South Carolina Law Review

Volume 7 | Issue 1 Article 20

Fall 1954

Public Corporations

Huger Sinkler

PUBLIC CORPORATIONS

HUGER SINKLER*

Annexation of Territory

For some reason which does not appear in the opinion, *Truesdale v. Jones*,[1] the appellant failed to raise the one question upon which he might have successfully defeated the challenged annexation by the town of Kershaw. In his complaint, the appellant admitted the sufficiency of the petition. Holding that he was bound by this admission that a majority of the freeholders of the area to be annexed had signed the petition seeking annexation, the Court refused to consider this question. It also refused, however, to approve the referee's holding that in the absence of fraud, accident or mistake, the town's conclusion with respect to the adequacy of the petition was conclusive. That this question should be reserved so pointedly was very proper, for obviously the sufficiency of the petition is the condition precedent to the validity of the proceedings. Furthermore, when the Town Council acts in finding as to the sufficiency of the petition, it does so in a quasi-judicial capacity which must be subject to review if the correctness of the finding is subjected to timely challenge.

The other grounds of challenge were highly technical and the Court was eminently correct in upholding the proceedings on the ground that there was a substantial compliance with the provisions of the statute. The Court's opinion includes an excellent synopsis of the steps which the statute requires to be taken in annexation proceedings. The corporation lawyers of expanding municipalities should take note of this valuable synopsis.

In the case, *Town of Forest Acres v. Seigler*,[2] the Court first notes that the Constitution of South Carolina imposes no restriction on the legislature with reference to extending the

*B.A., College of Charleston; Legal Education, University of South Carolina, School of Law; member City Council of Charleston, 1939-1943; member State Legislature, 1932-36, and 1945-46; member of Charleston County, South Carolina and American Bar Associations; member of firm of Sinkler, Gibbs and Simons, Charleston, South Carolina.

1. 224 S.C. 237, 78 S.E. 2d 274 (1953).
2. 224 S.C. 166, 77 S.E. 2d 900 (1953).

corporate limits of municipalities, and that as a consequence, the legislative power over municipalities is plenary and includes the right to regulate the manner in which the boundaries of such governmental units may be extended or diminished.

The case involved the effect of the two statutes relating respectively to annexations and the decreasing of the territory of municipalities. And the Court concluded that one municipality may not annex less than all of an adjacent municipality, unless, first of all, the territory to be annexed had first lawfully detached itself from the municipality of which it was a part. The Court noted that this statute required that an election be held which must result in the approval of a majority of all of the electors (voting in the election) of the town whose territory was to be annexed. The fact that only in rare cases could such a result be obtained was also noted. But this fact did not affect the Court's conclusions. The holding here is obviously correct and is sustained by well reasoned authorities elsewhere. One can think of many reasons why one municipality may not raid its neighbor's territory.

In the course of its decision in this case, the Court reaffirmed its right to examine the original statute to resolve an ambiguity resulting from its codification. Such a procedure says the Court is not in derogation of the legislative declaration that upon its adoption the code is the only general statutory law of the State. There is no room to question the soundness of this holding, but it points up a difficulty ever present to the practitioner.

Liability for Property Damage

The important point of the decision, *Hill v. City of Greenville*,[3] is that which holds that positive action by the city is required to render it liable to a damaged property owner under the statute formerly codified as Code Section 7301 of the 1942 Code.[4]

As construed by the Court, the key words in the statute were those requiring the city to find " . . . it . . . necessary or desirable to carry off the surface water from any street . . . ." The Court did not construe the statute as making it mandatory to furnish drainage upon demand of the property owner. In

3. 223 S.C. 392, 76 S.E. 2d 295 (1953).
4. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 59-224.

reaching the result here, the Court distinguished this case from the earlier case of *Macedonia Baptist Church v. City of Columbia,*[5] on the ground that the result reached by that case came about as a consequence of positive action by the municipality involved. Stated once again in this decision, is the important rule that the State, its municipalities, and its political subdivisions are not liable in tort in the absence of a statute removing the inherent governmental immunity except under a self-exercising constitutional provision.

