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Municipal Corporations: Final Examination (1961)

William & Mary Law School

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I. A. The City, in order to insure a pure water supply for its inhabitants, undertook the operation of a municipal waterworks. After several years it began marketing its water to residents of Toano, a neighboring village, at a higher rate than that charged to resident consumers. Several City residents consult you as attorney. Their complaint is that the water supply is not large enough to supply both residents and non residents and as a result they are experiencing a shortage of water in their homes. You investigate and discover that this complaint is prevalent throughout the city, however, the authority to market water outside of the corporate limits was in the form of a duly adopted municipal ordinance.

What would you advise your clients and by what method or methods would you seek to secure relief for them if any?

B. X, a resident of Toano, consults you concerning the higher rate being charged to residents of Toano. He notes that utility charges are regulated by the State Corporation Commission and feels that the high charge made to non residents is unreasonable. He asks you to bring an injunction for the purpose of enjoining the enforcement of that portion of the ordinance which permits a higher water rate against non residents.

What will you advise? Will your answer be any different assuming that a surplus amount of water existed?

C. The City water main broke at a point outside but near the corporate limits; as a result the properties of A, a non resident and B, a resident, were flooded and seriously damaged. A had noticed a leak in the main several weeks before the break occurred and notified the superintendent of public works but no corrective action had been taken. A State statute provided as follows:

No action shall be maintained by any person against any municipality on account of injury to person or property unless the person injured shall within three months thereafter and prior to the bringing of the suit file with the City Clerk a written statement giving the time and place of the happening of the accident or injury received and the circumstances relating thereto.

Four months after the incident A brought action to recover damages, without giving the required notice. B likewise instituted suit and gave notice which, however, failed to indicate the time and place where the break occurred.

What defenses would you as attorney for the City make in each case? What result and why?

II. In the use of its highways, streets and sidewalks a municipal corporation, as a general rule is not liable for injuries to persons or property resulting from its adoption of an improper construction of a highway, street or sidewalk when the defects in the plan are due to a mere error in the exercise of a bona fide judgment, even though reasonable men might differ as to which plan should have been adopted. However, there are four circumstances in which municipal corporations are liable for street, highway and sidewalk defects. What are they?

III. A. Defendant was prosecuted under the following ordinance:

It shall be unlawful for any person ... to have in his possession in an automobile any pistol, revolver, or other firearm capable of being concealed on the person without then and there having a permit issued by authorized governmental authorities authorizing him to do so ...

Defendant had a 22 calibre revolver laying on the front seat of his car when he was arrested. A State Statute provided:

Except as otherwise provided in this Act it shall be unlawful for any person within this state to carry concealed upon his person or within any vehicle which is under his direction or control any pistol, revolver or other firearm capable of being concealed upon the person ...

What argument would you make in behalf of the defendant? What argument would you make in behalf of the municipality and what result?

B. What is the inherent rights doctrine? What are the two exceptions in those jurisdictions which do not recognize the doctrine?

C. A municipal ordinance provided: "No person over the age of 16 years shall be permitted to appear in bathing costume or in any other than customary street attire upon any public street or thoroughfare in the City of X."...

The statute further provided that violations were misdemeanors and that violators would be punished by fines up to \$150 or imprisonment not exceeding 30 days or both.

1. May a municipality pass such a law?

2. What arguments would you make

in behalf of a woman arrested for violating the ordinance who, at the time of arrest, was wearing white sandals, yellow shorts, a colored halter and no hat?

3. Are Municipal ordinances which provide for a fine or imprisonment usually regarded as criminal ordinances? If not, how are they regarded? Under the majority rule when may municipalities create crimes?

IV. a) The City of X, needed an office building and entered into a contract with X Company for its construction for \$150,000. T, a taxpayer, seeks an injunction against the City to prevent payment of this money even though the building has been constructed because the city did not provide for competitive bidding. There was no statutory or constitutional provision that called for competitive bidding. The City demurred. Judgment for whom and why?

B. The City of X wanted an incinerator built with a certain type of stoker. A statute requires competitive bidding and that the lowest and best bid be accepted. T contends that there can be no competitive bidding where an article called for in the specifications is patented. Is this contention sound?

