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Municipal Corporations

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The cases which have appeared before the Florida Supreme Court during the period under consideration clearly demonstrate the rapid growth and progress taking place throughout the state of Florida.

The number and purposes of validation proceedings appearing for judicial scrutiny reflect the necessity for extending present municipal services in order to meet the needs of a growing population, as well as to provide new services for a well-developed and crystallized permanent population. The injustices resulting from the application of certain zoning ordinances have come to light in many circumstances after the lands encompassed within the use districts, provided for by the zoning ordinance, have been put to the use contemplated under the ordinance. Cases dealing with zoning demonstrated the great lack of proper city planning in many municipalities throughout Florida and an occasional effort to justify arbitrary and unreasonable zoning by economic considerations.[1]

The tort liability of a municipality reveals continued acceptance of the distinction between governmental and proprietary functions as well as the vagueness of the distinction. In this regard, great injustices are committed, particularly when an innocent third party is denied recovery against a municipality for damages resulting from the brutality of its law enforcement officers.[2]

ZONING

Since a zoning ordinance constitutes a regulation of the property rights of a landowner, by limiting the use of his lands, it is justified as a valid exercise of the police power.[3] In this regard, it is universally agreed that a zoning ordinance must bear a substantial relation to the public health, safety, morals, or general welfare.[4] Thus, it has been held that a zoning ordinance permitting the establishment of a jewelry shop, beauty parlor and other similar shops, and prohibiting the establishment of a millinery shop, was unconstitutional in that the limitations imposed upon the use of property did not bear a substantial relation to the public health, safety, morals, or general welfare.[5] The mere fact that the limitations were imposed for economic considerations in an effort to afford greater stability to similar shops already in existence was insufficient justification.

As in the case of other legislative enactments, a zoning ordinance is presumptively valid, and the person assailing its validity has the burden of

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1. Miami Beach v. 8701 Collins Ave., 77 So.2d 428 (Fla. 1955).
2. Wilford v. Jacksonville Beach, 79 So.2d 516 (Fla. 1955).
3. Miami v. Romer, 73 So.2d 285 (Fla. 1954).
4. 58 AM. JUR. *Zoning* § 26, p. 956.
5. See note 1 *supra*.

alleging and proving that the enactment is discriminatory, unreasonable, confiscatory or otherwise unconstitutional.[6] Allegations attacking the validity of the ordinance which are mere conclusions of the pleader are insufficient. Thus, it has been declared by the Florida Supreme Court:

> One who assails such legislation must carry the burden of both *alleging* and *proving* that the municipal enactment is invalid . . . the burden of one who attacks such an ordinance has been called an extraordinary one. King v. Guerra, Tex. Civ. App., 1927, 1 S.W.2d 373. Allegations and such an attack which are conclusions of the pleader are not enough. To say that a zoning code is bad simply because it permits one type of business in a given district and prohibits another does not meet the burden of alleging ultimate facts.[7]

It has been declared on numerous occasions that the court will not undertake to substitute its judgment for that of the legislative body in determining the validity of zoning ordinances. Consequently, when an ordinance is fairly debatable its constitutional validity will be sustained.[8] The mere fact that property would be of greater value when put to a use not permitted under an ordinance does not justify the conclusion that the ordinance is unreasonable and confiscatory. Thus, the Supreme Court has declared:

> An ordinance may be said to be fairly debatable when for any reason it is open to debate or controversy on grounds that make sense or point to a logical deduction that in no way involved its constitutional validity. If such a deduction supports the city's contention that to remove the present zoning restrictions would destroy the entire zoning scheme and bring about the evils contended by the city, then the court should not substitute its judgment for that of the City Council. There is no showing here that, even as now zoned, the lands are not of great value. In fact, the only deduction from the record is that they are very valuable.[9]

Since one of the prime requisites of any legislative enactment is certainty, when a zoning ordinance is uncertain in its terms or undertakes to delegate legislative powers to an administrative officer, it will be denounced either upon the ground of uncertainty or upon the ground of unlawful delegation of legislative powers. In this respect, the case of *Phillips Petroleum Co. v. Anderson*[10] is interesting and worthy of note.

