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"Public Purpose" in Municipal Financing Plans

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Unanswered is the question whether the electorate or the legislature could constitutionally simply repeal the sanctions on private property owners imposed by the Rumford Act. Such action would appear to be directed only at changing a particular method of executing the state's policy against discrimination in housing, rather than at reversing the policy itself. Moreover, since the legislature could at any time reenact those sanctions or enact new laws relating to the discriminatory conduct of private property owners, the repeal of the Rumford Act would not result in the serious restrictions on the state's ability to deal with this problem which resulted from the adoption of Proposition 14. Nevertheless, even the mere legislative repeal of those sanctions against private property owners might be invalidated if the court believed that the lack of such sanctions thereby nullified the state's entire policy against discrimination in housing.

"PUBLIC PURPOSE" IN MUNICIPAL FINANCING PLANS

The City Commission of Deerfield Beach authorized issuance of municipal bonds pledged by certain excise taxes to purchase land on which a major league baseball training facility was to be built and maintained by the city. The facility was to be leased to and operated by a private corporation. Rental, payable to the city, was to be the annual debt service on the bonds plus fifty per cent of net profits in excess of prior years' losses. Validation of the proposed issuance was decreed by the circuit court. On a taxpayer's appeal, the Florida Supreme Court, in a four to three decision, reversed. *Held:* A bond issuance proposed by a municipality, whereby the municipality agreed to purchase land on which to build and maintain a baseball training facility for subsequent lease to a private corporation, violates state constitutional provisions prohibiting assessment of taxes[1] and extension of credit[2] for purposes which are not "public."[3] *Brandes v. City*

[1] FLA. CONST. art. 9, § 5 provides:
The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation.

[2] FLA. CONST. art. 9, § 10 provides:
The Legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

[3] Numerous state constitutions prohibit taxation except for public purposes. See

of Deerfield Beach, 186 So. 2d 6 (Fla. 1966).

Judicial conceptions of what constitutes a "public purpose" within constitutional provisions prohibiting expenditures for any other purpose have varied significantly.[4] Changes in time, place and the prevailing economic and social conditions have resulted in new public requirements. These new requirements have impelled a re-examination of the public purpose doctrine by some state legislatures and courts to permit flexible municipal response to local problems.[5] The principal case, however, illustrates how a complex municipal project which the officials of a municipality have decided would serve a public purpose can be invalidated without articulation of the criteria relied upon and without a close, impartial scrutiny into the project's effect on the community and the state.

Numerous provisions from the lease contract between the City of Deerfield Beach and its lessee, Deerstad, Inc., were quoted by the majority in the principal case. These provisions recited the city's obligations under the lease contract of site purchase and construction and maintenance of the proposed baseball facility. At this point the court abruptly concluded: "It seems clear that purpose of the proposed bond issue is not for a public purpose or municipal purpose, and furthermore that the City, by the proposed services to be rendered by it, is lending its credit in contravention to the provisions of ... the

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McAllister, *Public Purpose in Taxation,* 18 CALIF. L. REV. 137, 138 n.2 (1929). Provisions prohibiting extension of public credit to private enterprises are also prevalent in state constitutions. See Note, *Legal Limitations on Public Inducements to Industrial Location,* 59 COLUM. L. REV. 618, 621 (1959); Abbey, *Municipal Industrial Development Bonds,* 19 VAND. L. REV. 25, 37 (1965). Washington's constitution limits municipalities to taxation for municipal purposes and prohibits lending public credit to individuals or private corporations. See WASH. CONST. art. 8, § 7; art. 11, § 12.

[4] The "public purpose" doctrine has proven to be an extremely flexible concept. A decision as to whether a certain project serves a "public purpose" is usually determined by the problems and needs in the deciding court's jurisdiction and by the attitude of the court as to how these problems and needs can best be met. When proposed projects are challenged as violating "public purpose" provisions of the state constitution, courts have not elucidated the distinction between purposes "public" and "private." See generally 15 McQUILLIN, MUNICIPAL CORPORATIONS § 43.31 (3d ed. 1950); McCallister, *supra* note 3, at 145; Note, *The "Public Purpose" of Municipal Financing for Industrial Development,* 70 YALE L.J. 789, 795 (1961); Note, 108 U. PA. L. REV. 95, 109 (1959).

[5] This re-examination is illustrated by the efforts of several southern state legislatures to solve unemployment problems by permitting municipalities to finance industrial development through bonding. A forerunner of the procedure of industrial development through municipal bonding was the Mississippi Balance Agriculture With Industry plan (BAWI) passed in 1936. MISS. CODE ANN. § 8936-05 (Supp. 1964) provides: "(c) That the present and prospective ... general welfare of the citizens demand as a public purpose the development within Mississippi of commercial ... enterprises ...." See generally Note, *The "Public Purpose" of Municipal Financing for Industrial Development,* 70 YALE L.J. 789 (1961).

