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## BOOK REVIEWS

**Municipalities and the Law in Action (1943).** Edited by Charles S. Rhyne. Washington, D. C.: National Institute of Municipal Law Officers. 1943. Pp. 1,611. \$7.50.

Perhaps Mayor LaGuardia of New York City best records one note which recurs throughout the series of reports collected in *Municipalities and the Law in Action* when he deftly sketches in words the conflicts arising between the municipalities and the Federal Government. He opened a speech made before the War Conference of city attorneys by referring to a federal court decision affecting cities: "I can't even open my remarks by saying 'The Town is yours,'" quipped the Mayor. "Not now, since the Judge Clark decision in the Post Office case, for if I were to say that, you could all sue me for specific performance."

Judge Clark, in the case referred to,<sup>1</sup> held that a letter from Mayor Walker of New York City to the U. S. Secretary of the Treasury bound the city of New York to a five-million dollar contract, even though the letter did not purport to be a contract and did not comply with New York City's charter requirements for contracts.

*Municipalities and the Law in Action (1943)*, edited by Charles S. Rhyne, Executive Director of the National Institute of Municipal Law Affairs, is a record of city legal experience during the first year of the war. Between its covers there is a wealth of detail contained in the more than twenty printed committee reports, the recorded minutes of the discussions of vital municipal and governmental problems raised by the subject matter in the printed reports, and copies of the speeches of member attorneys and guests at the 1942 Conference of the National Institute of Municipal Law Officers, a conference known as the War Conference because the impact of the war so colored the city legal problems arising during the year. The resolutions adopted at the 1942 War Conference of the National Institute will give some idea of the projection of the committee reports into the future. These resolutions refer to: (1) Appreciation of Presidential Leadership and a Pledge of Municipal Cooperation; (2) Unreasonable Impairment of Municipal Revenue by Federal Action; (3) The Maintenance of the Integrity and Independence of Municipal Government; (4) Home Rule and Preservation of Local Autonomy; (5) Municipal Sharing of Centrally Collected Taxes; (6) Benefits for Injuries Sustained by Volunteer Defense Workers; (7) Federal Taxation of the Income from Municipal Bonds.

The Report headed "One Year's Experience of American Cities at

<sup>1</sup> *United States v. City of New York*, 45 F. Supp. 226 (S. D. N. Y. 1942).

War," presented by a committee headed by Paul E. Krause of Detroit and Jacob Weinberger of San Diego, sketches the general outlines of many of the principal problems treated in the other reports. This Committee on Wartime Legal Problems of cities summarizes the scope of these problems as follows: "It will be seen that the problems created for American cities by the war fall roughly into the following categories: (1) The organization of civilian protection, (2) municipal employment problems brought about by the war, (3) municipal wartime revenue and finance problems, (4) the use or devotion of municipal money, property and facilities for war purposes, (5) the dislocations resulting from wartime population shifts with attendant housing, transportation and moral problems, (6) the effect of federal war measures upon municipal activities, and (7) the matter of dealing with personnel of the armed forces."<sup>2</sup>

Any attempt to treat each of these seven problem classifications even briefly would tend to obscure rather than to clarify the focal issues; therefore, only the most cogent ideas presented in the various reports will be given place in a discussion designed to highlight the main features of an annual report characterized by its non-academic presentation of the raw meat of the law—the law in action.

#### *Organization for Civilian Defense*

The specific questions arising in this nationwide program are of interest not only to cities but to lawyers generally and to the public at large.

(a) Is enabling legislation necessary before municipalities may spend municipal funds for financing defense councils? Are such powers to spend money for the common defense inherent? What methods of financing have been tried?

(b) Should defense council personnel and local government personnel be one and the same to promote efficiency and prevent conflict of authority?

(c) What are the civil liabilities resulting from civilian defense activities? Is a municipality liable for injury to civilians in a blackout? Who should insure a volunteer civilian defense worker injured in the performance of his duty?

Actual cases touching on these problems have arisen and are discussed in *Municipalities and the Law in Action (1943)*.

#### *Federal-City Cooperation*

Since numerous federal-city problems arise, there is real necessity for the cooperation commended by President Roosevelt in a letter to William C. Chanler, President of the National Institute of Municipal

<sup>2</sup> p. 138.

Law Officers, in these words: "The Attorney General has informed me of the excellent level of cooperation on wartime legal problems that has already been attained among the public servants of our Federal, State, and Municipal offices. This fine teamwork must be maintained; if possible further developed."

