Buffalo Law Review

Volume 9 | Number 1 Article 39

10-1-1959

Constitutional Law—Constitutionality of Water Pollution Control Act II

Buffalo Law Review

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

CONSTITUTIONALITY OF WATER POLLUTION CONTROL ACT II

In implementing the Water Pollution Control Act,[58] 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."[59]

In *Town of Waterford v. Water Pollution Control Board,*[60] 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.[61] 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,[62] 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.[63]

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.

pletely ignore them. The procedure as approved by the majority would, he indicated, render the statute unconstitutional as an invalid delegation of legislative authority. If the Legislature were itself classifying this same segment of water and in so doing, certified that it had not considered fiscal problems, the classification could not stand. In effect this would be judging without considering all relevant factors. Thus, he concluded that the Legislature cannot delegate authority to a board to make a judgment which it cannot itself make.

This case was one of first impression and it was resolved on the basis of statutory interpretation. The majority and the minority both looked at the language of Section 1209 and arrived at opposite conclusions. They agreed that the regulation of water pollution is within the state's police power but the majority was controlled by the practical aspects of the situation. The Water Pollution Control Board is confronted with the complex problem of classifying all the waters of the State. These classifications are adopted only after public hearings at which interested parties may present evidence bearing on the classifications.[64] If the Board is required to consider fiscal questions at these hearings, it would be confronted with a barrage of documents relative to the financial ability of the municipal units of the State. Such a procedure would frustrate the operation of the Board.

VALIDITY OF AMENDED ZONING CLASSIFICATION

The New York Village Law authorizes village trustees to classify property within their boundaries so as "to regulate and restrict . . . the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population. . . ."[65] These regulations are to be "made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."[66] There is no question that such a grant of general authority is constitutional if it is exercised in the interest of public health, safety, morals, or general welfare.[67]

In *Levitt v. Sands Point*[68] petitioner claimed that an amendment to local zoning regulations raising the minimum lot area for single family detached dwellings from one to two acres was unconstitutional in that it was unreasonable as it related to the property in question, and that it deprived him of property without compensation and due process of law because it depreciated his property value. The Supreme Court had entered judgment on a decision by a Referee that the ordinance in question was unconstitutional; the Appellate Division reversed;[69] and the Court of Appeals affirmed the reversal.

64. *Supra* note 58 § 1208(3), (9)(b).
65. N.Y. VILLAGE LAW § 175.
66. *Id.* § 177.
67. Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). See Nectow v. Cambridge, 277 U.S. 183 (1928); Seattle Trust Co. v. Roberge, 278 U.S. 116 (1928).
68. 6 N.Y.2d 269, 189 N.Y.S.2d 212 (1959).
69. 6 A.D.2d 701, 174 N.Y.S.2d 283 (2d Dep't 1958).