The Phillips Petroleum Company purchased land for the purpose of constructing a gasoline station. The property under consideration was situated in a business "A" zone which expressly permitted filling stations, but which provided:

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6. Miami Beach v. Silver, 67 So.2d 646 (Fla. 1953).
7. *Id.* at 647.
8. Miami Beach v. Lachman, 71 So.2d 148 (Fla. 1953).
9. *Id.* at 152.
10. 74 So.2d 544 (Fla. 1954).

> All of the above listed described and permitted uses in a business "A" district shall be permitted in such business "A" districts, provided that no operation shall be carried on which is injurious to the operating personnel of the business or to other properties, or to the occupants thereof by reason of the objectionable emission of cinders, dust, dirt, fumes, gas, odor, noise, refuse matter, smoke, vapor, vibration, or similar substances or conditions.[11]

On the basis of the above quoted provision, the building inspector, while acting consistently with the wishes of the city commission, denied the issuance of a building permit. In denouncing the ordinance as unconstitutional, the Supreme Court did so upon the basis that the ordinance failed to provide an adequate standard in order to govern the power of an administrative official and consequently constituted an unquestionable delegation of legislative power. In the light of the court's decision, it is difficult to ascertain the formulation of an ordinance which could effectively preclude the operation of a business on account of objectionable emission of noises or odors. However, in spite of this shortcoming and as the Supreme Court suggested, if operation of the business, although pursuant to the ordinance, becomes objectionable, some remedy may be available by resort to the courts on the basis of nuisance.

Dedication

In order to constitute a dedication of property the owner must offer the use of the property to the public, and there must be an acceptance on the part of the public. The offer can be either expressed or implied, oral or written, so long as it adequately shows an intent on the part of the owner to offer the property for public use.[12] In these respects, a dedication is peculiar in that it operates as a conveyance of real property or an interest therein without the necessity of a writing—an exception to the Statute of Frauds.

Dedications are generally classified as either statutory or common law. A statutory dedication is most frequently created by the filing and recording of a plat designating the areas for public use. A common law dedication generally rests upon an estoppel in pais and is frequently found existent, although a statutory dedication may be insufficient.[13] The most serious problems relative to dedication are concerned with the adequacy of an offer and acceptance. Thus, it has been held that where a plat of a subdivision is filed of record, pursuant to law, and there is an area designated between a public street and a waterway, the recordation of the plat alone is insufficient to establish a dedication of that portion of the property.[14]

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11. *Id.* at 545.
12. Roe v. Hendrick, 146 Fla., 119, 200 So. 394 (1941); Miami Beach v. Miami Beach Improvement Co., 153 Fla. 107, 14 So.2d 172 (1943).
13. 11 McQuillin on Municipal Corporations § 33.03, pp. 586-87 (3d ed. 1950).
14. Earle v. McCarthy, 70 So.2d 314 (Fla. 1954).

This result becomes more evident where the area between the public street and the waterway is divided into lots.

Declarations on the part of the city officials, although made during different city administrations, that certain property is to be used for the construction of a public park do not serve to establish a dedication where no clear and unequivocal offer has been made by the owner of the property. Thus, it has been held, with reference to land lying between a public drive and a river, that there is no dedication merely by filing a plat of the subdivision and by declaration of city officials that the land would be used for the construction of a riverfront park, although an ordinance was also adopted prohibiting the erection of buildings upon the property.[15] With reference to the ordinance, it was held that it constituted a violation of the due process clause of the constitution since the city had no interest in the land whatsoever.

