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not the insured is living when the change is recorded." The court distinguished the *Giuffria* case[28] on the basis of the policy language and held effective a change of beneficiary request received at the home office prior to the death of the insured but recorded a day thereafter. Since the recordation was a purely ministerial act and the wish of the insured had been clearly and formally expressed, the holding seems not in conflict with the established rule.

In an opinion which contains a scholarly weighing of the jurisprudence covering the application of R.S. 22:619B, the First Circuit held that a finding of an intent to deceive is necessary to support the insurer's defense based on an alleged material misrepresentation in an application for a policy of life insurance.[29]

The Supreme Court will resolve the issue that has divided some lower appellate courts concerning the nature of an action by an insured against his uninsured motorist insurer and the applicable prescriptive period. Writs of certiorari have been granted in *Booth v. Fireman's Fund Ins. Co.*[30] and *Thomas v. Employers Mut. Fire Ins. Co.*[31] Certiorari has likewise been granted in *Verneco, Inc. v. Fidelity & Cas. Co. of New York,*[32] which deals with the application of a fidelity bond provision excluding coverage under stated circumstances, and *Mullin v. Skains,*[33] which held that a release given by an insured to his uninsured motorist insurer did not prejudice the joint tortfeasors.

PUBLIC LAW

STATE AND LOCAL GOVERNMENT

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The occurrence of elections during the symposium period resulted in a number of noteworthy decisions clarifying the election laws. *Lasseigne v. Martin*[1] presented the First Circuit with

28. Giuffria v. Metropolitan Life Ins. Co., 188 La. 837, 178 So. 368 (1937).

29. Knight v. Jefferson Standard Life Ins. Co., 205 So.2d 485 (La. App. 1st Cir. 1967). For earlier discussions of the problem see *The Work of the Louisiana Supreme Court for the 1956-1957 Term—Insurance*, 18 LA. L. REV. 73 (1957). *The Work of the Louisiana Appellate Circuits for the 1963-1964 Term—Insurance*, 25 LA. L. REV. 386 (1965).

30. 207 So.2d 925 (La. App. 2d Cir. 1968).

31. 208 So.2d 374 (La. App. 1st Cir. 1968).

32. 207 So.2d 828 (La. App. 3d Cir. 1968).

33. 205 So.2d 207 (La. App. 2d Cir. 1967).

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1. 202 So.2d 250 (La. App. 1st Cir. 1967).

problems relating to the state's primary election laws.[2] At issue were procedural and substantive issues flowing from the action of the Democratic State Committee in adding to the applicable statutorily imposed qualifying fees,[3] a fee which it believed justified by the implications of Section 18:314(3) of the Revised Statutes which imposes upon candidates the burden of bearing such primary election cost as are not borne by the state or local governments. The court rejected the contention of the committee as frustrative of the interest of the election law, and thereupon subjected the committee[4] to mandamus in order to render a decree which would grant the plaintiff relief. The use of the mandatory injunction was predicated on the committee's unlawful and arbitrary refusal to perform an act which it had the sole power to perform. In so acting, the court placed in question prior jurisprudence in the so-called political question area.[5] In two other election cases[6] the Fourth Circuit took a liberal view of the residency requirement, and of the evidence disputing whether it had been satisfied in rejecting challenges to the state's first modern day Negro state legislator and to a congressional candidate. Under both rulings, a dual residence circumstance was approved as sufficient residence. A fourth election decision[7] pointed out the hazards of using the mails, even registered mails, to satisfy the statutory requirements of filing for candidacy. Still another opinion, *Angelle v. Angelle*,[8] is noteworthy for its extended responses to a number of challenges to ballots cast in the primary election, primarily concerning the markings placed on such ballots and the treatment of them during the period of tabulation. The outcome of that decision led to a runoff, but, in *Raborn v. Secretary of State*,[9] the court permitted the withdrawal of a candidate who had reached the runoff to virtually elect the candidate with the highest number of votes remaining in the race. The result thus gives withdrawal the same effect given to death

2. LA. R.S. 18:381 (1950).

3. The qualifying fees are $100 under LA. R.S. 18:310(A) and $110 under *id.* 18:311(E).

4. As well as the Secretary of State.

5. State v. Democratic State Central Comm'n, 229 La. 556, 86 So.2d 192 (1956); Reid v. Brunot, 153 La. 490, 96 So. 43 (1923); Caswell v. Hoft, 119 So.2d 864 (La. App. Orl. Cir. 1960).

