Public Law: Local Government Law

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arising under local or special provisions of the State Constitution. In Shannon v. Morgan City Harbor & Terminal District\textsuperscript{23} it was held that a constitutional amendment specifically providing for the creation of the harbor district and authorizing the issuance of bonds without a vote of the property owners in the district superseded all other general provisions of the Constitution relative to the issuance of bonds. In Short & Murrell v. Department of Highways\textsuperscript{24} it was held that the power of the Board of Highways “to establish, construct, extend, improve, maintain and regulate the use of the State highways and bridges,”\textsuperscript{25} authorized it to direct the Highway Department to enter into contracts looking toward the construction of a proposed office building to house the departmental activities. In Ewell v. Board of Supervisors of Louisiana State University,\textsuperscript{26} the court held that to the extent that sums collected for licenses, fees, and penalties under the provisions of fertilizer,\textsuperscript{27} feed,\textsuperscript{28} and pesticide\textsuperscript{29} statutes exceeded the cost of administering these measures, the statutes were to be regarded as revenue levies. As a consequence, it was proper for the University, to whom the excess revenue was dedicated, to bond the revenue and use the sums thus acquired for the purpose of constructing a building to house the activities of the state chemist, charged with the duty of enforcing these measures.

LOCAL GOVERNMENT LAW

Henry G. McMahon*

OFFICERS AND OTHER PERSONNEL

The officers of the Town of Mansura were elected for a two-year term on June 12, 1956. At the same time the electorate of the town voted to have their municipal affairs regulated in the future by the Lawrason Act.\textsuperscript{1} Under the pertinent provision of this statute, officers of a municipality in office when it elects to come under the provisions of the Lawrason Act retain their

\textsuperscript{23} 234 La. 1035, 102 So.2d 446 (1958).
\textsuperscript{24} 233 La. 735, 98 So.2d 170 (1957).
\textsuperscript{25} La. Const. art. VI, § 19.1.
\textsuperscript{26} 234 La. 419, 100 So.2d 221 (1958).
\textsuperscript{27} La. R.S. 3:1311 et seq. (1950).
\textsuperscript{28} Id. 3:1891 et seq.
\textsuperscript{29} Id. 3:1901 et seq.

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\textsuperscript{1} La. R.S. 33:321 et seq. (1950).
offices until the first general municipal elections held in accordance with the provisions of the statute.\textsuperscript{2} The next general municipal elections were held, under the Lawrason Act, in June of 1957, but no municipal election was called or held in Mansura. As a result the Attorney General ruled that these municipal offices were vacant, and the Governor appointed the then incumbents for another term. In State ex rel. Lemoine v. Municipal Democratic Executive Committee\textsuperscript{3} six electors of the municipality sought to mandamus the defendant committee to call a municipal election on June 12, 1958. The trial judge agreed with the relators' contention that the terms of the officers appointed by the Governor expired on July 1, 1958, and issued the mandamus. Under its supervisory jurisdiction, the Supreme Court reversed. The provisions of another section of the Lawrason Act,\textsuperscript{4} apparently not considered by the trial court, provided that municipal officers are elected for four-year terms. The terms of the municipal offices in question would not expire until July 1, 1961.

\textit{Slicho v. New Orleans}\textsuperscript{5} is a decision of far-reaching importance to the local government law of the state. The plaintiff therein, a detective on the police force of the defendant city, sought injunctive relief to prevent his discharge because of his refusal to answer questions, on the ground that he might incriminate himself, asked by the Intelligence Division of the Internal Revenue Service. The plaintiff also sought a declaratory judgment holding unconstitutional a section of the Constitution of Louisiana\textsuperscript{6} providing that such conduct was sufficient grounds for his discharge, pleading its violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States. The trial court rendered judgment for the plaintiff as prayed for. The Supreme Court reversed, holding that the issues were under the exclusive cognizance of the Civil Service Commission of the City of New Orleans, and that the courts were without jurisdiction to adjudicate the controversy.

