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## Constitutional Law—Constitutionality of Water Pollution Control Act I

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characterization as a business privilege tax, the section applied only to domestic corporations, which was no longer the case.

#### CONSTITUTIONALITY OF WATER POLLUTION CONTROL ACT I

In 1955 the Water Pollution Control Board submitted to the City of Utica, a plan for the abatement of pollution in the waters of the area. For over two years nothing was done by the City in pursuance of the plan. In 1957 the Board proceeded against the City for violation of Section 1220 of the Public Health Law.<sup>45</sup> The City instituted this Article 78 proceeding to restrain the Board from continuing its hearing upon the ground that the Water Pollution Control Law is invalid as an unconstitutional delegation of legislative power.<sup>46</sup> In *City of Utica v. Water Pollution Control Board*<sup>47</sup> the Court upheld the Appellate Division's affirmance of the Supreme Court's dismissal of the City's petition.<sup>48</sup>

The Court looked to the language of the statute to see what standards it contained and found that it included clear statements of policy and purpose,<sup>49</sup> that it reflected an awareness of the complexity of the situation,<sup>50</sup> and that the Board is directed to use trained experts.<sup>51</sup> The assigning of the classifications is to be guided by certain enumerated considerations,<sup>52</sup> and they are to be adopted only after public hearing.<sup>53</sup>

The Court then reviewed the law on the subject and concluded that discretion may be conferred upon an administrative agency if there are standards for its exercise and it is to operate only in a limited field.<sup>54</sup> Where the area to be regulated is complex, the Legislature need only specify standards in as detailed a fashion as is reasonably practicable.<sup>55</sup> It would be impossible for the Legislature to anticipate every situation which may arise and provide specific rules for every such situation. At some point it becomes unreasonable to compel the prescribing of detailed standards.

In applying these principles to the problem at hand the Court pointed out that control of water pollution is a complex problem. Conditions vary considerably in the various waters of the State. The Legislature has provided the manner in which the Board must act and the matters it must consider; it could be no more specific and that is all that is necessary.<sup>56</sup>

Judge Van Voorhis dissented. He felt that the statute was an invalid

45. N.Y. PUB. HEALTH LAW § 1220 prohibits the contamination of the State in contravention of the Board's classification.

46. *Id.* §§ 1200-1263.

47. 5 N.Y.2d 164, 182 N.Y.S.2d 584 (1959).

48. 6 A.D.2d 340, 177 N.Y.S.2d 47 (3d Dep't 1958).

49. *Supra* note 45 §§ 1200, 1201.

50. *Id.* § 1209.

51. *Id.* § 1206.

52. *Supra* note 50.

53. *Ibid.*

54. *Packer Collegiate Institute v. University of the State of New York*, 298 N.Y. 184, 81 N.E.2d 80 (1948), *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1934).

55. *Lichter v. United States*, 334 U.S. 742 (1948).

56. *Buttfield v. Stranahan*, 192 U.S. 470 (1904).

delegation of legislative power because of the construction placed on this statute by the Court in *Town of Waterford v. Water Pollution Control Board*.<sup>57</sup>

CONSTITUTIONALITY OF WATER POLLUTION CONTROL ACT II

In implementing the Water Pollution Control Act,<sup>58</sup> the function of the Water Pollution Control Board is to classify the waters of the state "in accordance with considerations of best usage in the interest of the public" and to encourage "the most appropriate use of the lands bordering the waters for residential and industrial purposes."<sup>59</sup>

In *Town of Waterford v. Water Pollution Control Board*,<sup>60</sup> the Town challenged the classification made by the Board because the Board failed to consider the fiscal and economic aspects of its classification. The contention of the Town was that by not considering these factors the Board did not determine the issue of whether or not the assigned classification was "in the interest of the public."

The Court of Appeals upheld the Appellate Division's affirmance of the Board's classification.<sup>61</sup> The basis for this holding is found in the *modus operandi* of the Board. The procedure is to first classify the waters and then evolve a comprehensive program for their treatment. The Court, after looking at the language of the statute, concluded that the time to consider fiscal issues was when the plan was submitted to the town and not at the time of classification. Under Section 1224 of the statute,<sup>62</sup> if it is shown that the town is financially unable to construct the necessary improvements, the Board shall withhold enforcement for up to five years. It may grant further indefinite extensions beyond the five year stay if at a public hearing, a showing of diligent effort to comply is made. The Court indicated that this was an express recognition in the statute of the fiscal problems involved and of the conflict between costs and public policy.<sup>63</sup>

Judge Van Voorhis dissented in a lengthy opinion which evidenced his feeling that many administrative agencies tend to act as independent units, unmindful, and often unconcerned about other branches and problems of government. He argued that the granting of extensions for compliance with the prescribed standards of purity is not a substitute for the consideration by the Board of fiscal questions at the time of classification. Furthermore, the Board need not be controlled by such considerations but that they may not com-

57. 5 N.Y.2d 171, 182 N.Y.S.2d 785 (1959). See Note, 9 BUFFALO L. REV. 83, *infra*.

58. N.Y. PUB. HEALTH LAWS §§ 1200-1263.

59. *Id.* § 1209(2), (3) (b).

60. 5 N.Y.2d 171, 182 N.Y.S.2d 785 (1959).

61. 4 A.D.2d 415, 164 N.Y.S.2d 171 (3d Dep't 1957).

62. *Supra* note 58 § 1224.

63. . . . the Legislature was aware that a comprehensive water purification program would impose a financial burden on municipalities, but by enacting the Water Pollution Control Act, determined that the pressing need for water purification outweighed any financial hardship incident thereto.

*Town of Waterford v. Water Pollution Control Board*, *supra* note 60 at 180, 182 N.Y.S.2d 791.