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Public Corporations

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PUBLIC CORPORATIONS

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An unusually large number of interesting developments took place in the field of law relating to public corporations during the last year. Not only were there a large number of cases decided by our Supreme Court, but the cases that were decided touched on many phases of this field of law. Included are cases involving zoning, cases involving public finance, and cases involving the liability of public corporations for damages. Some of these decisions will slumber peacefully on the book shelves of the lawyer, but others will be read, reread and ofttimes cited. In all, the developments in this field, which this writer shall endeavor to chart and comment upon, should be of general interest. As far as possible, the writer has endeavored to group the cases in classifications which reflect the most important point decided.

Zoning

Two cases relating to the law of zoning were decided. In the first case, *Dunbar v. City of Spartanburg*,[1] the taxpayer and property owner, Dunbar, sought, by way of writ of certiorari, to review and reverse the action of the Mayor and the City Council of the City of Spartanburg in refusing to rezone an area in which was situate Dunbar's property. Previously City Council had referred Dunbar's petition to the Board of Adjustment which had recommended, by a three to two vote, that the petition be granted. The City Council refused to abide by the recommendation of the Board of Adjustment and voted to reject the petition, and thus refused the petitioner's contention that the area, in which his property was situate, should be placed into a business zone.

The Supreme Court refused to grant the writ, pointing out that courts have no power to review or annul the legislative acts of municipal officials. Our court said:

> At common law and under the practice of most jurisdictions the writ of certiorari will lie to review only those acts which are judicial or quasi-judicial in nature.

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1. 226 S.C. 360, 85 S.E. 2d 281 (1954).

Clearly the remedy Dunbar had pursued was one involving the legislative functioning of the City Council of Spartanburg, and therefore no court review was possible when he lost in that forum.

An illustration of court review of the action of a municipal council which was quasi-judicial in nature is found in the case of *Truesdale v. Jones*.[2]

Being fully conscious of the need for municipal zoning in the crowded municipalities of today, the writer applauded the position taken by the Supreme Court in the case of *Hodge v. Pollock*,[3] reviewed in the 1954 Fall edition of the *Law Quarterly*. That decision upheld the zoning ordinance and refused to permit a spurious variation which had been sought upon the familiar cry that the ordinance worked an unnecessary hardship upon the property involved. The court there noted that before a variance to a zoning ordinance might be allowed, proof must be made that the particular property was placed at an unusual disadvantage peculiar to that property and different from other property in the particular zone. Obviously, any other rule would lead to spot zoning which is so universally condemned.

In applauding that decision, we expressed the hope that the court would continue to hue to the line thus laid down. About one year later the court did follow that rule in the case entitled *Application of Groves*.[4] Groves and a partner were lessees of the South Carolina State Ports Authority, which is the owner of a large amount of waterfront property in an area in Charleston which has been zoned as a "B Residential District". The land owned by the State Ports Authority had been acquired from the City of Charleston itself, subsequent to the time that the area had been zoned as a "B Residential District". Groves leased a portion of the property owned by the Authority in this area and proposed to erect thereon an expensive, attractive, public restaurant which he contended would improve the area and attract tourist trade to the City. The Charleston Board of Adjustment granted the variance sought and authorized the construction of the restaurant. By writ of certiorari certain property owners, immediately affected, sought a review of this action in the Court of Common Pleas. The cause was referred, and both the Referee and the Circuit Court followed the position taken by the Board of Adjustment and upheld the variance. Fortunately, the Supreme Court reversed.

2. 224 S.C. 237, 78 S.E. 2d 274 (1953). See 7 S.C.L.Q. 156 (Fall 1954).
3. 223 S.C. 342, 75 S.E. 2d 752 (1953). See 7 S.C.L.Q. 162 (Fall 1954).
4. 85 S.E. 2d 708 (S.C. 1955).

The majority opinion relied upon *Hodge v. Pollock, supra,* and pointed out that the particular property did not show any disadvantage peculiar to it alone. The court pointed out that the State Ports Authority had a large amount of property in this area and that there was no substantial difference between the property leased by Groves and the other property of the Authority. It also noted that the State Ports Authority had acquired the property after it had been zoned as a "B Residential Area".

The court's decision was not unanimous, and curiously, the author of the opinion in the *Hodge v. Pollock* case dissented. In doing so, he fails to note the point relied on by the majority, that the State Ports Authority had other property in the same area as well as that which was leased to Groves, and that consequently the disadvantage was not peculiar to the property leased by Groves.

