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Substantive Law - Public Law: Local Government

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LOCAL GOVERNMENT

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RIGHTS OF CIVIL SERVANTS

The widow and heirs of a deceased municipal employee brought suit in *Barcena v. City of New Orleans*[1] to recover salary alleged to have been due him from May 16, 1946, until his dismissal for cause on July 12, 1946, together with a penalty of the full salary from such date until his death, and a reasonable attorney's fee.[2] The decedent had been clerk of the recorder's court from 1937 until May 17, 1946, when he was discharged by the mayor for the assigned reason that he was not subject to the city civil service act, and hence could be dismissed at will. On an appeal to the civil service commission, the latter on July 1, 1946, reinstated him to his position and ordered the city to pay him his salary during the interim, on the ground that he was a classified civil servant not removable except for cause. Following this ruling, the mayor again dismissed him from his position, assigning various acts of commission and omission as reasons therefor. On a second appeal to the civil service commission, it was found that sufficient cause existed for his discharge.

The trial court held that since decedent had been dismissed for causes originating prior to May 16, 1946, plaintiffs could not recover. The Supreme Court reversed the judgment and awarded plaintiffs a judgment for decedent's salary from May 17, 1946, until July 12, 1946. It was held that under the civil service system it is the dismissal, and not the commission of the acts on which the discharge is predicated, which separates the employee from the service. No allowance of a penalty was made, as the statute on which this claim was based was held inapplicable to employees in the public service.

ORDINANCES DENOUNCING CRIMINAL OFFENSES

Two extremely important questions were decided in a series of cases[3] in which the defendants challenged the validity of the

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1. 60 So. 2d 74 (La. 1952).

2. This demand was based upon the provisions of La. R.S. 1950, 23:631, 632, prescribing penalties and a reasonable attorney's fee for the failure of an employer to pay a discharged employee all salary or wages due him within twenty-four hours of his discharge.

3. City of Alexandria v. LaCombe, 220 La. 618, 57 So. 2d 206 (1952); Same v. Ory, 220 La. 630, 57 So. 2d 210 (1952); Same v. Rexer, 220 La. 631, 57 So. 2d 210 (1952); and Same v. Clark, 220 La. 632, 57 So. 2d 211 (1952).

gambling ordinance of the City of Alexandria, under which they had been convicted. This ordinance contained a specific provision defining the offense prohibited as the "intentional betting, wagering or risking the loss of anything of value in order to realize a profit of any game conducted with cards, dice, dominoes, or other contrivance, without reference as to how the same shall be conducted or operated." This definition is considerably broader than that contained in the pertinent section of the Criminal Code,[4] which defines gambling as the "intentional conducting, or directly assisting in the conducting, *as a business*, of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit." (Italics supplied.) In view of this, the defendants argued that, as the general statute under which the city was chartered[5] merely delegated authority to the municipality to prohibit gambling, any ordinance adopted by the municipality which went beyond the Legislature's definition of the offense was invalid and illegal.

At one time all cities of the state having more than 5,000 and less than 100,000 inhabitants were specifically authorized to suppress and prohibit gambling, and "to define what shall constitute gambling."[6] In the statutory revision of 1950, however, the quoted language was omitted from the pertinent provision, and hence at the time these cases were decided there was no express statutory delegation of authority to the City of Alexandria to define gambling. To meet the force of this argument, the city attorney contended that since the Louisiana State Law Institute was directed in the legislative mandate to revise the general statutes[7] and not to make any changes of substance therein, the former statutory provision was still in full force and effect. This argument was rejected by the Supreme Court which held that by adopting the Revised Statutes, the Legislature had validly enacted the applicable section as written and that regardless of the Law Institute's mandate, the Legislature had expressly repealed the source legislation. In view of the lack of any delegated authority to adopt a broader definition of gambling, the ordinance was held invalid.

The hiatus which was responsible for the annullment of these convictions has already been filled by an amendment to the

4. La. R.S. 1950, 14:90.
5. The Lawrason Act—La. R.S. 1950, 33:321-33:481.
6. La. Act 125 of 1920, carried over in part in La. R.S. 1950, 33:4851.
7. La. Act 43 of 1942.

Revised Statutes expressly delegating authority to cities of this class to define what shall constitute gambling.[8] These cases, however, have settled once and for all the question of whether the Revised Statutes constitute the general statutes of Louisiana or whether they are only prima facie evidence thereof.

A similar contention of the invalidity of an ordinance was presented in *City of New Orleans v. Stone*,[9] where the defendant appealed from a conviction under an ordinance which prohibited anyone from acting as a lottery agent and made the possession of lottery tickets prima facie evidence that they were kept for sale. An examination of the statute constituting the city's charter, however, convinced the court that the municipality had been given ample authority by the Legislature to adopt the challenged ordinance.[10]

In two cases where the defendants had been convicted of a violation of parochial ordinances,[11] the defendants contended that the ordinances were invalid because of the Revised Statutes' specific repeal of the legislation delegating authority to the police juries to adopt prohibition ordinances. Relying upon the savings clause in the adopting statute, continuing in force all acts done, rights acquired and liabilities imposed by and under the statutes repealed, the Supreme Court swept aside this contention in affirming the convictions.