C. The board of education in advertising for bids to construct a new school required all prospective bidders to submit financial statements and complete experience questionnaires. Based on these documents the board seeks to limit the bidding to those contractors deemed by the board to be responsible and experienced. A state statute requires competitive bidding and does not prescribe that regulations for the determination of the lowest responsible bidder may be prescribed by ordinance. A, your client, after having filed the statement and questionnaire, has been refused the right to submit a bid.

By what method would you proceed and what argument would you make in his behalf?

V. Richmond enacted an ordinance providing for "the licensing and regulation of any automatic musical instrument (juke boxes)." The license fee was \$50 per year per machine. The preamble to the ordinance stated that in pursuance of the city's authority to promote the health, morals and general welfare of the inhabitants of the City of Richmond the ordinance was being enacted. Once a license was obtained, the licensee could operate the instrument anywhere he desired, i.e., anywhere that the public might use a juke box; nor were there any limitations on the time of day that such machines could be operated. In short, no limitations of any kind were placed upon the use or operation of properly licensed machines. In an action against X, a juke box distributor, for failing to obtain licenses for the machines that he owned and operated at a profit, X attacks the constitutionality of the ordinance. Discuss.

VI. In 1920, Abby Gotrocks dedicated to the City of Wide Open, Arizona, 10,000 acres of land which had come to be known as "Abby's Grand Canyon." The purpose of the dedication was to develop the site as a park for the City. The City accepted the dedication and appropriated five million dollars for the development of the area. Then, a series of interesting events ensued. In anticipation of the many cars which would daily arrive at the park, the City condemned a strip of land 500 feet wide and 12 miles long for the purpose of constructing a first-class highway to it. This highway would run from the park to U.S. Route 1. A highway 75 feet wide was contemplated with shoulders on each side, 12½ feet wide. The extra 400 feet was condemned so as to prevent the erection of billboards within 200 feet on either side of the highway. It was thought that billboards would mar the beauty of the area and cause accidents by distracting motorists. Next, the City entered into a contract with John Mayflower, a road contractor, for the construction of this contemplated highway. The contract was entered into without calling for bids as required by statute, because there were only two road contractors in the city, Mayflower and Mao Tse Tung, a Chinese National; and a city ordinance stated that only citizens were eligible bidders on city contracts. This road was constructed according to plans drawn up by the city. The plans were actually faulty and six months after the road was completed, parts of the road caved in occasionally under the weight of single cars. Every time there was a cave in, the city would fill the hole in with dirt. The thirteenth such cave in occurred while Charlie Brown was driving his 1920 Dodge Bros. over the highway. Charlie Brown broke his neck and big toe in this accident. In 1930, after the 51st cave-in the city officials became discouraged and abandoned its "first class" highway and constructed a new one some five miles away. The City never did pay Mayflower for the work on the first highway. As a result of vacating this original highway, all of the businesses along it which were benefiting from the tourist trade and auto repairs, became next to worthless. Then in 1957 when tourist visitations dropped off to nothing, the city sold "Abby's Grand Canyon" to Jack Benney for 40 million dollars. The sale was made in accordance with a state statute which authorized the sale of any dedicated lands should a municipal corporation deem the land was no longer suitable for the dedication purpose.

Answer each of the questions below independently of each other:

(Consider the highway as a city street and assume everything is within city limits):

- a) In 1920, a taxpayer attacked the validity of the five million dollar appropriation as not being for a "public purpose." Discuss.
- b) Also in 1920, a property owner of the condemned land attacked the validity of the condemnation. Discuss.
- c) Mao Tse Tung attacks the validity of the ordinance which restricts bidders on city contracts to citizens. Discuss.
- d) John Mayflower sues the city for the work he has done on the first highway as per his contract with the city. Discuss.
- e) Charlie Brown sues the city for the damage caused by the road cave-in. Discuss.
- f) An owner of a business along the vacated highway sues the city for the depreciation in the value of his land caused by the vacation. Discuss.
- g) A taxpayer attacks the sale of "Abby's Grand Canyon" to Jack Benney. Discuss.