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Municipal Corporations - Power of the Legislature to Alter Municipal Boundaries

Sam J. Friedman

The Louisiana Supreme Court, holding against the lessee in *Wilcox v. Shell Oil Co.*,[21] implied its disapproval of attempts to preserve the lease in its eleventh hour by unitizing voluntarily with land on which the lessee had already completed a producing well.[22] *Mallet v. Union Oil Co.*[23] was to the same effect. However, the court in the instant case did not consider those decisions to be controlling because the creation of the present unit was "forced" by an order of the Conservation Commissioner. The court observed approvingly that the lessee first drilled on the leased premises, and, having completed a dry hole, took prudent steps to protect what he could of his investment. Perhaps the courts in these three cases reacted to the demands of the various lessees in the same manner the lessors would have reacted at the time the leases were negotiated. It is unlikely that the *Wilcox* and *Mallet* lessors (or defendant's lessor) would have consented to a provision expressly authorizing the lessee to continue the lease indefinitely simply by unitizing at will with his own producing acreage. On the other hand, it is probable that defendant's lessor (and the *Mallet* and *Wilcox* lessors) would not have objected to a provision allowing the lease to be preserved by "forced" unitization with producing land, with the understanding that to obtain the unitization order, the lessee would be required to satisfy the Commissioner of Conservation that, on the basis of geological data, a unit should be created in the interests of conservation.

Gerald LeVan

MUNICIPAL CORPORATIONS — POWER OF THE LEGISLATURE TO ALTER MUNICIPAL BOUNDARIES

Petitioners, Negro residents of the City of Tuskegee, Alabama, sued in federal district court seeking a declaration that an act of the Alabama legislature, redefining the boundaries of the

21. 226 La. 417, 76 So.2d 416 (1954).

22. "In order to keep the Wilcox lease alive . . . Shell was faced, as the rental date . . . approached, with the alternative of commencing drilling on the Wilcox land or paying the delay rental. To avoid both of these alternatives, Shell formed an operating unit in an attempt to cause production from the FT sand to be considered production under the Wilcox lease. This was very much to its interest because by it Shell could save a rental payment of $2,750 and at the same time avoid the expense of drilling a well on the Wilcox lease within the 12 months remaining of the primary term in an effort to keep it alive beyond that term." *Id.* at 423, 76 So.2d at 418.

23. 232 La. 157, 94 So.2d 16 (1957).

City of Tuskegee, was unconstitutional. Petitioners claimed that enforcement of the statute, which altered the shape of the city from a square to an irregular twenty-eight sided figure, constituted discrimination against them in violation of the due process and equal protection clauses of the fourteenth amendment and denied them the right to vote in violation of the fifteenth amendment of the Constitution. The effect of the redefinition was to remove from the city all except four or five of 400 Negro voters while not removing a single white voter. Respondent's motion for dismissal for want of jurisdiction was granted, the court stating that it lacked power of supervision or control over a legislature's action in changing a municipal boundary. The Fifth Circuit Court of Appeals affirmed this judgment. On certiorari to the United States Supreme Court, *held*, reversed. Legislative control of municipalities lies within the scope of relevant limitations imposed by the United States Constitution. Such legislative power, extensive as it is, must yield to the fifteenth amendment, which forbids a state from passing any law which deprives a citizen of his right to vote because of his race.[1] *Gomillion v. Lightfoot*, 81 Sup. Ct. 125 (1960).

The rule has been almost universally recognized that municipal corporations are creatures of the legislature and may exercise only such powers as are conferred by the legislature.[2] Many decisions have pointed out that the state may modify or withdraw all such powers, expand or contract the territorial area of a city, and may even destroy the corporation itself.[3] Prior to the instant case, taxpayers and citizens of municipalities have been unsuccessful in their attempts to invoke federal constitutional provisions as a bar to legislative change in municipal boundaries.[4] Thus in the leading case of *Hunter v. Pittsburg*,[5] where citizens of Allegheny, Pennsylvania, protested consolida-

1. This Note is limited to a consideration of the part of the case dealing with municipal corporations.

2. Hunter v. Pittsburg, 207 U.S. 161 (1907); Kelly v. Pittsburg, 104 U.S. 78 (1881); Mount Pleasant v. Beckwith, 100 U.S. 514 (1879); Laramie County v. Albany County, 92 U.S. 307 (1875). See 1 YOKLEY, MUNICIPAL CORPORATIONS 13, § 6 (3d ed. 1956).