We feel this observation is warranted. In almost every zoned area there will be found property which could be put to some more advantageous use. As for example, there is always some corner lot in a residential section that would bring many times its otherwise value if it were to be used as a filling station. But the denial of the conversion of the use to which this lot may be put is not the sort of "unusual disadvantage" which warrants a change in use. The property must be so situate that it cannot, as a practicable matter, be made use of for the purpose for which the property in that area has been zoned, and even then a variance should be allowed only under rare and unusual conditions, and pecuniary hardship to the owner should not be considered in most circumstances.

Suits for Damage

Belue v. The City of Greenville[5] is a case which, to all intents and purposes, is similar to the case of *Holliday v. The City of Greenville,*[6] discussed under this heading in last year's review of cases involving the law of public corporations.[7] Once again, the court's decision holds the municipality liable if positive changes in drainage conditions effected by the City have resulted in damage to property by reason of excessive flow of water. Again the court points out that the City's alternative to a suit for damages is to condemn the property subjected to the excessive flow. As we noted in our comments on the *Holliday* case last year, the municipality should be permitted to mitigate the damages sustained by the property owner by

5. 226 S.C. 192, 84 S.E. 2d 631 (1954).
6. 224 S.C. 207, 78 S.E. 2d 279 (1953).
7. 7 S.C.L.Q. 158 (Fall 1954).

proving (if such is possible) that the improvements which brought about the excessive flow of water resulted in benefits in other ways. There is no attempt on the part of the court here to change the rule of law set forth in the *Holliday* case, which would seem to continue to be the leading authority on this point.

Bell v. The City of Anderson[8] relates to the time for the filing of actions in tort against municipal corporations. The verified summons and complaint here were filed with the Sheriff of Anderson County on the last day of the three months' period following the date of the plaintiff's injury. Code Section 47-71[9] requires the filing of a certified claim within three months following the date of the injury or damage, but provides that if the action is commenced upon a verified complaint within that time, the filing of the written claim with the municipal corporation shall be deemed dispensed with. Because the last day of the three months' period was a Saturday and the offices of the City of Anderson were closed on Saturdays, the Sheriff was unsuccessful in his effort to serve the summons and complaint within the exact time limit specified by Code Section 47-71.

However, the court concluded that Code Section 47-71 must be construed in the light of an earlier statute, *viz.*, Code Section 10-101,[10] which provides that a valid attempt to commence an action within the time limitation provided by statute shall be deemed the equivalent of the actual commencement of the action. This construction saved the plaintiff's claim and the verdict which it had obtained against the City of Anderson.

The sole question in the case of *Hicks v. The City of Columbia*[11] is whether a child injured by reason of a defect in a swing in a public park, maintained by the City of Columbia to provide recreational facilities for the youth of the City of Columbia, may bring suit against the City of Columbia under the provisions of Code Section 47-70.[12] This statute permits persons to recover who suffer bodily injury or damages through defects in "any street, causeway, bridge or public way, or by reason of a defect or mismanagement of anything under control of the corporation within the limits of any city."

As the court notes, there are several early South Carolina decisions which tend to sustain the plaintiff's contention that a public park is encompassed within the meaning of the statute. However, the court notes that later decisions have confined recoveries under

8. 226 S.C. 145, 84 S.E. 2d 343 (1954).
9. Code of Laws of South Carolina, 1952.
10. Code of Laws of South Carolina, 1952.
11. 225 S.C. 553, 83 S.E. 2d 199 (1954).
12. Code of Laws of South Carolina, 1952.

the statute to damages suffered from defects in the streets of the city.

It would thus appear that those earlier cases are overruled. Some of those cases had certainly enlarged "streets" in municipal corporations. For example, in the case of *Irvine v. Town of Greenwood*[13] the damages for which the recovery was permitted occurred when a child was electrocuted after having caught hold of a metallic chain attached to an electric light pole which was located at the edge of the street. And in *Haithcock v. City of Columbia*[14] a recovery was allowed by a boy who picked up and played with a dynamite cap found in a city park. Located in the park was a pumping station used in the operation of the municipal waterworks system. In the course of installing a pipe in this pumping station, the city had done some excavating. Dynamite had been used and one of the caps had been left lying around. It was this cap that had exploded and had seriously injured the plaintiff. . . . It is little wonder that the Supreme Court as then constituted characterized its then decisions on this question as "liberal".