Validity of Bonds

Eighty-four citizens and taxpayers attacked the validity of the creation of a parish-wide school district by resolution of the parish school board in *Stroud v. Caddo Parish School Board*.[12] The suit sought to annul and set aside a bond election and to enjoin the issuance and sale of the bonds. In the election called by defendant board, the qualified voters of the parish authorized a $20,000,000 bond issue and the assumption by the parish of the debts of seven school districts therein. The primary contention of the plaintiffs, which the Supreme Court held to be without

8. La. R.S. 1950, 33:4851.1, as added by La. Act 327 of 1952.

9. 221 La. 133, 58 So. 2d 736 (1952).

10. Other contentions of the appellant were rejected by the appellate court, which held that the ordinance did not violate any provision of the state or federal constitutions against forcing the accused to give evidence against himself in a criminal case, and that the governing board of the city had authority under the city charter to provide a mandatory fine and sentence for third offenders.

11. State v. Bradford, 220 La. 176, 56 So. 2d 145 (1951); State v. Reed, 220 La. 720, 57 So. 2d 413 (1952).

12. 60 So. 2d 304 (La. 1952).

merit, was that the creation of a parish-wide school district constituted a consolidation of smaller school districts and as such required the ratification of the voters in each district affected. Plaintiffs further contended that the constitutional authorization for the issuance of bonded debt up to fifteen per centum of the assessed valuation "for the purpose of acquiring school sites, erecting and equipping school buildings and improving school property" must be construed strictly, and as some of the purposes for which the bonds were to be issued could not be fitted into the strict letter of the quoted language, the issue was illegal. The appellate court, however, held that the quoted language was employed only in an attempt to give the broadest possible scope to the provision, which should be construed by way of illustration rather than of limitation; and that with respect to school districts it was meant to apply to any purpose connected with or germane to the acquiring, equipping and improving of school property generally. The judgment of the trial court dismissing the suit was affirmed.

The issuance of $500,000 of bonds by a consolidated school district was enjoined by the Supreme Court in *Shadow v. Rapides Parish School Board.*[13] At a special election the qualified voters of two school districts had ratified and confirmed the action of the parish school board in consolidating the districts, and had authorized the assumption of the outstanding bonded indebtedness of the two districts by the consolidated district. Previously, the voters of one of the school districts had authorized the issuance of $1,800,000 of bonds for school purposes. Of this amount, $1,300,000 had been issued prior to the consolidation. Thereafter, the parish school board authorized the issuance of the remaining $500,000 of bonds. This issue was enjoined by the Supreme Court on the ground that the action of the voters of the two districts in authorizing the assumption of the outstanding indebtedness of these districts did not include the assumption of bonds not yet issued. The constitutional peremption of sixty days pleaded by the defendant was held inapplicable to the $500,000 issue, as the suit was filed within thirty days of the action of the parish school board in authorizing the issuance and sale of these bonds.

LIABILITY FOR DEFECTIVE SIDEWALKS

In *Arata v. Orleans Capitol Stores,*[14] a judgment of the trial

13. 220 La. 302, 56 So. 2d 555 (1951).

14. 219 La. 1045, 55 So. 2d 239 (1951). The pleading aspects of this case are discussed infra, p. 309.

court maintaining exceptions of no cause of action and dismissing plaintiff's suit on the ground that the allegations of the petition disclosed contributory negligence was reversed by the Supreme Court under a writ of review. Plaintiff had brought suit against the City of New Orleans and the owner of the property abutting the allegedly defective sidewalk to recover damages for personal injuries sustained by plaintiff's minor son who was thrown from a bicycle when its front wheel struck a hole in the sidewalk. The exceptions were overruled under a holding that the allegations of the petition did not exclude every reasonable hypothesis other than the contributory negligence of the boy. In passing, however, the Supreme Court restated the law with respect to the liability of a municipality for the defective condition of its sidewalks. While it was admitted that the city is not an insurer, and need not maintain its sidewalks in perfect condition, it is required to keep them reasonably safe. The municipality would be held responsible for injuries to a bicyclist incurred as a result of a dangerous and sizeable depression in the sidewalk, provided the depressions were not subject to easy detection by persons exercising ordinary care and prudence in using the walk.

Zoning Ordinances

The single case decided by the Supreme Court during the past term in which the constitutionality and validity of a municipal ordinance was presented will be discussed in some detail later.[15]

STATE AND LOCAL TAXATION

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Four cases touching upon state and local taxation were decided during the course of the term, and all four of them involved ad valorem property taxes. To students of taxation, aware of the fact that less than three per cent of the state's revenues are derived from this type of levy, this implies that the term was of no great significance to the taxpayer or his attorney.

In a case of first impression, *Lafayette Building Association v. Spofford*,[1] the court held that the term "taxes" appearing in the

15. State ex rel. Loraine v. Adjustment Board of City of Baton Rouge, 220 La. 708, 57 So. 2d 409 (1952), discussed infra p. 321.

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1. 221 La. 549, 59 So. 2d 880 (1952).