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decision in the principal case clearly overrides this dictum.

The North Carolina Court has a traditionally favorable attitude towards dower, but it is hard to find any logical reason for not applying the ten year limitation to the wife’s dower in the equity of redemption. Should a case with similar facts come before the court again, the matter should be examined anew.

ERNEST S. DELANEY, JR.

Municipal Corporations—“Necessary Expense” as Question of Law or Fact—Determination of Local Necessity*

Until 1868 the General Assembly could authorize counties, cities and towns to levy taxes and incur debt without limit. Local governmental units had taken advantage of this freedom by investing heavily in the internal improvements program, suffering heavy losses when the improvement companies failed. There was a prevalent feeling that the General Assembly had allowed the public money to be foolishly spent, and there arose a demand that restrictions be imposed upon this unlimited power. One resulting limitation upon the power of the General Assembly and upon the imprudence of county and municipal officials is found in Article VII, section 7, of the North Carolina Constitution, which provides that “[n]o county, city, town, or other 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 approved by a majority of those who shall vote thereon in any election held for such purpose.” [Italics added.]

The exception of “necessary expenses” from the application of this provision raised the question of who decides what are “necessary expenses,” as well as the problem of which expenditures fall within the meaning of the term. It was early established that the courts are to

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*This material was prepared during the summer of 1951 while the author was serving as a member of the staff of the Institute of Government.


3 This section was amended by vote at the general election of November 2, 1948. It formerly required a “vote of the majority of the qualified voters therein.”

4 See Coates and Mitchell, "Necessary Expense," 18 N. C. L. Rev. 93 (1940), for a thorough discussion of the classifications of expenditures, the tests and standards which have evolved from the cases deciding what are and what are not “neces-
decide what are "necessary expenses" as a class, and the local governing authorities are to decide whether those types of expenditures classed as "necessary expenses" by the court are in fact necessary in a particular time and place. This proposition has been reiterated and followed in numerous decisions. It is supported by logic as well as by precedent.

Another problem developed when the court suggested in several cases that it would go further than merely to determine what classes of expenditures come within the meaning of "necessary expenses," and would also differentiate among localities to which the classifications would apply. See Coates and Mitchell, "necessary expenses," and the relative functions of the courts and commissioners.

In the first case to consider the question, an injunction was sought against the levy of a tax to build a bridge. It was alleged that the bridge was ill-placed, unnecessary, inconvenient, and extravagantly expensive. The court stated: "Who is to decide what are the necessary expenses of a county? . . . Repairing and building bridges is a part of the necessary expenses of a county . . . so the case before us is within the power of the county commissioners. How can this court undertake to control its exercise? Can we say, such a bridge does not need repair; or that in building a new bridge near the site of an old bridge, it should be erected as heretofore, upon posts, so as to be cheap, but warranted to last for some years; or that it is better policy to locate it a mile or so above, where the banks are good abutments, and to have stone pillars, at a heavier outlay at the start, but such as will ensure permanence, and be cheaper in the long run? . . . this court is not capable of controlling the exercise of power . . . and it cannot assume to do so, without putting itself in antagonism as well to the General Assembly, as to the county authorities. . . . Broadnax v. Groom, 64 N. C. 244, 249-250 (1870). This decision was interpreted in Wilson v. Charlotte, 74 N. C. 748 (1876), to mean that the courts are to determine what class of expenditures fall within the definition of "necessary expenses," and the commissioners are to decide whether those types of expenditures so classed are in fact necessary in a particular instance. This is the accepted rule of subsequent decisions.
as it would be impractical for the courts to enter into the administration of local affairs by passing on the necessity of each individual appropriation.\(^7\)

While recognizing that this rule has been an integral part of the law of North Carolina since 1870, the court could not agree upon its application to the situation presented in \textit{Green v. Kitchen}\(^8\) in 1948. The problem arose in this way: The Town of Weldon paid the salary and expenses of its police chief while he attended a 90-day course of special training at the National Police Academy in Washington, D. C. This expenditure had not been approved by the voters of the town. A taxpayer sued to have the payments returned on the ground, among others, that they were not for a "necessary expense" within the meaning of Article VII, section 7, of the Constitution. The defendants (commissioners, mayor, and police chief of Weldon) demurred \textit{ante tenus} to the complaint on the ground that it did not state a cause of action. The demurrer was sustained and the action dismissed. On appeal, this judgment was affirmed, and it was held that special training of a policeman is a necessary municipal expense.