In the case of *Hinnant v. The South Carolina State Highway Department*[15] the defendant Highway Department contended that the so-called Folly Beach Township, in Charleston County, was a municipal corporation against which suits for damages for defects in highways within its boundaries could be maintained under Code Section 33-229.[16] This Section provides that actions for damages resulting to persons injured through defects on state highways which are within the corporate limits of municipalities must be brought against such municipalities and that no action will lie against the Highway Department. The court held that Folly Beach Township was not an incorporated municipality but a special purpose district with immunity from tort liability for such occurrences. It noted that if the result contended for by the Highway Department were permitted, the plaintiff had no one to sue. The court then ruled that a state highway here was no different from any other highway lying beyond the limits of incorporated municipalities, and that persons who were injured from defects in such highways might bring suits against the Highway Department under the general statute removing the State's immunity from tort liability in such cases.

The well reasoned decision in the case of *Bush v. Aiken Electric Co-operative*[17] draws the distinction between a corporation serving

13. 89 S.C. 511, 72 S.E. 228 (1911).
14. 115 S.C. 29, 104 S.E. 335 (1920).
15. 226 S.C. 10, 83 S.E. 2d 209 (1954).
16. CODE OF LAWS OF SOUTH CAROLINA, 1952.
17. 85 S.E. 2d 716 (S.C. 1955).

a public purpose and a public corporation. In this case, the Aiken Electric Co-operative sought to escape liability for tort on the ground that the nature of the corporation was such that it must be presumed that the Legislature intended to grant it immunity from tort liability. The court noted that while certain aspects of the functions of the Co-operative were public in nature, the corporation was not a public corporation in the sense that it was a governmental unit or agency which had immunity from tort liability. Furthermore, it held that the fact that the property of the Co-operative was exempt from certain taxes was no proof at all of any intent to exempt such co-operatives from tort liability.

The court also disposed of the contention that the Co-operative should be classified as a charitable corporation which, under our decisions, would be granted full immunity from tort liability. In so doing, it cited with approval a similar holding of the Circuit Court of Appeals for the Fourth Judicial Circuit, in the case of *Bird v. Blue Ridge Rural Electrical Co-operative, Inc.*[18] That court observed that a rural electric co-operative was not designed to accomplish the beneficial purposes in the public interest for which true charitable associations are organized. That court thus held that a co-operative did not belong in the same category as a charitable corporation since, in reality, the Co-operative was essentially a business project designed to promote the convenience and material welfare of its members. These holdings are clearly sound.

Workmen's Compensation — Liability of Municipalities

The plaintiff, in the case of *Lomax v. The City of Greenville,*[19] was a janitor who worked in the city jail. Among the functions performed by Lomax was the running of errands for persons who were incarcerated in the jail. As a general rule he was "tipped" for these services. In the course of an errand which Lomax undertook for one of the prisoners, he left the jail and made a trip to the prisoner's home. While on this mission he was struck by an automobile and injured. As a consequence of that injury he sought and successfully obtained compensation from the City under the Workmen's Compensation Act.

In doing so he overcame the contention that the City of Greenville had no power to employ him or to permit him to perform the sort of service which he was rendering at the time that he was injured.

The court's decision seems to hinge upon the testimony of a lieu-

18. 215 F. 2d 542 (4th Cir. 1954).
19. 225 S.C. 289, 82 S.E. 2d 191 (1954).

tenant of the police force who stated that Lomax had many duties and was required to look after the prisoners and perform such errands as they requested.

The service rendered by this jail has much to recommend it. We know of hotels where this service cannot be had for love or money.

The court then discusses the doctrine of actual and implied powers of municipal corporations and rests its decision upon the ground that the City of Greenville had implied power to hire a janitor for its jail, who could be permitted to run errands for those incarcerated in the jail. The discussion of implied powers seems far-fetched. Quite obviously, the City of Greenville has both actual and implied power to operate a city jail. But what is more to the point, the service rendered by Lomax was not an official duty by any stretch of the imagination, but was something done in order that he might receive the tip promised him. The decision here is hard to rationalize.

Construction of Statute Relating to Tax Exemptions Afforded to Manufacturing Plants in Charleston County

The case of *West Virginia Pulp & Paper Co. v. Riddock*[20] involves a very narrow question of statutory construction. The statute involved purported to exempt additions to certain manufacturing plants in Charleston County from "county taxes". The statute stated that the exemption should not apply to school taxes or public service district taxes. The narrow issue was whether an ad valorem county tax levied to serivce county bonds was a county tax within the meaning of the statutory language. If it was, the exemption sought by the plaintiff had to be allowed. The West Virginia Pulp & Paper Company contended that taxes levied for county bonds were county taxes within the meaning of the statute, and that, therefore, the taxes levied for this purpose upon certain improvements constructed by the company and admittedly qualified for exemption under the Act should be abated for the statutory period. The court agreed with this contention, applying the principle *"expressio unius est exclusio alterius"*. The court says that the Legislature must be presumed to have intended that the exemption should apply to taxes levied for all county purposes since it could so easily have limited the exemption to taxes levied for operating purposes had it so wished.

