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Constitutional Law—Local Law Setting Residence Requirements for Local Police Officers Invalid as Conflicting With Valid State Statute

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check and the right to receive payment, while drawer Savings Bank has a duty to pay the check upon presentment. Neither of the contractual relationships concerns the underlying sales contract concluded between Miss Kuebler and the payee. Certified checks bear a similar characteristic: the bank becomes a party to the certification with the drawer, payee, or holder,[24] but not a party to the underlying transaction between drawer and payee. The Uniform Commercial Code implies that there is no right to stop payment on a check that has been certified.[25] However, neither the Code nor the common law explicitly states that there is no stop payment on a teller's check. In the instant case, stop payment on the teller's check was not permitted because the drawer Savings Bank accepted the check when issued and thereby acquired a sole primary obligation without regard to any underlying sales transaction. Moreover, since a check is a draft drawn on a bank,[26] section 3-118(a) of the Code further supports a primary obligation theory. ". . . A draft drawn on the drawer is effective as a note."[27] The drawer Savings Bank has accepted the check (draft) at the time of issuance. Hence, the teller's check is constructively drawn on the drawer Savings Bank,[28] and the teller's check is effective as a note. Drawer Savings Bank as maker of a note has a primary liability on the instrument.[29] The court should have based its decision more on the true nature of a teller's check and a primary obligation theory than on a policy standpoint of protecting payees.

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CONSTITUTIONAL LAW—LOCAL LAW SETTING RESIDENCE REQUIREMENTS FOR LOCAL POLICE OFFICERS INVALID AS CONFLICTING WITH VALID STATE STATUTE

The New York Public Officers Law states that all policemen in New York State are exempt from local residence requirements if they were appointed prior to July 1, 1961, and live in the county in which they work, provided that the police force of which the officer is a member consists of less than two hundred full-time members.[1] In October of 1964, the City of Peekskill passed a local law requiring all police officers employed within that city to live within the city limits.[2] The City of Peekskill contains less than two hundred full-time policemen. Three policemen in the City of Peekskill, who were appointed prior to July 1,

24. See Carnegie Trust Co. v. First Nat'l Bank, 213 N.Y. 307, 107 N.E. 695 (1915).
25. See *supra* note 16.
26. N.Y. U.C.C. § 3-104(2)(b).
27. N.Y. U.C.C. § 3-118(a).
28. The teller's check would have been drawn on the drawer Savings Bank except for the fact that savings banks in New York are not permitted to maintain checking accounts. See *supra* note 8.
29. See 1 Hawkland, Transactional Guide to the Uniform Commercial Code 478 (1964).

1. N.Y. Pub. Officers Law § 30 (Supp. 1965).
2. City of Peekskill, Local Law No. 3 (1964).

1961, brought an article 78 proceeding in the Supreme Court, Westchester County, to declare this local law invalid on the ground that it conflicted with the N.Y. Public Officers Law. The City of Peekskill defended the validity of its local law on the ground that the state statute was an unconstitutional special law relating to the property, affairs or government of a local municipality. *Held*, the state statute is a valid general law, therefore the local law must fail as inconsistent with a valid, prior state law. *Hesselgrave v. King*, 45 Misc. 2d 256, 256 N.Y.S.2d 753 (Sup. Ct. 1965).

Since colonial times the cities, towns and villages in New York State have been striving for that degree of autonomy which would allow local governments to control their own affairs without interference from the state legislature.[3] This quest for "home rule" on the part of local governments has met with opposition from both the legislative and judicial branches of the state government.[4] An important victory for "home rule" advocates over this opposition came in 1894 with the adoption of article twelve of the New York State Constitution.[5] This amendment provided that laws relating to the property, affairs or government of cities be divided into special and general laws. Special laws were those laws which applied to one city or less than all in a class; such laws had to be submitted to the mayor of the city affected for his approval or veto.[6] Due to judicial zeal to protect the legislature's power from local infringement this amendment was rendered powerless. When a state law was attacked as a special law, and therefore subject to approval by the mayor of the city affected, a court would evade this requirement in one of two ways. It would find that the state law under attack was either general in application and therefore not subject to the restrictions of special laws[7] or it would find that the law in question dealt with a matter of state concern such as health or safety and therefore did not require the mayor's approval.[8] During this period of judicial adversity to "home rule" the legislature began to reshape its attitude toward local governments. Many laws which would have been classified as general laws by the courts were sub-

3. N.Y. Const. art. xxix (1777) (election of local officers); N.Y. Const. art. 111, § 20 (1821) (two thirds vote of legislature required to appropriate local funds or property); N.Y. Const. art. 111, § 16 (1846) (imposing restrictions on legislature's power to pass local or private bills); N.Y. Const. art. 111, § 18 (1874) (prohibited legislature from passing special laws on certain subjects).