There was no dissent from the decision on the merits of the case.\(^9\)

\(^7\) Besides determining what kind of a courthouse is needed or what would be a reasonable limit to the cost,); \textit{McCless v. Meekins, 117 N. C. 34 (1895); McKethan v. Commissioners, 92 N. C. 243 (1885); Evans v. Commissioners, 89 N. C. 154 (1883); Cromartie v. Commissioners, 87 N. C. 134 (1882); Satterthwaite v. Commissioners, 76 N. C. 153 (1877).}

\(^8\) In \textit{Mitchell v. Trustees, 71 N. C. 400, 401 (1874), the court stated that "[i]t borders on the ridiculous to ask the Courts to say whether $34 for office rent, $20 for a book, $25 for a table, etc., etc., are necessary expenses."} In \textit{Wilson v. Charlotte, 74 N. C. 748, 760 (1876): "No other rule could be adopted without inconvenience and injury. If no one could contract with a county for the building of a bridge, or with a city for the building of a market house, or other work coming apparently within the class of necessaries, and which the government of the corporation has deemed necessary, except at the risk of having the contract avoided by the decision of a court, which may take a view of the actual necessity different from that of the city government; then no one would contract without either charging an extra proportion to the risk, or insuring safety by getting the opinion of the court if possible. The public business would be sacrificed or seriously obstructed, and the courts would assume the duties of municipal government, for which they were not intended."}

\(^9\) Except in cases of fraud, the courts cannot control the discretion of the local authorities. \textit{Fawcett v. Mount Airy, 134 N. C. 125, 45 S. E. 1029 (1903).} In \textit{Starmount Co. v. Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933), it was contended that there was no necessity for 81 miles of water main, 7½ miles of sewer main, 22 miles of improved streets, and 3 miles of paved streets, costing $200,000 in the aggregate, for the benefit of 4 or 5 families living in a municipal corporation covering only 1400 acres. The court held that since waterworks, sewerage systems and streets come within the class of necessary expenses, it could not control the discretion of the commissioners as to when they were needed.}
Three justices, however, writing two opinions, did not think that the "necessary expense" question was presented to the court for decision. Mr. Justice Stacy said that the only question was whether the complaint stated facts sufficient to constitute a cause of action. Inasmuch as the truth of the allegation that the payments "were not necessary expenses of said Town" was admitted by demurrer, the complaint stated a cause of action under Article VII, section 7, and "[t]he demurrer should have been overruled, and the defendants put to answer." He further stated his position, in reliance upon the established rule as to the relative functions of the courts and commissioners: "Nowhere on the record now before us (complaint and demurrer) does it appear that the Commissioners of Weldon have declared or determined that the instant expenditures are necessary for the governance of the municipality. On the other hand, they have come into court and conceded on demurrer that the expenditures are 'not necessary expenses of said Town.' When the body first charged with responsibility in the matter says the expenditures are not necessary, how can we say otherwise without usurping the powers of the local authorities? It is only when the question is presented as one of law, stripped of any question of fact, that the courts are authorized to act in the premises. . . . The Commissioners of the Town . . . are first to determine as a matter of fact whether a given expenditure is 'for the necessary expenses thereof' before the courts can be called upon to say whether such expenditure falls within the category of necessary governmental expenses." In this view, Justices Winborne and Denny concurred.

