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Article 7

A Significant Municipal Budget Decision

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to support the Landers case.[20] The Court looks with disfavor upon requiring distant defendants to come to New York.[21]

A more serious question is presented by the terminology of the amendment which provides that the city court shall have "original jurisdiction concurrent with the supreme court in actions for the recovery of money only, etc." A superficial examination of the act and constitution would tend to support the theory that the court's jurisdiction was now co-extensive with that of the supreme court, subject only to its limited power over the subject matter of the action. Here, also, the inefficient drafting of the amendment and act is responsible. But the construction placed upon this provision in the American Historical Society case seems amply in point and decisive of the question: what was conferred was jurisdiction *similar* to that of the supreme court in like actions limited of course by the local character of the city court itself.

L. L. W.

A SIGNIFICANT MUNICIPAL BUDGET DECISION.—In October, 1927, the Board of Estimate and Apportionment of the City of New York included in the budget an item of $13,000,000.00 "for the 1928 amortization installment on Rapid Transit Corporate Stock—maturing 1929, 1930, 1931."[1]

This action was taken pursuant to formal resolutions[2] previously adopted by the Board of Estimate and Apportionment by virtue of their

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[20]Hoag *v.* Lamont, 60 N. Y. 96 (1875); Wheelock *v.* Lee, 74 N. Y. 497 (1878); Davidsburgh *v.* Knickerbocker Life Ins. Co., 90 N. Y. 529 (1882).

[21]Geraty *v.* Reid, supra note 13.

[1]Greater New York Charter, §206. "——For the redemption of such debt out of said sinking fund there shall be annually included in the budget and paid into the sinking fund of the City of New York herein created, an amount to be estimated and certified by the comptroller, and to be by the ——board of estimate and apportionment inserted in the budget for each year,——"; Sec. 226, "——The said board shall annually ——make a budget of the amounts estimated to be required to pay expenses of—city——. In order to enable said board to make such budget,——the heads of departments—— shall send to the board of estimate and apportionment an estimate in writing——."

[2]October 27, 1927. "Resolved, By the Board of Estimate and Apportionment——pursuant to——requisitions of the Board of Transportation——that the term of the corporate stock thereby authorized, to the extent of Fifty-two million dollars, now unissued, shall be four (4) years from the date of issue——";

Resolved, That the Board of Estimate and Apportionment hereby authorizes the Comptroller of the City of New York to issue and sell, before December

authority under the City Charter [3] and the Rapid Transit Act.[4] Insofar as these resolutions specified the term and date of issue of the stock they represented a departure from the usual, recognized practice of the Board in such matters.

This attempted change in procedure resulted in an application being made to the Supreme Court at Special Term in the form of a motion for a peremptory order of mandamus striking the amount from the budget.[5] The motion was granted and the judgment was affirmed by the Appellate Division upon the ground that the insertion of this item in the budget was illegal in the absence of an estimate and certificate from the Comptroller as a basis therefor.[6] This decision has been reversed by the Court of Appeals.[7]

The opinion, written by Judge Pound, carefully recites and compares the respective duties of the Board and the Comptroller. That it is the duty of the latter to issue bonds when directed by the Board is admitted,[8] but it is claimed that he has a discretion in determing *when* to offer them for sale and that before the Board can lawfully make provision in the budget for a reduction of the city's debt it must first receive a certified estimate of the amount from the Comptroller.[9] Appellant does not attempt to overcome this argument by express denial, but contends, and rightfully, that failure upon the part of the Comptroller to furnish the information alleged to be essential to the validity of the Board's act does not relieve it from the obligation to provide for the redemption of such debt.[10] To sustain this position it cites a number of

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31, 1927, corporate stock to the value of Fifty-two million dollars ($52,000,000.) being that portion of the above mentioned various authorizations, as to which a term of four (4) years is hereinbefore fixed."

[3] *Supra* note 1, §§45, 206, 226.

[4] Rapid Transit Act, §37 (1) (L. 1891, chap. 4, as amended).

[5] New York Law Journal, Dec. 5, 1927.

[6] 222 App. Div. 260 and see *supra* note 1. §§206, 229.

[7] People *ex rel.* Schieffelin *v.* Walker, *et al.*, 247 N. Y. 320 (1928).

[8] *Supra* note 3. and note 7. at 324.

