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though severance payments may be so construed if the employer is legally obligated to make them.[12] However, in the latter case, severance payments do not disqualify a claimant for benefits unless they are paid "with respect to" a particular week, thus meeting the dual test for unemployment.

The employer who believes that a labor contract which provides for a guaranteed annual wage, payable in spite of a layoff, will be his only "compensation" to employees will find that he is mistaken. Unemployment compensation benefits may also be payable, and these are debited to the employer's experience rating and can increase his contribution rate or, at least inhibit its reduction. Although this seems to be a double payment, " 'double payment could only exist where the payments are for the same thing, same period of time, same consideration, same scope and nature.' "[13] The employer, along with the consumer to whom these added costs are passed, subsidizes this protection against one of the risks common to all workers.

STATE AND LOCAL GOVERNMENT

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ZONING

In *Moncla v. City of Lafayette*,[1] a property owner successfully attacked the validity of a zoning ordinance. Although within the appeal time the city might have adopted a regular ordinance to replace the one invalidated, its response instead was to enact a new temporary emergency ordinance and thereafter to adopt a permanent one pursuant to regular delays provided in the city charter. The property owner made an application for a building permit varying from the emergency zoning ordinance and upon denial, obtained a court order invalidating the ordinance on the ground that no emergency existed; a court of appeal affirmed. A dissenting judge urged the need to protect citizens against zoning violations during the adoption of a permanent ordinance

allowances," in the latter; but both were a form of remuneration for services rendered prior to separation from employment. The courts look at the nature of the payment and when it is made.

12. Swift & Co. v. Brown, 132 So.2d 508 (La. App. 3d Cir. 1961). These were dismissal payments which the employing unit *was* legally required to make. *See* LA. R.S. 23:1472(20)(C)(III) (1970).

13. Swift & Co. v. Brown, 132 So.2d 508, 513 (La. App. 3d Cir. 1961).

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1. 241 So.2d 307 (La. App. 3d Cir. 1970).

as justifying emergency action, noting that without such an emergency ordinance the property owner might now compel the city to issue a building permit for his non-conforming project on the theory that there was no valid zoning ordinance at the time of his application. The validity of a regular ordinance made retroactive as to applications pending at the time of its enactment was not before the court and was not commented upon.

In *Summerell v. Phillips*,[2] a property owner attacked successfully by way of mandamus a council resolution suspending issuance of trailer park permits pending further study. After the writ issued, the council adopted an ordinance restricting trailer park permits to designated zoning districts. The mandamused city official then moved for a new trial on the basis of the newly enacted ordinance. Since the validity of the ordinance had not been challenged, the district court dismissed plaintiff's suit on this ground. On appeal, however, the ordinance was successfully challenged[3] and our supreme court granted certiorari. That court held that it was error to entertain the constitutional attack at the appellate level as an original matter and remanded the case to the trial court for the property owner to plead the new issue. Dissenters would have decided the issue of constitutionality, since it had already been decided by a court of appeal. They also protested that to allow a plea of unconstitutionality to a statute enacted after a judgment was in effect to sanction an improper replicatory plea.[4] However, the court approved encyclopedic jurisprudence that plaintiff in a mandamus proceeding may attack the constitutionality of a statute or ordinance excusing the respondent from performance."[5] It found no statutory impediment to the adoption of this "majority" rule in Louisiana.

A New Orleans zoning ordinance authorized a property owner to request variance if zoning limitations imposed upon him unusual and practical difficulties or particular hardship; it required that such variances be in harmony with general zoning purposes and serve not merely the convenience of the property owner, but also alleviate a demonstrated and unusual hardship or difficulty. In *Garden District Association v. City of New Orleans*,[6] a court of appeal extended the procedure to a presently

2. 258 La. 587, 247 So.2d 542 (1971).
3. Summerell v. Phillips, 238 So.2d 786 (La. App. 1st Cir. 1970).
4. LA. CODE CIV. P. art. 852.
5. 258 La. 587, 595, 247 So.2d 542, 545 (1971), and authorities cited therein.
6. 238 So.2d 267 (La. App. 4th Cir. 1970).

non-conforming but legal use where the variance would improve, but not extend, present use.