Justice Ervin, writing the majority opinion, took a contrary view which to the dissenting justices disrupted a long line of decisions and left the law in confusion. He pointed out that "[i]n reaching this decision, we have not overlooked the allegations of the complaint that the expenditures involved 'were not necessary expenses of said Town.' . . ." But "[t]hese allegations are not averments of fact. They are mere conclusions of law asserted by the pleader. Consequently, they are not admitted by the demurrer." [Italics added.] He took cognizance of the rule which reserves to the discretion of the local authorities the de-

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1 Id. at 461, 50 S. E. 2d 545, 553 (1948).
2 Id. at 460, 50 S. E. 2d 544, 552 (1948).
3 Id. at 457, 50 S. E. 2d 545, 550 (1948).
cision on the need of a given project in a designated locality, but did not think that his conclusion was in conflict.

The majority opinion did not clarify this position, but it is believed that it can be sustained under the previously existing law, and that the quandary of having two opposing contentions stem from the application of the one proposition can be resolved. The demurrer to the allegation that the expenditure was not for a necessary expense of Weldon did not constitute a factual determination of non-necessity by the commissioners, because a valid action on behalf of the town could only have been taken by them in a lawfully held and constituted meeting. The official determination that the expenditure was in fact necessary was made, in effect, by adoption of the resolution which authorized the policeman to take a leave of absence with pay and which appropriated a sum of money to cover his expenses. This prior determination of factual necessity by the commissioners presented the "necessary expense" question to the court as a matter of law, and it properly decided the case

\[12\] See note 5 supra.

\[13\] The exercise of the power to decide whether a particular expenditure is necessary for a designated locality otherwise than by a majority vote of the commissioners assembled in a lawful meeting is not a determination by the "Board of Commissioners."

N. C. Gen. Stat. §§160-1 (1943) ("... every incorporated city or town is a body politic and corporate...") ; 160-3 ("The corporate powers can be exercised only by the board of commissioners, or in pursuance of resolutions adopted by them, unless otherwise specially provided by law."); 160-269 ("... every matter shall be put to a vote. The governing body shall not by executive session or otherwise consider or vote on any question in private session."); 153-1 ("Every county is a body politic and corporate... and its powers can only be exercised by the board of commissioners, or in pursuance of a resolution adopted by them.").

Jefferson Standard Life Insurance Co. v. Guilford County, 225 N. C. 293, 302, 34 S. E. 2d 430, 435 (1945) ("... it is sufficient to point to the lack of any corporate finding that the proposed undertaking... was necessary or needed in the city of High Point for county governmental expenses. This is fundamental to the undertaking. And the fact that in the judgment of the several members of the board of commissioners such a public building was necessary is not a corporate action, and determinative of the fact."); O'Neal v. Wake County, 196 N. C. 184, 187, 145 S. E. 28, 29 (1928) ("... to make a contract which shall be binding upon the county the board must act as a body convened in legal session, regular, adjourned, or special. A contract made by members composing the board when acting in their individual and not in their corporate capacity while assembled in a lawful meeting is not the contract of the county. As a rule authorized meetings are prerequisite to corporate action based upon deliberate conference and intelligent discussion of proposed measures. The principal applies to corporations generally, and by the express terms of our statute... [N. C. Gen. Stat. §153-1 (1943)] every county is a corporate body.") By the provisions of N. C. Gen. Stat. §§160-1 (1943), every incorporated city or town is also a corporate body. See also London v. Commissioners, 193 N. C. 100, 136 S. E. 356 (1927); Cleveland Cotton Mills v. Commissioners, 108 N. C. 678, 13 S. E. 271 (1891) (by implication).

\[15\] "... it seems to us that the action of the town council in expressly authorizing and directing the expenditure to be made ought to be deemed tantamount to a determination on its part that it was necessary or needed for the proper enforcement of law and order within the municipality."


\[16\] The term "necessary expenses" includes law and fact. The courts decide the one and the local authorities the other. Glenn v. Commissioners, 201 N. C. 233, 159 S. E. 439 (1931); Henderson v. Wilmington, 191 N. C. 269, 132 S. E. 25 (1926).
on its merits, without invading the discretion left by law to the local authorities.\textsuperscript{17}

This view is further borne out by pursuing to conclusion the course of action advocated by the dissenting opinions. Suppose that the demurrer had been overruled and the defendants "put to answer." Logically, the truth of the allegation of the non-necessity of the expenditure would have been denied, thereby raising an issue to be decided by the jury, or by the judge if jury trial were waived. This would clearly have constituted a substitution of the finding of the jury or judge for that of the commissioners, contrary to the undisputed rule of law that it is within the discretion of the local governing authorities to determine whether in fact an expense is necessary for a particular locality. Paradoxically, it is the very result which the dissenting justices wanted to avoid.