[9] *Supra* note 1, §206. Matter of City of N. Y., 218 N. Y. 274; 112 N.E. 911 (1916); People *v.* Flack, 216 N. Y. 123; 110 N.E. 167 (1915); Bull *v.* Burton, 227 N. Y. 101; 124 N.E. 111 (1919); Matter of Cooper, 93 N. Y. 507 (1883); Schieffelin *v.* Hylan, 106 Misc. 347; 188 App. Div. 192; 227 N. Y. 593; 125 N.E. 925; 227 N. Y. 669; 126 N.E. 922 (1919); Bd. of County Commrs. of St. Louis Co. *v.* Nettleton, 22 Minn. 356; Lancaster Co. *v.* City of N. Y. 214 N. Y. 1; 108 N.E. 90 (1915); Merritt *v.* Village of Portchester 71 N. Y. 309 (1877); People *v.* City of Geneva, 98 App. Div. 383 (1904); Hellwig *v.* City, 158 N. Y. Supp. 475 (1916); People *ex rel.* Dady *v.* Prendergast, 203 N. Y. 1; 96 N.E. 103 (1911); Schieffelin *v.* Henry 123 Misc. 792 (1924)

[10] *Supra* note 3.

cases,[11] all of which speak for a practical interpretation of various statutes.

When the Legislature created the State Transit Commission, it provided that the Board when so required by the Commission, should appropriate such sum as the Commission might certify to be necessary to enable it to perform its duties, and compliance with the demands of that body was made mandatory.[12] The Commission was empowered to resort to the Appellate Division to enforce recognition of its requirements.[13]

"Doutbless the Comptroller has, under the charter, in a general way, a wide discretion as to when the bonds of the city shall be issued," but this discretion is "subordinated to the duty to put the bonds on the market before the date of their maturity." [14] Formulation of policies is a proper function of the Board of Estimate and when it has decided upon a definite course, it is not competent for the Comptroller to question the wisdom of its action. It is his duty as an administrative officer, to execute it.

The conduct of a municipal corporation is, like that of a private corporation, regulated by statute and its activities must be confined to such things as come within the scope of its charter.[15] Where the Legislature in conferring power on the corporation to do a certain thing has prescribed the method to be pursued in the exercise of that power, it must as a general rule be followed.[16] But, as already pointed out, the Board is under compulsion to provide for the liquidation of the city's debt, so that the instructions relating to the manner in which it is to be done may be considered as merely directory.

There is an Appellate Division decision holding that the matters in the budget and their readjustment are exclusively within the juris-

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[11]Grimmer *v.* Tenement House Dept. 205 N. Y. 549; 98 N.E. 332 (1912); People *ex rel.* Werner *v.* Prendergast, 206 N. Y. 405; 99 N.E. 1047 (1912); Wintersteen *v.* City, 220 N.Y. 57; 115 N.E. 17 (1917); Matter of City of N. Y. 217 N. Y. 1; 111 N.E. 256 (1916); City *v.* N. Y. City R. Co., 193 N. Y. 543; 86 N.E. 565; People *ex rel.* Metropolitan Life *v.* Knapp 193 App. Div. 413 (1920); People *v.* Karr, 240 N. Y. 348 (1925); Reformed Church *v.* M. A. Bldg. Co., 214 N. Y. 268; 108 N.E. 444 (1915); People *ex rel.* Snyder *v.* Hylan, 212 N. Y. 236; 106 N.E. 89 (1914); Litchfield Construction Co. *v.* City of N. Y., 244 N. Y. 251; 155 N.E. 116 (1926).

[12]*Supra* note 3, §45, and note 4.

[13]Matter of McAneny *v.* Board of Estimate, 232 N. Y. 377, 390; 134 N.E. 187 (1922); See also Matter of College of City of N. Y. *v.* Hylan, 205 App. Div. 372, 199 N. Y. Supp. 804, *aff'd*, 236 N. Y. 594; 142 N.E. 297 (1923).

[14]*Supra* note 7 at p. 330.

[15]City of Buffalo *v.* Stevenson, 207 N. Y. 258; 100 N.E. 798 (1913).