4. The executive branch has historically been sympathetic to home rule advocates. "In many such instances the governors even vetoed legislation relating to matters which have since become recognized as . . . 'matters of state concern.'" Richland, *Constitutional City Home Rule in New York*, 54 Colum. L. Rev. 311, 319 (1954).

5. N.Y. Const. art. XII, § 2 (1894). See McBain, *Law and Practice of Municipal Home Rule*, 101-06 (1916).

6. If the mayor of the affected city exercised his *suspensive veto*, the legislature could override the veto by repassage of the bill by a majority vote. N.Y. Const. art. XII, § 2 (1894).

7. Matter of McAneny v. Board of Estimate, 232 N.Y. 377, 134 N.E. 187 (1922) (Rapid Transit Law); Brooklyn City R.R. v. Whalen, 229 N.Y. 570, 128 N.E. 215, *affirming* 191 App. Div. 737, 182 N.Y. Supp. 283 (2d Dep't 1920) (bus system); McGrath v. Grout, 171 N.Y. 7, 63 N.E. 547 (1902) (Sheriff's Salary); People *ex rel.* Hobach v. Sheriff, 13 Misc. 587, 35 N.Y. Supp. 19 (Sup. Ct. 1895) (Regulation of Barbers).

8. People *ex rel.* Einsfeld v. Murray, 149 N.Y. 367, 44 N.E. 146 (1896).

mitted to local governments for approval.[9] Prompted by this change in legislative position the Home Rule Amendment of 1923 was adopted.[10] In an obvious effort to curb judicial restriction of "home rule" the amendment redefined special laws as those which were special in "terms or effect"; therefore, the courts could no longer call a statute general simply because it was not aimed at one particular city as it had done in the past. In addition, the amendment of 1923 gave local governments power to legislate in nine specific subjects.[11] Furthermore, in 1928, the legislature gave to the cities the power to legislate in their own property, affairs or government in addition to the nine specific categories.[12]

The great strides that the "Home Rule" movement had made in the legislature since 1923, came to a shattering halt in 1929. In that year the State Legislature passed a municipal dwelling law.[13] New York City attacked the law as an unconstitutional special law on the ground that it was special in "terms or effect" because it applied to the property, affairs or government of one city (it applied only to cities with over 800,000 population—in effect, New York City). In the landmark decision of *Adler v. Deegan* the statute was upheld as a general statute.[14] The Court of Appeals, when construing the phrase "property, affairs or government of cities," used pre-1923 cases and refused to be influenced by all that had transpired in the legislature since 1923. The Court expressly stated that "when the people put these words in . . . the Constitution, they put them there with a Court of Appeals' definition, not that of Webster's Dictionary."[15] The second ground used to uphold this statute was the doctrine of State concern, which had been formulated in an earlier case.[16] Under this doctrine the state legislature has the power to pass any kind of law, even an otherwise "special law" as long as it relates to a matter of substantial state concern. After the decision in the *Adler* case[17] the legislature made one more attempt to curb the restrictive interpretation which the courts were placing on the home rule movement. This came in the form of an amendment to the New York Constitution in 1938 which granted to the cities the legislative power over their

9. Richland, *Constitutional City Home Rule in New York*, 54 Colum. L. Rev. 311, 325-327 (1954).

10. N.Y. Const. art. XII, § 2 (1894) (Amended 1923).

11. The nine subjects were: matters relating to the officers and employees of a city, the transaction of its business, incurring obligations, matters relating to claims against a city, the hours of work and safety of employees of its contractors and subcontractors, matters relating to city streets and property, regulating the conduct of its inhabitants, the protection of the property, and the protection of the safety and health of its inhabitants.