What the court disagreed on was not whether the necessary expense question is one of law and fact or one exclusively of law, nor the question of the relative functions of the courts and commissioners. Rather, the trouble arose from the failure to distinguish between the question of fact in the determination of "necessary expense," which is decided in the discretion of the local governing authorities, and a question of fact as used in its usual and technical sense, which is decided by the trier of fact with reference to the evidence in the case. The effect of the argument of the dissenting opinions was to confuse the two meanings of the one term, and while recognizing the rule which reserves to the commissioners the power to decide the necessity of a particular expenditure, cut it short of its full significance by insisting, in effect, that the question be submitted to a jury. It seems clear from this case that the factual determination of local necessity, as a prerequisite to the existence of the necessary expense question as a matter of law, can only be made by the local governing authorities acting in an official capacity, if the power reserved to them by the force of a long line of decisions is not to be usurped.

In order to reach the decision that the allegation of non-necessity

\textsuperscript{17} The majority stated without explanation that its conclusions did not "render all authorized proceedings of the governing authorities of municipal corporations subject to judicial control. The converse is true for the reason that courts will not interfere with the exercise of discretionary powers conferred on municipal corporations for the public welfare, unless their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of discretion." Green v. Kitchen, 229 N. C. 450, 459, 50 S. E. 2d 545, 551 (1948). But the dissenting justices clearly felt that the decision that special training of Weldon's police chief was a necessary expense was an infringement of the commissioners' power. The argument was advanced that "... if this court is going to decide both questions of law and fact involved in what is "necessary expense" and when such expense is a necessary one for a particular locality, then governing authorities of municipalities may find themselves confronted with a mandamus to require them to send all their officers to a police school at public expense, whether they think it proper to do so or not." Id. at 462, 50 S. E. 2d 545, 553 (1948) (dissenting opinion).
demurred to by the commissioners in Green v. Kitchen was a mere conclusion of law, and thus not admitted,18 it was necessary to find that the commissioners had previously made a determination of local necessity.19 They had not expressly made such a finding, but the majority of the court did not think that one was required. It treated the express authorization of the expenditure by the commissioners as tantamount to a determination and declaration on their part that it was necessary for the proper enforcement of law and order within the municipality.20 On the other hand, the dissenting opinions were clearly based upon the belief that no finding of necessity had been made by the local authorities.21 The majority seems to represent the better view, but since no authority was used to support this position, and since several prior cases22 had indicated that an express declaration of local necessity was essential before the court could classify an expenditure as a necessary expense as a matter of law, it may be appropriate to question the soundness of the position23 in order to determine how far it may be relied upon in the future.24 It is believed that in so far as prior cases require an express.