6. Daley v. Morial, 205 So.2d 213 (La. App. 4th Cir. 1967); Stavis v. Engler, 202 So.2d 672 (La. App. 4th Cir. 1967).

7. Jordan v. 26th Senatorial Dist. Democratic Exec. Comm'n, 202 So.2d 681 (La. App. 4th Cir. 1967).

8. 204 So. 2d 581 (La. App. 3d Cir. 1967).

9. 204 So. 2d 630 (La. App. 1st Cir. 1967).

of a remaining candidate.[10] Moreover, the simple promulgation of primary election results was considered sufficient to constitute a "selection" as nominees, of the two candidates receiving the highest number of votes for the two positions open in the election.[11]

Beyond these election cases, a virtual potpourri of legal issues reached appellate conclusion during this symposium period. A large number of decisions further developed the jurisprudence of civil service. Four cases dealt with the standards for dismissal of employees. Approved grounds included: theft from place of employment;[12] negotiation with a prisoner by a prison employee;[13] and activity disrupting the capacity or willingness of fellow employees to perform, despite an "excellent" rating by the involved employee.[14] The other dismissal decision held moot a suit contesting a substandard service rating where dismissal for identical grounds later became finalized.[15] A final noteworthy decision in the civil service area concerned the enforcement of the commission's duty to notify any employee of his suspension prior to or on the date of suspension.[16] Where the duty was not observed, the court treated the suspension inoperative and awarded the employee back pay.

Electric cooperatives were held outside the jurisdiction of the Public Service Commission during the period of the symposium.[17] And where an electric company had an obligation to provide service to an area, the city council rather than the courts was held to be the proper forum in which to determine the issues relating to allocating the costs of construction.[18]

State licensing statutes[19] preclude contractors from engaging in that business without having previously qualified as a

10. Vining v. Democratic Exec. Comm'n, 204 So. 2d 801 (La. App. 2d Cir. 1967).
11. Cloud v. Democratic Exec. Comm'n, 206 So. 2d 160 (La. App. 3d Cir. 1968).
12. Johnson v. State Parks & Recreation Comm'n, 198 So.2d 180 (La. App. 1st Cir. 1967).
13. Speegle v. State Dept. of Institutions, 198 So. 2d 154 (La. App. 1st Cir. 1967).
14. Parrino v. LSU School of Medicine, 207 So. 2d 800 (La. App. 1st Cir. 1968).
15. Danna v. Comm'r of Ins., 207 So. 2d 377 (La. App. 1st Cir. 1968).
16. Louviere v. Ponchartrain Levee Dist., 199 So. 2d 392 (La. App. 1st Cir. 1967).
17. Central La. Elec. Co. v. Louisiana Pub. Serv. Comm'n, 251 La. 532, 205 So. 2d 389 (1967).
18. Aurora Properties, Inc. v. Louisiana Power & Light Co., 251 La. 880, 207 So. 2d 356 (1968).
19. LA. R.S. 37:2151—2163 (1950).

contractor under its provisions.[20] A contractor is defined, *inter alia,* as one who "undertakes, attempts, or submits a bid to construct" a building valued in excess of $30,000.[21] In *Quality Contractors, Inc. v. State Licensing Board for Contractors,*[22] the court equated negotiations of a contract with bidding under those statutes thereby subjecting to penal sanctions a company which entered into such negotiations and contracts prior to licensing.

A goodly number of decisions during this period dealt with the operations of local governments. In *Vinson v. Plaquemines Parish Comm'n Council,*[23] the court approved the council's contribution to the support of the local school board. In doing so, however, the court did point out that such contributions could only extend to capital costs as distinguished from operating costs,[24] and took pains to point out another distinction—that between contributing resources to and exercising the powers of the school board.

