NORTH CAROLINA LAW REVIEW

Volume 14 | Number 1 Article 19

12-1-1935

Municipal Corporations -- Power to Regulate Taxicabs -- Requirement for Indemnity Bond

F. M. Parker

statute even though the contract were made in England. Certain steps were taken by the defendant in Georgia which resulted in a violation of the Georgia law. After all, these statutes providing punishments and penalties for gambling were enacted for the purpose of stamping out this vice, and in view of this policy, the law should not present the opportunity of easy evasion which exists if the gambler is allowed to escape merely because the bet was actually accepted in another state.

N. A. TOWNSEND, JR.

Municipal Corporations—Power to Regulate Taxicabs—Requirement for Indemnity Bond.

A city was given power by its charter "to license and regulate all vehicles operated for hire in the city." *Held,* the city was without authority to require taxicab operators to provide liability insurance or bond to protect the public against negligent operation of the cabs.[1]

In reaching this result the court based its decision on the principle that a municipal corporation possesses only those powers expressly granted, necessarily implied, or essential to its declared objects.[2] But the great majority of courts, although reciting this formula, have reached results *contra* to that of the instant case and have upheld similar ordinances under grants of power no more extensive than that involved in the principal case. Ordinances requiring indemnity bonds of taxicab operators have been upheld under grants of power to "collect a license tax on and regulate hacks,"[3] "to regulate the use of streets,"[4] "to regulate every description of carriages which may be kept for hire,"[5] and "to license, tax, and regulate public hackmen."[6] In the light of these decisions the court in the principal case seems to adopt an unnecessarily

[1] State v. Gulledge, 208 N. C. 204, 179 S. E. 883 (1935). The same ordinance was before the court in State v. Saseen, 206 N. C. 644, 174 S. E. 142 (1934), and was held invalid on constitutional grounds. For a comment attacking that decision see (1935) 13 N. C. L. REV. 222. The constitutional objections were removed from the ordinance before the instant case arose.

[2] Detroit Citizens Street Railway Co. v. Detroit Railway, 171 U. S. 48, 18 Sup. Ct. 732, 43 L. ed. 67 (1897); Smith v. New Bern, 70 N. C. 14 (1874); 1 DILLON, MUNICIPAL CORPORATIONS (5th ed. 1911) §237.

[3] *Ex parte* Counts, 39 Nev. 61, 153 Pac. 93 (1915).

[4] City of New Orleans v. Le Blanc, 139 La. 113, 71 So. 248 (1915); Fenwick v. City of Klamath Falls, 135 Or. 571, 297 Pac. 838 (1931); Greene v. City of San Antonio, 178 S. W. 6 (Tex. Civ. App. 1915); *Ex parte* Sullivan, 77 Tex. Crim. Rep. 72, 178 S. W. 537 (1915); *Ex parte* Bogle, 78 Tex. Crim. Rep. 1, 179 S. W. 1193 (1915); Note (1926) 25 MICH. L. REV. 81. In *Ex parte* Cardinal, 170 Cal. 519, 150 Pac. 348 (1915), an ordinance requiring indemnity bond of taxicab operators was upheld under the city's implied police power to regulate the streets; the ordinance was described as being "purely regulatory in its nature."

[5] Willis v. City of Fort Smith, 121 Ark. 606, 182 S. W. 275 (1916); Commonwealth v. Kelley, 229 Ky. 722, 17 S. W. (2d) 1017 (1929); *Ex parte* Dickey, 76 W. Va. 576, 85 S. E. 781 (1915).

[6] Sprout v. City of South Bend, 198 Ind. 563, 153 N. E. 504 (1926).

strict construction of charter powers[7] in order to deny a city power to adopt a socially desirable ordinance.[8]

In these days of constantly expanding governmental functions it becomes increasingly necessary for the state to delegate to municipal corporations ever larger powers of control over matters of local interest. If the ultra-strict construction of charter powers expressed in the principal case is followed, it will not be possible by general language to give municipal corporations that plenary power which may be desired in a particular field. Instead, it will be necessary to include in city charters a particularized statement of each item of power granted. This would produce two undesirable results: first, it would necessitate that municipal charters be tremendously bulky and detailed documents; and second, in spite of the greatest legislative foresight, in every such attempt at enumeration there is always danger of omission of things intended to be included.[9]

Adherence to the strict construction of the principal case will go far to paralyze cities attempting to operate under existing charters. Many city ordinances now in force would have to be declared invalid if attacked.[10] In passing new ordinances the cities may be impelled, in order to insure their validity, to run to the state for particular grants of

[7] State *ex rel.* Johnson v. Bates, 161 Tenn. 211, 30 S. W. (2d) 248 (1930), cited by the court in the principal case to support its decision, is distinguishable. There the charter granted power to the municipality "to regulate the running of automobiles." It was held that this referred to traffic rules regulating the speed and movement of automobiles on the city streets and did not confer power upon the city to exact security for the benefit of passengers using the automobiles. The charter provision involved in the instant case was "to regulate all vehicles," not "to regulate the running of vehicles."