18 A demurrer admits for the purpose of testing the sufficiency of the pleading, the truth of factual averments and relevant inferences to be deduced therefrom, but not conclusions of law asserted by the pleader. E.g., General American Insurance Co. v. Stadium, 223 N. C. 49, 25 S. E. 2d 202 (1943); Cathay v. Southeastern Construction Co., 218 N. C. 525, 11 S. E. 2d 571 (1940); Leonard v. Maxwell, Com'r, 216 N. C. 89, 3 S. E. 2d 316 (1939); Hussey v. Kidd, 209 N. C. 232, 183 S. E. 355 (1935).
19 The term "necessary expenses" is a mixed question of law and fact. See note 16 supra and cases cited note 5 supra. Until the factual question of necessary expense is determined, it seems that the question cannot exist as one exclusively of law.
20 "The town made this expenditure to maintain law and order within its borders. In so doing it was performing an inherent function of sovereignty delegated to it by the State under statutes enacted by the Legislature in conformity to the Constitution. Since the Town of Weldon could not confer upon itself the constitutional and statutory authority to make an expenditure for this purpose by any action of its governing authorities, we are unwilling to adjudge that it acted illegally in this particular case in exercising a discretionary power conferred upon it by the Constitution and legislative fiat merely because of some supposed insufficiency in the phrasing of the resolution of its governing body directing the making of the expenditure. But even if it be assumed that the Town of Weldon could not exercise a discretionary power conferred upon it by the Constitution and the Legislature in the absence of some linguistic proclamation by its governing body that the expenditure in question was necessary or needed in the locality embraced by its limits, it seems to us that the action of the town council in expressly authorizing and directing the expenditure to be made ought to be deemed tantamount to a determination and declaration on its part that it was necessary or needed for the proper enforcement of law and order within the municipality." Green v. Kitchen, 229 N. C. 450, 458, 50 S. E. 2d 545, 550 (1948).
21 See text p. 316.
22 See note 25 infra.
23 An alternative approach is to consider whether the majority position changes previously existing law, or whether there has heretofore been no actual decision on the point.
24 The court also stated that "... we are unwilling to adjudge that it [Town of Weldon] acted illegally in this particular case...", Green v. Kitchen, 229 N. C. 450, 458, 50 S. E. 2d 545, 550 (1948), but there is no reason to believe that this was said with the intention of restricting the decision to the facts of the case.
declaration of necessity, they are of questionable validity. In addition,

as Two cases follow the same line of reasoning found in the dissenting opinions of Green v. Kitchen. In Wilson v. Charlotte, 206 N. C. 856, 175 S. E. 306 (1934), the resolution authorizing the issuance of bonds to erect a fire drill tower failed to recite that the tower was a necessary expense for the city of Charlotte. The trial judge found that in fact the tower was not necessary. On appeal, the order reciting that the tower was necessary was affirmed, as no exception had been made to the finding. Here the trial judge clearly exercised the fact finding function reserved to the local authorities. Under the reasoning of the majority opinion in Green v. Kitchen, the authorization of the bond issue would have been treated as tantamount to a finding of local necessity, and the necessary expense question decided as one of law by the court, which might well have led to a different result, since the only question considered by the court on appeal was whether the facts found were sufficient to support the judgment.

There was language in Black v. Commissioners, 129 N. C. 121, 39 S. E. 818 (1901), to the effect that where an allegation that expenditures were not made for necessary expenses was denied, an issue of fact was raised which the judge was not authorized to try, and that the court could not in this situation presume that the commissioners acted properly. McCless v. Meekins, 117 N. C. 34, 23 S. E. 99 (1895), where the court presumed that notes were given for necessary expenditures of the county, was distinguished on the ground that there it was not denied that the indebtedness was based upon the necessary expenses of the county. But again, if the rule giving local authorities the power to decide the necessity of a project in a given locality is to be followed, the fact question in Black v. Commissioners was decided before the litigation was begun, and the denial of the allegation of non-necessity could not revive this question of fact for jury decision without usurping the power reserved to the commissioners. At the trial stage the necessary expense question seems exclusively one of law.

In Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1937), holding that an airport is not a necessary expense, the court "noted that the ordinance appropriating the $5,000 in question is not predicated upon any finding or determination of the governing body that it is for a necessary expense." Id. at 65, 195 S. E. 271, 274 (1937). Since the decision was to the effect that an airport is not a necessary expense as a class, this language has no significance on the question whether an express finding of local necessity is a prerequisite to a decision that an expenditure is a necessary expense as a matter of law. When the court determines the necessary expense question in the negative, it necessarily acts independently of any declaration to the contrary by local authorities, in line with the relative functions of the courts and commissioners, although practically, a finding that a tax is for a necessary expense by the commissioners is persuasive on the court in its deciding the question as a matter of law. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786 (1935). This is to be distinguished from an answer by the court in the affirmative, which raises the problem of the principal case. Apparently, the observation in Sing v. Charlotte was made merely to buttress an opinion which could have been reached even if the commissioners had expressly stated by resolution that the airport was a necessary expense for Charlotte.