Constitution."[6] The Chief Justice, speaking for the dissent, concluded that building such a baseball facility was a "legitimate public objective"; therefore, there was nothing constitutionally objectionable in a governmental agency and a private corporation joining forces to further this public objective. Furthermore, the Chief Justice argued that the decision concerning whether the project would serve the welfare of the community should be left to the officials of that community, presumably because these officials are in a better position than a court to assess the impact of the proposed facility on the community.[7]

Underlying both constitutional provisions relied upon by the majority is the conception that the public must be the primary beneficiary of any proposal requiring the expenditure of public monies.[8] The tax provision, permitting the legislature to authorize taxation by incorporated cities for municipal purposes only, represents an accepted axiom of taxation: tax monies must be used to confer benefit on the taxpayers generally, not a private group or individual.[9] Extension of public credit to a private organization or individual is prohibited to prevent municipalities from becoming involved in private projects which in the past have proven to be financially disastrous for some communities.[10]

Courts have recognized that a determination of whether a public purpose will be served by a proposal is essentially a matter for the legislature,[11] and a legislative determination is not likely to be overturned by a court unless it is clearly arbitrary or, as stated in a previous Florida decision, it violates "organic law."[12] However, plans

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[6] 186 So. 2d at 12.

[7] *Id.* at 12, 13.

[8] *Id.* at 12:

> "Taxes for municipal purposes" means a public purpose as distinguished from a private or nongovernmental purpose .... The mere incidental advantage to the public resulting from a public aid in the promotion of private enterprise is not a public or municipal purpose; and the incidental benefits or advantages gained by private enterprise from expenditures made for a public purpose do not vitiate or diminish the public purpose.

This form of analysis affords a court much leeway in assessing the public purpose in a project. See McAllister, *supra* note 3, at 145: "When the court sets up the category of direct and substantial or indirect and incidental public benefits the final decision will depend on the judgment of the court as to which social values shall prevail."

[9] See ANDERSON, TAXATION AND THE AMERICAN ECONOMY 21-25 (1951); McAllister, *supra* note 3, at 140.

[10] Bailey v. City of Tampa, 92 Fla. 1030, 111 So. 119 (1926). See generally Note *Legal Limitations on Public Inducements to Industrial Location*, 59 COLUM. L. REV. 618 (1959).

[11] Peterson v. Town of Davenport, 90 Fla. 71, 105 So. 265 (1925); Brown v. Lakeland, 61 Fla. 508, 54 So. 716 (1911). See 16 MCQUILLIN, MUNICIPAL CORPORATIONS § 44.35 (3d ed. rev. 1963).

conceived at the municipal level without legislative approval do not enjoy the same presumption of validity as do plans authorized by the state legislature.[13]

The proposal in the principal case did not receive state legislative approval. Furthermore, the financing plan was advanced by the city officials without the benefit of state legislative standards or guidelines which would permit the municipality to coordinate the bond proposal with the economic and recreational goals of the state.[14] Also, there is no procedure for submitting a proposal to a state administrative agency that could consider the plan according to specific legislative criteria and thus assure closer correlation with the legislature's understanding of what is a public purpose and a legitimate public objective. The problem is *how* to permit municipalities to plan community developments with some confidence that the project satisfies current legislative understanding of what serves a public purpose and thereby minimize

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[12] In Peterson v. Town of Davenport, 90 Fla. 71, 74, 105 So. 265, 266 (1925), the court observed:

> Whether the object for which bonds are to be used is a municipal purpose may not be arbitrarily determined by legislation without regard to organic limitations; but a statutory determination of what is an appropriate municipal purpose will not be disturbed by the courts, where the purpose designated by statute is in fact municipal in its nature, and no provision of organic law is violated in such designation.

The term "organic law" usually refers to constitutional law only. See St. Louis v. Dorr, 145 Mo. 466, 469, 46 S.W. 976, 979 (1898). See also Patterson, *Legal Aspects of Florida Municipal Bond Financing*, 6 U. FLA. L. REV. 287, 311 (1953); 15 McQUILLIN, MUNICIPAL CORPORATIONS § 43.29 (3d ed. 1950).

[13] The difference between a municipally proposed plan with state legislative approval and a plan without such approval with respect to presumptive validity is illustrated by two Florida Supreme Court decisions. In City of Bradenton v. State, 88 Fla. 381, 102 So. 556 (1924), the court held a municipally proposed bond issuance for construction of a golf course unconstitutional because it was a corporate and not a governmental function. In Peterson v. Town of Davenport, *supra* note 12, a similar bond issue for golf course construction was validated by the court when the state legislature expressly authorized the city to issue the bonds.

[14] FLA. STAT. ANN. § 169.02 (1941) provides: "The city or town council may issued [sic] bonds ... whenever it may be necessary for the purpose of building or repairing the public works of the city, the widening and extension of streets or parks, payment of existing indebtedness of the city, or any other municipal purpose." This enabling act provides no concrete guidance for a municipality concerning the specific economic or recreational goals of the state.

