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Municipal Corporations -- Taxation -- Meaning of Public Purpose

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tions by saying that the diplomatic representatives, their families, staff or servants are subject to return to their own country for trial and punishment while officers and employees of international organizations, if granted immunity, would escape trial and punishment completely.[17]

It should not be assumed that because the United Nations has no tribunal for the trial and punishment of offenders that no effective action can be taken by the United Nations against an employee who has violated the local law. The Secretary General has broad administrative power and should be capable of dealing out adequate punishment.[18]

If this method be found unworkable, it is suggested that the United Nations set up a tribunal to try cases of violations by officers and employees of local law, and of violations of regulations of the organization itself. There is ample power in Article 14[19] and Article 22[20] of the United Nations Charter for the General Assembly to create such a tribunal.

That there have been and will be abuses of these privileges and immunities by officers and employees of international organizations cannot be doubted, but so necessary a rule must not be abandoned because of the derelictions of a few. To hold otherwise is to set a precedent that conceivably might become an instrument of coercion toward the international organization, its officers, or employees, by the national state in which such organization functions.

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Municipal Corporations—Taxation—Meaning of Public Purpose

"Taxes shall be levied only for public purposes" under Art. V, §3, of the North Carolina Constitution.[1] Therefore, whether the project

[17] Westchester County v. Ranollo, 67 N. Y. S. 2d 31, 34 (1946). (The Court here refers to a case of "one Avenol in the Courts of the Republic of France" as refusing to grant immunity to the Secretary General of the League of Nations on a charge of non-support of his family. No citation is given and research has failed to disclose the case.) *But cf.* V.—— v. D.——, 54 Clunet 1175 (1927) (a civil case in which immunity was recognized in the case of a permanent delegate to the League of Nations).

[18] U. N. CHARTER, Art. 97, Art. 101. The request for immunity was withdrawn by the Security Officer of the United Nations by direction of Secretary General Lie. N. Y. Times, Nov. 30, 1946, p. 1, col. 6.

[19] "Subject to the provisions of Art. 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations." U. N. CHARTER, Art. 14.

[20] "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." U. N. CHARTER, Art. 22.

[1] This sentence was put into the constitution by a 1936 amendment. However, following the trend of judicial decisions in this country, North Carolina adopted the doctrine that taxes may be levied only for public purposes in Wood v. Oxford, 97 N. C. 227, 2 S. E. 653 (1887). See McAllister, *Public Purpose in Taxation*, 18 CALIF. L. REV. 137 (1930) for a discussion of the history of this doctrine.

in mind is a public purpose is one of the first hurdles that the governing body of any municipal corporation must clear in passing on a proposed tax levy.[2]

In *Nash v. Town of Tarboro*[3] the question arose whether a municipality pursuant to an act of the Legislature[4] could by an ordinance approved and ratified by a majority of the qualified voters issue $250,000 in bonds for the construction and operation of a commercial hotel, the interest and principal of the bonds to be paid by levying annually a sufficient amount of taxes. *Held:* Judgment of the superior court denying plaintiff taxpayer's request for injunctive relief, upholding the ordinance and statute, and dismissing the action is reversed. The construction and operation of a hotel is not a public purpose within the meaning of Art. V, §3, of the North Carolina Constitution. Therefore the Legislature is without authority to authorize a municipality to issue bonds and levy taxes for this project.

"The difficulty, however, arises in deciding what is and what is not a public purpose."[5] Since the "necessary expenses" of municipal corporations, within the meaning of Art. VII, §7 of the Constitution, necessarily involve public purposes, the items which have been held to be necessary expenses are *per se* public purposes.[6]

The following items have been held to be such necessary expenses:[6a] (1) the ordinary expenses of government including salaries, wages and office expenses; (2) the building and repair of municipal buildings, public roads, streets, bridges, market houses, jetties, abbattoirs, cemeteries, sewerage systems, electric light plants, water-works plants, and incinerators; (3) the maintenance of the poor; (4) the maintenance of the administration of justice; (5) fire insurance for school buildings; (6)

[2] Other and related constitutional hurdles, beyond the scope of this note, include: (1) Restriction of Art. V, §6 (upon state and county only) that "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly. . . ." See Coates and Mitchell, *Property and Poll Tax Limitations Under the North Carolina Constitution*, 18 N. C. L. REV. 275 (1940). An amendment is to be submitted to the people in 1948 to increase this to twenty-five cents. (2) Restriction of Art. VII, §7 that "No . . . municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein." See Coates and Mitchell, *Necessary Expenses*, 18 N. C. L. REV. 93 (1940). (3) Restriction of Art. V, §4 (if any debt is to be contracted) which limits the increase of public debts by counties and municipalities. See Hoyt and Fordham, *Constitutional Restrictions Upon Public Debt in North Carolina*, 16 N. C. L. REV. 329 (1938).