Public Finance

There are three decisions which were handed down by the Supreme Court during the last year which relate to public finance. These

20. 225 S.C. 283, 82 S.E. 2d 189 (1954).

cases involve constitutional questions also, but their principal importance is their effect upon the attempt of public corporations to finance public undertakings.

In the case of *Leonard v. Talbert*[21] the court once more had occasion to construe Article 10, Section 6, of the South Carolina Constitution, which is the provision of the Constitution controlling the levying of taxes and the issuance of bonds by Counties. This Section limits the right of counties to levy taxes or issue bonds to the purposes enumerated therein. Among the enumerated purposes are those which permit taxes and bond issues for "educational purposes" and for "ordinary County purposes." In 1953 the General Assembly undertook to authorize an issue of general obligation bonds of Richland County, payable from the proceeds of ad valorem taxes, whose proceeds were to be expended to provide what the Act referred to as "physical education equipment and facilities". As the court so aptly noted, it is obvious that a better term for the facilities thus described by the Act would have been "recreational facilities". The court refused to accept the legislative label and held that the purpose of the Act was to provide recreational facilities rather than educational facilities. It then held that recreational facilities could not possibly have been intended by the framers of the Constitution to be included within the term "educational". The court also held that facilities of this sort did not fall within the purview of the term "ordinary county purposes".

The writer is in entire accord with the holding of the court and agrees that if the provisions of the Constitution are to be enlarged, they should be enlarged through the amendment process and not by judicial declaration.

Perhaps the most interesting phase of this case is the court's implied criticism of its own holding in the earlier case of *Powell v. Thomas*.[22] In that case the court had upheld as a valid county purpose for which bonds might be issued a "cattle barn and show ring". The court stated in so holding it relied upon the representation of the County Board that the exhibition of milk cattle was highly informative and educational to many citizens of Chester County and furnished an incentive to the breeding of better cattle. It said:

> We think it may be reasonably inferred that the proposed undertaking is of an educational nature designed to disseminate among farmers for practical purposes scientific knowledge for the improvement of the cattle and milk business . . . .

21. 225 S.C. 559, 83 S.E. 2d 201 (1954).
22. 214 S.C. 376, 52 S.E. 2d 782 (1949).

While the court in the *Leonard* case, *supra,* did not see fit to point out that it went too far in the *Powell* case, it noted that the *Powell* case was an exceedingly close one, and it refused to permit the cattle barn and show ring case to stand as a precedent for the legislative attempt to provide physical educational facilities through the issuance of general obligation bonds by Richland County. The court's comment upon the *Powell* case seriously weakens its standing as a precedent.

In the case of *Bolt v. Cobb*[23] the Supreme Court upheld as valid an Act of the General Assembly relating to the issuance of bonds for hospital facilities in Anderson County. The Act authorizes a bond issue of $1,000,000 to provide additional hospital facilities for Anderson County. It authorizes the Board of Commissioners of Anderson County to construct such facilities on property which the County owns in fee and to lease the facilities thus constructed for a nominal rental to the Anderson County Hospital Association, a private but eleemosynary corporation. The Act provides that the lease might continue for so long a period of time as the County Board shall approve, provided that during such period the leased facilities and the existing facilities of the Association should be made available to the public of Anderson County under such conditions and regulations as the County Board and the Association shall mutually agree upon, but which should be designed to permit the greatest possible free service to the residents of Anderson County unable to pay for such service. The Act declares that the scheme thus described enables the County to discharge a proper function of government, *viz.,* that of providing hospital facilities. In that respect, the case has several earlier precedents, notably the case of *Battle v. Wilcox.*[24] The facts of the *Battle* case and the *Bolt* case, *supra,* are practically identical. In both instances, a hospital was to be erected through the proceeds of a county bond issue, and in both instances the hospital facilities were to be leased for a nominal rental. The court agreed that Anderson County could discharge this governmental function in cooperation with the private agency since that agency was both non-profit and non-sectarian. The court therefore held that the plan of the Act did not constitute a donation of public property for private purposes.

