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Public Law: Local Government

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than that the collective agent appeared and purported to act for him. It must appear that in some legally sufficient way he authorized it to act in his behalf."[14] The decision met with a storm of protest from employers and unions alike, as well as from the governmental agency charged with the administration of federal legislation, and upon rehearing the decision was affirmed, but in a modified form which recognized that "custom and usage may be as adequate a basis of authority as a more formal authorization for the union, which receives a grievance from an employee for handling, to represent him in settling it. . . ."[15] Applying the test as thus formulated to the instant case, the written request from the plaintiff to the union would seem to supply the authorization required.

LOCAL GOVERNMENT

*Alvin B. Rubin**

PUBLIC CONTRACTS

In *Board of Levee Commissioners v. Lacassin*[1] a motion had been made to authorize the chief engineer of the Board of Levee Commissioners to advertise for bids for a lease on certain property owned by the board "for a period not to exceed one year." A detailed lease proposal and a form of the proposed lease were prepared containing an option to renew for two years.

The Supreme Court held that since the form of the lease had been prepared by the board's employees, "any one who was led to bid in accordance with all the terms contained in the form of lease, had the right to expect that the Board would abide with all of its provisions after acceptance of his bid."[2] In addition the court stressed that, subsequent to the receiving of bids, the board authorized its president to enter into a contract of lease with the successful (and only) bidder " 'in accordance with the General and Special Specifications . . . all in accordance with his bid . . . which is hereby accepted. . . .' "[3] The court did not

14. *Id.* at 738.
15. Elgin, Joliet & Eastern R.R. v. Burley, 327 U.S. 661, 663 (1946).

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1. 74 So.2d 52 (La. 1954).
2. *Id.* at 55.
3. *Ibid.*

discuss whether the bidder was entitled to place reliance on the proposed lease form without examining the resolution which authorized the making of the lease.

POLICE POWER

The growth of suburban communities and the advance of scientific knowledge together create problems of a type unknown in earlier and simpler days. The right of a city council to require fluoridation of the city's water supply was presented in *Chapman v. City of Shreveport.*[4] Fluoridation was proposed for the alleged primary purpose of reducing tooth decay in children twelve years of age and under. The court held that if fluoridation of the water supply bears any reasonable relation to the public health, it can be undertaken by the city under the provisions of the Shreveport home rule charter.[5]

The trial judge had concluded that fluoridation of the city water supply was a matter within the realm of private dental health and hygiene; the Supreme Court held that fluoridation of water to prevent tooth decay is a matter of public health. The court found no proof that fluoridation would cause serious ill effects to the aged or ill. Neither was it arbitrary or unreasonable to fluoridate the water when this would reduce the incidence of disease only among a limited class. "A health measure is not necessarily arbitrary because it affects primarily one class."[6]

MUNICIPAL ORDINANCES

In *Olan Mills, Inc. of Tennessee v. City of Bogalusa*[7] a transient photographer wished to pursue her trade on behalf of her Tennessee corporate employer in the City of Bogalusa. She was arrested for violation of a municipal ordinance which required itinerant vendors to furnish a $2,000 bond and to pay a $50 license fee for each solicitor. She did not offer a defense to her criminal prosecution. Instead her employer sought by separate action to enjoin enforcement of the ordinance "so as to restrain interference with its business activities."

The Supreme Court found that there was an adequate remedy for her in the criminal proceedings before the Bogalusa City

4. 74 So.2d 142 (La. 1954).
5. LA. CONST. Art. XIV, § 37.
6. 74 So.2d 142, 146 (La. 1954). The Ohio court of appeals has recently sustained the power of the City of Cleveland to fluoridate its water. Kraus v. City of Cleveland, Ohio, 121 N.E.2d 311 (Ohio 1954).
7. 225 La. 648, 73 So.2d 791 (1954).

Court. There all appropriate issues could be raised and litigated, with a remedy by direct appeal to the Supreme Court. Indeed, the court pointed out that, were it imperative to litigate the issue in advance of violation, an action would lie for a declaratory judgment.[8] In addition there was no property right involved, for there is no vested right to peddle. Therefore, the injunction sought was denied.

PENSIONS

A fireman engaged in playing a stream of water on a fire collapsed. Fifteen minutes later he died. The cause of death was diagnosed as coronary arteriosclerosis and myocardial hypertrophy. The court found[9] that the fireman was "killed" while working at a fire within the meaning of the statutory provisions governing the Firemen's Pension and Relief Fund for the City of New Orleans.[10] The court stated that it was not necessary that death result solely from external violent, physical force to entitle the family of the deceased to pension benefits; it sufficed that there was a sudden death in which "the efficient or a contributing cause of which is an accident occurring while he is engaged in the performance of his duties as a fireman. . . ."[11]

TEACHERS TENURE

Subsequent to a Supreme Court decision ordering reinstatement of a Supervisor of Classroom Instruction, the school board offered to employ the former supervisor as a classroom teacher, at a salary equal to that which he had previously been paid. The teacher accepted the offer, but filed suit for back pay from the date for which he was last paid until the time of his reemployment. He also sought reinstatement as Superintendent of Classroom Instruction.