[3] 227 N. C. 283, 42 S. E. 2d 209 (1947).

[4] N. C. Session Laws 1945, c. 413.

[5] Nash v. Town of Tarboro, 227 N. C. 283, 287, 42 S. E. 2d 209, 211 (1947).

[6] This is recognized by the court in Nash v. Tarboro, 227 N. C. 283, 287, 42 S. E. 2d 209, 211 (1947), where they list the items.

[6a] Coates and Mitchell, *Necessary Expenses*, 18 N. C. L. REV. 93 (1940).

professional services in refunding bonds; (7) contract with hospital for care of indigent sick and afflicted poor.

In addition, the following have been held to be public purposes: (1) aid to railroads;[7] (2) aid to establish a teachers training school;[8] (3) railway terminal facilities;[9] (4) public auditorium;[10] (5) World War I Veterans' Loan Fund;[11] (6) the state fair;[12] (7) a park;[13] (8) a municipal hospital;[14] (9) an airport;[15] (10) port terminal facilities;[16] (11) public housing authority under federal housing acts;[17] (12) playgrounds and recreational facilities;[18] (13) public library;[19] and (14) schools.[20]

[7] Wood v. Town of Oxford, 97 N. C. 227, 2 S. E. 653 (1887); *accord*, Caldwell v. Justices of Burke County, 57 N. C. 323 (1858). On eminent domain see Raleigh & G. R. R. v. Davis, 19 N. C. 451 (1837).

[8] Cox v. Commissioners, 146 N. C. 584, 60 S. E. 516 (1908) (Pitt County proposed to issue bonds not exceeding $50,000 to aid in establishing what is now Eastern Carolina Teachers College).

[9] Hudson v. Greensboro, 185 N. C. 502, 117 S. E. 629 (1923), 2 N. C. L. REV. 38 (1923) (issuance of bonds amounting to $1,300,000 to lend the Southern Railroad the proceeds thereof to build a railway terminal in Greensboro pursuant to N. C. Priv. L., 1920, c. 105; approved by a vote of the people).

[10] Adams v. Durham, 189 N. C. 232, 126 S. E. 611 (1925) (city proposed to build a public auditorium using funds derived from the sale of a city lot; not voted on by the people).

[11] Hinton v. Lacy, State Treasurer, 193 N. C. 496, 137 S. E. 669 (1927) (state issued bonds to establish a fund whereby veterans could borrow up to $3,000 to build homes; this was approved by the voters of North Carolina in 1924 and again in 1926).

[12] Briggs v. Raleigh, 195 N. C. 223, 141 S. E. 576 (1928) (N. C. Pub. L. 1927, c. 209, set aside 200 acres of state land for the purpose of holding a state fair provided the city of Raleigh would donate $75,000 thereto by issuing bonds in that amount, the issuance of which was authorized by c. 110, upon approval of the voters of Raleigh. Voters approved. Court held that a state fair was a "public undertaking" and that its location or retention within five miles of Raleigh made the bond issue for a "public municipal purpose.").

[13] Yarborough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928) (issuance of bonds pursuant to N. C. Pub. L. 1927, c. 48, for purchase of part of land for Smoky Mt. National Park). See note 21 *infra*.

[14] Burleson v. Board of Aldermen of Spruce Pine, 200 N. C. 30, 156 S. E. 241 (1930).

[15] Greensboro-High Point Airport Authority v. Johnson, 226 N. C. 1, 36 S. E. 2d 803 (1946); Turner v. Reidsville, 224 N. C. 42, 29 S. E. 2d 211 (1944); Goswick v. Durham, 211 N. C. 687, 191 S. E. 728 (1937); *cf.* Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1937).

[16] Webb v. Port Commission, 205 N. C. 663, 172 S. E. 377 (1933) (Port Commission was set up as a corporation to construct, maintain and operate port facilities at Morehead City with power to issue tax exempt bonds.); *cf.* Henderson v. Wilmington, 191 N. C. 269, 132 S. E. 728 (1926).

[17] Mallard v. Eastern Carolina Housing Authority, 221 N. C. 334, 20 S. E. 2d 281 (1942); Cox v. Kinston, 217 N. C. 391, 8 S. E. 2d 252 (1941); Wells v. Housing Authority, 213 N. C. 745, 197 S. E. 693 (1938). Also see N. C. GEN. STAT. (1943) c. 157.