Once a dedication has been completed by offer and acceptance, it is agreed that the property could subsequently be abandoned by the public. However, in order to constitute an abandonment, the intent must be clearly manifested. The mere fact that the dedicated property is not placed to use is insufficient to create an abandonment, particularly when there is no necessity for effectuating any improvements upon the property.[16]

Regulation of Business

No generalizations can be made with reference to the validity and reasonableness of an ordinance regulating the time during which a business can be operated. In each instance the validity is dependent upon the nature of the business involved as well as the nature of the area in which the regulation is sought to be imposed. The justification for an ordinance regulating the time during which businesses can be conducted is derived from the police power, consequently, the regulation must bear a substantial relationship to the public health, morals, welfare, or safety.[17]

It has been consistently held that the sale of alcoholic beverages is a proper subject of regulation; however, the regulation must be reasonable and non-discriminatory. Thus, when both a municipality as well as the state undertake to regulate the hours for the sale of alcoholic beverages, both regulations will be given full force and effect, except in the case of inconsistencies, in which event the state regulation will prevail. This principle found application in the case of *Boven v. St. Petersburg*.[18] An action for a declaratory judgment was brought for the purpose of determining the validity of an ordinance, enacted by the city, regulating the opening hours for business establishments dealing in the sale of alcoholic

15. Beck v. Littlefield, 68 So.2d 889 (Fla. 1953).
16. Indian Rocks Beach South Shore v. Ewell, 59 So.2d 647 (Fla. 1952).
17. 58 Am. Jur. *Zoning* § 68, p. 984-985.
18. 73 So.2d 232 (Fla. 1954).

beverages. The ordinance provided that such business establishments were authorized to open at 6:00 A.M. After adoption of the ordinance, the legislature enacted a statute[19] which provided that establishments selling alcoholic beverages were permitted to open at 8:00 A.M.; however, a duly organized municipal government could further restrict or limit the sale of alcoholic beverages in which event the more stringent regulation would be applicable. In declaring the ordinance invalid, the Supreme Court did so upon the ground of inconsistency declaring:

> It is only in case of conflict between the public general law and an ordinance that the general law prevails over the ordinance.[20]

The same result is applicable in the event a municipal ordinance is in conflict with federal regulations. This was aptly demonstrated in the case of *Tatum v. Hallandale*.[21] The appellant was engaged in the business of flying airplanes towing advertising banners over the Gulfstream Race Track, lying within the city. The appellant was arrested for flying an airplane towing an advertising banner without a permit, as required by a city ordinance. In attempting to have the ordinance declared invalid, the appellant contended:

> 1. That the regulations of the federal aeronautics board were in conflict with the ordinance and, therefore, were supreme;
> 2. That the flying of an airplane towing an advertising banner was not a business subject to regulation by a municipality;
> 3. That the ordinance was inconsistent with a statute passed by the Florida Legislature.[22]

At that time the federal aeronautics board imposed various requirements which included a special tow attachment and release mechanism, a certificate of waiver, and a federal license to fly the airplane. In addition, the flight was required to be in compliance with its rules and regulations. The statute[23] passed by the Florida Legislature provided that it shall be unlawful for any municipality to collect any license or registration fee on any aircraft or glider in the state. The ordinance under which the appellant was arrested required a permit or licensing of the operator of an airplane but did not impose any tax or license upon the aircraft as such. In sustaining the ordinance, the Supreme Court concluded that no inconsistency existed between the ordinance and the state statute or federal regulations and that the activities of the appellant constituted a proper subject for municipal regulation under its police power. In arriving at its conclusion, the Supreme Court declared:

> We hold that the owner or operator of an aircraft operating over a municipality of this state for the purpose of exhibiting advertising

19. Laws of Fla. c. 19419 (1953).
20. 73 So.2d 232, 234 (Fla. 1954).
21. 71 So.2d 495 (Fla. 1954).
22. FLA. STAT. § 330.17 (1953).
23. *Ibid.*

> by signs, sound or otherwise, to the populace of said municipality, is, to the extent of such operation, doing business within said city and is subject to reasonable regulation by such municipality so long as said regulation does not conflict with either a state or federal regulation concerning the operation of aircraft, and relates to matters which are properly subject to the police power of said municipality.[24]