In *State* ex rel. *Parker v. Vernon Parish School Board*[12] the court recognized the dismissed teacher's right to back pay until the time he was tendered reemployment. The court intimated that a formal tender of employment may not be necessary, but a definite and unequivocal offer must be made before the right

8. LA. R.S. 13:4231 *et seq.* (1950). The question was not raised whether this suit could not be considered one for a declaratory judgment.
9. Sabathier v. Board of Trustees, 225 La. 31, 72 So.2d 1 (1954).
10. LA. R.S. 33:2114 (1950).
11. 72 So.2d 1, 3 (La. 1954).
12. 222 La. 91, 62 So.2d 111 (1952).

to back pay ceases.[13] The court found that "[t]he acceptance of the position as classroom teacher by the relator renders the question moot insofar as the position he now holds being comparable with that of Superintendent of Classroom Instruction."[14] It might be argued that acceptance of reemployment does not render questions of status moot. Since it is a duty of every litigant to mitigate damages, a teacher might well be free to accept the tendered reemployment without sacrificing a claim that it is not of like status and equal standing with the position from which he was dismissed. Of course, the right of the school board on a reasonable and non-discriminatory basis to create and to abolish positions as the educational and administrative needs of the school system indicate is another matter, and this right need not be inhibited by the Teachers' Tenure Statute.

LOCAL OPTION

Ward 4 of Caddo Parish contains the City of Shreveport. In 1952 the unincorporated portion of Ward 4 sought and obtained a local option election. A majority of the voters voted "dry." A suit to have the election declared illegal followed. The principal contention made was that the election was invalid unless it was ward-wide, and that there is no authority in the local option statute for an election dealing only with a portion of a ward. In *McGee v. Police Jury of Caddo Parish*[15] the Supreme Court agreed with this contention, finding no statutory authority for an election to be held in only the unincorporated portion of a ward. It was of no moment that the City of Shreveport called and held a local option election at about the same time as the election for the unincorporated part of the ward, for the two elections did not present the same issue; the electors of the City of Shreveport voted only on the question of municipal prohibition and not on the issue of ward-wide prohibition.

EXPROPRIATION

In *State v. Barineau*[16] the Supreme Court affirmed the amount of an award of damages made by the district court, finding it sustained by the evidence. The court, however, pointed out once again that the general statutory rule exempting the

13. State *ex rel.* Parker v. Vernon Parish School Board, 225 La. 297, 72 So.2d 512 (1954).
14. 72 So.2d 512, 513 (La. 1954).
15. 225 La. 471, 73 So.2d 424 (1954).
16. 225 La. 341, 72 So.2d 869 (1954).

state and its agencies from the payment of court costs other than stenographer's fees[17] does not apply in expropriation proceedings. "In these, the State is liable for costs, unless tender of the true value of the land has been made. . . . To hold that the owner must pay his own costs in resisting attempts to take his land without his consent would nullify to a certain extent the constitutional guarantee of just and adequate compensation." The " 'class of expenses usually taxed as costs should be included as an element of the owner's damage.' "[18]

A different sort of expropriation issue was presented when the Police Jury of Lafayette Parish engaged in a program of improving navigation in the parish. In order that a land dredge used in this work along the Vermilion River might pass over a land route, it became necessary to move telegraph lines owned by Western Union Telegraph Company and extending across the Vermilion River. The company alleged that it moved the lines under protest and sought to recover as compensation the amount spent for this purpose. Relying upon an exception of no cause of action, the defendant set forth that the plaintiff's construction permit required it not to obstruct the ordinary use of the waters of the Vermilion River. The Supreme Court held that, since the petition alleged that the telegraph line did not obstruct ordinary use of these waters, the plaintiff should be given an opportunity to prove its allegations.[19] The import of the decision is that, if the telegraph lines permit ordinary use of the stream crossed, it is not necessary that they also permit work to improve the stream for navigation. Improvement of navigation would then appear to be not an "ordinary use" in the court's eyes. It is interesting to speculate whether maintenance of existing navigation channels would constitute "ordinary use . . . of the waters."

ASSESSMENT

In *Roy O. Martin Lumber Co. v. Baird*[20] the court applied the statute which provides that, when the boundary lines of parishes are in dispute, the parish lines as shown by "Hardee's Map" of 1895 shall fix parish boundaries for tax assessment purposes.[21] Even were that map wrong, it was properly followed

17. LA. R.S. 13:4521 (1950).
18. 72 So.2d 869, 872 (La. 1954).
19. Western Union Tel. Co. v. Police Jury, 225 La. 531, 73 So.2d 450 (1954).
20. 225 La. 14, 71 So.2d 865 (1954).
21. LA. R.S. 47:1952 (1950).

in making an assessment where the line between two parishes was indefinite and uncertain and had not been fixed on the ground. In such a case, the line is "in dispute under the meaning of the statute," for the object of the statute was "to make certain that the same property would not be assessed in two parishes."[22]

DEDICATION TO PUBLIC USE

In *Mecobon v. Police Jury of Jefferson Parish*[23] the court applied the settled rule that intention to dedicate a plot of ground to public use must be clearly established and found no dedication under the facts presented.

PUBLIC UTILITIES

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In *Illinois Central Railroad Company v. Louisiana Public Service Commission*[1] the court found both "warrant in law" and "warrant in the record" for commission action ordering a railroad to permit construction of a crossing of its right of way by public authorities. The validity of the statute[2] authorizing the commission to require such construction was upheld against an indirect challenge to its constitutionality as a taking of private property for public purposes without just compensation in contravention of the Constitution.[3] Argument of counsel that the railroad held its land in perfect ownership within Article 490 of the Civil Code and could be deprived of it only by expropriation was rejected in favor of the principle that "[i]mplicit in the charter and franchise of the railroad company is the implied condition that it is granted subject to the right of the State, in the exercise of its police power, to establish and authorize new works necessary and subservient to the convenience and safety of its citizens which might cause damage to the property of the railroad. To this end, the State has the power to require of the railroad the uncompensated duty of constructing and maintaining

22. 71 So.2d 865, 868 (La. 1954).
23. 224 La. 793, 70 So.2d 687 (1954).
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1. 224 La. 279, 69 So.2d 43 (1953).
2. LA. R.S. 45:841 (1950).
3. LA. CONST. Art. I, § 2.