12. N.Y. Sess. Laws 1928, ch. 670. The necessity of this enactment was shown by *Browne v. City of New York*, 241 N.Y. 96, 149 N.E. 211 (1925). There it was held that the City of New York could not acquire a bus system because this did not come within the nine specified categories. The State, on the other hand, could not legislate in this area because that would be an unconstitutional special law.

13. N.Y. Sess. Laws 1929, ch. 713.

14. 251 N.Y. 467, 167 N.E. 705 (1929), 39 Yale L.J. 92.

15. *Id.* at 473, 167 N.E. at 707.

16. City of New York v. Village of Lawrence, 250 N.Y. 429, 443, 165 N.E. 836, 840 (1929).

17. Adler v. Deegan, 251 N.Y. 467, 478, 167 N.E. 705, 710 (1929).

own property, affairs and government.[18] This power had been granted to the cities previously only by a statute.[19] The courts, however, have continued to impose restrictions upon legislative enactments in this area of "home rule" and have continued to give very confusing interpretation to the phrase "local property, affairs and government" as well as the scope of the phrase "state concern."[20] This course of action on the part of the judiciary has lead to outcries and pleas for judicial leniency in this area of "home rule" from many prominent writers in the area.[21]

Prompted by the obvious need for a change in this area of Home Rule, article nine of the State Constitution was amended and went into effect on January 1, 1964.[22] Under this new Amendment the State Legislature is still empowered to enact general laws relating to local property, affairs and government.[23] However, at the same time their power is intended to be limited. The first limitation is express. If municipalities are given a grant of power in the Statute of Local Governments,[24] the state legislature cannot restrict or withdraw this power, even by a general law.[25] The second limitation is implied from the rejection by the amendment of the old concept that local governments are agencies of the state and that they derive all their power from the state.[26] The rejection of this old concept is to be found in two sections of the new amendment. First, the construction clause states that "rights, powers, privileges and immunities granted to local governments by this article should be liberally construed."[27] Secondly, it is the stated purpose of this amendment to provide for effective local self-government and intergovernmental cooperation.[28] In addition to this *limited* power to pass general laws affecting the property, affairs or government of municipalities the state also has the authority to pass special laws affecting these local areas provided that the special law deals with a matter of state concern.[29] While many of the provisions of the new amendment are restatements of past home rule provisions, different language as well as language

18. N.Y. Const. art. IX, § 12. For a discussion of the further events at the 1938 Constitutional Convention see Richland, *Constitutional City Home Rule in New York:* II, 55 Colum. L. Rev. 598, 605-08 (1955).

19. N.Y. Sess. Laws 1928, ch. 670.

20. See, *e.g.*, Baldwin v. City of Buffalo, 6 N.Y.2d 168, 160 N.E.2d 443, 189 N.Y.S.2d 129 (1959); Whalen v. Wagner, 4 N.Y.2d 575, 152 N.E.2d 54, 176 N.Y.S.2d 616 (1958); Ainslee v. Lounsberry, 275 App. Div. 729, 86 N.Y.S.2d 857 (3d Dep't 1949).

21. McGoldrich, *The Law and the Practice of Municipal Home Rule* 310-12 (1933); Mott, *Home Rule for American Cities* 51 (1949); Council of State Governments, *State-Local Relations* 170 (1949).

22. N.Y. Const. art. IX, (1938) as amended (Supp. 1964).

23. N.Y. Const. art. IX, § 2(a)(2) (1938) as amended (Supp. 1964). See Shapiro, *Powers of the Legislature* 16-19 (1963 Municipal Law Seminar).

24. N.Y. Sess. Laws 1964 ch. 205.

25. Such a grant of local power can only be restricted or withdrawn by the use of certain procedures specified in § 2, Subd. (b)(1) of the 1964 amendment.

26. 1 Dillon, *Commentaries on the Law of Municipal Corporations* § 237 (5th ed. 1911). This has commonly been referred to as the "Dillon Rule."

