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held the company bound to the terms of the contract because the dissolution was not *bona fide*.[9]

In the instant case the Court was not called upon to decide whether the union's contention was true, but simply to determine whether an arbitrable dispute existed. Since the company in the *Teschner* case[10] could not avoid the labor contract by a scheme of dissolving and reforming, the Court felt that in the instant case the company could not get employees away from coverage under the labor contract by entering an outside contract which was merely a subterfuge. If the contentions of the union were true, the employees cleaning the offices would be covered by the labor agreement. The Court held, therefore, that it was for arbitrators to determine whether this was a *bona fide* independent contract.

Under a similar labor agreement, where a dairy contracted out the delivery of milk, a New Jersey court held that whether a contract was *bona fide* or only a device was an arbitrable issue.[11]

The decision in the instant case appears to be in conformity with the existing authority in this area of labor law.

MUNICIPAL CORPORATIONS

STREET CLOSING: JUDICIAL REVIEW OF PUBLIC NECESSITY

Subject to Constitutional limitations regarding taking or damaging private property for public use without compensation, a state legislature has power to vacate streets.[1] This power is generally, however, delegated to some local body within a county or city government.[2] By the terms of Section E15-3.0 of the administrative Code of the City of New York, the power to vacate streets within the City of New York is vested in the Board of Estimate, *viz:*

> The City may authorize the closing . . . of such streets therein . . . as it may deem necessary in order to more effectively secure and preserve the regularity and uniformity of the streets therein, or where other public necessity requires the closing . . . of such streets. . . .

When such a street is vacated, the abutting owner may acquire the fee.

The Court of Appeals had occasion recently in the case of *Stahl Soap Co. v. City of New York* to consider the extent to which a court may inquire

9. 309 N.Y. 972, 132 N.E.2d 901 (1956).
10. *Ibid.*
11. Newark Milk & Cream Co. v. Local 680 of International Brotherhood, T.C.W.H., 12 N.J. Super. 36, 78 A.2d 839 (1951).

1. 11 MCQUILLIN, MUNICIPAL CORPORATIONS § 30.185 citing In re Joiner Street, 177 App. Div. 361, 164 N.Y. Supp. 272 (4th Dep't 1917).
2. McCutcheon v. Buffalo Terminal Comm., 217 N.Y. 127, 111 N.E. 661 (1916).

into the public necessity of a Board of Estimate decision to vacate a street and permit an abutting owner to acquire the fee.[3]

Defendant abutter approached officials of the City of New York with a view to closing an interior block of a five block long street. They owned the fee on both sides of the street and wished to obtain the street area for parking facilities for their brewing business. The request was granted. The minutes of the meeting at which the decision was adopted disclosed that the Board of Estimate acted upon reports of the City's Chief Engineer and the Chairman of its Planning Commission that the "purpose" of closing the street was "to permit the release of the City's interest in the street to the abutting property owner that they may assure themselves of the exclusive use of that area for necessary parking and for access to their property."

Plaintiff brought a taxpayer's action to nullify the closing alleging, *inter alia,* that it was not for the purpose of more effectively securing and preserving the regularity and uniformity of the streets nor for any other public necessity. Plaintiff did not allege fraud or collusion. In support of its allegations, plaintiff pointed to the above mentioned minutes of the meeting of the Board of Estimate.

Motion to dismiss was granted for failure to state a cause of action but was unanimously reversed in the Appellate Division.[4] In a 4-3 *per curiam* opinion, the Court of Appeals held that the statements in the minutes, coupled with the allegations, were sufficient to withstand a motion to dismiss. This was on the theory that they refute the statement of the Board of Estimate that the closing was in the public interest, *ergo* it was not within their delegated power.[5]

In the dissent, Desmond, J., took the view that the closing of a public street, being a legislative function, it is not the province of the judiciary to inquire into the motives of the legislative branch, provided that it acted within its granted powers, and there was no fraud or collusion.

