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# Constitutional Law - Eminent Domain - State Slum Clearance Housing Projects

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can be regulated in the interest of public health,[28] that since such a business need not technically be affected with a public interest in order that price fixing be regulated,[29] and that since the prices which barbers may charge appear to be (particularly in view of the Minimum Wage decision)[30] not "demonstrably irrelevant"[31] to public health, we believe that the Louisiana Supreme Court reached a legally correct and socially desirable conclusion.

*H. M. S.*

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CONSTITUTIONAL LAW—EMINENT DOMAIN—STATE SLUM CLEARANCE HOUSING PROJECTS—The "Slum Clearance" Act[1] represents one of the most recent pieces of social legislation enacted by the Louisiana legislature. The Act authorizes the creation of public corporations in cities having population in excess of 20,000, with power to investigate living and housing conditions and to develop projects for clearing, replanning and reconstructing slum areas in order to provide housing accommodations for persons of low income.[2] To test the constitutionality of the act, the Attorney General of the State brought suit[3] to enjoin the City of New Orleans and the newly created New Orleans Housing Authority from proceeding with the proposed slum clearance project. *Held,* that the Act is constitutional since it has for its object the expropriation of land and expenditure of public funds for the public use.[4] *State ex rel Porterie, Attorney General v. New Orleans Housing Authority,* 182 So. 725 (La. 1938).

It is a matter of common knowledge that slums exist throughout the United States.[5] It is equally undoubted that there is a close relationship between slums and disease, crime delinquency

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28. State ex rel. Newman v. City of Laramie, 40 Wyo. 74, 275 Pac. 106 (1929); State v. Zeno, 79 Minn. 80, 81 N.W. 748 (1900); State v. Armeno, 29 R. I. 431, 72 Atl. 216 (1909); State v. Walker, 48 Wash. 8, 92 Pac. 775 (1907).

29. Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934).

30. West Coast Hotel v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, 108 A.L.R. 1330 (1937).

31. See note 19, supra.

1. La. Act 275 of 1936 [Dart's Stats. (Supp. 1937) §§ 6280.1-6280.26].

2. Id. § 8 [Dart's Stats. (Supp. 1937) § 6280.8].

3. In virtue of La. Const. of 1921, Art. VII, § 56.

4. La. Const. of 1921, Art. X, §§ 1, 5.

5. Engle, Housing Conditions in America, as Revealed by The Real Property Inventory (1934) 17; Wood, Slums and Blighted Areas in the United

and immorality.[6] Merely to place piecemeal restrictions upon existing slum areas, or even to clean up entirely a single slum area will not blot out the slum evil. It will only lead to the creation of new slums. The essential need is to eradicate slums completely and to prevent their rebirth. This can only be accomplished by providing safe and sanitary dwellings at low rent for those who formerly lived in the demolished slum areas.[7]

The power of eminent domain may be exercised only for a public purpose or a public use.[8] There is no comprehensive or exclusive definition of the terms "public purpose" and "public use."[9] The definition varies not only among the different states but also with respect to the federal government.[10] Whether the condemnation of land for a rehousing project is a proper federal

States, Federal Emergency Administration of Public Works, Housing Division, Bulletin No. 1 (1935) 25-74, 77 et seq.

6. Hartsough and Caswell, Housing and its Relationship to Delinquency and Crime, Federal Emergency Administration of Public Works, Housing Division, Bulletin No. 2, part 2, section 5.

7. It was argued on behalf of the Housing Authority of New Orleans that the conviction was nation-wide that only public authority armed with broad governmental powers could cope with this evil. "Thirty-two states of the Union, besides our own, representing most of the states having large urban communities, have adopted legislation in terms almost paralleling the Louisiana Housing Authorities Law. Ala. Gen. Acts, 1935, No. 56, p. 126; Ark. Acts of 1937, No. 298; Cal. Laws of 1938, Extra Sess., c. 4; Colo. Sess. Laws of 1935, cc. 131, 132; Conn. Laws of 1936, Spec. Sess., c. 33c; Del. Rev. Code 1935, c. 160; Laws 2d Spec. Sess. 1933, c. 16; Fla. Laws of 1937, c. 17981, Act No. 275; Ga. Laws of 1937, Act No. 411; Ill. Smith-Hurd Anno. Stat. c. 67½; Laws of Ill. 3d Spec. Sess. 1934, p. 159; Ind. Acts 1937, c. 207; Ky. Acts 1934, c. 113; Md. Laws Spec. Sess. 1933, c. 32; Mass. Acts 1933, c. 364, amended by Mass. Acts 1935, c. 449; Miss. Laws of 1938, House Bill No. 694; Mont. Laws 1935, c. 140; Neb. Laws 1935, c. 29; N. J. Laws of 1938, c. 19; N. Y. Laws 1934, c. 4, amended by N. Y. Laws 1935, c. 310; N. C. Pub. Laws 1935, c. 456; N. D. Laws of 1937, c. 102; Ohio Laws 1st Spec. Sess. 1935, c. 1078, p. 56; Ore. Laws of 1937, c. 442; Pa. Laws of 1937, P. L. p. 955, Act No. 265; R. I. Acts Spec. Sess. 1935, c. 2253; S. C. Laws 1935, Nos. 301, 345, pp. 424, 500; Tenn. Acts Spec. Sess. 1935, c. 525; Texas, Laws of 1937, House Bill No. 821, as amended by Laws of 1937, 2d Called Sess., House Bill No. 102; Va. Laws of 1938, House Bill No. 227; Vt. Laws of Vt. 1937, Act No. 231; W. Va., Acts of W. Va. 1933, Extra Sess., c. 93; Wis. Laws of 1935, c. 525, as amended by Laws of 1937 Spec. Sess., cc. 10, 15. Hawaii also has a housing authority act: Hawaii Laws 1935, c. 262A. Michigan has authorized cities to engage in housing directly: Mich. Laws 1935, p. 132." Brief on Behalf of Defendants-Appellees, pp. 40-41, State ex rel. Gaston L. Porterie, Attorney General v. Housing Authority of New Orleans, 182 So. 725 (La. 1938).

