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prosecuted against a union by an unsuccessful applicant for membership who alleged that as a result of the union's refusal to accept him he had been dismissed from employment in three instances at its instigation because of his non-membership.[1] The court has traditionally exhibited a reluctance to interfere with the affairs of voluntary associations, including unions, so long as they are created for lawful purposes, conduct their activities in an orderly manner, and are not opposed to the public interest.[2] In the instant case, however, it was unnecessary to invoke this line of jurisprudence since specific legislative enactment supported the action of the union. Plaintiff, a minor of fifteen years of age at all relevant times stated in the petition, alleged that he had been denied membership because of lack of apprenticeship training and further charged that all his efforts to achieve apprenticeship status had been thwarted by the malicious action of the union. The union showed that its action was predicated on the terms of a joint labor-industry agreement to which it was a signatory, entered into under the provisions of Act 364 of 1938,[3] approved by state and federal authorities and establishing a minimum age of eighteen years for apprentices in the plastering industry. The court approved the action of the trial judge in dismissing the petition—a result which seems inescapable under the circumstances. It is probable that the decision, or the statute which dictated it, will be criticized in light of current inclinations to condemn exclusionary devices which some unions impose upon membership. But regardless of the merits of the controversy, the remedy, if there is to be one, must be sought at the hands of the legislature.

LOCAL GOVERNMENT

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ELECTIONS

Election laws provided the main source of controversy in the local government area. Election law cases, of course, are invariably tied into current political issues and just as invariably demonstrate that political cases do not make good law.

1. Hornsby v. LeBlanc et al., 217 La. 1095, 48 So. 2d 99 (1950).
2. Elfer v. Marine Enginers Beneficial Assn. No. 12, 179 La. 383, 154 So. 32 (1934) and cases cited.
3. La. R.S. (1950) 23:381 et seq.

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In *Langlois v. Lancaster*[1] two cases were consolidated on appeal[2] as they involved two elections for mayor and officers in the Town of New Roads, which were conducted within a six-month period in 1949. The first election was called for and held pursuant to the town's charter on January 3, 1949. Lancaster defeated Langlois by only one vote. Langlois and several other electors then sued in the district court to have the election set aside and another election ordered for the office of mayor, and in the alternative that Langlois be declared the duly elected mayor. Judgment was rendered on May 24, 1949, in favor of plaintiffs, declaring the election null and void and ordering another election. A suspensive appeal was granted and perfected on May 26, 1949.

However, on May 19, 1949, prior to the rendition of the above judgment, the Parish Board of Supervisors of Elections called an election in New Roads for the offices of mayor and councilmen to be held on June 14, 1949. Lancaster, who had in the meantime taken the office of mayor, did not offer as a candidate in the June 14 election[3] and he and his adherents refrained from participating in it.[4] The June 14 election was held and Langlois, being the only candidate for mayor, quite naturally won. Before the returns of the June 14 election had been promulgated by the secretary of state, Lancaster filed suit in the district court seeking to enjoin the promulgation of the June 14 results. An injunction was granted. Subsequently, upon application to the supreme court, a suspensive appeal was granted and perfected.

The supreme court agreed that the election of January 3 was null and void. The main reason was that the registration of voters had expired on December 31, 1948, and the new registration of voters began on January 2, 1949,[5] the day before the election. Inasmuch as the law provides that "electors shall not be registered within thirty days next preceding any election," [6]

1. 217 La. 995, 47 So. 2d 795 (1950).

2. Langlois v. Lancaster and Lancaster v. Martin, 217 La. 995, 47 So. 2d 795 (1950).

3. Lancaster vainly attempted to enjoin the holding of the June 14 election and his application to the supreme court for writs was denied.

4. Lancaster's refusal to enter the second election was of questionable wisdom, if one bears in mind the obvious irregularities in the first election. He may have feared that participation in the second election would estop him from subsequently challenging its validity. This fear, however, seems groundless in view of the fact that Langlois' participation in the first election did not prevent his challenge of it.

5. Provisions of La. Act 267 of 1946, amending La. Act 45 of 1940.

6. La. Const. of 1921, Art. VIII, § 16.

it is obvious that no one could have registered in time to vote in that election.[7]

Concerning the appeal from the judgment enjoining the promulgation of the June 14 returns, the court noted that the granting of the suspensive appeal to the state officials had the effect of releasing them from the injunction. Thereupon the secretary of state had promulgated the returns certifying Langlois and the others elected with him, and in due time commissions were issued to them by the governor. Thus, said the court, the question of whether or not the injunction should be maintained had become moot and the appeal was dismissed.

