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Municipal Corporations—New York Thruway Authority Held to be a Separate Entity

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disagreed with the construction of the Special Term that held that before the village could validly make an assessment it must prove that the benefited property is also property abutting on a public street, and held that "or" as used between "benefited" and "abutting" in the statute is not used in the sense of "and," hence the only test under the statute is whether property is in fact benefited.[16]

Benefited property, under the statute, is thus classified as either; (1) property which abuts on the improvement, since it seems clear that property abutting on the street in which mains are laid is thereby benefited, or, (2) property which benefits from the improvement, though not abutting, either one being the proper subject of a special assessment.

Under this construction it would seem that the burden of proving benefit by the assessing agent is somewhat less in the case of abutting property than proving benefit when the property does not abut. The fact that property does abut on the street where mains are laid may support an inference of benefit to the property, but since benefit in this instance was denied by the property owner the issue was remitted to Special Term for determination.

NEW YORK STATE THRUWAY AUTHORITY HELD TO BE A SEPARATE ENTITY

Section 135 of the New York Finance Law states:

> Every officer, board, department, or commission charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alterations of buildings, for the state, when the entire cost of such work shall exceed $25,000, must have prepared separate specifications for each of the following three subdivisions of the work to be performed:
>
> 1. Plumbing and gas fitting
> 2. Steam heating, hot water heating, and air conditioning apparatus[17]
> 3. Electric wiring and standard illuminating fixtures.
>
> Such specifications must be so drawn as to permit separate and independent bidding upon each of the three subdivisions of work.

The case of *Plumbing, Heating, Piping and Air Conditioning Contractors Assoc., Inc. v. New York State Thruway Authority* raised the single issue of whether Section 135 of the State Finance Law applies to and is binding upon the New York State Thruway Authority.

The New York State Thruway Authority advertised for bids receivable in January of 1957 for the construction of six buildings at various locations along the Thruway. The specifications for the work provided for the con-

> borne wholly by the village, or wholly by the owners of land benefited or abutting on the streets on which said work is done, or partly at the expense of each.

16. The claim that property must also abut on a public street was abandoned on appeal since the statute permits such construction anywhere within the village limits.

17. Plumbing, Heating, Piping and Air Conditioning Contractors Association Inc. v. New York State Thruway Authority, 4 A.D.2d 541, 167 N.Y.S.2d 756 (3d Dep't 1957), *aff'd* 5 N.Y.2d 420, 185 N.Y.S.2d 534 (1959).

struction, plumbing, heating and ventilating, electrical and site development work to be performed under a single contract for each of the six projects. The appellant brought a proceeding in order to compel the Thruway Authority to withdraw the notice to bidders and to publish a new notice which would contain separate bidding on each of the three Subdivisions as specified in Section 135 of the State Finance Law. The preceeding was dismissed at Special Term, the Court holding that Section 135 of the State Finance Law does not apply to the Thruway Authority. The dismissal was affirmed in the Appellate Division and the Court of Appeals on the theory that Section 135 does not apply to contracts made with the New York State Thruway Authority since it is not the "State" but is a separate and distinct corporate entity not bound by the provision of Section 135.

It is true that the Thruway Authority was created by the State and is subject to dissolution by it, nevertheless, it is and must be considered a public corporation which is independent and autonomous. It was designed so as to be able to function with a freedom and flexibility not permitted to an ordinary State board, department or commission. This has been the view held by the courts for a number of years in regard to various public authorities created by the State.[18] The best example of this is the Saratoga Springs Authority. Although created to perform a different function, it was set up in a manner similar to the Thruway Authority. *Pantess v. Saratoga Springs Authority*[19] held that while the Authority was an agency of the State, its corporate activity was separate and apart from the State, and that the State was not liable for its torts as it was not the State or an agent of the State. So, too, with the New York State Thruway Authority.

Such a view is necessary on the theory that the use of the orthodox governmental organization is unsatisfactory for the performance of certain functions. The Staff Report on Public Authorities under New York State submitted by the Temporary State Commission on Coordination of State Activities to the Legislature on March 21, 1956 clearly recognizes the autonomous character of the public authority and the need therefor. The form of organization, the administrative flexibility, and the degree of legal and administrative autonomy possible in the public authority make it adaptable to the quick assumption of operating responsibility of such an enterprise. The autonomy of the public authority has been one of its distinctive characteristics. It was deliberately so designed to: (1) avoid governmental liability for its debts. (2) gain the confidence of the investing community (3) avoid legal and procedural barriers commonly associated with regular governmental agencies.

18. "The Thruway Authority is a separate entity for purposes of suit." Bird v. N.Y.S. Thruway Authority, 13 Misc. 2d 203, 177 N.Y.S.2d 926 (Ct. Cl. 1958). "The State of New York is not liable for the torts of the Thruway Authority in the performance of its usual functions." Thompkins v. State of New York, 6 A.D.2d 977, 176 N.Y.S.2d 804 (3d Dep't 1958).

19. 255 App. Div. 426, 8 N.Y.S.2d 103 (3d Dep't 1938).

It is submited that although this decision adds little substantively to the law of public authorities, it does reflect an important point of policy in this area of law. The exigencies of government have caused the number of public authorities, performing a wide variety of functions, to increase and multiply in recent years. They might as well not be created if their separate, corporate existances are to be overridden whenever it is convenient to do so. It was not the intention of the Legislature to establish public authorities in name only, having the powers but lacking status and responsibilities of independent corporate entities. In that event their standing would be undermined and their usefulness impaired.

CHANGE OF CITY WARD BOUNDARIES: EFFECT ON COUNTY ELECTORAL SYSTEM

During the 1958 Term, the Court of Appeals was presented with the question of the power of a city to change its ward boundaries, that power being exercised without referendum. A challenge to the exercise of power was grounded upon the effect of the change upon the election of county supervisors. *Baldwin v. City of Buffalo* is not noted here in view of its inclusion in a general treatment of the problem by Dean Jacob D. Hyman and Emil Cohen, appearing at 9 BUFFALO L. REV. 1, *supra*.

PROPERTY

ABATEMENT OF TAX BASIS FOR ADJUSTMENT OF CONTROLLED RENT

Does the State Rent Administration have the power to revise rent increases which were previously granted to compensate a landlord for the installation of a capital improvement when the landlord thereafter obtains an abatement of taxes by reason of the same improvement? This was the question presented in the case of *225 East 70th Street v. Weaver*.[1]

In 1955 the appellant's predecessor installed central heating and obtained an increase in rents on the basis of such installation.[2] On December 31, 1955 the City of New York enacted a law permitting tax abatement to any owner who installed central heating.[3] The owner made an application in 1956 for such benefit, which was granted. In 1957 the appellant purchased the premises and in connection with the sale, submitted the rent roll, which reflected the increases earlier allowed, to the Rent Commission. The Commission certified the rent roll as submitted. In 1958 the Local Rent Administration began a proceeding under Section 33 of the Rent Regulations[4] to revise and adjust the 1955 allowances to the appellant's predecessor on the ground that there had been a substantial change in the basis on which the allowances had been granted. Some weeks later the rents were reduced by order of the Local Ad-

1. 6 N.Y.2d 225, 189 N.Y.S.2d 175 (1959).
2. N.Y. UNCONSOL. LAWS, Appendix, Rent and Eviction Regulations, § 33.
3. N.Y. CITY LOCAL LAWS 1955, No. 118.
4. *Supra* note 2.