

Municipal Corporations--City Home Rule--Local Law of City of New York Imposing Penalties for Violations of Regulations of Price Administrator (People v. Lewis, 295 N.Y. 42 (1945))

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MUNICIPAL CORPORATIONS—CITY HOME RULE LAW—LOCAL LAW OF CITY OF NEW YORK IMPOSING PENALTIES FOR VIOLATIONS OF REGULATIONS OF PRICE ADMINISTRATOR.—The State of New York passed a law imposing a fine of not more than twenty-five dollars and five days in jail for the willful violation of price ceilings fixed by the Federal Price Administrator. New York City thereafter passed a law imposing liability for violations of the O.P.A. price ceilings in which the penalties for such violations were a fine of fifty dollars, ten days in jail, and other penalties, such as a forfeiture of license, if any, issued by the city. The local law did not specify that willful violations alone were punishable. Defendant was convicted and fined fifty dollars under the city law for willfully selling chickens, within the City of New York, at a price in excess of the price ceiling. The defendant contended that the New York City law was unconstitutional. The only question involved on this appeal was the question of the validity or invalidity of the New York City law.

Held, conviction affirmed. The local law of the City of New York which imposes penalties for the violation of regulations of the Federal Price Administrator is within the legislative power of the City as defined in the State Constitution, the City Home Rule Law, and the New York City Charter. The fact that it imposes higher penalties than are imposed by the New York State War Emergency Act does not make it inconsistent with that statute. *People v. Lewis*, 295 N. Y. 42, 64 N. E. (2d) 702 (1945).

The first contention of the defendant was that the city had no power to pass a price control law. However, the New York State Constitution,¹ the New York City Home Rule Law,² and the New York City Charter³ confer upon the New York City Council the power to provide by local law for the preservation and promotion of the health, safety, and general welfare of its inhabitants, and a price control law is a valid exercise of the power to promote the general welfare.

The defendant's second contention was that the city law was unconstitutional because it conflicted with a similar state law, in that the city law imposed greater penalties than the state law. Generally, when a city law is inconsistent with a state law, the city law is invalid. But a mere difference in penalty is not such an inconsistency as to invalidate the city law.⁴

¹ N. Y. CONST. Art. IX, § 12.

² CITY HOME RULE LAW § 11, subd. 2.

³ N. Y. CITY CHARTER § 27.

⁴ *Wood v. City of Brooklyn*, 14 Barb. 425, 429 (N. Y. 1852); *City of Brooklyn v. Toynbee*, 31 Barb. 282, 284 (N. Y. 1857).

The final contention of the defendant was that the city law imposed penalties for non-willful as well as willful violations, whereas the state law only penalized willful violations, and that therefore the local law was unconstitutional. But the defendant was convicted of a willful violation. Thus the question of a non-willful violation is not involved in this case, and the court will not anticipate a question of constitutionality unless it is necessary to the proper rendition of judgment in the case.⁵

E. W.

MUNICIPAL CORPORATIONS—NEGLIGENCE—FAILURE TO MAINTAIN FIRE DEPARTMENT AND EQUIPMENT.—A fire broke out in plaintiff's building, which destroyed his property. An action was brought by him for damages suffered as a result of this fire. Plaintiff alleged that the city negligently failed to keep in repair the pressure and flow regulating valve located near plaintiff's property and that by reason of such negligence an insufficient supply of water was provided to combat effectively the fire in question. Plaintiff based his right of action on the city charter which provided that the city "may construct and operate a system of waterworks . . . and it shall maintain fire, police, school, and poor departments." *Held*, for defendant. The complaint failed to state facts sufficient to constitute a cause of action. *Steitz v. City of Beacon*, 295 N. Y. 51, 64 N. E. (2d) 704 (1945).

The majority opinion in this case reasoned that although the defendant's sovereign immunity was waived by Section 8 of the Court of Claims Act, its liability, like that of an individual or a corporation, was predicated on the circumstances alleged in the complaint. Accordingly, there would be no cause of action against an individual because of failure to protect property from destruction by fire which was started by another unless a duty to quench the fire or indemnify the loss had been assumed by agreement or imposed by statute. There was no such agreement in this instance, the liability rested solely on the city charter defining its power of government, which has been interpreted as not to protect the personal interest of the individual but for the benefit of the community as a whole. "If the plaintiff is to prevail, one who negligently omits to supply sufficient pressure to extinguish a fire started by another assumes an obligation to pay the ensuing damage, though the whole city is laid low. A promisor will not be deemed to have had in mind the assumption of a risk so overwhelming for any trivial reward."¹ An intention to allow the people of the city to recover for fire damages to their property for any omis-

⁵ *Burton v. United States*, 196 U. S. 283, 295, 25 Sup. Ct. 243 (1905).

¹ *Moch Co. v. Rensselaer Water Co.*, 247 N. Y. 160, 166, 159 N. E. 896, 898 (1928).