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Educational Films case. The changed personnel of the court is a strong indication that probably the instant North Carolina case is based on an authority of which the majority of the court now disapproves. Under the realistic approach which it seems the present tendency of this majority to follow the tax in the North Carolina case would perhaps be sustained as only a negligible impairment of the operations of the national government. Especially is this true in the light of the concession even by the minority of the court that the function of granting patents is not "a vital power of the federal government."²³

JAMES H. CHADBOURN.

OPEN COURT

CONSOLIDATION OF COUNTY AND CITY GOVERNMENTS

The principal purpose in establishing counties is to make effectual the political organization and civil administration of the state, in respect to its general purposes and policy which require local direction, over matters of local finance, education, provisions for the poor, the establishment and maintenance of highways and bridges, and, in large measure, the administration of public justice.

A municipal corporation is an organized body, consisting of the inhabitants of a designated area of contiguous territory, established by the Legislature of the State with or without the consent of such inhabitants, and constituting a legal entity with perpetual succession under its corporate name, and having the power to own and hold property, to select its own offices, to levy and collect taxes and appropriate and expend the funds thus raised, to enact and enforce police regulations within such area, and confers upon the individuals of which it is composed, powers, privileges and immunities which they would not otherwise possess.

The consolidation of counties and municipal corporations has been attempted outside of North Carolina—the cities of Baltimore and Memphis are said to be coterminous with the counties in which they lie—and it might be well to consider whether it can be done in this state. In the absence of constitutional restrictions, it is generally considered that the power of a state Legislature over the boundaries of the political subdivisions of the state, is absolute, and

²³ *Educational Films Corp. v. Ward*, *supra* note 2, at 174.

that the Legislature is not precluded, by having once carved up the territory of the state into counties, cities and towns or other units, from making a new subdivision at any subsequent time. If it were desired, the Legislature could extend the corporate limits of Asheville so as to include all of Buncombe County.

Our Supreme Court, in the case of *Ellis v. Green* 191 N. C. 763, decided in 1926, reiterated the law as follows: "It is well settled that the constitution of the State recognizes as governmental agencies the existence of counties, cities and towns. . . . They can, at the will of the Legislature, be changed, divided and abolished."

But it is not desired to abolish either the County of Buncombe or City of Asheville, but to consolidate or merge so far as can be done legally, such offices, departments and governmental agencies as will eliminate duplication of work, numerous boards, bureaus and officials, and with the purpose and hope of saving large sums to the tax payers while at the same time promoting efficiency in government.

The limitation upon the authority to effect such a merger of the two governments is the Constitution of North Carolina, which creates certain county offices and prescribes their duties and powers, and so long as the Legislature does not abolish a county, certain offices must function. For instance, Article IV of the Constitution creates and provides for election of a clerk of the court, sheriff and coroner. These officers are a part of the civil administration of the state, and so long as a county exists they must be elected and exercise the duties of their respective offices. However, the duties and powers of said officers have mostly been conferred on them by the Legislature, which can at will increase or reduce their duties and powers and transfer them to other agencies. For instance, in many counties of the state the duty of collecting taxes has been taken from the sheriff and given to a tax-collector. On the other hand, there are other county offices created by the Constitution which can be abolished, or the duties of the officers curtailed, enlarged or transferred to other agencies. Article VII provides for the election of a treasurer, register of deeds, surveyor and county commissioners, which also prescribes the duties of the county commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying taxes and finances of the county. But by Section 14 of the same article creating these offices it is provided that "The General Assembly shall have full power by statute to modify, change, or abrogate any and all the

provisions of this article and substitute others in their place." By inserting such a provision as Section 14 it seems to me the framers of our Constitution must have partially foreseen such a situation as we have today in providing for the entire abolition of Article VII except Sections 7, 9 and 13 not pertinent to this discussion, and substitution of other articles in its place. Our Legislature has repeatedly and continuously exercised the powers given it under Section 14 by changing, enlarging or curtailing the powers of register of deeds, treasurer, and county commissioners. For instance, the office of county treasurer has been abolished in some counties and some bank performs the duties as depository. The authority over public roads once exercised by said commissioners is now generally exercised in most counties by road commissioners. Authority over public schools once exercised by said commissioners is now generally conferred on trustees in special school districts created in the counties and boards of education. Boards of audit and finance have been created by the Legislature which powers and duties were originally conferred on county commissioners.

So it will be seen that the Legislature has not hesitated to act under the authority given it by Section 14 of Article VII to "modify, change, or abrogate any or all the provisions of this article and substitute others in their place." Any officer in the county, except clerk, sheriff and coroner, can be abolished and the duties of these offices can be curtailed or enlarged. All other offices in both county and city can be abolished or changed in such respect as the Legislature may determine and other offices substituted in their place with such powers as the Legislature may confer not in conflict with the authority given clerks, sheriffs and coroners as representatives of the State government.

It is further submitted that there could be practical mergers of the functions and departments of the two governments, and which would tend to promote economy and efficiency in government, if an act was passed by the Legislature providing for the following:

- (1) Constituting one officer to collect both county and city taxes.
- (2) One board of commissioners could administer the affairs of both governments.
- (3) One purchasing agent could act for both county and city.
- (4) Abolish the office of Police Justice and confer his powers and duties on the Judge of the General County Court.