While the court's holding reiterates earlier decisions, its action is of considerable importance. Practically everywhere throughout the State a greater interest in public health is being taken, and more and

23. 225 S.C. 408, 82 S.E. 2d 789 (1954).
24. 128 S.C. 500, 122 S.E. 516 (1924).

more efforts are being made to establish good hospital facilities throughout the State. The operation of a hospital is bound to be a costly venture, and it seems proper that except where it is prohibited by the Constitution, public agencies should be permitted to cooperate with private eleemosynary corporations.

However, cooperative plans of this sort should be drawn up with the provisions of Article 11, Section 9, of South Carolina Constitution in mind. That Section forbids the use of public money or credit to aid any charitable endeavor which is wholly or in part under the direction or control of any church or religious organization.

The case of *Sammons v. The City of Beaufort*[25] involves the validity of an Act of the General Assembly designed to assist municipal corporations in alleviating the ever increasing parking problem. The case is one of considerable interest and one which has been commented on in several periodicals throughout the country. It has been the subject of review in the *Michigan Law Review*.[26] Likewise, it has been commented on by the Editor of the *Municipal Letter,* a publication of the Municipal Section of the American Bar Association.

The Act authorized municipalities of the State to establish off-street parking projects and to finance them with revenue bonds. This much, said the court, was lawful and proper. But the statute was found to have other features which could not be upheld. It so happens that almost everywhere throughout the United States, the revenues which municipal corporations derive from off-street parking facilities are not in themselves sufficient to finance the cost of such projects, and almost everywhere attempts have been made to "sweeten" the pot by adding to the security of the revenue bonds, proceeds of which are used to construct the off-street facilities, a pledge of revenues derived from on-street parking facilities, *viz.,* curb line parking meters. These attempts have met various fates. In perhaps the greater number of states, they have been upheld, as, for example, in the case of West Virginia. There the statute permitted both a pledge of the revenues derived from on-street parking facilities and its implementation by a covenant that the municipality would maintain on-street parking facilities throughout the life of the bonds. Such an Act was upheld in *State ex rel. Bibb v. Chambers*.[27] It is this phase of financing off-street parking facilities which gives the trouble. The West Virginia Court had held that a reservation by the town to enable it

25. 225 S.C. 490, 83 S.E. 2d 153 (1954).
26. 53 MICH. L. REV. 896 (April 1955).
27. 77 S.E. 2d 297 (W. Va. 1953).

to make appropriate changes in the location of parking meters or other on-street parking facilities was sufficient to preserve the town's essential police powers. Our Court refused to follow that holding, and it held that a covenant to maintain parking meters was, in effect, an attempt to barter away the police power. Our Court said:

> It is a fundamental principle of constitutional law that no legislative body may part with its right to exercise the police power, nor may a municipality to which such power has been delegated divest itself of same by contract or otherwise. It is a continuing power which may be exercised as often as required in the public interest and must always remain fluid.

The court noted that parking meters in South Carolina had been upheld as being a proper exercise of the police power in the regulation of motor vehicular traffic. It therefore held that the municipalities must have freedom of action to use or abandon curb line parking meters, and that while they were at liberty to pledge such revenues as they might derive from such on-street parking facilities as they might from time to time operate, they could not covenant to maintain parking meters throughout the life of the bonds. The court's holding here is basically sound.

The South Carolina decision appears to be quite similar to one reached by the Colorado Court.[28] There the court upheld the power of a municipality to use revenue derived from on-street parking to defray in part the cost of providing off-street parking, but it did not uphold a pledge to maintain parking meters throughout the life of the bonds. Florida is one of the states which has followed West Virginia, notwithstanding a very strong dissent on the part of one of the justices of that State's court of last resort. The dissenting opinion was applauded in the opinion in the *Sammons* case.[29] The Florida decision upholding a pledge of on-street revenues to partially finance off-street facilities was rendered in the case of *Gate City Garage v. The City of Jacksonville*.[30]

It may be of some interest to note that during the past year the City of Beaufort was successful in marketing parking facilities revenue bonds secured by a pledge of the revenues of the parking lot to be constructed with the proceeds of the bonds and additionally secured by a pledge of such revenues as the City should from time to

28. Brodhead v. City and County of Denver, 126 Colo. 119, 247 P. 2d 140 (1952).
29. See footnote 25 *supra*.
30. 66 So. 2d 653 (Fla. 1953).

time derive from such on-street parking facilities as the City did from time to time maintain during the life of the bonds. The investing public evidently feels that parking meters are on the streets to stay.