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Municipal Corporations—Constitutionality of Community Colleges

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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

Muncipal 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 enjoin[56] 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 ⅓ by the state, ⅓ by the local government and the remaining ⅓ 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.

proper apportionment of the county's capital expenditures, and thus, the county would be incurring a debt for a non-county purpose in violation of the Constitutional prohibition.

In unanimously affirming a dismissal of the complaint by the Supreme Court,[59] the Court of Appeals held that where, as in the instant case, the establishment of a community college is of "primary local interest", it is a county purpose sufficient to comply with the requirements of the Constitutional provision, notwithstanding that a disproportionate number of non-residents may also benefit. The Court's conclusion was based on previous cases deciding that higher education is a valid municipal purpose,[60] that a precise severability of respective interests is not required,[61] and other cases which indicate that a valid municipal purpose in a project is not invalidated by the presence of an additional larger purpose.[62] The Court pointed out that there is an optimum size for an educational plant, below which its operation would be unduly expensive, and whether present or future needs justify the proposed size is a matter to be primarily determined by the trustees of the State University and the local Board of Supervisors.

Statutory Limitation of Amount of Sales and Utility Taxes Imposed by Local Government Units

The Legislature, by statute,[63] allows the imposition of certain types of taxes by counties and cities, the aggregate, however, not to exceed a fixed percentage of the tax base (*e.g.* amount of total sale price). So as to avoid the possiblity of one governmental unit or the other preempting the field in a given locality, the act establishes a system of "prior rights" as to various taxes, so that in the event taxes which are imposed by the two governments exceed the limit, that unit not having the "prior right" should reduce its tax or, if necessary, abolish it. Where both the City of Buffalo and the County of Erie had prior rights to the respective taxes (utility tax and sales tax) involved, both were reduced proportionately so as to bring the total within the permitted aggregate.[64]

59. 9 Misc.2d 1082, 171 N.Y.S.2d 49. (Sup. Ct. 1958).

60. College of City of New York v. Hylan, 205 App.Div. 372, 199 N.Y.Supp. 804 (1st Dep't 1923), *aff'd* 236 N. Y. 594, 142 N.E. 297 (1923); Union Free School District v. Town of Rye, 280 N.Y. 469, 21 N.E.2d 681 (1939).

61. *Cf.* In re Bryant, 152 N.Y. 412, 46 N.E. 851 (1897); Rivet v. Bierdick, 255 App.Div. 131, 6 N.Y.S.2d 79 (1938).

62. Gordon v. Cornes, 47 N.Y. 608 (1872); Sun Printing & Publishing Ass'n. v. Mayor, *supra* note 54; Hesse v. Roth, 249 N.Y. 436, 164 N.E. 342 (1928).

63. Laws of 1947, ch. 278, as amended by Laws of 1948, ch. 651, and Laws of 1950, ch. 589.

64. County of Erie v. City of Buffalo, 4 N.Y.2d 96, 172 N.Y.S.2d 586 (1958).