27. N.Y. Const. art. IX, § 3(c) (1938) as amended (Supp. 1964).

28. N.Y. Const. art. IX, § 1 (1938) as amended (Supp. 1964).

29. N.Y. Const. art. IX, § 2(b)(2)(c); 3(a)(3).

of qualification is used to express these old ideas. This fact together with the stated purpose of the amendment and the section calling for a liberal construction has lead to speculation that the courts will now yield to the purpose of the legislature and the mandate of the people who ratified this amendment to allow local government more autonomy in administering their own local "property, affairs or government."[30]

In the instant case the court proceeds on the basic assumption that once it is established that there is a state statute general in nature, which relates to the property, affairs or government of a particular city, any local law which conflicts with this general statute must fail as being unconstitutional.[31] The court then goes on to hold that since the classification of towns based on population was reasonable and this statute did apply to all in the class, the public officers law in question is not a special law but rather a general law and therefore constitutional.[32] Accordingly, the local law must be declared invalid since it conflicts with a valid state law on the same subject. The court also was of the opinion that the state statute under attack dealt with a matter of state concern.[33] There was no further discussion of the issue. No mention is made of the constitutional amendment of 1964 which was in effect at this time and also in effect prior to the enactment of the local law under attack.

The approach taken by the court in the instant case poses a number of interesting problems to be considered. First, when determining whether the state law in the instant case was general in nature the court uses the test enunciated in *Farrington v. Pinckney*.[34] Under this test the law in question need not apply to all cities to be general but rather it need only apply to all cities *in a class*. A general law is defined by the 1964 Amendment as "A law which in terms and in effect applies, alike to all counties, . . . all cities, all towns or all villages."[35] Nowhere in this definition is there any allusion to classes of cities or towns or villages. It is therefore questionable whether the *Farrington* test is consistent with the plain language of the Constitution. One possible answer to this is that the Court in *Farrington v. Pinckney*[36] was applying a liberal interpretation to the phrase "all cities." The problem with this answer is that the 1964 Amendment only calls for a liberal construction when interpreting the "rights, powers, privileges and immunities granted to local governments by the article . . . ."[37] It could be implied from this that the rest of the Constitutional Amendment should be strictly construed and therefore the *Farrington* test is no longer justified under the 1964 Amendment, which would mean that state statutes

30. For a thorough discussion of the recent Amendment and its effect on Home Rule in general see *Home Rule: A Fresh Start*, 14 Buffalo L. Rev. 484 (1965).
31. Instant case at 258, 256 N.Y.S.2d at 756.
32. Instant case at 258, 256 N.Y.S.2d at 756.
33. *Ibid.*
34. 1 N.Y.2d 74, 80, 133 N.E.2d 817, 822, 150 N.Y.S.2d 585, 593 (1956).
35. N.Y. Const. art. ix, § 3(d)(1) (1938) as amended (Supp. 1964).
36. 1 N.Y.2d 74, 80, 133 N.E.2d 817, 822, 150 N.Y.S.2d 585, 593 (1956).
37. N.Y. Const. art. IX, § 3(c) (1938) as amended (Supp. 1964).

applying to all cities in a class rather than all cities in the state would be special rather than general laws. Since it would now be a special law relating to the property, affairs or government of a municipality it would be invalid unless passed upon the request of two-thirds of the legislative body of the municipality or on request of the mayor of the municipality and concurred in by a majority of the local legislature or in the case of the City of New York, upon an emergency request of the governor and concurred in by two-thirds of the members of the state legislature.[38] Even if the special law were valid according to one of the above procedures, a local government could still enact a law inconsistent with the special law provided that the local law dealt with one of ten subjects enumerated in the 1964 Amendment.[39]

The second problem posed is that the 1964 Amendment gives to the state legislature the power to pass general laws relating to the property, affairs or government of local municipalities. The problem involved here is whether or not this power to pass such general laws is limited. The court in the instant case, as well as the court in *Wholesale Laundry Board of Trade v. City of New York*,[40] seems to be of the opinion that this state power is unlimited. Both courts take the approach that once it is established that the state statute is general in nature, any local law inconsistent with the state law is invalid per se. It is arguable that the clause of the amendment calling for a liberal construction when construing powers granted to local governments[41] demands that powers given to the state government be construed narrowly; therefore, there should be some limitation placed upon the state power to pass such general laws. In addition, the only way to give effect to the stated purpose of the amendment, which is to provide for effective local self-government,[42] is to place some limitation on the power of the state to pass general laws relating to the property, affairs or government of municipalities. If it is determined that the power of the state in this area should be limited, the next question is what should this limitation be? Perhaps one answer would be to limit the power of the state to pass general laws dealing with local affairs only where the cities have failed to act effectively or where there is a matter of concern to the entire state involved.