The issue joined between the two points of view is apparently in delimiting the point at which the judiciary may review a policy determination of the legislative branch to determine whether the latter was acting within its power.

Since the power of the City to close the street in the instant case is limited to "public necessity,"[6] it follows that an allegation that the closing was for a "solely private purpose" would be an effective attack on the exercise of that power. There are two lines of cases which bear on this question. In the first, the courts hold that if the vacation for a private purpose is not shown on the face of the ordinance, unless fraud or collusion is alleged, the courts will not inquire into the motives of the legislative body in passing the ordinance.[7]

3. 5 N.Y.2d 200, 182 N.Y.S.2d 808 (1959).
4. 4 A.D.2d 957, 167 N.Y.S.2d 717 (2d Dep't 1957).
5. *Supra* note 3.
6. Administrative Code of the City of New York, § E15-3.0 (Williams 1957 Edition).
7. *Op. cit. supra* note 1, McQuillin, § 30.186, citing Amboy v. Ill. Cent. R. Co., 236

In the second series of cases, the courts proceed on the theory that although the legislative branch has discretion to determine the necessity of closing a street, the courts shall determine whether the purpose is in fact a public one.[8] New York has traditionally followed the former view.[9]

Under the former view, it has been held that a vacation is not void on its face because it appears that it was granted on petition of an abutter in circumstances similar to those present in the instant case.[10] "Even though the [resolution] did not so state, it is implicit in the action taken by the [council] that it considered the vacation would be for the public good and secondarily beneficial to the abutting property owner."[11]

The difficulty with the position of the majority in the instant case is that it does not distinguish between "purpose" and "motive." As was said in a leading New York case on the subject,

> Nor does it seem material that the vacation is made with a view or intention of vesting the adjoining proprietors with the ownership of the lands embraced within the street. That merely goes to the *motive* by which the act of vacation is performed, and in that as in all legislative acts, the motives by which the legislative body is activated is immaterial and cannot be inquired into.[12]

It is unfortunate that the City officials reporting to the Board used the word "purpose." It is more unfortunate that this decision permits the plaintiff to make use of the semantic error to clog up the courts with harassing litigation. On trial, it will be a relatively easy matter for the City to show a public benefit (*e.g.* the land goes back on the tax rolls) thereby defeating plaintiff's contention that the purpose was for a solely private benefit. It is submitted that the Court has acted outside of its traditional interstitial area of operation.

PROPERTY BENEFITED BY PUBLIC IMPROVEMENT

In *Buff v. Board of Trustees of Incorporated Village of Greenwood Lake,*[13] the Court of Appeals reversed the order of the Special Term, affirmed by the Appellate Division,[14] that annulled a special assessment levied by the defendants for construction of a water main on a private road, under an easement, abutting the plaintiff's property.

In construing section 224 of the Village Law,[15] the Court of Appeals

Ill. 236, 86 N.E. 238 (1908); MacDonald v. Board of Street Comm'rs, 268 Mass. 288, 167 N.E. 417 (1929).

8. *E.g.,* People v. City of Los Angeles, 62 Cal. App. 781, 218 Pac. 63 (1923); Teacher Bldg. Co. v. Las Vegas, 68 Nev. 307, 232 P.2d 119 (1951).

9. In re Mayor of City of New York (Deering), 28 App. Div. 143, 52 N.Y. Supp. 588 (1st Dep't 1898) *aff'd* 157 N.Y. 409, 52 N.E. 1126 (1898) citing Meyer v. Village of Teutopolis, 131 Ill. 552, 23 N.E. 651 (1890).

10. City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239 (1946).

11. *Ibid.*

12. *Supra* note 9.

13. 5 N.Y.2d 602, 186 N.Y.S.2d 619 (1959).

14. 6 A.D.2d 836, 176 N.Y.S.2d 244 (1958).

15. The board of water commissioners may determine that the cost of extending the mains or distributing pipes, as herein provided, shall be