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Municipal Corporations—Home Rule, Public Authorities

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terpretation and application of section 175 of the Village Law.³⁹ The ordinance being void, the Court could and did assert that the 1955 statute took nothing from the village and effected no change or alteration in the village charter.

While the rationale of the Court is persuasive, the end result is that two municipal corporations exist within the same territory exercising the same powers.⁴⁰ This situation should be avoided for the practical consideration that intolerable confusion instead of good government would attain in a territory in which two corporations endeavor to function concurrently.⁴¹

Home Rule, Public Authorities

Under the Home Rule amendment to the state Constitution, the legislature may not act by special law "in relation to the property, affairs or government of any city" unless requested to do so by the city affected.⁴² In a leading case,⁴³ however, the words "property, affairs or government" were held to have a "special, legal significance"⁴⁴ and to have been adopted with "a Court of Appeals' definition, not that of Webster's Dictionary."⁴⁵ (The direction taken by this case, however, was not a new one.⁴⁶) This definition has been a narrow one, allowing the legislature wide latitude in dealing with local matters. Thus city transit,⁴⁷ health,⁴⁸ water supply⁴⁹ and sewage⁵⁰ problems have been held subject to special legislative action without benefit of a city message. The type of reasoning by which such results have been achieved was shown at its most extreme where it was said: "The statute affects the health and safety not only of the residents of Rochester, but of persons temporarily there. It does not deal solely with the 'property, affairs or government' of Rochester."⁵¹

In the light of this judicial history it could come as no surprise when the

39. *Long Island Univ. v. Tappan*, 305 N.Y. 893, 114 N.E.2d 432 (1953); *Concordia Collegiate Inst. v. Miller*, 301 N.Y. 189, 195-196, 93 N.E.2d 632, 635-636 (1950).

40. Compare N. Y. VILLAGE LAW §89(6) with N. Y. TOWN LAW §220(4).

41. 2 McQUILLIN, MUNICIPAL CORPORATIONS, §7.08 (3d ed. 1949).

42. N. Y. CONST. Art. IX, §11.

43. *Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705 (1929).

44. *Id.* at 472, 167 N.E. at 706.

45. *Id.* at 473, 167 N.E. at 707.

46. See *City of New York v. Village of Lawrence*, 250 N.Y. 429, 165 N.E. 836 (1929); *McAneny v. Board of Estimate*, 232 N.Y. 377, 134 N.E. 187 (1922); *Admiral Realty Co. v. City of New York*, 206 N.Y. 110, 99 N.E. 241 (1912).

47. *Admiral Realty Co. v. City of New York* *supra* note 46; *Salzman v. Impelliteri*, 203 Misc. 486, 124 N.Y.S.2d 369 (Sup.Ct.), *aff'd* 281 App. Div. 1023, 122 N.Y.S.2d 787 (1st Dep't), *aff'd* 305 N.Y. 414, 113 N.E.2d 543 (1953).

48. *Adler v. Deegan*, *supra* note 43.

49. *Board of Supervisors of Ontario County v. Water Power & Control Comm.*, 227, App.Div. 345, 238 N.Y.Supp. 55 (3d Dep't 1929).

50. *Robertson v. Zimmermann*, 268 N.Y. 52, 196 N.E. 740 (1935).

51. *Board of Supervisors of Ontario County v. Water Power & Control Comm.*, *supra* note 49.

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Court, in *Whalen v. Wagner*⁵² held that Chapters 806-809 of the Laws of 1955, which provided for the construction, improvement, and operation of several bridges in the City of New York by the Port of New York Authority and the Triborough Bridge & Tunnel Authority, did not relate to the "property, affairs or government" of the City of New York, and thus did not require valid city messages. In considering those bridges within the jurisdiction of the Port Authority, the Court pointed out the tremendous disruption that would result from a contrary holding (no city or special message had accompanied the enactment or amendments of the Port Authority Act), the dual-state character and functions of the Authority, and the interstate function of the bridges. Sufficient state concern to take the bridge to be built and operated by the Triborough Authority out of the scope of "property, affairs or government of any city" was found in its function as "an integral part of projects of an interstate character."

Constitutionality of Community Colleges

Municipal governments are prohibited by the New York Constitution from incurring debts for other than municipal purposes.⁵³ An exact definition of a municipal purpose has not been established, and questions as to what constitutes a municipal purpose have been decided as they arise.⁵⁴

In *Grimm v. County of Rensselaer*,⁵⁵ a taxpayer association sought to enjoin⁵⁶ the Rensselaer Board of Supervisors from issuing and selling bonds and notes to finance the county's share of the capital costs of Hudson Valley Technical Institute, a two year college established pursuant to Article 126 of the New York Education Law. This statute provides, *inter alia*,⁵⁷ that the capital costs incurred in establishing the college are to be borne half by the county and half by the state. The petitioners maintained that since the ratio of non-resident to resident students attending the college would be greater than two to one,⁵⁸ there would not be a

52. 4 N.Y.2d 575, 176 N.Y.S.2d 616 (1958).

53. N. Y. CONSTITUTION, Art. VIII §2 provides:

No county, city, town, village or school district shall contract any indebtedness, except for county, city, town, village or school district purposes, respectively. . . .

54. *Sun Printing & Publishing Ass'n. v. Mayor*, 152 N.Y. 257, 264-265, 45 N.E. 499, 500 (1897).

55. 4 N.Y.2d 416, 176 N.Y.S.2d 271 (1958).

56. N. Y. GEN. MUN. LAW §51.

57. N. Y. EDUCATION LAW, Art. 126 §§6301 *et seq.* authorizes:

a county to act as a "local sponsor" and propose for the approval of the board of trustees of the State University a plan for a community college within its territorial limits; . . . that operating costs are to be shared $\frac{1}{2}$ by the state, $\frac{1}{2}$ by the local government and the remaining $\frac{1}{2}$ by the students in the form of tuition fees; that community colleges are required to admit non-resident students in accordance with a quota set by the State University trustees.

58. Based on ratio of non-resident and resident attendance during 1956-1957.