Buffalo Law Review

Volume 4 | Number 1 Article 54

10-1-1954

Municipal Corporations—Elections

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traffic is not considered to authorize it to forbid the use of its streets to motor vehicles.[47]

The court, noting the prohibition in Section 54 of the Vehicle and Traffic Law,[48] concluded that this ordinance was not a reasonable regulation and very properly held the ordinance invalid.

Elections

Section 248 of the Election Law[49] has again been before the Court of Appeals for interpretation. In the instant case,[50] petitioner, an independent candidate for city judge, sought to have the proposed voting machine format altered so that his opponent, who was nominated by the Republican, Democratic, Liberal and United City parties, would not appear on the ballot on a separate line for the United City party.

The constitutionality of statutes prohibiting the placing of a candidate's name more than once on a ballot have been generally upheld throughout the United States.[51] In New York the statute has been the grounds for some divergence of opinion. Early cases held that comparable statutes that attempted the consolidation on a ballot were unconstitutional as they discriminated against the independent voters.[52] This stand was somewhat modified in *Haskell v. Voorhis*,[53] where the court held that the sole nominee of an independent body who was also a nominee of the Republican party could have the party names and emblems combined on one ballot. Several years later, the court held that the provision of the Election Law was constitutional except in instances where its application would be unfair and prejudicial to a particular class

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47. *Id.* at § 24.616 (3d ed. 1949).

48. § 54: "Local authorities shall have no power . . . to pass, enforce, or maintain any ordinance . . . inconsistent with the provisions of this chapter . . . and no such ordinance . . . shall have any force or effect."

49. § 248:
". . . When the same person has been nominated for the same office to be filled at the election by more than one party, the voting machine shall be so adjusted that his name shall appear in each row or column containing generally the names of candidates for other offices nominated by such party; and if such candidate has also been nominated by one or more independent bodies, his name shall appear only in each row or column containing generally the names of candidates for other offices nominated by any such party, and the name and emblem of each such independent bodies shall appear in one such row or column . . ."

50. *Belford v. Board of Elections of Nassau County*, 306 N.Y. 70, 115 N.E. 2d 658 (1953).

51. See annotation, 78 A.L.R. 398.

52. *Hopper v. Britt*, 203 N.Y. 144, 96 N.E. 371 (1911); *Gilfillan v. Bever*, 124 Misc. 628, 207 N.Y. Supp. 628 (Sup. Ct. 1924), *aff'd*, 212 App. Div. 855, 207 N.Y. Supp. 842 (4th Dep't), *aff'd*, 240 N.Y. 579, 148 N.E. 712 (1925).

53. 246 N.Y. 256, 158 N.E. 613 (1927).

of voters.[54] In *Matter of Aurelio*,[55] the court took a definite stand on the grounds that a, "strict observance of the letter of the statute would interfere unnecessarily with the intelligent and ready expression of his choice by an independent voter."[56]

In the instant case, the court affirmed, *per curiam*, the order of the Appellate Division which followed the *Aurelio* case and held that a strict construction of the statute would be unconstitutional and denied the application to change the format.

X. Property

A. Real Property

Easements

Easements in public streets may be acquired in the following ways: (1) By condemnation proceedings under a statute. (2) By prescription, or where land is used by the public for twenty years with the knowledge, but without the consent of the owner. (3) By dedication through offer and implied acceptance, or when the owner throws open his land intending to dedicate it for a highway and the public uses it for such a length of time that they would be seriously inconvenienced by an interruption of the enjoyment. (4) By dedication through offer and actual acceptance, where the owner throws open his land and by acts or words invites acceptance of the same for a highway, and the public authorities formally or in terms accept it as a highway.[1]

In *Sauchelli v. Fata*,[2] the owners of property abutting sides of a blind alley sought to enjoin defendants whose property abutted the dead end from using the land for ingress and egress. After finding that the plaintiffs had easements of access in the property the court granted the injunction on the grounds that defendants failed to show acceptance by the town as a public highway and since they had ready access to their land which faced another

54. *Matter of Callaghan v. Voorhis*, 252 N. Y. 14, 168 N. E. 447 (1929). The court said that the statute prejudiced the independent body as they had nominated almost a full row of candidates and a voter would think that no one had been nominated for that office upon seeing the blank.

Matter of Crane v. Voorhis, 257 N. Y. 298, 178 N. E. 169 (1931). Here the statute said in substance that if an independent body, who had not nominated candidates for more than fifty percent of the offices to be filled, nominated a candidate who was also a nominee of one of the other political partys, his name would only appear once with both names and emblems. The court held this unconstitutional.

55. 291 N. Y. 176, 51 N. E. 2d 695 (1943).

56. *Id.* at 180, 51 N. E. 2d at 697.

1. *Nicholas Copper Co. v. Connolly*, 208 App. Div. 667, 203 N. Y. Supp. 839 (2d Dep't 1924), *aff'd*, 240 N. Y. 596 (1925).

2. 306 N. Y. 123, 116 N. E. 2d 75 (1953).