[18] Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936) (Durham issued $25,000 in bonds without a vote of the people to acquire land for public parks and playgrounds. Held that for a city as populous and industrial as Durham, such objectives were necessary expenses); Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939) (parks and playgrounds were *not* a necessary expense for Wilmington, although they were a public purpose); Brumley v. Baxter, 225 N. C. 691, 36 S. E. 2d 281 (1945) (donation of land by city for recreational centers is for a public purpose); Pursuer v. Ledbetter, Treasurer of Charlotte, 227 N. C. 1, 40 S. E. 2d 702 (1946) (public parks, playgrounds and recreational facilities are

The North Carolina Court has utilized eminent domain as a test; *i.e.*, the fact that what is a public purpose for eminent domain is generally also a public purpose for which taxes may be levied.[21] However, the list is not added to as most of the previously mentioned projects have also been the subject of the eminent domain decisions.[22]

The "custom and usage" test may work both ways.[23] "In determining whether or not a tax is for a public purpose, when considered in the light of custom and usage . . . courts should also take into consideration the fact, that a purpose not thereofore considered public but by reason of changed conditions and circumstances, may be so classified."[24] The court points out by analogy that prior to a 1903 decision[25] water and lights were not considered necessary expenses. Judging from this declaration and past decisions the expected trend of any change

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not a necessary expense, although a public purpose, Atkins v. Durham, *supra*, will not "be followed as a precedent").

[19] Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939) (public library not a necessary expense, but by implication it is a public purpose); Westbrook v. Southern Pines, 215 N. C. 20, 1 S. E. 2d 95 (1939). See N. C. GEN. STAT. (1943) §§160-75 and 160-77.

[20] Collie v. Commissioners of Franklin County, 145 N. C. 171, 59 S. E. 44 (1907). For cases on public purpose from other jurisdictions see 51 AM. JUR. §§342-386, 44 C. J. §4285, 61 C. J. §21; 5 MCQUILLEN, MUNICIPAL CORPORATIONS §§1951-1960, 2325 (rev. ed. 1937).

[21] Nash v. Town of Tarboro, 227 N. C. 283, 287, 42 S. E. 2d 209, 212 (1947) ("A municipal corporation, however, in the exercise of a proprietary right, just as in the exercise of a governmental power, cannot invoke the power of taxation or the right of eminent domain except for a public purpose."); Charlotte v. Heath, 226 N. C. 750, 40 S. E. 2d 600 (1946) (condemnation case); Yarborough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928) (Plaintiff objected to proposed bond issue on grounds that acquisition of lands for a national park with the proceeds was not a public purpose. Court held that the bonds were for a public purpose on basis of eminent domain cases and authorities.). Also see Turner v. Reidsville, 224 N. C. 42, 29 S. E. 2d 211 (1944); Cox v. City of Kinston, 217 N. C. 391, 8 S. E. 2d 252 (1940); 6 MCQUILLEN, MUNICIPAL CORPORATIONS §2532 (rev. ed. 1937) (". . . no good reason is apparent why a purpose, if public as to one [i.e., eminent domain or taxation] is not public as to all."); 51 AM. JUR. §324 (". . . in its practical application public use has much the same meaning in eminent domain that it has in taxation."); *accord*, Cole v. La Grange, 113 U. S. 1 (1885); MCBAIN, AMERICAN CITY PROGRESS AND THE LAW, c. 5 (1917); JUDSON, TAXATION §351 (1903); MCGEHEE, DUE PROCESS OF LAW 229 (1906).

[22] Public ferries might be added to the list. Willaims v. Commissioners of Craven County, 119 N. C. 520, 26 S. E. 150 (1896); Barrington v. Neuse River Ferry Co., 69 N. C. 165 (1875). For material approaching the subject from the eminent domain angle see Nichols, *The Meaning of Public Use in the Law of Eminent Domain*, 20 B. U. L. REV. 615 (1940); Note, 21 N. Y. U. L. Q. REV. 285 (1946).

[23] Prior decisions have been held to be of little weight. City of Tombstone v. Macia, 30 Ariz. 218, 245 Pac. 677 (1927) ("We should not be controlled to too great an extent by decisions of courts in climates far distant from ours . . . [or which] . . . come from a remote time, and therefore may be out of tune with modern conditions.").

[24] Nash v. Town of Tarboro, 227 N. C. 283, 287, 42 S. E. 2d 209, 212 (1947) (this custom and usage idea was adopted from Loan & Savings Association v. Topeka, 87 U. S. 655 (1874)).

