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Local Government Law

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interest of requiring tortfeasors to make the injured whole, is logically supportable, though it seems to give an unusual importance to pleading niceties.

In 1957 the United States Supreme Court granted certiorari¹⁴ in *Gonzales v. International Association of Machinists*,¹⁵ a California case factually similar to *Mahoney*. In that case the expelled union member sought reinstatement to the union, and damages for loss of wages and mental distress on a breach of contract theory. The California court granted all relief sought, basing its award of damages measured by back pay on the ground that it was "not for an unfair labor practice, but for breach of contract and as incidental to the restoration to plaintiff of his right of membership."¹⁶ If this decision is affirmed by the Supreme Court, new doubt would be cast on the efficacy of *Mahoney*.

FRED BRUHN

LOCAL GOVERNMENT LAW

Local Government Law—Declaratory Judgment—Municipal Corporations. P, a Pasco taxpayer, brought an action for declaratory judgment and injunction, claiming the city of Pasco could not lease municipally owned land for a parking lot. D city relied upon the following: RCW 35.24.010: "Every city of the third class... may control and dispose of [property] for the common benefit..."; RCW 35.24.300: "The city council... shall have power to... control, lease, sublease, convey or otherwise dispose of [property]...; to lease any waterfront and other lands adjacent thereto owned by it...; to lease... portions of its streets which bound upon or terminate in its waterfront...; and Laws 1955, c. 294: "The city council of the city of Pasco... shall have power to lease, sell, or otherwise dispose [of the land in question]..."

Held, (6-3) for P taxpayer. *Miller v. Pasco*, 50 Wn.2d 229, 310 P.2d 863 (1957). The court's reasoning and conclusions were as follows:

(1) P was a proper party plaintiff under the Uniform Declaratory Judgments Act, RCW 7.24, because he was a taxpayer "and otherwise meets the qualifications of an interested person, as defined by RCW 7.24.020." If this means taxpayers are proper parties plaintiff to bring declaratory judgment actions to contest the legality of acts of municipal officers, then the decision is of first impression on this point in Washington. (See 87 A.L.R. 1243; 114 A.L.R. 1366.)

(2) RCW 35.24.010 does not give power of lease, because "may control" does not give power to *delegate* control, and "dispose of" means to sell. RCW 35.24.300 does not give power to lease anything except waterfront lands, because specific provisions control the general grant of power to lease.

(3) Laws 1955, c. 294, is unconstitutional. Washington Const. art. 2, § 28, prohibits special laws granting corporate powers. This applies to municipal corporations.

¹⁴ 352 U.S. 966 (1957).

¹⁵ 142 Cal. App.2d 207, 298 P.2d 92 (1956).

¹⁶ 298 P.2d at 99.

Municipal Corporations—Discharge of Seattle City Employees—Civil Service—Seattle City Service Commission. *State ex rel. West v. Seattle*, 50 Wn.2d 94, 309 P.2d 751 (1957). P, a Seattle civil service employee in the lighting department, was discharged by the department personnel supervisor. The Seattle civil service commission sustained her dismissal, and she appealed its decision. Seattle's city charter provides: Art. VII, § 8: "He [superintendent of lighting] shall appoint... all officers and employes in his department." Art. XVI, § 12: "Any officer or employee [in such civil service] may be removed by the appointing power only upon the filing with the commission of a statement in writing of the reasons therefor." Art. XVI, § 4: "The [civil service] commission shall make rules... for... removals..." Seattle civil service commission Rule 1 defines "appointing officer" as "the head of a department... or a person designated by such head of department with authority to appoint, discipline and remove subordinates."

Held, (5-0) for P. Art. VII, § 8, and Art. XVI, § 12, taken together, mean only the superintendent of lighting *in person* may remove lighting department employees. Civil service commission Rule 1 was violative of the city charter and so void. Therefore P's discharge by the department personnel supervisor was ineffective.

This surprisingly strict construction of the Seattle charter will apply to the departments of engineering, water, buildings, transportation and probably to public health, as well as to lighting. It is understood that those departments are now insuring that discharges are signed by their heads, so the precise issue of this case probably will not recur. However, the judicial approach of strictly construing city charters may be used again.

PRACTICE AND PROCEDURE

Landlord and Tenant—Unlawful Detainer—Jurisdiction Over the Person. The opinion of the supreme court of Washington in the case of *Sowers v. Lewis*¹ changes the law of Washington in the action of unlawful detainer. The court, ignoring past Washington cases, held that the notice which is to be given a tenant before an action of unlawful detainer² can be brought is a jurisdictional condition

¹ 49 Wn.2d 891, 307 P.2d 1064 (1957).

² RCW 59.12.030: A tenant of real property for a term less than life is guilty of unlawful detainer either:

- (3) When he continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due.
- (4) When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture."