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MUNICIPAL CORPORATIONS - USE OF STREETS - VALIDITY OF ORDINANCE PROVIDING FOR PARKING METERS

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MUNICIPAL CORPORATIONS — USE OF STREETS — VALIDITY OF ORDINANCE PROVIDING FOR PARKING METERS — Petitioner was convicted and fined for parking in a meter parking space on a city street without depositing a nickel in the meter as required by municipal ordinance. Upon being committed to jail he applied for a writ of habeas corpus, contending that the ordinance providing for parking meters was invalid. *Held*, the writ was denied, parking meter ordinances being valid police regulations. *Ex parte Duncan*, 179 Okla. 355, 65 P. (2d) 1015 (1937).[1]

Municipal corporations have power to regulate the use of their streets.[2] This includes the power to regulate traffic, including the parking of vehicles.[3] In case of conflict between state and municipal traffic regulations, the former prevail.[4] Municipal parking regulations must be reasonable. Ordinances prohibiting the privilege of parking on certain streets for longer than thirty minutes or one hour have been generally upheld.[5] Absolute prohibition of the parking on congested streets has been upheld as reasonable, but to prohibit the

[1] The legality of parking meter ordinances has also recently been before the courts of Alabama, Florida and Massachusetts. The Supreme Court of Florida in December, 1936, upheld the use of meters as a legitimate exercise of the police power. State v. McCarthy, 126 Fla. 433, 171 So. 314 (1936). A parking meter ordinance of Birmingham was declared invalid in January, 1937, by the Supreme Court of Alabama, on the ground that it was "an unauthorized use of the taxing power." City of Birmingham v. Hood-McPherson Realty Co., (Ala. 1937) 172 So. 114. In April, 1937, the Supreme Judicial Court of Massachusetts, in an advisory opinion, In re Opinion of the Justices, 8 N. E. (2d) 179, stated that the legislature could authorize the regulation of parking by meters. The court stated, however, that parking meters cannot be used to make a profit over and above the expense involved in proper regulation. 19 PUBLIC MANAGEMENT 148 (May, 1937).

[2] 2 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 712 (1911); 3 McQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., §§ 981, 992 (1928).

[3] Village of Wonewoc v. Taubert, 203 Wis. 73, 233 N. W. 755 (1930). As to whether in a home rule state the regulation of traffic is a matter for state or local regulation, see Ex parte Daniels, 183 Cal. 636, 192 P. 442 (1920); Bruce v. Ryan, 138 Minn. 264, 164 N. W. 982 (1917); Kalich v. Knapp, 73 Ore. 558, 142 P. 594 (1914); Detroit, Wyandotte & Trenton Transit Co. v. Detroit, 260 Mich. 124, 244 N. W. 424 (1932).

[4] Genusa v. Houston, (Tex. Civ. App. 1928) 10 S. W. (2d) 772; Lowenberg v. Fidelity Union Casualty Co., (La. App. 1932) 147 So. 81; Mendel v. Dorman, 202 Ky. 29, 258 S. W. 936 (1924).

[5] Commonwealth v. Fenton, 139 Mass. 195, 29 N. E. 653 (1885); Commonwealth v. Rowe, 141 Mass. 79, 6 N. E. 545 (1886); Pugh v. Des Moines, 176 Iowa 593, 156 N. W. 892 (1916).

stopping of automobiles for purposes incident to travel is unreasonable.[6] Applying different regulations to streets where similar traffic conditions exist is unreasonable, such ordinances being invalid because they constitute arbitrary discrimination.[7] Automobiles may be treated as a class and subjected to parking regulations peculiarly applicable to them.[8] Abutting property owners may not object to ordinances regulating or prohibiting parking as long as there is no unreasonable interference with their right of ingress and egress.[9] The power to regulate traffic may not be used for fiscal purposes.[10] While three of the four courts which have thus far passed upon the question hold that parking meters