It is generally agreed that there is no vested or inherent right to operate taxicabs upon the public streets. The business of conducting taxicabs for hire upon public streets is a privilege which can be withheld, restricted, or, when once issued, withdrawn in the discretion of the municipality. Thus, it has been declared:

> The right to use the streets and highways of a municipality for the conduct of a strictly private business is not inherent; it can be acquired by permission or license from the city, thus power to withhold or grant it in the manner and to the extent it may see fit is an essential prerogative of municipal government.[25]

Since a municipality has the right to grant or deny the privilege of operating a taxicab business upon its streets, it necessarily has the implied power to impose terms and conditions upon the issuance of permits. Thus, it is agreed that conditions, including good character and fitness of licensees, can be imposed upon the granting and withholding of licenses.[26] These principles were applied in the interesting case of *Pratt v. Hollywood*.[27] The appellant made application to the city for the transfer of permits for the operation of the taxicab business upon its streets. The police department investigated the circumstances surrounding the transfer and determined that a person guilty of various crimes would be associated with the appellant in the conduct of the business. The city then notified the appellant that any association of the person with the taxi business would be contrary to the welfare of the city and would preclude the issuance of the permits. The appellant thereafter assured the city in writing that the person would be in no way associated with the conduct of the business. Upon receipt of these assurances the city issued the transfer permits and later threatened to revoke them for the appellant's failure to abide by the assurances given to the city. In concluding that the city had the right to suspend the licenses for the violation of the assurances given by the appellant the Supreme Court held that the city had the authority to suspend the licenses for any good cause affecting the public health, safety, morals and welfare of those resorting to the taxicab business for service.

Torts

At the common law it was not essential for a person injured as a result of the tortious conduct of a municipality to advise the municipal

24. 71 So.2d 495, 497 (Fla. 1954).
25. Jarrell v. Orlando Transit Co., 123 Fla. 776, 167 So. 664 (1936).
26. McWhorter v. Settle, 202 Ga. 334, 43 S.E.2d 247 (1947).
27. 78 So.2d 697 (Fla. 1955).

authority of his injury or to seek compensation prior to the institution of an action.[28] This common law holding has been modified by charter provisions which ordinarily require a notice of claim within a specified time from the date of injury or the date of the accrual of the cause of action. Such limitations have uniformly been sustained as constitutional and do not constitute an unwarranted discrimination between municipal and private corporations. The provision is generally justified upon a strong public policy which attempts to dispense with needless litigation. The notice, as a condition precedent to suit, affords municipal authorities the opportunity to investigate a tort claim against the city and to settle the claim without litigation if the circumstances justify. This requirement of notice, as a condition precedent to the institution of a lawsuit against the city, has no application in causes of action arising from contract. Thus, the Supreme Court said:

> A passenger who was allegedly injured because of the negligent operation of the city's bus, had right to ground her action for injury against city on breach of an implied contract to deliver her safely, and therefore requirement of notice to city before bringing action was immaterial.[29]

And again in *Holbrook v. Sarasota*, the court declared:

> Where patient in city hospital was injured by being permitted to fall from bed, patient could properly bring action for breach of contract, express or implied, to furnish nursing care and attention, and was not required to bring action sounding in tort, and hence provision in city charter that no suit shall be maintained against city arising out of any tortious action or action sounding in tort unless written notice of such damage be given within 30 days after injury, was not applicable to bar the action for failure to give such notice.[30]

Although notice as a condition precedent is not necessary in actions arising from contract, the general statute of limitations is applicable. In this respect, the general rule is to the effect that where an injury, although slight, is sustained by virtue of wrongful conduct on the part of another, the statute of limitations attaches at once. The fact that actual or substantial damages do not occur until after the injury has been sustained does not serve to postpone the running of the statute. However, a limitation upon the application of the statute of limitations was imposed by the Florida Supreme Court in *Miami v. Brooks*.[31] The plaintiff, while a patient at a hospital received injuries to her heel by x-ray therapy treatment. The injuries were sustained in April of 1944; however, the first manifestation appeared in the middle of May of 1949. In holding that her claim was not barred by the statute of limitations, the Florida Supreme

28. 38 AM. JUR. *Municipal Corporations* § 673, p. 381.
29. Doyle v. Coral Gables, 159 Fla. 802, 33 So.2d 41 (Fla. 1947).
30. 58 So.2d 862 (Fla. 1952).
31. 70 So.2d 306 (Fla. 1954).