In Jefferson Standard Life Insurance Co. v Guilford County, 225 N. C. 283, 34 S. E. 2d 430 (1945), the court declared a provision in a deed by which the county agreed to assume certain indebtedness to the plaintiff, unenforceable as an express contract on the several grounds that it was violative of the necessary expense limitation of Art. VII, §7, and the debt limitation provision of Art. V, §4 of the Constitution, and that the board of commissioners had not acted in its corporate capacity, or in pursuance of the requirements of the County Finance Act. The court stated: "Testing the present case by these constitutional limitations and statutory provisions, and decisions of this Court interpretive thereof, it is sufficient to point to the lack of any corporate finding that the proposed undertaking ... was necessary or needed in the city of High Point for county governmental purposes. This is fundamental to the undertaking. And the fact that 'in the judgment of the several members' of the board of commissioners such a public building was necessary is not a corporate action, and determinative of the fact." Id. at 302, 34 S. E. 2d 430, 435 (1945). It is not entirely clear whether or not the authorization for the incurrence of the indebtedness was considered by the court to have been made by a lawfully adopted resolution of the board of commissioners. If the undertaking was not made by the board of commissioners acting in its corporate capacity, then the contract is unenforceable against the town on this ground. Also,
an appropriation invalidly made cannot suffice for a determination of local necessity. On the other hand, if the authorization was validly made, and if the language quoted above refers only to the omission of an expression in the resolution that the building was a necessity for the locality, then the court may be demanding an express declaration of local necessity as a prerequisite to a finding of necessity by the court. However, this does not necessarily follow. Since the purpose of the assumption of the debt (erection of county office building) had previously been clarified as a necessary expense, e.g., Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909), for the court to decide that as a matter of law the expenditure was not for a necessary expense would be differentiating between localities, which practice the same court has since condemned in Purser v. Ledbetter, 227 N. C. 1, 40 S. E. 2d 702 (1946). See note 3 supra. If the court was deciding that the indebtedness was not in fact for a necessary expense for Guilford County, then it invaded the power reserved to the local authorities.

There is language in one other case, which if not explained, might be misleading. In Hall v. Commissioners of Duplin, 195 N. C. 367, 142 S. E. 315 (1928), a taxpayer sought to enjoin the county board of commissioners from issuing bonds for the purpose of erecting schoolhouses. The trial court upheld the validity of the bond purpose on the basis of its finding of fact that the proposed schoolhouses were necessary for the maintenance of the six-month school term required by Art. IX, §2 of the Constitution, and that in providing them the county was acting as an administrative agent of the state. These facts are essential to the validity of bonds issued for school purposes without the approval of the voters. Hall v. Commissioners of Duplin, 194 N. C. 768, 140 S. E. 739 (1927), as schools are not a necessary expense within the meaning of Art. VII, §7 of the Constitution. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. 2d 825 (1942); Greensboro v. Guilford County, 209 N. C. 655, 184 S. E. 473 (1936). The plaintiff in the Hall case contended that inasmuch as the bond resolution was silent as to the necessity of the expenditures for maintaining the school term, the court had no power to make this finding, and that to allow such action would in effect permit the court to pass a bond ordinance or to amend one already passed by the county commissioners. The supreme court sustained this contention, and said that when bonds are issued for the purpose of erecting or purchasing schoolhouses or lands for school purposes without approval of the voters on the basis of their being necessary for the establishment or maintenance of the six month school term as required by Art. IX, §2, this purpose must be set forth in the bond resolution itself. But it must be noted that expenditures for school purposes have had a unique history. See Coates and Mitchell, "Necessary Expenses," 18 N. C. L. Rev. 93 at 109 (1940). They were repeatedly refused admission into the circle of "necessary expenses," and were only belatedly given a comparable status through the invocation of Art. IX of the Constitution, to avoid the restriction of Art. VII, §7. Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907). Therefore, an expenditure to do more than is necessary to operate schools for the constitutional term is still subject to the mandate of Art. VII, §7, and must be approved by a vote of the people. A finding of necessity in order to bring the expenditure within the provisions of Art. IX, §2 is not the same as a finding of "necessary expense" within the meaning of Art. VII, §7; therefore, the language in Hall v. Commissioners is not applicable to the question of whether an express declaration of local necessity should be made by the local authorities.