That the state legislature has recognized the importance of economic and recreational development is indicated by the powers granted to the Florida Development Commission. FLA. STAT. ANN. § 288.03 (1955) provides:

> The general purposes of the commission shall be to guide, stimulate and promote the ... development of the state ... counties and municipalities ....
>
> For the accomplishment of such purposes, the commission shall have the power and authority to: (1) Create and build Florida industries ... encourage visitors from other states and countries to come to Florida, and raise the earning level of Florida's citizens; and in order to promote and develop business ... to plan and conduct a campaign of information, advertising and publicity relating to the business ... *recreational,* scenic ... and residential facilities ...[Emphasis added.]

the possibility of summary judicial invalidation. This problem is complicated by the almost limitless factors which could be considered in determining whether the public would be the primary beneficiary of a bond proposal. The summary disposition of the public purpose issue by both opinions in the principal case could be attributed to the court's realization that it did not possess the background or expertise to fully consider the economic and social complexities of the question.[15]

A possible solution to the problem is found in the response of the Tennessee legislature to serious conditions of unemployment, emigration and sub-average family incomes. The legislature passed "The Industrial Building Bond Act of 1955,"[16] which, after enunciating the conditions needing reform, stipulated that it was in the public interest to solve these problems through municipal industrial bonding.[17] Very specific statutory standards had to be met before a municipally proposed financing plan would be approved by the state administrative agency which had authority to grant or withhold a "Certificate of Public Purpose and Necessity" enabling the municipality to go ahead with the project.[18] The Tennessee Supreme Court held that the act was constitutional because solving unemployment and low income crises through issuance of general obligation bonds for industrial development involved pledging of the taxing power for a public purpose.[19]

The procedure set up for industrial financing in Tennessee provides for legislative articulation of the purposes which the financing seeks to

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[15] The tendency of courts to avoid detailed analysis of the public purpose question could also be attributed to a conviction that another government body, because of expert background and available research assistance, would better assess the ramifications of the issue. Therefore, the legislature or an administrative agency should consider the question. See Note, *The "Public Purpose" of Municipal Financing for Industrial Development*, 70 YALE L.J. 789, 795-97 (1961).

[16] TENN. CODE ANN. §§ 6-2901 to -2916 (Supp. 1966).

[17] Compiler's Note to TENN. CODE ANN. § 6-2902 (Supp. 1966). Acts 1955, ch. 209, § 1 provided:

> That it is hereby determined and declared that the purpose of this Act is to do that which the state welfare demands, and the state public policy requires:
> (a) That the migration and loss of the people of Tennessee . . . be retarded and reduced.
> (b)) That the conditions of unemployment existing statewide in Tennessee be relieved. . . .
> (g) That the present and prospective . . . general welfare of the citizens demand as a public purpose, the development within Tennessee of commercial ... enterprises by the several municipalities. . . .

[18] Standards which have to be met before a Certificate of Public Purpose and Necessity will be issued are listed in TENN. CODE ANN. § 6-2906 (Supp. 1966). The agency has to determine that there exists (1) sufficient natural resources readily available; (2) an available labor supply; (3) adequate property values to support the bonded indebtedness.

[19] McConnell v. City of Lebanon, 203 Tenn. 498, 314 S.W.2d 12 (1955). See Note, *Financing Industrial Development in the South*, 14 VAND. L. REV. 621, 626 (1961).

accomplish and the criteria which must be met before a municipality may issue its general obligation bonds. Passage of legislation providing for such a procedure would permit a municipality to plan financing projects according to specific standards promulgated by the state legislature. For example, where development of recreational facilities is an important aspect of a state's economy, a legislature could declare that municipal development of such facilities would serve a "public purpose." Limitations on the type of facilities and on the methods of financing would provide additional guidance to a municipality which would also consider the plan in light of the designated standards and policies.[20] While judicial scrutiny would still be the final step, such a procedure as suggested would provide a sounder basis for application of the public purpose doctrine and minimize the prospect of summary invalidation of municipal financing proposals.

VISITOR RESPONDING TO PUBLIC INVITATION CLASSIFIED AS INVITEE

Defendant savings and loan association invited local community groups to use, without charge, a room and adjoining kitchen facilities on its premises for meetings. Plaintiff was injured on defendant's premises while walking to a meeting of her organization scheduled for this room. Plaintiff sued for damages; defendant's motion to dismiss was granted. On appeal, the Washington Supreme Court reversed the order of dismissal and remanded. *Held:* When the public is invited to use premises under circumstances implying an assurance of reasonable care, any visitor responding to that invitation is an "invitee" owed an affirmative duty of reasonable care by the owner or occupier, whether or not economic benefit may be derived from the visit. *McKinnon v. Washington Fed. Sav. & Loan Ass'n,* 68 Wash. Dec. 2d 640, 414 P.2d 773 (1966).

During the nineteenth century the common law evolved the categories of trespasser, licensee, and invitee for persons going on land of another.[1] In Washington a land owner or occupier owes an invitee an

[20] A similar recommendation was made by a commentator on the limitations on municipal indebtedness in Utah. Elimination of all restrictions on municipal indebtedness present in the state constitution was advocated, followed by creation by the legislature of a State Department of Local Government. This department would have broad powers over financing plans of municipal corporations. See Note, *Constitutional Restrictions Upon Municipal Indebtedness,* 1966 UTAH L. REV. 462, 487.

[1] See Comment, 10 ALA. L. REV. 369, 371-76 (1958); Annot., 95 A.L.R.2d 992, 995-96 (1964).