Since the January 3 election was declared null, the promulgation of election results by state officials certainly worked no harm. However, at the time a suspensive appeal was granted from the injunction of the promulgation, the validity of the January 3 elections was still undecided. In view of that, it would have been fairer to those seeking to uphold that election if the suspensive appeal could have waited until the decision on that election had been rendered.[8]

Subsequently, the state on the relation of Langlois and others brought a proceeding under the intrusion into office act against Lancaster and his councilmen to have them excluded from the offices of mayor and councilmen, to have such offices delivered to relators and to have refunded emoluments received by Lancaster and others for holding such offices. The district court held that the respondents were usurpers and were unlawfully attempting to remain in possession of the offices. He ordered them to deliver their respective offices to the relators and to pay all wages and salaries or emoluments of the offices for the period beginning July 1, 1950, until the time the offices were vacated and delivered to the relators.

On appeal[9] the court accepted jurisdiction of the case only insofar as the respondent Lancaster and the office of mayor were concerned.[10] The first inquiry by the court was whether Lan-

7. The court also found merit in some of the other points raised, notably the one alleging that the hours of election were not in accordance with the election laws.

8. Had the January 3 election turned out to be valid, the granting of the suspensive appeal (and the resultant promulgation) would have resulted in a most confused situation. Realistically speaking, there was no danger, since the court had undoubtedly decided upon the illegality of the first election before granting the suspensive appeal as to the second one.

9. State ex rel. Langlois v. Lancaster, 218 La. 1052, 51 So. 2d 622 (1951).

10. The emoluments of office of the councilmen were too low to give the supreme court jurisdiction. Their case was thus transferred to the court of

caster had shown his right to remain in office until a rightful successor demanded possession of it. Lancaster contended that he had such a right in that he was a holdover and as such required by the Constitution[11] to discharge the duties of mayor until the induction of his successor. It would indeed be a startling interpretation if one who goes into office solely by virtue of an election which is subsequently declared null can be considered a holdover under the Constitution. The court therefore properly rejected this contention by Lancaster.

The court however accepted Lancaster's contention that he was entitled to retain the emoluments of the mayor's office received by him from July 1, 1950. The court noted that under the statutes an intruder or usurper may be ordered to refund the emoluments received where he attempts to hold the office in bad faith.[12] However, the court did not believe that it had been proved that Lancaster was acting in bad faith inasmuch as his contention that he regarded himself as a holdover was made on the advice of competent counsel and had not been previously passed upon by the court. This interpretation of "bad faith" certainly seems to limit the statute and lends encouragement to office usurpers. As Chief Justice Fournet stated in his dissent on this point: "But it is difficult for me to follow the rationale of the majority opinion in holding that because the respondent is tenaciously holding on to the office, on advice of competent counsel—even after our decision handed down on June 30, 1950, declaring the nullity of the election under which Lancaster took office—that he is holding office and receiving the muniments of the office in good faith." [13]

Webb v. Parish Council of Parish of East Baton Rouge[14] presented to the court an interesting problem of statutory construction. In this suit Jesse L. Webb sought mandamus to compel the parish council to call an election for the purpose of submitting

appeal. See State ex rel. Langlois v. Lancaster, 52 So. 2d 780 (1951), rehearing denied 53 So. 2d 271 (1951). The decision of the court of appeal not only disregards much of the reasoning of the supreme court case but also seems confused on the questions of what constitutes a de facto officer and the meaning of Section 6 of Article XIX of the Constitution. For a good discussion of de facto officers in Louisiana, see Comment, 12 LOUISIANA LAW REVIEW 200 (1952).

11. Section 6 of Article XIX of the Louisiana Constitution provides: "All officers, State, municipal and parochial, except in case of impeachment or suspension, shall continue to discharge the duties of their offices until their successors shall have been inducted into office."

12. La. R.S. (1950) 42:80.

13. 218 La. 1052, 1068, 51 So. 2d 622, 628 (1951).

14. 217 La. 926, 47 So. 2d 718 (1950).

to the parish electors 101 proposed amendments to the plan of government of Baton Rouge and the Parish of East Baton Rouge. The district judge sustained an exception of no cause and no right of action and Webb appealed.

One of the reasons given by the trial judge for sustaining the exception was that there was not a sufficient number of signers to the petition which contained the full text of the amendments and which had been submitted to the parish council with the request for an election. The supreme court chose to accept this ground in affirming the district court.[15]

Under the city and parish plan of government amendments may be proposed by a petition containing the full text of the proposed amendment and "signed by qualified voters of East Baton Rouge Parish in number equal to ten per cent of the number of votes cast for sheriff at the last preceding election of parish officers and filed in the office of the parish clerk." [16]

The petition in the instant case contained the names of 212 qualified electors. At the Democratic primary election for sheriff preceding the petition filed 27,000 electors voted. At the last preceding general election only about 1000 voters voted. Thus whether or not the petition contained the requisite ten per cent names depended on whether the word "election" in the plan of government refers to general election or primary election. The court noted that the drafters of the plan were surely aware that a large number of voters participate only in the primary election, which in the popular sense in this state is regarded as the election. If a petition containing the signatures of only ten per cent voting in the general election were considered sufficient, it would mean that a disproportionately "small group of disgruntled citizens" could harass the council and compel it to call one costly election after another. Obviously this was not intended by the drafters, hence the court construed the word "election" to mean primary election.