[25] Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903).

would be towards increasing the favored objectives. However, using the suggested necessary expense analogy one finds that in 1936 recreational facilities in industrial Durham were held to be a necessary expense[26] but after chipping away at this holding[27] the court decided in 1946[28] that such facilities are not necessary expenses.

Justice Barnhill's definition of public purpose is: "It must be a corporate purpose directly connected with the local government and having for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity or contentment of the inhabitants or residents within the political division from whence the revenue for its support is derived."[29] Such a statement is loaded with terms over which reasonable men may disagree. The citizens of Tarboro, faced with a situation where private enterprise had broken down in that the only hotel for its 8,000 people was "obsolete" and bore a "poor reputation,"[30] thought a hotel would promote the "general welfare and convenience of both the residents and transients . . . and . . . the economic interests of the town."[31] The trial judge so found. The court's answer was "but ordinarily such benefits will be considered too incidental to justify the expenditure of public funds."[32] Thus, the presence of only one or two of Justice Barnhill's criteria may be insufficient. Or, as one authority states: "Hardly any project of public benefit is without some element of peculiar personal profit to individuals, hardly any private attempt to use the taxing power is without some colorable pretext of public good. Each case must be judged on its own facts, and any attempt at fixed definition must result in confusion and contradictions."[33]

Another test utilized in the principal case was whether the object under scrutiny would be exempt from taxation by virtue of that part of Art. V. §3, N. C. Constitution which provides that "property belonging to the state or to municipal corporations" must be exempt.[34] This has been construed to mean only property held for a public purpose.[35]

[26] Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).
[27] Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).
[28] Pursuer v. Ledbetter, 227 N. C. 1, 40 S. E. 2d 702 (1946). See note 18 *supra*.
[29] Concurring in part and dissenting in part in Greensboro-High Point Airport Authority v. Johnson, 226 N. C. 1, 36 S. E. 2d 803 (1946).
[30] Transcript of Record, p. 10, Nash v. Town of Tarboro, 227 N. C. 283, 42 S. E. 2d 209 (1947).
[31] *Id.* at 7.
[32] Nash v. Town of Tarboro, 227 N. C. 283, 290, 42 S. E. 2d 209, 214 (1947).
[33] 6 McQUILLEN, MUNICIPAL CORPORATIONS §2532 (rev. ed. 1937).
[34] Nash v. Town of Tarboro, 227 N. C. 283, 289, 42 S. E. 2d 209, 213 (1947).
[35] Winston-Salem v. Forsyth County, 217 N. C. 704, 9 S. E. 2d 381 (1940); Warrenton v. Warren County, 215 N. C. 342, 2 S. E. 464 (1939); Town of Weaverville v. Hobbs, Commissioner, 212 N. C. 684, 194 S. E. 860 (1937); Benson v. Johnston County, 209 N. C. 751, 185 S. E. 6 (1935); Board of Financial Control v. Henderson County, 208 N. C. 569, 181 S. E. 636 (1935). For a thorough discussion of these cases see Coates, *The Battle of Exemptions*, 19 N. C. L. REV. 154 (1941).

But this argument goes in a circle. Thus, *Warrenton v. Warren County*[36] decided that a hotel acquired by a town to protect an investment was taxable by the county because the hotel was not held for a public purpose.

In cases of this type, it is probable that public policy as the court sees it is often the factor that tips the scales one way or the other. The court in the instant case quotes from two cases that take the traditional viewpoint. The first is an 1874 decision[37] of the United States Supreme Court to the effect that a city bond issue to donate money to a private iron works was not a public purpose.[38] The second is an 1887 Kentucky case[39] in which it was said: "Certainly, a tax could not be constitutionally levied to aid one in building or conducting a hotel; and to exempt the keeper from the payment of the tax thereon is but doing indirectly what cannot be done directly."