3. *E.g.*, Hunter v. Pittsburg, 207 U.S. 161 (1907); Laramie County v. Albany County, 92 U.S. 307 (1875). See 1 COOLEY, CONSTITUTIONAL LIMITATIONS 390-95 (8th ed. 1927); 2 MCQUILLIN, MUNICIPAL CORPORATIONS 36-44, §§ 4.16-4.20 (1949).

4. See Hunter v. Pittsburg, 207 U.S. 161 (1907); Mount Pleasant v. Beckwith, 100 U.S. 514 (1879); Laramie County v. Albany County, 92 U.S. 307 (1875). See also 1 COOLEY, CONSTITUTIONAL LIMITATIONS 393 (8th ed. 1927); 2 MCQUILLIN, MUNICIPAL CORPORATIONS 37, § 4.17 (1949); 1 YOKLEY, MUNICIPAL CORPORATIONS 13, § 6 (1956).

5. 207 U.S. 161 (1907).

tion with the City of Pittsburg because of the increased tax burdens to the citizens of Allegheny resulting from the merger, the Supreme Court held there was no deprivation of property in violation of the due process clause of the fourteenth amendment, where the only result of legislative change of the municipal boundary was an increased tax burden to the citizens. The Court also held that there was no impairment of contract between the citizens and the municipality as a result of the legislature's change in the municipal boundary. However, in reaching its decision, the Court stated that: "Although the inhabitants and property owners may by such changes suffer inconvenience . . . for any reason, they have no right by contract *or otherwise* in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state and those who legislate for the state are alone responsible for *any unjust* or oppressive exercise of it."[6] (Emphasis added). This statement has been used by courts in many instances to uphold legislative changes of municipal boundaries, the courts each time expressing the belief that the state is supreme, unrestrained by *any* provision of the Federal Constitution.[7] That the courts of last resort in the various states have interpreted these decisions as affording the state unlimited authority in changing municipal boundaries is illustrated by the fairly recent Louisiana case, *State* ex rel. *Kemp v. Baton Rouge*.[8] In that case, one challenge to the adoption of a plan of government was that it incorporated a change in the municipal boundary in violation of the Federal Constitution. The court stated that there is nothing in the fourteenth amendment or any other provision of the Federal Constitution which would prohibit the state, at its pleasure, from modifying, contracting, or expanding the territorial area of a municipality. The court pointed out that there is nothing in the Federal Constitution to protect the citizens from the injurious consequences resulting from a change in a municipal boundary.[9] This same view has been accepted by the lower federal courts which have acted on this matter, as is

6. *Id.* at 179.

7. See Houck v. Little River Drainage District, 239 U.S. 254 (1915); Ettor v. City of Tacoma, 228 U.S. 148 (1913); Louisiana *ex rel.* Folsom v. New Orleans, 109 U.S. 285 (1883); Kelly v. Pittsburg, 104 U.S. 78 (1881).

8. 215 La. 315, 40 So.2d 477 (1949). See Toney v. Mayor of Macon, 119 Ga. 83, 46 S.E. 80 (1903).

9. 215 La. 315, 331, 40 So.2d 477, 485 (1949).

evidenced by the opinion of the district and appellate courts in the instant case.[10]

It has generally been stated that the intent or motive of the legislature in altering the boundaries of a municipality is immaterial.[11] Thus in *Doyle v. Continental Ins. Co.*,[12] the United States Supreme Court said, "if the state has the power to do an act, its intention or the reason by which it is influenced in doing cannot be inquired into . . . it is quite out of the power of any court to inquire what was the intention of those who enacted the law."[13]

In the instant case something of a new position has been taken by the Supreme Court concerning the right of a citizen of a municipality to invoke the Federal Constitution as a bar to a change in the municipal boundary. While the Court in the instant case distinguished and labeled some of its prior statements as dicta, it would seem that the conclusion is inescapable that the interpretations accorded the prior holdings are now changed. Accordingly, legislative control of municipal boundaries is not an absolute power unrestrained by the Federal Constitution, but the power lies within the scope of relevant constitutional limitations, including the fifteenth amendment. Thus

10. Gomillion v. Lightfoot, 270 F.2d 594 (1959), *aff'g*, 167 F. Supp. 405 (1958). It should be pointed out that none of the judges involved in these decisions have shown any conservative attitude towards segregation; therefore, proper weight should be given to their decision.