[6] An ordinance of the city of Chicago which prohibited the standing of any vehicle on the streets of the "loop" or down-town shopping and office district for any purpose, or for any time, during the business hours of the day, was held unreasonable. Haggenjos v. Chicago, 336 Ill. 573, 168 N. E. 661 (1929). But an ordinance prohibiting the standing of vehicles in the same district "for a period of time longer than is necessary for the reasonably expeditious loading or unloading of passengers, providing such loading or unloading shall not consume more than three minutes" was later held to be reasonable. Chicago v. McKinley, 344 Ill. 297, 176 N. E. 261 (1931). Cf. Ex parte Battis, 40 Tex. Crim. 112, 48 S. W. 513 (1898), where a similar ordinance was held void on the ground that it was unreasonable. See criticism of Haggenjos v. Chicago in 15 ST. LOUIS L. REV. 302 (1930); and 4 UNIV. CIN. L. REV. 231 (1930).

[7] Giant Tiger Corp. v. Trenton, 11 N. J. Misc. 836, 168 A. 310 (1933).

[8] Village of Wonewoc v. Taubert, 203 Wis. 73, 233 N. W. 755 (1930); State v. Mayo, 106 Me. 62, 75 A. 295 (1909). Special regulations may be applied to cabs and hacks, prohibiting their parking while vacant on public streets at places other than those designated. People v. May, 98 Misc. 561, 164 N. Y. S. 717 (1917); Yellow Taxicab Co. v. Gaynor, 159 App. Div. 893, 144 N. Y. S. 299 (1913); Swann v. Mayor and City Council of Baltimore, 132 Md. 256, 103 A. 441 (1918); Commonwealth v. Rice, 261 Mass. 340, 158 N. E. 797 (1927); Chapman v. Portland, 131 Me. 242, 160 A. 913 (1932).

[9] Allen v. Presbrey, 50 R. I. 53, 144 A. 888 (1929). Cf. City of Richmond v. Smith, 101 Va. 161, 43 S. E. 345 (1903); Decker v. Goddard, 233 App. Div. 139, 251 N. Y. S. 440 (1931). Property owners may not recover in such cases against the city for loss of rent or business resulting from the prohibition of parking. Thompson v. Reidsville, 203 N. C. 502, 166 S. E. 389 (1932). On the power of a city to establish and regulate hack and cab stands as against the objections of abutting owners, see: Waldorf-Astoria Hotel Co. v. New York, 212 N. Y. 97, 105 N. E. 803 (1914); Branahan v. Hotel Co., 39 Ohio St. 333, 48 Am. Rep. 457 (1883); McFall v. St. Louis, 232 Mo. 716, 135 S. W. 51 (1911); Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N. W. 219 (1924). Also see Goodman, "Validity of Ordinances Permitting the Parking of Automobiles," 10 VA. L. REG. (N. S.) 545 (1924); and 11 CHI. KENT REV. 295 (1933).

[10] Cities may impose wheel taxes for purposes of securing revenue if the power is expressly conferred, but the power to do this will not be inferred from a general power to regulate and control the use of streets. Fort Smith v. Scruggs, 70 Ark. 549, 69 S. W. 679 (1902); Tomlinson v. Indianapolis, 144 Ind. 142, 43 N. E. 9 (1896); Marmet v. State, 45 Ohio St. 63, 12 N. E. 463 (1887); St. Louis v. Weitzel, 130 Mo. 600, 31 S. W. 1045 (1895); Mobile v. Gentry, 170 Ala. 234, 54 So. 488 (1911); State v. Scheidler, 91 Conn. 234, 99 A. 492 (1916); Combs v. Bluefield, 97 W. Va. 395, 125 S. E. 239 (1924).

are an exercise of the police power, all agree that if the primary purpose is to raise revenue then their use is illegal.[11] If experience demonstrates that the primary purpose and benefit of parking meters is in solving the traffic problem, then a favorable attitude on the part of the courts may be expected.[12]

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[11] This is significant since one of the principal arguments which has been advanced for the use of parking meters is that they will return a substantial revenue.

[12] Licensing of particular types of vehicles, such as taxicabs, would seem to be regulatory, but a general wheel tax imposed on all owners of automobiles would appear to be primarily fiscal. People v. Thompson, 341 Ill. 166, 173 N. E. 137 (1930); Town of Fleming v. Wright, 225 Ky. 129, 7 S. W. (2d) 832 (1928).