The third and probably most perplexing problem posed by the instant case is the scope of the phrase "state concern." When a particular area is classified as a matter of state concern, for example Civil Service,[43] does this mean that all aspects of this area are likewise matters of state concern? *Caparco v. Kaplan*[44] answers this question in the negative. In that case it was held that even

38. N.Y. Const. art. IX, § (b)(2) (1938) as amended (Supp. 1964).
39. N.Y. Const. art. IX, § 2(b)(3)(c) (1938) as amended (Supp. 1964).
40. 43 Misc. 2d 816, 252 N.Y.S.2d 502 (Sup. Ct. 1964).
41. N.Y. Const. art. IX, § 3(c) (1938) as amended (Supp. 1964).
42. N.Y. Const. art. IX, § 1 (1938) as amended (Supp. 1964).
43. See Matter of Meenagh v. Dewey, 286 N.Y. 292, 36 N.E.2d 211 (1941); Matter of Friedman v. Finegan, 268 N.Y. 93, 196 N.E. 755 (1935); *cf.* Caparco v. Kaplan, 20 A.D.2d 212, 245 N.Y.S.2d 837 (4th Dep't 1964).
44. 20 A.D.2d 212, 245 N.Y.S.2d 837 (4th Dep't 1964).

though Civil Service was a matter of state concern, the administration of civil service was not. The administration of civil service is a matter of local concern and came within the definition of local property, affairs or government.[45] This approach would seem to be consistent with the letter and the spirit of the 1964 Amendment. In analyzing the approach taken by the court in the instant case toward the question of state concern, two flaws appear. First, fire protection has been held to be a matter of local affairs rather than state concern.[46] Although there is no direct holding classifying police protection as a matter of local affair, there are many decisions holding certain aspects of the police department, such as wages, hours of work, pension plans, as being matters related to the property, affairs or government of local municipalities.[47] This prior case law makes the holding of the court in the instant case rather weak when it states that the state law setting the residency requirements of police officers is dealing with a matter of state concern. The second flaw of the court's opinion in the instant case is that even if this area (police protection) could be considered a matter of state concern, the reasoning of the *Caparco* case would justify a holding that the particular area involved (residency requirements) was a matter of local concern. The specific area involved rather than the general subject matter is determinative. These are just a few of the questions which must be answered by the courts when construing the 1964 Amendment. The answers will determine to a great extent the future course of the home rule movement in New York.

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CRIMINAL PROCEDURE—RIGHT TO ASSIGNED COUNSEL NOW AVAILABLE TO MISDEMEANANTS TRIED IN SPECIAL SESSIONS COURTS

Defendant, a nineteen year old youth, along with two others, was arrested at an apple orchard in the Town of Ramapo, Rockland County, on September 12, 1961, at approximately 10:30 P.M. while helping himself to half a bushel of apples valued at about two dollars. The owner of the orchard, having caught one of the youths in the act, filed an information with the Justice of the Peace charging the defendants with petit larceny. The defendant appeared before the Justice of the Peace at a little past midnight that same evening, whereupon he was informed of the charge against him and instructed in the following manner:[1]

45. *Id.* at 217, 245 N.Y.S.2d at 839.
46. See Holland v. Bankson, 290 N.Y. 267, 49 N.E.2d 16 (1943); Osborn v. Cohen, 272 N.Y. 55, 4 N.E.2d 289 (1936).
47. Allmendinger v. City of New York, 182 Misc. 142, 46 N.Y.S.2d 641 (Sup. Ct. 1944), *aff'd*, 269 App. Div. 691, 54 N.Y.S.2d 392 (1st Dep't 1945), *aff'd*, 295 N.Y. 644, 64 N.E.2d 712 (1945); Gorman v. City of New York, 304 N.Y. 865, 109 N.E.2d 881 (1952).

1. These proceedings were held pursuant to N.Y. Code Crim. Proc. § 699.