Court held to the effect that the statute of limitations attaches only when there has been notice of an invasion of a legal right of the plaintiff. In the instant case, so the court reasoned, at the time the x-ray treatment was administered, there was nothing to indicate any injury or to place the plaintiff on notice of any invasion of her legal right. In arriving at its conclusion, the Supreme Court emphasized the distinction existing between notice of the negligent action and notice of its consequences. If a plaintiff received no notice of the negligent action, the statute of limitations does not commence running. However, if the plaintiff has notice of the cause of action, the statute commences running although there is no indication relative to its consequences.

In practical effect, it is difficult to ascertain the justification for the distinction. This is particularly true since a person sustaining an injury due to the ordinary negligence of another has no cause of action unless damages are alleged and proved. It is, therefore, evident that under certain circumstances, although a party plaintiff is cognizant of an offensive contact resulting from the negligence of another, actual damages may not be sustained until after the statute of limitations has expired. Since this result is inescapable it is difficult to see how justice demands or requires any distinction between notice of the negligent act and notice of its consequences.

In determining the tort liability of a city for improper maintenance of its streets the use intended for the particular parts of the street where the cause of action arose is a factor which will be considered. Thus, where a pedestrian was injured as the result of a fall while crossing an unlighted street at night, at a point not intended for use by pedestrian traffic, the fact that the sandy shoulder was three or four inches lower than the pavement does not constitute a basis for imposing liability upon the city.[32] In arriving at its conclusions the Supreme Court declared:

> While it is true that a different responsibility is placed upon a municipality to keep streets, that is, the space between the property lines, reasonably safe for use by the public, we think that in determining the propriety of the discharge of that duty the court must consider the use intended for particular parts of those streets, thus, a municipality should only be required to keep a specified portion of the street in a condition reasonably safe for the kind of traffic intended for it.[33]

The distinction between corporate and governmental capacity for purposes of determining tort liability of a municipality continues to exist in a cloud of uncertainty. The Supreme Court has previously held that a municipal corporation is not liable for tortious acts of its police officers committed as an incident to the exercise of purely governmental functions.[34]

32. Ft. Lauderdale v. Duchine, 70 So.2d 897 (Fla. 1954).
33. *Id.* at 898.
34. Miami v. Bethel, 65 So.2d 34 (Fla. 1953).

Thus, where a policeman beat an individual whom he accused of engaging in a dice game, it was held his act was incidental to a governmental function, thereby exonerating the city from any responsibility.[35] In this respect, the Supreme Court has been consistent. From all indications, a city cannot be held accountable for the tortious acts of its police officers. In order to afford innocent victims of arbitrary and unjustified attacks by police officers, public policy will, in all probability, and in the not too distant future, manifest itself in the form of a statute affording remedies under such circumstances.

VALIDATION

As an expedient for the validation of municipal obligations, the Florida Statutes[36] make provision for a procedure that may be instituted in the form of a petition naming the State of Florida and taxpayers affected as parties defendant. Although this procedure is made available it is not deemed to be exclusive since declaratory relief has been held to be available for the same purpose.[37] However, there are several distinctions existing between the statutory validation procedure and declaratory relief, which renders the former more advantageous and desirable. For example, no right is conferred upon a taxpayer or citizen to compel the governing authority of a municipality to invoke the validation procedure provided for by statute, nor can the procedure be placed in motion by the citizen or taxpayer himself. Further, a declaratory decree once issued is not binding upon, nor does it affect, the rights of parties or persons not made defendants to the proceedings. In addition, under the declaratory judgment statute the right of review is the same as in other types of actions and an appeal is available only from an adverse decree against the appellant. However, under the statutory validation procedure, a review is available by any party to the cause, whether petitioner, defendant, or intervenor, or any other person dissatisfied with the final decree.