11. Doyle v. Continental Ins. Co., 94 U.S. 535 (1876); Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (1958).

12. 94 U.S. 535 (1876).

13. *Id.* at 541. The right to invoke the Federal Constitution as a bar to legislative control over municipal boundaries arises in two other situations. (1) The rule has been that there is no provision of the Federal Constitution which a *municipality* may invoke to prevent the state legislature from expanding or contracting their territorial areas. There is said to be no contract between the state and the municipality which prevents the state from revoking municipal governmental powers. See Trenton v. New Jersey, 262 U.S. 182 (1923); Pawhuska v. Pawhuska Oil and Gas Co., 250 U.S. 394 (1919); Hunter v. Pittsburg, 207 U.S. 161 (1907); Kelly v. Pittsburg, 104 U.S. 78 (1881). (2) In cases involving the rights of third persons who have contracted with a municipality, it has been the general rule that contracts between municipal corporations and private persons, like other contracts, are protected from subsequent impairment by state law. The determining factor is whether or not the state law altering the municipality provides a remedy for the enforcement of these obligations which is the substantial equivalent of the remedy existing when the contract was made. If the remedy is less certain, the obligation of contract is impaired. Thus, creditors holding bonds of a particular municipality cannot lose their rights by a state act extending or contracting the boundary of the municipality. See Superior Water, Light & Power Co. v. Superior, 263 U.S. 125 (1923); Mobile v. Watson, 116 U.S. 289, 305 (1886). See also Schulz, *The Effect of the Contract Clause and the Fourteenth Amendment upon the Power of the States To Control Municipal Corporations*, 36 MICH. L. REV. 385, 401 (1938).

the Court has seemingly said that the prior cases have held only that the due process clause, fourteenth amendment, and the constitutional inhibition against impairment of contracts are no bar to legislative alteration of municipal boundaries, but that the fifteenth amendment is such a bar.[14] This reasoning is at least difficult to follow in view of the breadth of the language in the *Hunter* case, wherein the Court stated that with respect to municipal boundary change the state is supreme, unrestrained by *any provision* of the United States Constitution, and the citizens have no right by contract or otherwise to complain of this exercise of power.[15]

Possibly the intention of the Alabama legislature was actually inquired into by the Court in the instant case. It is arguable that the somewhat extreme result produced by the action of the Alabama legislature in reshaping the City of Tuskegee into a twenty-eight sided figure influenced the decision.[16] Conceivably, when the situation presented will produce less extreme results, the Court will return to the position that it has no jurisdiction to rule on the power of a state legislature to alter a municipal boundary. However, it appears that in truth the Supreme Court has decided to give the fifteenth amendment a preferred position in this area. That the right to vote in a particular municipal election should be afforded a more favorable position than due process of law is at least a questionable result.

Sam J. Friedman

SALES — ADMISSION OF PAROL EVIDENCE TO ANNUL AN AUTHENTIC ACT

Plaintiff instituted suit against his wife and son seeking, *inter alia*, to have immovable property which he had transferred to his wife during the existence of the community of acquets and gains between them declared to be property of the com-

14. In a concurring opinion in the instant case, Mr. Justice Whittaker felt that the decision should be based on a denial of equal protection of the fourteenth amendment, rather than the right to vote provision in the fifteenth amendment. He felt that the right to vote does not entitle a person to vote in a particular municipal election, but only the general right to vote.

15. Hunter v. Pittsburg, 207 U.S. 161, 179 (1907). See Laramie County v. Albany County, 92 U.S. 307, 314 (1875).

16. For a diagram of the City of Tuskegee after the redefinition see the instant case at page 131.