A Jefferson Parish zoning ordinance vested authority to issue building permits in a safety director; permits were revocable only where work in violation of the code had been stopped, notice posted, and the owner or agent notified in writing of violation of the code. In *Dunn v. Parish of Jefferson*,[7] a building permit had been issued and installations made. Thereafter the safety director revoked the permit without posting the property or notifying the owner of the violation, and the latter attacked the revocation's validity seeking a writ of prohibition. The parish defended on the ground that the property owner had failed to exhaust the administrative remedy of an appeal to a zoning appeals board. A court of appeal, however, found no authority for such appeal except where the director had acted within his authority; exhaustion of the administrative remedy was deemed unnecessary where the agency had committed clear error of law. Where, as here, the property owner had changed his position on the basis of agency action, principles of estoppel might have seemed a preferable answer to the parish defense rather than entirely outlawing administrative review of unauthorized action, as the court seems to have done.

An interesting reversal of roles occurred in *Chism v. City of Baton Rouge*;[8] instead of the city seeking to impose regulation upon a taxpayer in the interest of public health, the taxpayer sought to enjoin the city, on the basis of health considerations, from reducing its garbage pickups. Since any hazard to health could be remedied by taxpayer's providing appropriate containers, and the only injury taxpayer could show was the cost of such additional containers or the expense of employing private haulers, there was no irreparable injury and therefore no occasion for the issuance of an injunction.

In a per curiam opinion in *Plessala v. Landry*,[9] a court of appeal refused to entertain an attack on the constitutionality of the provision for trial of contested election cases. The legislation directs the Secretary of State to furnish absentee ballots not less than twenty days before an election and provides that in the event of an election contest, where a district court judg-

7. 242 So.2d 845 (La. App. 4th Cir. 1971).
8. 244 So.2d 48 (La. App. 1st Cir. 1971).
9. 244 So.2d 298 (La. App. 1st Cir. 1970).

ment has been rendered and appeal taken, the Secretary is to print the name of the successful district court litigant upon the ballot, thus mooting the appeal, if no decision on appeal has been had prior to the voting period. Noting that parties would be deprived of any legislatively authorized procedure to contest an election if invalidated, and further noting that election matters are beyond control of the judiciary in the absence of special authority, the court dismissed the appeal. It thus treated as a political question the legislative decision to make a district court judgment final where necessary to provide absentee ballots an appropriate period before an election.

STATE AND LOCAL TAXATION

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ASSESSMENTS

Municipalities are authorized by the legislature to "levy and collect local or special assessments on the real property abutting the improvements . . . sufficient in amount to defray the total cost of the works. . . ."[1] In *Williams v. City of Shreveport*,[2] the municipality had assessed the cost of improvements to a street entirely upon the abutting privately owned property, although city property as well as privately owned property abutted thereon. This was deemed in accordance with its authority to levy an assessment sufficient to cover the *total* cost of the improvement. A court of appeal rejected the underlying argument that public property, because exempt from taxation, was also exempt from assessment; as to abutting public property, the city must pay an assessment thereon as an agent of the entire body of citizens, who are assumed to that extent to benefit. The fact that the public property consisted of esplanades along the middle of the boulevard was not deemed to change the result, since they were not part of the street and as such occupied the position of ordinary abutting property.

In *Bussie v. Long*,[3] our supreme court has now approved a "public" action[4] for a writ of mandamus directing the tax com-

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1. LA. R.S. 33:3301 (1950).
2. 241 So.2d 598 (La. App. 2d Cir. 1970).
3. 257 La. 623, 243 So.2d (1971).
4. *See* L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 483-86 (1965) for analysis and defense of this development.