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Constitutional Law--Municipal Corporations--Power of Legislature to Enact Multiple Dwelling Law (Adler v. Deegan, 251 N.Y. 467 (1929))

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whatever conditions it may attach to its expenditure, it cannot make one of those conditions the approval by one of its own members; that is, to confer upon him the duties of an administrative office."

The development of the Executive Budget is part of a long and dignified history of the evolution of modern government. The decision strengthens the foundation upon which Budget reform is based and prevents the attempt by the Legislature to decentralize the responsibility for public expenditures. To have held otherwise, would have been an irremediable injury to the efficiency of our administrative department of government.

R. L.

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—POWER OF LEGISLATURE TO ENACT MULTIPLE DWELLING LAW. — Plaintiff, owner of a multiple dwelling, challenges the constitutionality of the Multiple Dwelling Law on the ground that it violates the Home Rule provisions of the New York State Constitution insofar as it required him to light the halls of his multiple dwelling. He contends that the provisions of said statute relate to the property, affairs of government of the city of New York and, therefore, should have been passed as the result of an emergency message of the Governor with the concurrent assent of two-thirds of the members of each house of the Legislature and not by a majority vote. The Special Term declared the law unconstitutional. On appeal to the Court of Appeals, *held*, reversed and complaint dismissed. Adler v. Deegan, 251 N. Y. 467, 167 N. E. 705 (1929).

The Tenement House Law [1] was enacted to remedy the evils existing in housing conditions, containing provisions in respect to light, air, fire protection and sanitation. Its validity has been upheld by the Court of Appeals [2] and by the United States Supreme Court,[3] not as a local city law but as a public health measure under the police power. The Multiple Dwelling Law [4] is virtually a revision of the Tenement House Law and was adopted, after a complete survey of the housing field, to meet modern conditions. The determining factor on this appeal was the interpretation of the words "property, affairs or government of cities" as used in Section 2, Article XII of the Constitu-

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[1] Laws of 1901, ch. 334, as amended—Consol. Laws, ch. 61.

[2] Tenement House Department v. Moeschen, 179 N. Y. 325, 72 N. E. 231 (1904).

[3] *Ibid.* 203 U. S. 583 (1906).

[4] Laws of 1929, ch. 713—Consol. Laws, ch. 61-a.

tion.[5] Under the Home Rule Law,[6] the local legislative body of a city may not adopt a local law which changes any of the provisions of the Tenement House Law. As the Multiple Dwelling Law is in effect a remodeling of the Tenement House Law, the power to amend or supersede its provisions, by virtue of the Home Rule Law, is vested in the State Legislature. The state has full power to delegate to municipalities the right to legislate with regard to any matters whatever.[7] The fact that the Legislature has expressly empowered a municipality to enact ordinance in respect to matters primarily within the scope of its power, does not, however, preclude the state from legislating with respect to the same subject matter.[8] The basic principle is that the power to adopt laws resides with the Legislature except insofar as it has been limited or surrendered, and it will not be so inferred unless the intention is clearly revealed. The test is not whether the subject is predominantly of state concern, but, rather, that if the subject be in a substantial degree a matter of state concern, the Legislature may act, though intermingled with it are concerns of the locality. The protection of the health and morals and safety of its citizens and inhabitants lies within the police power reserved to the state, and should not be localized or delimited by city boundaries. In view of the fact that a power derived from the state may be modified, diminished or recalled,[9] if the affair is partly state and partly local, the city is free to act until the state has intervened, and the power of the city, at such times, becomes subordinate to the power of the state.

R. L.

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[5] Home Rule Amendment, which provides: "The legislature shall not pass any law relating to the property, affairs or government of cities, which shall be special or local either in its terms or in its effect, but shall act in relation to the property, affairs or government of any city only by general laws which shall in terms and in effect apply alike to all cities except on message from the governor declaring that an emergency exists and the concurrent action of two-thirds of the members of each house of the legislature. * * * The provisions of this article shall not be deemed to restrict the power of the legislature to enact laws relating to matters other than the property, affairs or government of cities."

[6] Laws of 1924, ch. 363—Consol. Laws, ch. 76; passed after the adoption of the Home Rule Amendment.

[7] Cleveland v. City of Watertown, 222 N. Y. 159, 118 N. E. 500 (1917).

[8] Matter of McAneny v. Board of Estimate & Apportionment of the City of New York, 232 N. Y. 377, 389, 134 N. E. 187 (1922); People v. Tweed, 63 N. Y. 202 (1875); People *ex rel.* McLean v. Flagg, 46 N. Y. 401 (1871); People *ex rel.* Morrill v. Board of Supervisors of Queens Co., 112 N. Y. 585, 20 N. E. 549 (1889).

[9] City of Worcester v. Worcester Con. St. Ry. Co., 196 U. S. 539 (1904); City of Pawhuska v. Pawhuska Oil & Gas Co., 250 U. S. 394 (1918).