In support of its position, the Supreme Court pointed out that any civil servant of the city aggrieved by an act of his ap-

\textsuperscript{2} LA. R.S. 33:383 (1950).
\textsuperscript{3} 234 La. 969, 102 So.2d 234 (1958).
\textsuperscript{4} LA. R.S. 33:383 (1950).
\textsuperscript{5} 235 La. 305, 103 So.2d 454 (1958). This case was consolidated for trial and argument on appeal with Vairin v. New Orleans, 235 La. 313, 103 So.2d 457 (1958).
\textsuperscript{6} LA. CONST. art. XIV, § 15.
pointing authority may take his complaint to the Civil Service Commission, which is given exclusive jurisdiction to hear it. The trial court had concluded that the pertinent section of the State Constitution granted to the Commission the exclusive right to hear "appeals"; and that since this was a suit for a declaratory judgment it did not constitute any appeal from disciplinary action taken by the appointing authority. The appellate court swept this contention aside with the following language:

"The word 'appeal' as used in the constitutional amendment is not intended to signify a review by a judicial body of the action taken by another judicial body; it is used in the sense that the commissions are established tribunals wherein all civil servants must file their complaints, the hearing before the appropriate commission being the first adversary proceeding of a judicial nature available to the complainant."7

The fourth case in this area of local government law involved only an issue of fact.9

In Klump v. Board of Trustees,10 the widow of a former captain in the New Orleans Fire Department, alleging that her husband died in the performance of his official duties, sued to recover a pension. Prior to trial of the case, the plaintiff died, and her heirs were substituted as parties plaintiff, and the demand was reduced to the amount which would have been due the original plaintiff prior to her death. The trial court dismissed the suit, and held: (1) the action had not abated on the death of the plaintiff, insofar as the pension which might have accrued prior to her death was concerned; and (2) the deceased died of natural causes.

The Supreme Court affirmed on the second point decided by the trial court, and refused to consider the issue of abatement of the action. After a study of the legislative history of the pertinent statute, through a careful analysis of its various amendments and source provisions, the court concluded that a widow was not entitled to a pension unless her husband died in the performance of his duties as a result of an accident. The deceased admittedly died of a heart attack, and since he sustained the

7. Ibid.
8. 103 So.2d at 457.
9. Mayerhafer v. Department of Police of the City of New Orleans, 104 So.2d 163: (La. 1958). There, the Supreme Court, with one Justice dissenting, reversed the action of the Civil Service Commission which upheld the discharge of the plaintiff police captain.
fatal attack after the performance of light and non-strenuous duties, the appellate court agreed with the court below that he died from natural causes, and not as a result of an accident. A prior decision invoked by the plaintiffs was differentiated on the ground that there the fireman had died as a result of a heart attack superinduced by strenuous and violent physical activities while fighting a fire.

FINANCE

The plaintiffs in *Bell v. Shreveport*\(^\text{11}\) sought a judgment annulling an ordinance imposing assessments on abutting property to cover a portion of the costs of street paving. In accordance with the authorizing statutory provisions, the city council gave public notice of its intention to pave a portion of one of its streets, the work to be done under competitive bidding, with two-thirds of the cost thereof to be assessed against the abutting property. Subsequently, the city council approved plans and specifications for the work prepared by the city engineer, and ordered that bids be received for the work to be done in accordance therewith. The lowest bid submitted was accepted, the work was completed, and by ordinance two-thirds of the total cost was assessed against the abutting property.

The six plaintiffs, owners of abutting property affected, asserted the nullity of the assessment ordinance on the ground that the paving contract was illegal. It was contended that the statute under which the work was done and the assessments levied required acceptance of a contract based on a “turnkey job,” while the council had accepted a contract based on a “unit price” bid. As a result, the plaintiffs asserted, the total cost of the work had exceeded the bid price by $14,369.

A judgment dismissing the suit was affirmed by the Supreme Court. Both trial and appellate courts held that the basis of competition between the bidders was not in the estimate of total costs submitted, but rather in the unit price bids offered. It was found that the items which made up the difference between the total cost and the estimated total bid price accepted consisted of minor and immaterial alterations in the work as it progressed, made necessary because of certain obstacles and conditions encountered which had not been foreseen.

\(^{11}\) 234 La. 607, 100 So.2d 883 (1958).