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Municipal Corporations—Pensions

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BUFFALO LAW REVIEW

City boards of education are state created entities,²⁷ and as such, they have been considered independent agencies,²⁸ distinct from²⁹ and beyond³⁰ a municipality's control. However in "matters not strictly educational or pedagogic" a board is subject to local regulation.³¹

In determining this area to which the local law applies, the courts have produced some seemingly inconsistent results. They have held that a teacher comes within city charter provisions prohibiting city officers from holding dual positions,³² or making it a crime for city employees to conspire to defraud the city,³³ and lower courts have held that the section now in question applied to teachers.³⁴ Conversely it has been held that a teacher is not an employee of the city where local ordinances provided that a city employee was to receive the same salary in a new position where the old one had been abolished,³⁵ or where it forbade the holding of dual positions.³⁶

In the instant case, a majority of the court applied a liberal interpretation to the New York City Administrative Code which defines a city employee as "any person whose salary in whole or in part is paid out of the city treasury."³⁷ As the petitioners' salaries were paid with funds from the city treasury and their employment with the board of education must be added to other municipally paid services in determining seniority rights under Civil Service,³⁸ the court concluded that the petitioners were employees of the city and therefore subject to dismissal.

Pensions

Before the constitutional amendment which made membership in a state or civil pension system a contractual relationship,³⁹ New York followed the traditional rule that a pension was a gratui-

27. EDUCATION LAW §§ 2557, 6201.

28. *Gunnison v. Board of Education of City of New York*, 176 N. Y. 11, 68 N. E. 106 (1903).

29. *Lewis v. Board of Education*, 258 N. Y. 117, 179 N. E. 315 (1932).

30. *Matter of Divisich v. Marshall*, 281 N. Y. 170, 22 N. E. 2d 327 (1939).

31. *Hirshfield v. Cook*, 227 N. Y. 297, 125 N. E. 504 (1919).

32. *Metzger v. Swift*, 258 N. Y. 440, 180 N. E. 112 (1932).

33. *People v. Engel*, 200 Misc. 60, 102 N. Y. S. 2d 166 (Ct. Gen. Sess. 1951).

34. *Matter of Koral v. Board of Education*, 197 Misc. 221, 94 N. Y. S. 2d 378 (Sup. Ct. 1950); *Matter of Goldway v. Board of Higher Education*, 178 Misc. 1023, 37 N. Y. S. 2d 34 (Sup. Ct. 1942).

35. *Matter of Ragsdale v. Board of Education*, 282 N. Y. 323, 26 N. E. 2d 277 (1940).

36. *Matter of Gelson v. Berry*, 233 App. Div. 20, 250 N. Y. S. 577 (2d Dep't 1931), *aff'd*, 257 N. Y. 551, 178 N. E. 791 (1931); *contra*, *Metzger v. Swift*, *supra* note 9.

37. NEW YORK CITY ADMINISTRATIVE CODE § 981-1.0.

38. CIVIL SERVICE LAW § 31.

39. N. Y. CONST. Art. V, § 7, effective July 1, 1954.

THE COURT OF APPEALS, 1953 TERM

tous allowance and before the completion of the conditions precedent there was no vested right to it and hence it could be revoked at the will of the legislature.⁴⁰ Once there had been compliance with the statutory conditions a "contractual" relationship arose and there was an absolute right to the pension in absence of any statutory reservations.⁴¹

In the instant case,⁴² the period of service required to entitle petitioner to the pension was increased after the petitioner became a patrolman, but before the constitutional amendment went into effect. The court held that since the statutory change occurred prior to the amendment, no contractual obligation arose from mere membership, and as the petitioner had the expressed right, under the statute, to withdraw his contributions to the fund at any time, there was no taking of property without due process of law.

Local Traffic Ordinances

Section 90 of the Vehicle and Traffic Law delegates to local authorities the power in certain instances to regulate traffic. In addition to the several specific enumerations, they are given the authority to make such additional reasonable ordinances as the special local conditions may require. During this past term, the constitutionality of a town ordinance which prohibited through or transient vehicular traffic on the streets within a specified area was questioned.⁴³

It has always been recognized that the regulation of motor vehicles in their use of the streets is an important function of municipal government.⁴⁴ Where the exercise of this function is reasonable, nondiscriminatory, authorized by state law and not in conflict with it, it is valid.⁴⁵ A regulation which applies to the operation of certain vehicles and not to others is void when the distinction constitutes an unreasonable classification,⁴⁶ and a grant of power to a municipality to regulate motor vehicles and street

40. *Pennie v. Reis*, 132 U. S. 464 (1889); *Friel v. McAdoo*, 101 App. Div. 155, 91 N. Y. S. 454 (2d Dep't), *aff'd*, 181 N. Y. 558, 74 N. E. 1117 (1905); *Roddy v. Valentine*, 268 N. Y. 228, 197 N. E. 260 (1935).

41. *Roddy v. Valentine*, *supra* note 40; *Matter of O'Brien v. N. Y. State Teachers' Retirement Board*, 215 App. Div. 220, 213 N. Y. Supp. 738 (3d Dep't), *aff'd*, 244 N. Y. 530, 155 N. E. 884 (1926).

42. *Day v. Mruk*, 307 N. Y. 349, 121 N. E. 2d 362 (1954).

43. *People v. Grant*, 306 N. Y. 258, 117 N. E. 2d 542 (1954).

44. 7 McQUILLAN, MUNICIPAL CORPORATIONS § 24.618 (3d ed. 1949).

45. *Ibid.*

46. *Id.* at § 24.622 (3d ed. 1949).