Although the question in the principal case was not whether Tarboro could give public money to a private corporation to build a hotel, but whether Tarboro could erect and operate its own hotel, the underlying question of public policy is analogous. However, the United States Supreme Court has, without overruling the 1874 case, taken a broader view in a 1920 decision[40] allowing the State of North Dakota to set up state enterprises to manufacture and market farm products, to provide homes for residents, and to establish a state bank and in a 1927 decision[41] upholding the right of the City of Lincoln, Nebraska, to establish a municipal filling station which operated at cost. The more recent state decisions "indicate a tendency to . . . broaden the scope of those activities involving a public purpose in which a state or its political subdivisions may lawfully engage."[42]

Nor is the enactment of the legislature authorizing the project sufficient in North Carolina. "In its final analysis, it is a question for the courts."[43] The United States Supreme Court has in recent years devel-

[36] 215 N. C. 342, 2 S. E. 2d 464 (1939).
[37] Savings & Loan Association v. Topeka, 87 U. S. 655 (1874).
[38] See McAllister, *supra* note 1 for discussion of this case.
[39] Lancaster v. Clayton, 86 Ky. 373, 5 S. W. 864 (1887).
[40] 253 U. S. 233 (1920) Note 29 YALE L. J. 933 (1920).
[41] Standard Oil Co. v. City of Lincoln, 114 Neb. 243, 207 N. W. 962, *aff'd mem.*, 275 U. S. 504 (1927), Note 41 HARV. L. REV. 775 (1928).
[42] See Note, 115 A. L. R. 1459 (1938).
[43] Nash v. Town of Tarboro, 227 N. C. 283, 286, 42 S. E. 2d 209, 211 (1947) (court cites this phrase from Briggs v. Raleigh, 195 N. C. 223, 141 S. E. 597 (1928)). Similar language is used in many other cases. Turner v. Reidsville, 224 N. C. 42, 29 S. E. 2d 211 (1944); Wells v. Housing Authority, 213 N. C. 745, 197 S. E. 693 (1938); Yarborough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928); Hinton v. Lacy, State Treasurer, 193 N. C. 496, 137 S. E. 669 (1927); Stratford v. Greensboro, 124 N. C. 127, 32 S. E. 394 (1899). *But cf.* Hudson v. Greensboro, 185 N. C. 502, 516, 117 S. E. 629, 636 (1923) ("It was earnestly argued before us that the proposition that . . . Greensboro should loan this fund would impair its credit, that the issue of over a million dollars in bonds by a city for the purposes recited [to loan to Southern Railroad to build a terminal

oped a broader view, stating: "When Congress has spoken on this subject [what is a public purpose] its decision is entitled to deference until it is shown to involve an impossibility. Any departure from this judicial restraint would result in courts deciding on what is and what is not a governmental function and in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields."[44]

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Negotiable Instruments—Adoption of Printed Seal

Suit was brought on a "note or bond" set out in detail in the complaint with the usual allegations of demand and non-payment.[1] The copy of the note disclosed the printed word "Seal" at the right of defendant maker's signature but there was no recital such as "Witness my hand and seal."[2] The answer admitted execution of the instrument set out in the complaint and pleaded the statute of limitations, "Said notes not bearing the seal of . . . defendants and were more than three years past due prior to the bringing of this action."[3] The trial judge excluded defendant's evidence that he neither sealed the note nor understood the significance of nor adopted the printed word as his seal.[4] He also declined to submit any issue on the question of defendant's intent to adopt the word as his seal.[5] Moreover in his charge to the jury the judge referred to the instrument as a bond.[6]

Thus hedged in and his instrument judicially classified against him, the defendant lost at trial and on appeal claimed the rulings and charge of the trial judge to have been error. That, if erroneous, they had been prejudicial could not be doubted.

The North Carolina Supreme Court in affirming said that after defendant had admitted executing the instruments set out by plaintiff it would violate the parol evidence rule to admit evidence that they were

in city] was not only novel . . . and that the precedent thus set, if followed to any extent, would not serve the public interest. *But these are not matters which are confided to this branch of the government.*").

[44] United States *ex rel.* Tennessee Valley Authority v. Welch, 327 U. S. 546 (1946) (case related to taking of land in Swain County, N. C., by the T. V. A.). *But see* the concurring opinion of Mr. Justice Reed.

[1] Bell v. Chadwick, N. C. Super. Ct., May term, Craven County, 1946.

[2] *Id.* Fall term, 1946, North Carolina Supreme Court, record on appeal, p. 3. It seems to be settled that the recital when present will conclusively establish the adoption of the printed word Seal. Jefferson Std. Life Ins. Co. v. Morehead, 209 N. C. 174, 176, 183 S. E. 606, 607 (1936), *semble*. *Cf.* Churchill v. Speight's Extrs., 3 N. C. 338 (1805).

[3] Record, pp. 7, 8. As to the necessity of pleading the facts see Murray v. Barden, 132 N. C. 136, 43 S. E. 600 (1903) and other cases in N. C. DIGEST, Limitation of Actions, §183(2).

[4] Record, pp. 21-23.

[5] Record, p. 24.

[6] Record, p. 25.