These distinctions were clearly declared and considered in *North Shore Bank v. Surfside*.[38] The town adopted an ordinance authorizing the issuance of $70,000 of public improvement certificates for the purpose of raising funds to acquire certain lands to be used as a supplement to and an addition to its bathing facilities. Thereafter, the town instituted an action for a decree declaring that the certificates were legal obligations of the town and did not require the approval of the qualified electors as a condition precedent to their issuance. By way of defense in the action, it was contended that declaratory relief was not the proper remedy for validation, and that the only remedy available was that conferred by statute relative

35. *Ibid.*
36. FLA. STAT. § 75.02 (1949).
37. North Shore Bank v. Surfside, 72 So.2d 659 (Fla. 1954).
38. *Ibid.*

to validation procedure. The Supreme Court denounced this contention as being without justification, and proceeded to conclude that by virtue of the distinctions between declaratory relief and statutory validation, the latter was most desirable and should be resorted to.

Delegation of Power

It is a well-established principle that a legislative body cannot delegate authority to administrative tribunals without imposing sufficient standards governing the administrative officers' conduct.[39] It is equally well-settled that a municipality possesses only such authority as has been conferred upon it by the legislature. Since the Florida Constitution[40] confers upon the legislature the power to establish and abolish municipalities, it is in derrogation of the Constitution for the legislature to attempt to delegate *unlimited* authority to a municipality. Thus, in Orlando v. Hill,[41] the Supreme Court denounced an attempt by the legislature to confer upon the city the power to adopt a new charter without subsequent legislative approval.

Special Assessments

A special assessment is a charge imposed for the purpose of paying the cost of a local improvement in a municipality and levied only on those lands which derive special benefit from the improvement. Once a special assessment has been imposed it constitutes a lien upon the property benefited and is enforceable as in the case of municipal taxes or as in the case of mortgage foreclosures.

In *Miami v. Board of Public Instruction*,[42] the Supreme Court considered the problem of whether a special assessment imposed by the city was collectable from the Board of Public Instruction when the schools were benefited by the improvement. The city had constructed sidewalks and had installed sewer mains along the street upon which the schools were located. The city made demand upon the Board of Public Instruction for the payment of special assessments which had accrued prior to 1953. In its action, the city relied upon a statute[43] passed by the Florida Legislature in 1953 which expressly authorized the Board of Public Instruction to discharge lawfully imposed encumbrances upon school properties which had been imposed for special or local assessments. The Board of Public Instruction defended upon the theory that since the word *authorized* was used in the statute, payment of the encumbrances was discretionary with the Board and could not be compelled by the city. In denouncing the

39. Phillips Petroleum Co. v. Anderson, 74 So.2d 544 (1954).
40. Fla. Const. Art. 8, § 8 (1885):
'The legislature shall have power to establish, and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time. When any municipality shall be abolished, provision shall be made for the protection of its creditors.
41. 67 So.2d 673 (Fla. 1953).
42. 72 So.2d 901 (Fla. 1954).
43. Fla. Stat. § 235.34 (1953).

contention advanced, the Supreme Court held that the statute was mandatory in nature, since to construe it as discretionary would violate the well established principle that unbridled discretion can not be delegated to an administrative tribunal by the legislature. However, in its holding, the Supreme Court denied recovery solely upon the ground that a statute is not to be given a retrospective effect unless intended by the legislature.

Conclusion

It is reasonable to assume that the present rate of growth and progress in the State of Florida will continue, and consequently, the Supreme Court will be confronted with a large number of validation proceedings, and cases involving the constitutionality of zoning ordinances. It is also reasonable to assume that continued concentration of population will bring many new municipal problems before the Supreme Court for determination. Many of these new problems will require legislation; however, in the interim period, until legislation is enacted, cases of first impression will appear. The cases involving tort liability of a municipality clearly reveal the necessity for legislation as a substitute for the distinction between governmental and proprietary functions now used by the Supreme Court.