It seems clear that the intention of the drafters (assuming

15. Another reason given by the district court was that the proposed amendments were illegal and unconstitutional and even if adopted could not be put into effect for this reason. Even a cursory study of the amendments indicates that the district court was quite correct on this point. From the point of view of the desirability of bringing to an end a long and clearly political piece of litigation, it seems unfortunate that the supreme court did not affirm on this point as well. I suppose, however, that one should not quarrel with the supreme court exercising judicial restraint in not deciding constitutional questions where other grounds for decision are available.

16. Plan of Government of the Parish of East Baton Rouge and the City of Baton Rouge, § 11.09.

they thought about it at all) was (or should have been) as the court stated it. However, it is not at all clear that the drafters embodied this intention in the plan. The word "election" as found in a statute or in the constitution usually means "general election" [17] for even in the South an officer is not "elected" to office until the general election has been held. What is even more compelling in this case is that later in the section the word "primary" *was* used by the drafters in referring to primary elections.

The court in seeking out the supposed intention of the drafters departed from the plain meaning rule of statutory construction[18] and in effect rewrote the section of the plan to include the word "primary" preceding the word "election." Such judicial legislation, of course, is not infrequent and perhaps in cases such as this is even desirable, but it should be recognized for what it is.

The court's construction still leaves open some interesting problems. "Election" now means "primary election." Does it mean the first primary or the run-off primary? And does primary include the primary of a second party, should one arise? It would seem that the council would do well to forestall such problems by appropriately amending the plan of government.

REMOVAL

A troubling problem concerning the removal of officers was raised in *Bourgeois v. Orleans Parish School Board.*[19] There the school board dismissed plaintiff, a school superintendent, for incompetency, inefficiency and unworthiness. The superintendent was not allowed a hearing on the specific charges. Plaintiff then sought to enjoin the school board from disturbing him in the peaceful possession of his office, from interference with performance of his duties and the enjoyment of emoluments of office. The district court granted the injunction but reserved to the school board the right to try the plaintiff.[20]

The school board pointed out that according to the statute,

17. McQuillan, Municipal Corporations § 12.04 (3 ed. 1949).

18. See, e.g., United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932). See cases cited in Cohen, Materials and Problems on Legislation 71, 73, 75-76, 93, 94, 163-164 (1950).

19. 219 La. 512, 53 So. 2d 251 (1951).

20. The school board appealed from the injunction. Plaintiff answered the appeal praying that the judgment be amended so as to strike therefrom that portion which reserved to the school board the right to try him. The supreme court rejected plaintiff's appeal, holding that the school board was competent to hold the hearing.

"If at any time a parish superintendent shall be found incompetent, inefficient or unworthy, he shall be removable for such cause by a majority vote" of the school board.[21] Under this statute, the school board contended, there was no necessity for a hearing and consequently its dismissal of the superintendent was proper.

The court rejected this view, stating that as a matter of statutory construction, "it was unnecessary for the Legislature to incorporate in the statute any provision granting such officer a right to notice and a hearing before dismissal, because the fixing of the officer's term and the providing that he may be dismissed only for cause show that a hearing was intended."

Although many jurisdictions have arrived at the same conclusion, the courts have not very satisfactorily pointed out the precise reason for it. Some decisions, as did the present one, rationalize that the legislature "intended" to provide for notice and a hearing. Other courts have approached the problem by concluding that notice and hearing in such cases are a part of the constitutional due process clause.[22] This seems clearly correct. A dismissal for cause involves adjudication and the due process conduct of adjudication carries with it procedural safeguards of notice and hearing. The difficulty with imposing such due process requirements in removal cases lies in the necessity of finding the necessary deprivation of either liberty or property. Property would seem the logical answer, were it not for the long standing principle that a public office is a public trust and not properly property within the due process clause. The obstacle present in this rule has led some courts to qualify it by recognizing a property interest for certain purposes, such as in controversies relating to the possession and conduct of an office.[23] Certainly it would seem that at least the loss of name and reputation attendant on a dismissal for cause is a property right sufficiently tangible to invoke the due process protection. Other judges, however, have preferred to find a deprivation of liberties as reason for requiring notice and hearing.[24]

21. La. R.S. (1950) 17:54.

22. State ex rel. Ryan v. Norby, 118 Mont. 283, 165 P. 2d 302 (1946). See authorities cited in Notes, 99 A.L.R. 336 (1935).