It is probable that in none of the cases here discussed was the court actually thinking of whether or not to require an expression of necessity by resolution adopted by the board of commissioners.

26 In McCless v. Meekins, 117 N. C. 34, 23 S. E. 99 (1895), defendant resisted payment of bonds on the ground that the complaint did not show that the county orders for which the bonds were issued were given for the necessary expenses of the county, or by sanction of a vote of the people, and were therefore void. In rejecting this contention, the court stated that since the complaint alleged that the orders were valid, this was sufficient, as a county order issued without a popular vote, except for necessary expenses, would be invalid; that there was nothing to show that the orders were not issued for necessary expenses except an averment in the answer to that effect, based on the failure of the plaintiff to so allege and not as a substantive fact; and that the presumption was that the commissioners acted within the scope of their authority and issued the orders for necessary expenses.
over, allowing the authorization of an expenditure to suffice for an express determination that it is necessary can clearly be supported by reason, for as a practical matter, few businessmen serving as members of a city or county board of commissioners are likely to feel that a word formula is required to express their opinions on the necessity of making appropriations for particular purposes. Assuming that a commissioner will not reject and forget his usual and customary methods of doing business when he steps from private life to public office, it is perhaps more accurate to say that it may be presumed from the fact that an expenditure was authorized, that the purpose was considered a necessary expense by the commissioners, than to say that it may be presumed that they did not think it necessary because they did not say that it was. The unnatural requirement that a certain phrase be used to indicate that a determination of local necessity has been made would impose an undue penalty upon the local authorities, as it would serve in many instances to shift the factual question of necessary expense from the commissioners to the courts. The absence of a requirement that the finding of local necessity be expressly stated does not open the doors to fraudulent or excessive expenditures of public funds, for the abuse of discretion by local authorities is always subject to review by the courts.\(^{27}\)

The soundness of the holding in *Green v. Kitchen* seems beyond dispute, but until its significance has been determined through its application to other situations, it may be advisable for local authorities to embody in each appropriation resolution, or stipulate by separate resolution (unless popular approval is secured), that it has been determined that the expenditure is a necessary expense for that county or municipality.\(^{28}\) This is clearly decisive of the factual question of necessary expense and leaves only the question of law to be decided by the courts.

*Stephen P. Millikin.*

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It seems that the commissioners could as well be deemed to have determined that an expenditure was necessary when it was made by valid resolution, but omitted an expression of necessity.

In *Tate v. Greensboro*, 114 N. C. 392, 19 S.E. 767 (1894), an analogous case in another field, the court assumed throughout that the city acted in the public interest, although there was no declaration by the city to that effect. A street committee appointed by the board of commissioners decided to have certain trees removed from land located in front of plaintiff's home which had been dedicated for street purposes. In an action for damages for lessening the comfort of the home by removing the trees when not necessary for public convenience, the court refused to review the exercise of discretion in the matter by the city in the absence of an allegation of want of good faith, on the ground that to allow a jury to judge of the correctness of the conclusion reached by the street committee would be transgressing to court and jury the discretion which the law vests in municipalities.

\(^{27}\) *E.g.*, Riddle v. Ledbetter, 216 N. C. 491, 5 S. E. 2d 542 (1939); Hudson v. City of Greensboro, 185 N. C. 502, 117 S. E. 629 (1923); State v. Staples, 187 N. C. 637, 73 S. E. 112 (1911); Southern Ry. v. Commissioners, 148 N. C. 220, 61 S. E. 690 (1906).

\(^{28}\) As a matter of practice, resolutions authorizing bond issues do expressly state that the commissioners have determined that the purpose for which the proceeds will be used is a necessary expense, for this is presently required by bond attorneys doing business in North Carolina.