[8] The idea of requiring a bond is not a new one. "Where in its nature an occupation is apt to cause injury to others, such a bond has frequently been required. And the jitneysy present such an obviously proper case for an application of this principle that this requirement has been unhesitatingly indorsed." Note (1916) 38 HARV. L. REV. 437.

[9] This is particularly true since the rule of interpretation that the specific enumeration of certain powers impliedly excludes those not mentioned would be applied in such a case. Grand Rapids v. Hughes, 15 Mich. 54 (1860); State v. Ferguson, 33 N. H. 424 (1856).

[10] A logical application of the reasoning of the instant case would result in invalidation of many types of ordinances passed under general grants of power. As an illustration, by the terms of N. C. CODE (1935) §2623-6 "a city or town is authorized to grant upon reasonable terms franchises for public utilities." Under authority of this statute a city, in an ordinance granting a franchise to a street railway company, included a provision fixing the maximum rate which could be charged for carrying a passenger within the city. CODE OF CITY OF CHARLOTTE (1931) §435d(f). Under the reasoning of the principal case such a provision might be invalid because the power to enact it was not in specific terms granted to the city. Also, the instant case would seem to directly affect the validity of ordinances of the cities of Asheville, Greensboro, Winston-Salem, and Raleigh requiring taxicab operators to file indemnity insurance or bond. ORDINANCE OF CITY OF ASHEVILLE, April 20, 1933; ORDINANCES OF THE CITY OF GREENSBORO (1930) c. 37, §7; ORDINANCES OF WINSTON-SALEM (1926) §178; CONSOLIDATED ORDINANCES OF CITY OF RALEIGH (1929) c. 15, §26.

power, thus further consuming the time of the legislature with purely local problems. A more reasonable construction of charter powers would obviate these harmful results.

F. M. PARKER.

Taxation—Trusts—Power to Tax Interest of Beneficiary.

An Ohio statute[1] levied a tax on all investments from which income is derived, excepting interests in land, but expressly not excepting equitable interests in land divided into shares evidenced by transferable certificates. Plaintiff, a resident of Ohio, was the owner of transferable land trust certificates in seven separate trusts,[2] four of which consisted of office building properties in Ohio, the other three outside of Ohio. Plaintiff claimed that his certificates represented an interest in land, and that the tax on the Ohio trusts violated the uniformity clause of the Ohio constitution[3] because the land had already been taxed against the trustee, and in the case of the out-of-state trusts, the tax was a violation of the Fourteenth Amendment of the Federal Constitution as a tax on land outside the jurisdiction of Ohio. The Supreme Court of Ohio sustained the tax in each instance.[4] The decision was reversed by the Supreme Court of the United States, three justices dissenting.[5]

There is presented here the question of the power of a state to tax the beneficiary's equitable interest in a trust, and whether that power may be affected by the nature of the trust and the composition of the *res*.

[1] "'Investments' defined. §5323. The term 'investments' as used in this title includes the following: . . . Annuities, royalties and other contractual obligations for the periodical payment of money and all contractual and other incorporeal rights of a pecuniary nature whatsoever from which income is or may be derived, however evidenced, excepting (1) patents and copyrights and royalties derived from each, (2) interests in land and rents and royalties derived therefrom, other than equitable interests divided into shares evidenced by transferable certificates." 115 LAWS OF OHIO 552 *et seq.* (1933).

[2] The trusts were all similar but entirely separate. There was no connection between managements. Parcels of land were severally conveyed to trustees, each trustee holding but one parcel and, by the terms of the trust agreement, undertaking to hold and manage the property, to receive the income and pay it over ratably to the certificate owners. If the lands were sold under the existing options the proceeds were likewise to be ratably distributed. Each owner of a certificate was registered on the books of the trustee, but had no right to possession or partition, and had no control over the trustee. The certificates were freely transferable. For more detailed information on the usual set-up for Ohio land trust certificates see Goldman and Abbott, *Land Trust Certificates with Relation to Ohio Law* (1928) 2 U. OF CIN. L. REV. 255.

[3] Art. XII, §2 of the Constitution of Ohio provides, ". . . Land and improvements thereon shall be taxed by uniform rule according to value." Apparently this view had been previously accepted by the Attorney General of Ohio. See the principal case, *infra* note 5. 55 Sup. Ct. 800, 803, 79 L. ed. (Ad. opinions) 863, 866. See also OHIO GENERAL CODE (1929) §§710-140 (d).

[4] Senior v. Braden, 128 Ohio 597, 193 N. E. 614 (1934).

[5] Senior v. Braden, 55 Sup. Ct. 800, 79 L. ed. (Ad. opinions) 863 (U. S. 1935).