8. 1 Lewis, Eminent Domain (3d ed. 1909) § 252.

9. Id., §§ 257, 258; Oury v. Goodwin, 3 Ariz. 255, 26 Pac. 376 (1891); Tanner v. Treasury Tunnel Min. & Reduction Co., 35 Colo. 593, 83 Pac. 464, 4 L.R.A. (N.S.) 106 (1906).

10. It is undoubted that, in order for the federal government to condemn land, it must be shown that the use for which the land is taken falls within one or more of the delegated powers of the federal government, or that the purpose of the condemnation is necessary and proper in order to carry such power into effect. United States v. Gettysburg Electric Ry. Co., 160 U.S. 668, 16 S.Ct. 427, 40 L.Ed. 576 (1896).

"public use" is as yet undetermined. Two decisions of the Circuit Courts of Appeal which reach opposite conclusions are *United States v. Certain Lands in Louisville, Kentucky*[11] and *Oklahoma City v. Sanders.*[12] The decision in the latter case was rendered with full cognizance of the decision in the former, yet the court held that such condemnation by the federal government was a "public use" since the beneficial effects of such projects affect the nation as a whole and promote the public welfare.[13] There has been as yet no holding on this problem by the United States Supreme Court.

Many of the state courts have committed themselves to the view that "public use" means an actual user by the public.[14] In this light, condemnation for slum clearance would be viewed as a private use, since only a limited class of the public can be expected to actually "use" the new housing facilities. Other state courts incline toward the view that "advantage to the public" is the proper test.[15] Judged by this standard, rehousing projects should receive judicial approval.

The Louisiana Supreme Court deemed the latter test the more enlightened view. It agreed that slum eradication is conducive to the general welfare and therefore is a public advantage in protecting the morals and health of the people and in providing for their safety.[16] The court went so far as to say: "All governmental activities, complicated as they are, have that simple end in view."[17] It is true that there is dicta in a prior case[18] which would seem to indicate that the Louisiana courts are inclined to the strict view that a "public use" means a general public right to a definite use of the property rather than the more liberal view that "public use" or "public purpose" means a benefit to the public. However, in the instant case the court inferentially re-

11. 78 F. (2d) 684 (C.C.A. 6th, 1935).
12. 94 F. (2d) 323 (C.C.A. 10th, 1938).
13. Id. at 327.
14. See 54 A.L.R. 15, § III, and cases there cited.
15. Green v. Frazier, 44 N.D. 395, 176 N.W. 11, aff'd, 253 U.S. 233, 40 S.Ct. 499, 64 L.Ed. 878 (1920); Willmon v. Powell, 91 Cal. App. 1, 266 Pac. 1029 (1928); New York City Housing Authority v. Muller, 270 N.Y. 333, 1 N.E. (2d) 153 (1936); Spahn v. Stewart, 268 Ky. 97, 103 S.W. (2d) 651 (1937); Marvin v. Housing Authority of Jacksonville, 183 So. 145 (Fla. 1938); Dornan v. Philadelphia Housing Authority, 200 Atl. 834 (Pa. 1938); Wells. v. Housing Authority of Wilmington, 213 N.C. 744, 197 S.E. 693 (1938).
16. State ex rel Porterie, Attorney General v. New Orleans Housing Authority, 182 So. 725, 733 (La. 1938).
17. Ibid.
18. River & Rail Terminals v. La. Ry. & Navigation Co., 171 La. 223, 234, 130 So. 337, 340 (1930).

jected this idea. It is suggested that the reason for such distinction in interpretation is due to the theory that public policy ought to favor a liberal interpretation of the term "public use" or "public purpose" where the right to condemn is sought to be utilized by public agencies, and favor a strict interpretation where the right is claimed by private parties or private corporations.

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CONSTITUTIONAL LAW—INTERGOVERNMENTAL IMMUNITY FROM TAXATION—FEDERAL TAXATION OF EMPLOYEES OF BI-STATE CORPORATION—Respondents were employed by the Port of New York Authority, a bi-state corporation created by compact between New York and New Jersey, the purpose of which was to carry on an extensive program of port development. The Authority in furthering this program constructed and now operates interstate bridges and tunnels and a freight terminal. It also operates a bus line. The United States Commissioner of Internal Revenue determined deficiencies in respondents' income tax reports for the years 1932 and 1933. The Board of Tax Appeals exempted the salaries received by the respondents from the Authority and the Circuit Court of Appeals for the Second Circuit affirmed this ruling.[1] Thereupon the Commission appealed to the Supreme Court. *Held,* the judgment of the Circuit Court of Appeals is reversed. The burden placed upon the states by the taxation of such salaries is so remote, speculative and uncertain that by their exemption the federal taxing power would be restricted without any substantial protection thereby accruing to the state government. Moreover, such a tax does not incumber any function that has hitherto been considered essential to the states' existence as such. *Helvering v. Gerhardt,* 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 962 (1938).

The doctrine of the immunity of federal instrumentalities from state taxation dates from the celebrated case of *McCulloch v. Maryland.*[2] This doctrine has also been applied to officers of the federal government.[3] It is reciprocal in that the states and their officers and instrumentalities are likewise immune from

1. 92 F. (2d) 999 (1937).
2. 17 U.S. 316, 4 L.Ed. 579 (1819).
3. Dobbins v. Commissioners of Erie County, 41 U.S. 435, 10 L.Ed. 1022 (1842).