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## Constitutional Law—Existing Emergency Rent Controls Justified

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of the centuries-old office of Sheriff,"<sup>11</sup> and concludes that, "Such a provision has nothing whatever to do with the negligent handling of a county-owned automobile which happens to be driven by a county employee paid by the county but carrying the title of 'deputy sheriff.'"<sup>12</sup>

It should be noted that two judges, Van Voorhis and Foster, concurred with Judge Froessel's opinion, and that two judges concurred with Chief Judge Desmond in his dissenting opinion. The seventh, Judge Dye, concurs only in the result as to the county upon the ground that the evidence is insufficient as a matter of law to establish the negligence of the deputy. It is questionable whether Judges Van Voorhis and Foster should have concurred in Judge Froessel's holding as to the constitutional issue, since in their dissenting opinion they voted to reverse as to the deputy because of insufficient evidence. Thus, they were not required to pass on the constitutional liability of the county. However, this case does illustrate that the Court is evenly divided in their interpretation of the county immunity clause.

In view of the constitutional history and the lower court's seemingly consistent holdings as to the immunity of the county for the acts of a sheriff or his deputies,<sup>13</sup> it would appear that a great deal of reliance has been put on this interpretation of Article IX, Section 5. Judge Froessel seems to state the wisest course to follow when he says, "to hold the county liable in this case for the acts of the Sheriff would require us to cast aside the mandate of the Constitution and shift the liability from the surety to the county, which the Constitution directs shall never be responsible. This may not be done without recourse to a constitutional amendment."<sup>14</sup>

#### EXISTING EMERGENCY RENT CONTROLS JUSTIFIED

In the matter of *Lincoln Building Associates v. Jame*,<sup>15</sup> the petitioner landlord challenged the constitutionality of the 1959 re-enactment and extension<sup>16</sup> of the Emergency Business Rent Control Law.<sup>17</sup> Petitioner claimed the statutes violated the due process clauses of the federal and state Constitutions<sup>18</sup> and the federal obligation of contracts clause,<sup>19</sup> in that the emergency upon which the statute was enacted no longer existed and hence the action of

11. *Id.* at 124, 202 N.Y.S.2d 295.

12. *Ibid.*

13. *Iserean v. Stone*, 3 A.D.2d 247, 160 N.Y.S.2d 336 (4th Dep't 1957); *Hawkins v. Dominy*, 18 Misc. 2d 221, 185 N.Y.S.2d 310 (Sup. Ct. 1959); *Schnitzer v. County of Erie*, 8 Misc. 2d 989, 168 N.Y.S.2d 217 (Sup. Ct. 1957); *Mentillo v. County of Cayuga*, 2 Misc. 2d 820, 150 N.Y.S.2d 97 (Sup. Ct. 1956).

14. *Supra* note 7 at 123, 202 N.Y.S.2d 294 (1960).

15. 8 N.Y.2d 179, 203 N.Y.S.2d 86 (1960).

16. N.Y. Sess. Laws 1959, ch. 809.

17. *Ibid.* It should be noted that the Emergency Business Rent Control Law is applicable only in cities of the state having a population of more than one million, thus only affecting New York City.

18. N.Y. Const. Art. 1, §§ 6, 11; U.S. Const. Amend. XIV.

19. U.S. Const. Art. 1, § 10.

the Legislature was not justified. The Attorney General, appearing in the proceeding pursuant to Section 71 of the Executive Law,<sup>20</sup> filed a general denial.

The same landlord had previously challenged the constitutionality of the 1955 re-enactment and extension<sup>21</sup> in *Lincoln Building Associates v. Barr*.<sup>22</sup> There the court dismissed the petition but stated that rent controls have justification only in periods of emergency and left open the question of how long the Legislature may lawfully continue the office rent control. Subsequent to the *Barr* decision the Legislature effected a gradual relaxation of controls by systematically reducing the amount of rent required to make office space applicable for decontrol under the 1956 amendment.<sup>23</sup>

The Court of Appeals affirmed the order of the Municipal Court of the City of New York,<sup>24</sup> which had dismissed the petition, stating that petitioner's evidence only showed that the intensity of the emergency . . . "has moderated to some extent but not in substantial degree."<sup>25</sup> The Court noted that such a process of gradual cessation of controls avoided economic disruption and dislocation and held that such determination of the Legislature was not arbitrary or a violation of constitutional guarantees. The dissenting opinion, argued as it did in the *Barr* case, that the act in question was an excessive use of the police power in an emergency, as defined by the United States Supreme Court,<sup>26</sup> and resulted in the violation of an individual's constitutional rights. The dissent stressed that the emergency which gave rise to the act, namely conditions of war, no longer existed, urging a distinction between conditions caused by war and those resulting from a general prosperity in which both tenants and landlords share.

It appears that the Business Rent Control Law will eventually disappear; the decision indicating judicial approval of the legislative process of gradual cessation of controls. Such a gradual process, the Court feels, is in line with the stated purpose of the act "to protect and promote public health, safety and general welfare."

#### DELEGATION OF POWER TO MUNICIPALITY TO TAX LIMITED

Article 3, Section 1 of the New York State Constitution confers on the Legislature the exclusive power to levy taxes and to determine the class of persons to be taxed provided such classification has a reasonable basis. The

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20. N.Y. Executive Law § 71:

Whenever the constitutionality of a statute is brought into question . . . the court or justice before whom such action or proceeding is pending may make an order, directing the party desiring to raise such question to serve notice thereof on the attorney-general and that the attorney-general be permitted to appear at such trial or hearing in support of the constitutionality of such statute.

21. N.Y. Sess. Laws 1955, Chap. 701.

22. 1 N.Y.2d 413, 153 N.Y.S.2d 633 (1956).

23. N.Y. Sess. Laws 1956, ch. 735, §§ 2, 3.

24. 21 Misc. 2d 500, 196 N.Y.S.2d 241 (Mun. Ct. 1960).

25. *Supra* note 15 at 181, 203 N.Y.S.2d 87 (1960).

26. *Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922).