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Municipal Corporations—Power to Maintain Parking Garages

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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 statute[21] 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 Commissioner[22] 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 property[25] 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 § 1482 et seq.
29. N. Y. GENERAL MUNICIPAL LAW § 72-j.

purpose.[30] There was no illegal extension of the City credit[31] nor violation of the Elmira Parking Authority Law, [32] which provided that neither the State nor City were to be liable on Authority bonds nor were the bonds to be payable out of funds other than those of the Authority. That law did not forid the transfer of money to the Authority, especially where that transfer was part of a scheme of action by which the City would satisfy a public requirement.[33]

The dissent argued that the contract was in direct violation of the provisions of the law[34] expressly forbidding the city from assuming any liability for payment of the bonds, as this contract did in fact and in effect bind the city to meet Authority obligations. The dissent further argued that the contract also constituted a gift of credit by a city which was expressly prohibited.[35]

On the basis of the authority cited by the majority of the Court and in view of the needs of a modern city which must be provided by the most practical methods available, the scheme entered into between the City and the Authority can not be condemned.

Notice of Tort Claim

The General Municipal Law and the Education Law enumerate the persons to be notified where notice is required as a condition precedent to bringing a tort action against any municipal corporation or officer or employee thereof.[36] The prime if not the sole objective of the notice requirement of such a statute is to insure a municipality an adequate opportunity to investigate the circumstances surrounding the accident and to explore the merits of the claims while information is readily available.[37] Unless specific statutory provision requiring such a notice is found, there need be no service of a notice in a common law tort action against an employee of a municipality in his individual capacity,[38] since he has first-hand knowledge of the tort which he allegedly has committed. However, in those instances where the law provides that the municipal corporation indemnify the employee for a judgment recovered against him on a tort claim, the legislature may specifically require that a notice of claim be given, even when the employee alone is sued.[39]

30. *Denihan Enterprises, Inc. v. O'Dwyer,* 302 N. .Y. 451, 99 N. E. 2d 235 (1951).
31. See note 24, *supra.*
32. N. Y. PUBLIC AUTHORITIES LAW § 1493.
33. *Robertson v. Zimmerman,* 268 N. Y. 52, 196 N. E. 740 (1935).
34. N. Y. PUBLIC AUTHORITIES LAW § 1493.
35. See note 24, *supra.*
36. N. Y. MUNICIPAL CORPORATION LAW §§ 50(b), (d); N. Y. EDUCATION LAW §3813.
37. *Teresta v. City of New York,* 304 N. Y. 440, 108 N. E. 23 397 (1952).
38. *O'Hara v. Sears Roebuck & Co.,* 286 App. Div. 104, 142 N. Y. S. 2d 465 (4th Dep't 1955).
39. N. Y. MUNICIPAL CORPORATIONS LAW §§ 50(b), (c) (d),