[16]Village of Carthage *v.* Frederick, 122 N. Y. 268; 25 N.E. 480 (1890).

diction of the administrative powers of the city, and the courts have no power to interfere, or supervise their action by mandamus.[17] However exercise of the power conferred on the Board in that case was discretionary. The action of the Board has been subjected to review by the use of this remedy, many times. We have, for example, an order compelling the Board to provide an amount requested for salaries of court attendants appointed by justices of the Supreme Court.[18] The Board, in opposing the application, stated to the court that the amount of the budget would exceed the limit allowed by the Constitution, but the court refused to allow this defense because the Board has the power to reduce discretionary items. And in another case [19] the Board was forced to yield to a demand for the payment of the expense of improving lands and for salaries of commissioners of the Bronx Park Commission.

For a proper determination of the distribution of power between the Board and the Comptroller, it is necessary to have recourse to the City Charter. Repeated references are made to it by the court and the necessity of reading all of the applicable sections as an entirety cannot be too strongly emphasized. A different analysis would make the question complex and extremely difficult of determination. The court is careful to note that they "are not to be read as disconnected and independent provisions of law," but to be construed, if possible "as a harmonious whole, providing a practical and consistent scheme of municipal administration in connection with the construction of the subways."[20]

When we apply this test, the conclusion is inevitable, that the Comptroller is, as to the matter in controversy, the source of information rather than the authority for the necessary items. The power of the Board to insert a proper amortization item in the 1928 budget does not depend on the concurrence or approval of any other board or public body. Its inclusion "was, therefore, proper in anticipation of the issue of the bonds by the Comptroller." [21]

The decision is further evidence of the growing tendency of the Court to dispose of questions upon the actual merits of the controversy without

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[17]People *ex rel.* Kelly *v.* Dooley, 169 App. Div. 423, 155 N. Y. Supp. 326 (1915).

[18]People *ex rel.* Cropsey *v.* Hylan, 199 App. Div. 218, 191 N. Y. Supp. 195, *aff'd* 232 N. Y. 601, 134 N.E. 588 (1921); followed in Same *ex rel.* Eidt *v.* Same, 199 App. Div. 965, 191 N. Y. Supp. 945, *aff'd* 232 N. Y. 602; 134 N.E. 589 (1921).

[19]Bronx Parkway Comm. *v.* Hylan, 119 Misc. 785, 198 N. Y. Supp. 271, *aff'd* 206 App. Div. 688, 200 N. Y. Supp. 915, *aff'd* 236 N. Y. 593; 142 N.E. 297 (1922).

[20]*Supra* note 7 at p. 327.

[21]*Ibid.* 331.

over regard for rules merely technical or procedural. From the very structure of our local government it is apparent that dissension among individual office-holders could, if unchecked, lead to great public inconvenience. Those who have from time to time participated in the formulation of our system of municipal regulation have, it would seem, laid their plans in the assumption that the requisite co-operation would, at all times, be forthcoming. That the Court has, in the instant case, taken a hand in obviating a difficulty, technical at best, is worthy of commendation.

J. A. M.

RACIAL SEGREGATION IN PUBLIC EDUCATION: GONG LUM *v.* RICE.[1]—A young Chinese girl of good moral character is denied the privilege of attending the public high school maintained for the district in which she resides with her parents, upon the sole ground that she is of Chinese descent and not a member of the white or Caucasian race, although her father is a taxpayer helping to support the school. The petition alleges undue discrimination against the girl by the Board of Trustees of the school. The Supreme Court of Mississippi had held that since their state constitution provided that "Separate schools shall be maintained for children of the white and colored races," there was a consequent division of the educable children into those of the pure white or Caucasian race on the one hand, and the brown, yellow and black on the other; that the legislature is not compelled to provide schools for each of the colored races; that a colored public school exists in every county, in which every colored child is entitled to obtain an education; and that if the plaintiff desires, she may attend the colored school of her district or go to a private school

This was attacked as unconstitutional on the theory that a state cannot be said to afford a child of Chinese ancestry, born in this country and a citizen of the United States, the equal protection of the laws by giving her the opportunity for education in a school which receives only colored children of the brown, yellow or black races. Unfortunately, the plaintiff did not allege in her petition that she would be subject to great inconvenience in being compelled to travel a greater distance were she to attend the colored school, and the Court did not consider the point. It did intimate vaguely that, under those circumstances, a different question might have been presented, but whether or not that would change the ruling is very doubtful from the tenor of the decision.

In expressing the opinion of the Supreme Court, Chief Justice Taft held that any citizen not of the white or Caucasian race, may be classed

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[1]275 U. S. 78 (1927).