*Municipalities and the Law in Action (1943)* presents within its pages a wealth of illustrations of the cooperation attained between federal, state, and municipal governmental units, although as is natural, the particular cross section of problems specifically dealt with relate primarily to federal-city relations. A sample of the fields in which municipalities have furnished financial support, use of facilities, use of municipally owned utilities, and of equipment and personnel may help to demonstrate the actuality of this cooperation on the part of city governments. Municipalities have provided facilities such as school buildings and quarters in city-owned buildings for selective service and rationing boards, for civilian defense purposes, and for other agencies and organizations related to the war effort. In some cities even such facilities as municipal airports and harbor installations have been furnished. Cities have been called upon to supply water, sewage service, and electric power through municipally owned utilities; and some such utility properties required expansion to serve federally constructed war industries and government projects for the housing of workers. City recreational facilities have been made available to the armed forces in neighboring cities; cities have acquired additional lands needed for federal uses; city rubbish and garbage collection trucks and personnel have collected scrap for salvage campaigns.

"The existence of municipal power to make such expenditures and to devote municipal properties in assistance of the war effort has been approved by numerous court decisions, some of which are reviewed in *Municipalities and the Law in Action in 1941*, pp. 62-63."<sup>3</sup>

The major fields in which the Federal Government has shown cooperation with the municipal governments, which faced financial problems of real magnitude, are: (1) payments in lieu of taxes on several types of federally held real property; (2) in certain contracts drawn through the Civil Aeronautics Administration; and (3) the real spirit of cooperation between military and civil authority in handling the military personnel.

#### *Briefs Amicus Curiae in Important Cases*

The report of President William C. Chanler on "The Work of the National Institute of Municipal Officers in 1942" discusses an interesting practice recently begun: "In 1942 we began action in still another

<sup>3</sup> p. 93.

field; that of filing briefs amicus curiae in the Supreme Court of the United States and in other courts in cases in which all cities are vitally interested."<sup>4</sup> Some of the cases in which such briefs were filed are discussed.

*Federal Control of City Salaries: No Basis in Law*

City Solicitor Murray Benson, of Baltimore, Maryland, in discussing federal control of city and state salaries and wages, drew from constitutional provisions, historic decisions of the Supreme Court, statutes, and Executive Orders this conclusion: "We can fairly conclude that there is no power in the Federal government, or in any of its branches to support the regulations by which the Federal government attempts, among other things, to control salaries and wages of municipal employees."

An Editor's note<sup>5</sup> purports to show that this question, as well as the question of the War Labor Board's jurisdiction to settle municipal employee disputes,<sup>6\*</sup> has been finally settled by the following ruling of the Board: "After careful consideration of all matters presented to the National War Labor Board at and in connection with the public hearings on December 9, 1942, the Board finds that it has no power . . . to issue any directive order or regulation in these disputes governing the conduct of the state of municipal agencies involved."

*War Pressures on Municipal Revenue and Finance*

Sudden vast shifts in the population, marked increases in federally held property, and numerous unfavorable developments in local tax revenue situations have increased expenses of cities or reduced their income. Despite the aid of payments in lieu of taxes on some federally held lands, the pressure of increased financial needs has sent tax officials in search of new sources of revenue. Philadelphia's one and one-half per cent wage and earned income tax, the New Orleans two per cent sales tax and like measures are looked upon with favor because these tax methods tap the elusive pockets of that portion of the population labeled war increment. These questions and related problems such as the Federal Government's move to tax the interest from municipal bonds, the status of the municipal bond market, tax delinquency trends, tax moratoriums, tax-delinquent land and suggested plans to meet the problems created thereby, mass purchasing agencies for states and municipalities, and a reference to court decisions relating to taxation and revenue matters are the basic elements in the report of a committee headed by Francis P. Burns of New Orleans on "The Effect on City Revenue and City Financing."

<sup>4</sup> p. 33.

<sup>5</sup> p. 487.

<sup>6\*</sup> The War Labor Board had previously decided that it had authority to settle a labor dispute which arose between the city of Newark and some of its employees.

An interesting feature of the search for new revenue by cities was the treatment of religious, charitable, and educational property exemptions. The search here was so intense that a battle raged around a semicolon in the Kentucky constitution.<sup>7</sup>

In conclusion, it may be said that the city attorneys have faced honestly the necessity for close federal-city relations, but all declare that these relations should "be based upon cooperation, not dictation,"<sup>8</sup> and demand that "even essential wartime measures be conducted upon a sound legal basis to the end that our government may remain a government of laws."<sup>9</sup>

The postwar issue of challenging and removing "the subordination of Municipal to State and Federal government"<sup>10</sup> and "the restoration of local authority in its proper fields"<sup>11</sup> is a clear clarion call, a gage of battle calling upon every citizen and citizen's organization. *Municipalities and the Law in Action (1943)* is significant as a prognostication of the motivating force of municipalities within our democratic governmental process.

GEORGE B. MCGEEHEE.

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<sup>7</sup> p. 297.

<sup>8</sup> p. 138.

<sup>10</sup> p. 138.

<sup>9</sup> p. 139.

<sup>11</sup> *Ibid.*