Holliday v. City of Greenville[6] is the companion case to *Hill v. City of Greenville.*[7] However, the result is directly opposite. In this case the plaintiff charged, offered testimony to prove, and the jury found that positive changes in drainage conditions made by the city resulted in the discharge of surface water on the property of the plaintiff and for this reason sustained the recovery allowed to the plaintiff by the jury. The Court notes its recent holding in the *Hill* case but concludes that the result permitted in this case is not in conflict. While the Court rests its holding entirely on the statute ("It is unnecessary for us to consider whether there is a foundation of liability on the part of the appellant otherwise than the code . . . ."), it did note that a similar result might obtain on the theory that property had been taken without compensation. But because of the nature of the issues as joined below, it did not rule on the question of whether in an action brought on the theory that property had been taken without compensation, the city might prove, in mitigation of the property owner's damage, benefits to the property by the improvements installed by the city which had in turn caused the discharge of water.

In the next case of this sort, it would seem that the city would allege (if it could so prove) that the installation of the improvements resulted in benefits to the property which could lessen or offset the damages sustained because of the discharge of water.

From a practical standpoint, there is no difference between these two theories. The statute merely seems to be an implementation of the constitutional principle that property may not be damaged (taken) by public bodies without compensation.

5. 195 S.C. 59, 10 S.E. 2d 350 (1939).
6. 224 S.C. 207, 78 S.E. 2d 279 (1953).
7. See note 3 *supra.*

Regulation of Parking

In the earlier case, *City of Columbia v. Alexander*,[8] the Supreme Court had held invalid an ordinance of the City of Columbia which forbade the operation of taxicabs, jitneys and vehicles for hire on the principal portion of Main Street, except for discharge or pick-up passengers who had previously called for service. The ordinance required taxis, in such cases, to effect an exit from Main Street at the nearest corner. On the basis of that holding the Court of Common Pleas had held invalid the Chester ordinance which prohibits taxicabs from parking elsewhere than at their regular stands except to take on or discharge passengers. The Supreme Court reversed this holding in *Radio Cab Co. v. Bagby*,[9] noting first, that in the *Alexander* case the Court found that the Columbia ordinance would destroy or impair a lawful business, and such was the avowed purpose the ordinance, a situation which did not exist in the instant case. Secondly, the Supreme Court noted that the *Alexander* case had been decided by a divided court, and that its holding was out of harmony with the majority rule. The Court then proceeds to uphold the ordinance. Such ordinances are of course always either valid exercises of police power or invalid as unreasonable exercises of power. However, it occurs to the writer that the true test is not how the ordinance affects any given occupation, but whether under existing conditions it is reasonably necessary. If it is necessary, it is valid irrespective of its effect on the individual. The converse, of course, is equally true.

Special Districts

The case, *Wagener v. Johnson*,[10] sustains legislation which confers upon the Board of Township Commissioners of Folly Island, a board whose status the case of *Wagener v. Smith*[11] left in grave doubt, the power to construct and operate a public waterworks system irrespective of whether its status was *de jure* or *de facto*. The decision is not of too much consequence in the field of municipal finance. There is, however, one *obiter dictum* that is puzzling. The decision stated:

8. 125 S.C. 530, 119 S.E. 241 (1923).
9. 224 S.C. 28, 77 S.E. 2d 264 (1953).
10. 223 S.C. 470, 76 S.E. 2d 611 (1953).
11. 221 S.C. 438, 71 S.E. 2d 1 (1952).

> Numerous decisions of our Court uphold the validity of legislation creating special purpose districts, including districts established for the purpose of constructing, operating and maintaining Waterworks Systems and it is needless for me to discuss this question in further detail. *Rutledge v. Greater Greenville Sewer District,* 139 S. C. 188, 137 S. E. 597; *Floyd v. Parker Water & Sewer Sub-District,* 203 S. C. 276, 17 S. E. (2d) 223; *Ashmore v. Greater Greenville Sewer District,* 211 S. C. 77, 44 S. E. (2d) 88, 173 A. L. R. 397.

Then it went on to say:

> It should be emphasized that the bonds proposed to be issued are 'revenue bonds', for the payment of which the credit and taxing power of the township or district are not pledged, which differentiates and effectively distinguishes the case in this respect from *Doran v. Robertson,* 203 S. C. 434, 27 S. E. (2d) 714.

