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Municipal Corporations—Sale of Schoolhouse

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those premises for a school for mentally retarded children,⁹ in violation of a zoning ordinance,¹⁰ the defense was that the existing use as a school for mentally retarded children was a mere continuation, although by a different owner, of a previous non-conforming use, such continuation being specifically permitted by ordinance. The Court, in denying an injunction, held that the previous use as a convalescent home for cardiac children, an incident of which use was the schooling and instruction of the children who were there confined, was the same as the present use. In support of its decision the Court relied on the public policy of the state to enforce the education of children,¹² and concluded that since education of the children in the convalescent home was favored, the present use of the property as a school for mentally retarded children is merely a continuation of the con-conforming use in a limited and restricted fashion.

Judge Conway, dissenting, questioned the previous non-conforming use, it being ultra vires for the previous owner to conduct a school. As its charter provided only for the operation of a convalescent home, there could be no legal non-conforming use as a school, and consequently the present use was illegal. Conceding however that previous use of the premises was partly for school purposes, the difference in the character of the students would make maintenance of an "identical" non-conforming use, as required by ordinance, impossible.¹³

Sale of Schoolhouse

The New York State Education Law provides three methods for the disposition of unused school houses or sites.¹⁴ In *Ross v. Wilson*¹⁵ a majority of the Court held that where a central school district had taken over an existing common school district and a meeting was called to consider the disposition of an old schoolhouse of the former district, the voters had no right to approve a sale at a price lower than the highest offer. The meeting, which had before it the high bid of a Grange, had no power to sell to a church which had made a lower offer, the former not being an objectionable use. This was held despite the language of the statute¹⁶

9. *Rogers v. Ass'n for Help of Retarded Children*, 308 N. Y. 126, 123 N. E. 2d 806 (1954).

10. Pelham Manor Zoning Ordinance.

11. *Ibid.*

12. N. Y. CONST, art VI, § 7; N. Y. EDUCATION LAW art. 65.

13. Pelham Manor Zoning Ordinance.

14. N. Y. EDUCATION LAW § 402 provides that when the site of a school house has been changed, the voters of the school district involved may by majority vote at a meeting sell the old property at such price and upon such terms as they shall deem proper. N. Y. EDUCATION LAW § 1804 provides that when a central school district is formed, the property of the former common school district may be sold upon the majority vote of the qualified voters of the former district and the proceeds apportioned among the taxpayers of that district.

15. 308 N. Y. 605, 127 N. E. 2d 697 (1955).

16. N. Y. EDUCATION LAW § 402.

which the Court applied to the situation, disregarding the other two sections cited above which bear on the sale of school property and which the Court admitted would be more appropriate here. The section was construed to mean that the electors may use their judgment as to what is the highest price, but where a higher offer is before them, they are bound to accept. The majority are deemed to be trustees, in a fiduciary relationship to the non-consenting property owners,¹⁷ and bound to get the best price.¹⁸ The action taken by the majority of the school district was also held to be illegal as a gift of property to promote objectives outside the scope of the Education Law,¹⁹ and especially illegal as a gift of public money to a religious establishment.²⁰

A vigorous dissent maintained that the statute²¹ was applicable to give the majority of the voters a free rein in deciding to whom and for what uses property can be sold. The dissent was further based on the grounds that the statute providing there be no appeal from a decision of the State Education Commissioner²² was applicable here, since his decision could not be deemed arbitrary.²³ To prevent abuses of authority by cliques in school districts, however, it would appear that the majority view is more realistic.

Power to Maintain Parking Garages

No city in New York may give or loan its credit to or in aid of any individual or any public or private corporation.²⁴ This does not prevent a city from making a gift of money or property²⁵ where such a gift is to further a proper public governmental function.²⁶ In *Comereski v. City of Elmira*,²⁷ the court held a contract between the City of Elmira and the Elmira Parking Authority,²⁸ which provided that the City pay to the Authority an amount equal to the deficit in the funds of the latter which were available for the payment of Authority bonds, to be a valid exercise the City's power. The City had the power to construct and maintain parking garages,²⁹ and funds spent here were used for a proper public use and

17. *Godly v. Crandall & Godly Co.*, 212 N. Y. 121, 105 N. E. 818 (1914).

18. *Berner v. Equitable Office Bldg. Corp.*, 175 F. 2d 218 (2d Cir. 1949).

19. N. Y. EDUCATION LAW § 414.

20. U. S. CONST. Amends. 1 and 14; N. Y. CONST. art. 9, § 4.

21. N. Y. EDUCATION LAW § 402.

22. *Id.*, § 310.

23. *Levitch v. Board of Education*, 243 N. Y. 373, 153 N. E. 495 (1926).

24. N. Y. CONST. art. VIII, § 1; *Union Free School Dist. No. 3 v. Town of Rye*, 280 N. Y. 469, 21 N. E. 2d 681 (1939).

25. *Ibid.*; *Western N. Y. Water Co. v. Erie County Water Authority*, 305 N. Y. 758, 113 N. E. 2d 152 (1953).

26. *Denihan Enterprises, Inc. v. O'Dwyer*, 302 N. Y. 451, 99 N. E. 2d 235 (1951).

27. 308 N. Y. 428, 125 N. E. 2d 241 (1955).

28. N. Y. PUBLIC AUTHORITIES LAW § 1432 et seq.

29. N. Y. GENERAL MUNICIPAL LAW § 72-j.