23. Sutton v. Adams, 180 Ga. 48, 178 S.E. 365 (1934); State ex rel. Ryan v. Norby, 118 Mont. 283, 165 P. 2d 302 (1946).

24. See Walton v. Davis, 188 Ga. 56, 64-65, 2 S.E. 2d 603, 607 (1939). The majority opinion in this case interestingly notes that notice and hearing had origins somewhat older than our Constitution. "It will be remembered that even the Almighty himself, although His wisdom is inscrutable and all His judgments just, did not pass sentence upon Adam until He had first heard the charge against him and he was given an opportunity to make his defense.

These divergent reasonings make it all the more desirable that the legislature expressly provide for notice and hearing prior to dismissal for cause. In the absence of such provision, however, it seems clear that through one rationale or another the courts will find the means to impose desirable safeguards.

FRANCHISES

Public utility franchises were the subject of two cases, neither of which involved any question of particular difficulty.

Prior to an expansion of the city limits of Baton Rouge on January 1, 1949, relator operated a motor bus line over routes most of which lay outside the corporate limits. After the extension of the city limits, all of the routes were within the city limits. Relator made written application to the city for a certificate of convenience and necessity to continue the operation of his bus line. Without having acted on relator's application, the city council adopted two bus ordinances. According to these, motor buses could only be operated by one holding a franchise from the city. A franchise previously granted to the Baton Rouge Bus Company was recognized and ratified; although this franchise was declared not to be exclusive, the council also stated that it had no present intention of granting other franchises within the near future.

Subsequently relator sought a writ of mandamus to compel the city to issue him a certificate of public convenience and necessity so that he might continue his operations. In affirming[25] an exception of no cause of action the court pointed out the difference between a certificate of public convenience and necessity and a franchise. Since the ordinance required a franchise, a certificate alone would still not entitle relator to operate his bus line. Thus the granting of the writ of mandamus would be ineffectual as a remedy and in such cases is not issued.

Thereafter, Hutton continued to operate his bus line and was charged by an affidavit with violation of the city bus ordinance. After trial, defendant was found guilty and he appealed.[26]

Defendant's first plea was that the bus ordinance was invalid because the city was limited in regulating the use of its streets

'Adam, where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat? And the same question was also put to Eve.'" (188 Ga. 56, 63, 2 S.E. 2d 603, 606.)

25. State ex rel. Hutton v. City of Baton Rouge, 217 La. 857, 47 So. 2d 665 (1950).

26. City of Baton Rouge v. Hutton, 218 La. 371, 49 So. 2d 613 (1950).

to the one requirement of certificate of public convenience and necessity which, he argued, negatives the right or the power to grant a franchise. The court, after reviewing the pertinent provisions of Act 169 of 1898 and Act 334 of 1946 properly concluded that the city did have authority under those acts to enact ordinances to grant franchises.

Defendant next contended that the ordinance was an unconstitutional discrimination between the Baton Rouge Bus Company and others in a like situation. In rejecting this contention the court took cognizance of the chaotic condition of transportation which in the interests of the public impelled the city council to resort to one integrated bus system. Such action, said the court, "cannot be said to have been arbitrary and capricious."

TAXATION

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In the course of discussing the work of the court during the 1949-1950 term a year ago,[1] the writer called attention to a tax case[2] in which it appeared that an issue of due process of law had been mistakenly treated as one involving equal protection—a mistake which did not affect the result. In that case the taxpayer, a pipeline company, was protesting the inclusion of its property within the limits of a levee district when adjacent lands were excluded—both being within the spillway of the district. Although the taxpayer raised the objection of equal protection of the law, it was apparent that the real onus of its complaint, if any, was the manner in which the boundaries of the district were defined. This gave rise to the question whether the act creating the district was such a legislative "gerrymander" as to take the taxpayer's money without due process of law or whether sufficient benefit would be derived from the creation of the district to justify the inclusion of the taxpayer's property within it. During the term just past the identical question was raised in *Bahry v. West Ascension Consolidated Drainage District*,[3] this time so clearly that it was recognized and treated as a due process question.

Plaintiffs in the *Bahry* case were taxpayers residing within

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1. 11 LOUISIANA LAW REVIEW 214 (1951).
2. Interstate Oil Pipeline Co. v. Guilbeau, 217 La. 160, 46 So. 2d 113 (1950).
3. 218 La. 1028, 51 So. 2d 614 (1951).