Tracing the pertinent provisions of the Revised Statutes[25] and of the Code of Civil Procedure,[26] the Louisiana Supreme Court determined that where there are mayor's courts, such courts are generally limited to the enforcement powers of fines and forfeitures and thus cannot issue injunctions.[27]

The Third Circuit took a hard line on the formalities in annexation periods in *Garland v. Town of Ville Platte.*[28] Here the last day of the required ten-day waiting period prerequisite to adoption of the ordinance[29] fell on Sunday. The city fathers proceeded to act on the ordinance the next day, Monday. Despite a failure on the part of the complainants to show injury or prejudice, the court held the annexing ordinance illegal applying the rule that in cases where Sunday is the last day in a period in excess of seven days, an extra day ought to be added in order that citizens have the time in which to act. The case seems a questionable concession to the human trait of procrastination.

20. LA. R.S. 37:2160 (1950).
21. LA. R.S. 37:2157 (1950).
22. 206 So.2d 738 (La. App. 1st Cir. 1968).
23. 199 So.2d 1 (La. App. 4th Cir. 1967).
24. LA. R.S. 17:100 (1950).
25. LA. R.S. 33:441 (1950).
26. LA. CODE CIV. P. art. 4837.
27. City of Harahan v. Olson, 250 La. 999, 200 So.2d 874 (1967). The same rule apparently applies to city courts and to justice of the peace courts.
28. 198 So. 2d 451 (La. App. 3d Cir. 1967).
29. La. R.S. 33:172 (1950).

A number of the local government decisions concerned employee relations. One of these decisions concerned an oral agreement between the City of New Orleans and its firemen.[30] Having assured itself of the existence and terms of the agreement, the court enforced it against the city's urgings. At issue were understandings as to hours and wages, which the court deemed effective despite the failure of the Civil Service Commission to make recommendations regarding hours or the city's Director of Finance to approve the financial obligations. Estoppel of the city was the central rationale in these matters, colored substantially by judicial indications that the city was in bad faith in seeking to violate its agreement or to avoid it by a specious declaration that a state of emergency existed.[31] In all of these respects, the decision would seem to greatly strengthen the positions of those pressing public employee organization. In *Penny v. Bowden*,[32] the Third Circuit was called upon to consider the procedural and substantive rights of policemen relating to their pension fund. The court first sustained the standing of the plaintiffs, all retired policemen, to bring the suit and in so doing reversed the lower court. It went on to clarify the responsibilities of the city under the pension fund statutes, characterizing it as "a positive duty . . . to [annually] appropriate . . . the difference between the benefits paid out"[33] and the annual income from statutory sources. In each, said the court, the duty was greater than the city's general duties of a discretionary nature and could be required by mandamus to allocate such resources before exercising its discretionary power. Having thus estalished its support for the principles urged upon it by the plaintiffs, however, the court deprived them of nearly all the relief sought in the instant case on the grounds of laches. The failure of the plaintiffs to protest in a "reasonably prompt" period against the diversion of funds to other public programs precluded a decree compelling payment of the deficits prior to 1965, the year preceding the initiation of the suit. A later decision in the Fourth Circuit[34] relied upon *Penny*, to the extent that it extended to a pension fund trustee board standing and capacity to

30. New Orleans Fire Fighters Ass'n. v. City of New Orleans, 204 So. 2d 690 (La. App. 4th Cir. 1968).

31. Based on a threatened employee boycott which the court saw as merely "an aggravation of a chronic condition." *Id.* at 695.

32. 199 So. 2d 345 (La. App. 3d Cir. 1967).

33. *Id.* at 350.

34. Board of Trustees v. City of New Orleans, 207 So. 2d 166 (La. App. 4th Cir. 1968).

sue in order to protect the beneficiaries of the fund, and authorized mandamus as a proper remedy.

A number of principles related to zoning were announced in *Dufau v. Parish of Jefferson.*[35] Chief among them was the discounting of any rule which required a disgruntled landowner to petition the Parish Council to rescind a zoning reclassification where to do so would appear a vain and useless act, as where the parties had previously participated unsuccessfully in the public hearings before the council which led to the reclassification. In enumerative fashion the court listed "jurisprudential guidelines for zoning and zoning reclassification."