It is hard to see how the nature of the bonds sold has anything to do with that question. Particularly since all of the bonds, held valid by the *Rutledge* and other cases cited as analagous, were general obligations which the Court approved irrespective of debt limitations on the grounds that the *ad valorem* taxes levied to pay those bonds were in reality assessments for special benefits. The *Doran* case went off on the ground that sewers were not among the purposes for which counties might issue bonds as enumerated in Article X, Section 6 of the Constitution.[12] *Doran,* of course, did note that a county could hardly be set up as a special district to be especially benefitted by the installation of sewers in any one place, and that, as a consequence, the purpose for which Charleston County in the *Doran* case sought to issue bonds could not be regarded as an ordinary county purpose. But here the territory was presumably benefitted.[13]

Furthermore, the question of lack of benefit had not been raised. For that reason it would appear that the presumption was conclusive that there were special benefits, which should make the case exactly similar to the *Rutledge* case.

---

12. S. C. CONST. (1895).
13. Compare Chesebro v. Los Angeles County Flood Control, 306 U.S. 459 (1939).

Validity of Contract Between an Elected Official and The Agency of Which He Is a Member

The interesting question raised by *Town of Myrtle Beach v. Suber*[14] is that which is duly noted but not decided. It relates to the right of a member of a public body to purchase property from the public body at private sale. Unfortunately, the Court found that the appeal could be disposed of without deciding the question. The respondent, while a member of the Commissioners of Public Works of Myrtle Beach, under whose custody and control lay the operation and management of the municipal waterworks system of Myrtle Beach, had purchased a discarded cypress tank from the Commissioners of Public Works. When, by a subsequent Act of the General Assembly, the functions of the Commissioners of Public Works of Myrtle Beach were devolved upon the Town Council of that municipality, that body sued for an accounting. The Supreme Court concluded that because the suit had not been one to set aside or enjoin the sale of property, the question we have noted was not properly raised.

We are not given the pleadings, but obviously the suit was on the equity side and presumably the plaintiff sought "such other and further relief as to the Court seems equitable." Furthermore, an important matter involving a public body was involved. Therefore, it seems that the question so fully noted should have been decided and not so neatly sidestepped. While it is true that courts should not decide questions that are purely academic, nevertheless, the situation here did not seem to require that treatment.

The writer of this review is inclined to the view that a contract made after private negotiations between a member of a public body and the public body of which he is a member should be held void and not merely voidable. One should not forget that public officers are trustees of a most sacred trust; that established for the public as a whole. The rule is clear in this State that a trustee, in the absence of Court sanction, cannot buy from himself.[15] In private trusts the personal interest of the individual is ever present to discipline the trustee. But in the case of the public, too often is everyone's business, no one's business. Hence certainly the rule should be as strict in the case of the public trustee as in the case of the private

14. 81 S.E. 2d 352 (S.C. 1954).
15. Honeywell v. Dominick, 223 S.C. 365, 76 S.E. 2d 59 (1953).

trustee. It does not matter whether or not the member of the public body absents himself from official meetings. His influence is present if his person is absent. And lest the public be deprived of a potential purchaser, let the sale be publicly advertised and conducted at auction. At such a sale the public official could bid.

Unfortunately, the Court in this case was too impressed with the apparent good faith observed by the respondent, with the result that it missed a golden opportunity to raise the standards of public morality.

Zoning

Hodge v. Pollock[16] points up and corrects an error so commonly found in the workings of Zoning Boards of Adjustment. Proceeding on the theory that variances authorized by Code Section 47-1009(3)[17] might be granted as long as no substantial harm resulted to adjacent property holders, the Spartanburg Board of Adjustment had permitted a property owner to ignore the side lot requirement of six feet which was applicable to the particular zone. The action of the Board of Adjustment had been upheld by the Court of Common Pleas in *certiorari* proceedings.

The Supreme Court reversed, criticizing the Zoning Board for assuming that this alone was the criterion to be observed.

Said the Court:

> It is generally held that before a variance can be allowed on the ground of 'unnecessary hardship', there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. *Hickox v. Griffin*, 298 N.Y. 365, 83 N.E. (2d) 836.

If such were not true, reasoned the Supreme Court, Boards of Adjustment could nullify zoning ordinances by granting repeated variances.

In this day and time, we are becoming more and more conscious of the necessity of intelligent municipal planning, and zoning is an essential feature of any such planning. For this reason, we cannot but applaud the holding of the Court in this case. Its soundness is not open to dispute. It is hoped that the Court will hue to the line which they have clearly laid down.

16. 223 S.C. 342, 75 S.E. 2d 752 (1953).
17. CODE OF LAWS OF SOUTH CAROLINA, 1952.