> "1. A homeowner has the right to rely on the rule of law that a classification made by ordinance will not be changed unless the change is required for the public good.
>
> "2. The power to amend is not arbitrary. It cannot be exercised merely because certain individuals want it done or think it ought to be done.
>
> "3. Before a zoning board rezones property, there should be proof either that there was some mistake in the original zoning or that the character of the neighborhood has changed to such an extent that reclassification ought to be made.
>
> "4. The burden of proof of original mistake or the need for a substantial change is upon the proponents of the change."[36]

In another zoning decision,[37] a tennis court operated for the benefit of an adjacent apartment complex was held a "commercial" use, thus precluding its operation since the ordinance only permitted "private" use of such courts in the single-family residential area of its location. A third case[38] dealt with the quality of parking area dedication requisite to satisfaction of a zoning requirement of a given ratio of parking spaces per apartment unit, the court here rejected a communication stating that there would be compliance as a self-serving letter far short of the requisite encumbrance.

Finally, there were several decisions dealing with tort liability. In *Snell v. Stein*[39] the Fourth Circuit relying upon the de-

35. 200 So. 2d 335 (La. App. 4th Cir. 1967).
36. *Id.* at 337-38.
37. Shady Grove, Inc. v. Parish of Jefferson, 203 So. 2d 869 (La. App. 4th Cir. 1967).
38. Abbott v. Caplan, 209 So. 2d 176 (La. App. 4th Cir. 1968).
39. 201 So. 2d 876 (La. App. 4th Cir. 1967).

cision in *Hamilton v. City of Shreveport*,[40] dismissed a tort claim against the parish and its traffic engineer because it found no legislative waiver of immunity on the part of the parish as is necessary in order to trigger the provisions of Article 3, Section 35, of the Louisiana Constitution. In *Warfield v. Fink & McDaniel Plumbing & Heating*,[41] however, the Fourth Circuit found such a waiver in the statutes authorizing the New Orleans sewer and water board to exercise the expropriating power.[42] Relying upon an early Supreme Court opinion,[43] the court first equated the power to expropriate with the power to sue or be sued, and then equated that with a waiver of the board's sovereign immunity. A similar result was reached, in line with the *Hamilton*[44] decision, in *Pierce v. Fidelity & Cas. Co.*,[45] where a pre-existing charter provision authorizing the parish of East Baton Rouge to sue or be sued was retroactively read and applied as a waiver of immunity in tort under Article 3, Section 35, of the Louisiana Constitution. Immunity was not found waived, however, by passage of two similar but not identical resolutions of the 1964 House and 1966 Senate of the Louisiana legislature, since the history of those resolutions was non-supportive of any "concurrent" characterizations.

STATE AND LOCAL TAXATION

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Interestingly, there was little jurisprudence during this symposium period concerned with ad valorem taxes or tax sales. Only one such opinion seems noteworthy. In *Jackson v. Hanna*,[1] the Second Circuit made an effort to clarify judicial characterization of the periods for redemption and annulment under Article 10, section 11 of the Louisiana Constitution. Put in the light of the developed jurisprudence, the opinion would characterize the three year period for redemption as a peremptive right and the six month or five year period for annulment as a prescriptive one albeit limitedly so, inasmuch as corporeal possession alone stops the running of time. While the opinion does not alter

40. 247 La. 784, 174 So. 2d 529 (1965).
41. 203 So.2d 827 (La. App. 4th Cir. 1967).
42. LA. R.S. 33:4078 (1950), as amended La. Acts 1952, No. 262, § 1; La. Acts 1956, No. 426, § 1.
43. State v. Kohnke, 109 La. 838, 33 So. 793 (1903).
44. Hamilton v. City of Shreveport, 247 La. 784, 174 So. 2d 529 (1965).
45. 205 So. 2d 831 (La. App. 1st Cir. 1967).

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1. 206 So. 2d 779 (La. App. 2d Cir. 1968).