Michigan Law Review

Volume 38 | Issue 3

1940

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CONSTITUTIONAL LAW — MUNICIPAL CORPORATIONS — DELEGATION OF POWER — CONSENT OF ADJOINING PROPERTY OWNERS — REASONABLENESS OF RESTRICTION ON THE USE OF PROPERTY. — An ordinance of the city of Detroit regulated trailer camps in part by requiring the consent of sixty-five per cent of the adjoining property owners before a permit would issue, and by forbidding the parking of occupied trailers in any camp or camps for more than ninety accumulated days in any twelve-months' period. Plaintiff camp owner sought to restrain enforcement of the restrictions. *Held*, that as to both the consent and the ninety-day provisions, the ordinance is a valid and reasonable exercise of the police power.[1] *Cady v. City of Detroit*, 289 Mich. 499, 286 N. W. 805 (1939).

About half of the states have considered the question of the requirement

[1] Three justices dissented as to the consent question, agreeing with the able opinion of Circuit Judge Miller of the Third Judicial District, that delegation of legislative power to the property owners was involved.

of property owners' consent for the issuance of a permit to use land;[2] the majority call this a delegation of legislative power to the property owners. The minority, typified by Michigan,[3] distinguishes between the imposing of a restraint and the waiving of a prohibition imposed by the city, and call the latter condition valid.[4] This distinction has received wide application,[5] but a number of writers [6] and a few courts [7] have recognized that it has neither logical nor practical basis. A prohibition imposed by the city council is for the general welfare, and a small group of property owners should not be allowed to remove the prohibition and thus re-expose the community as a whole to the evils which were specifically prohibited.[8] Some cities have avoided this dilemma by providing that the consent of the property owners be filed with the city council, as a condition precedent to the issuance of a permit by that body. Such a provision makes it easier for courts to hold the ordinances valid, since the delegation of legislative power

[2] See cases collected in: 43 A. L. R. 834 (1926), 46 A. L. R. 88 (1927) (and supplemental decisions); METZENBAUM, THE LAW OF ZONING 279 (1930); 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 434 (1927); McBain, "Law-Making by Property Owners," 36 POL. SCI. Q. 617 (1921). The article by McBain contains a critical analysis of the cases.

[3] City of East Lansing v. Smith, 277 Mich. 495, 269 N. W. 573 (1936), and the principal case.

[4] The United States Supreme Court held, in Eubank v. Richmond, 226 U. S. 137, 33 S. Ct. 76 (1912), that an ordinance allowing two-thirds of the property owners in a block to determine the building line in that block was an unreasonable exercise of the police power. See also: Gorieb v. Fox, 274 U. S. 603, 47 S. Ct. 675 (1927). In Cusack & Co. v. Chicago, 242 U. S. 526, 37 S. Ct. 190 (1917), the court held that an ordinance allowing the owners to waive a restriction upon the building of signboards in residential districts was valid. In State of Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U. S. 116, 49 S. Ct. 50 (1928), the court distinguished an ordinance similar to the one in the Cusack case, supra, upon the ground that there was no prohibition of a nuisance involved, and that therefore the ordinance was an unreasonable restraint. The facts of the present case are closer to the Cusack case inasmuch as the trailer camps here involved might become as much of a nuisance as signboards, so that the latest holding of the Supreme Court might not apply.

[5] ROTTSCHAEFER, CONSTITUTIONAL LAW 530 (1939); 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 434 (1927).

[6] BASSETT, ZONING 43 (1936); METZENBAUM, THE LAW OF ZONING 277, 278 (1930); ROTTSCHAEFER, CONSTITUTIONAL LAW 531 (1939); McBain, "Law-Making by Property Owners," 36 POL. SCI. Q. 617 (1921); Freund, "Some Inadequately Discussed Problems of the Law of City Planning and Zoning," 24 Ill. L. Rev. 135 (1929); Havighurst, "Property Owners' Consent Provisions in Zoning Ordinances," 36 W. VA. L. Q. 175 (1930); 3 UNIV. OF CIN. L. REV. 319 (1929).

[7] Utica v. Hanna, 202 App. Div. 610, 195 N. Y. S. 225 (1922); State ex rel. Omaha Gas Co. v. Withnell, 78 Neb. 33, 110 N. W. 680 (1907).

[8] In McBain, "Law-Making by Property Owners," 36 POL. SCI. Q. 617 (1921), the author points out that the fact that it is the property owners, and not the property occupiers, who are usually vested with the power indicates that the ordinance is more concerned with property values than with the health and morals of the community. If this deduction is correct, the courts should specifically recognize it as a factor in their decisions.

feature has been removed.[9] There still are objections to this type of ordinance, however, because it subjects the city council to pressure by property owners who want to have special exceptions made to the uniform community plan.[10] As to the ninety-day provision, the present case holds, in effect, that a trailer is not a proper permanent home,[11] and that the use of property for trailer camps must be regulated, because such use creates problems of sanitation,[12] fire protection,[13] taxation and schooling,[14] and the proper rearing of children.[15] The city has proper authority, under the police power, to make reasonable regulations,[16] since all property is held subject to this power,[17] and regulations of this kind of use have been upheld.[18] The decision in the present case on the ninety-day question is in accord with well-informed opinion.[19]

[9] See: City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096, 184 N. W. 823, 188 N. W. 921 (1922); City of Stockton v. Frisbie & Latta, 93 Cal. App. 277, 270 P. 270 (1928); Rochester v. West, 164 N. Y. 510, 58 N. E. 673 (1900); State ex rel. Galle v. City of New Orleans, 113 La. 371, 36 So. 999 (1904); City of New Orleans v. Smythe, 116 La. 685, 41 So. 33 (1906); City of St. Louis v. Howard, 119 Mo. 41, 24 S. W. 770 (1893). Most ordinances, unlike the ones in the cases just cited, provide that the permits shall be issued by an administrative board or officer. The validity of delegation of discretion to such administrative agencies has also been considered in the cases. See 43 A. L. R. 834 (1926). The ordinance in the present case provides that the permits shall be issued by the mayor.

[10] See Hays v. City of Poplar Bluff, 263 Mo. 516 at 532, 173 S. W. 676 (1914).

[11] Spitler v. Town of Munster, 214 Ind. 75, 14 N. E. (2d) 579 (1938), held valid an ordinance providing that no person should live in a tourist camp for more than thirty days, as a reasonable restriction to maintain the transient character of the camp. Practically all ordinances regulating trailers provide that blocks and skirting shall not be placed under the trailers, and also that the wheels shall not be removed, so as to destroy the characteristics of the trailer as a temporary dwelling place.

[12] 27 AM. J. PUB. HEALTH 516 (1937) contains a brief discussion of the sanitary problems involved in the use of trailers.

[13] Klein, "Regulating House Trailers and Camps," 53 AM. CITY 61 (Aug. 1938).

[14] 52 AM. CITY 111 (Mar. 1937), abstracting a report of the American Municipal Association, "The House Trailer: Its Effect on State and Local Government."

[15] This was brought out by testimony at the trial.

[16] 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 1321 (1927); ROTTSCHAEFER, CONSTITUTIONAL LAW 517 (1939); METZENBAUM, THE LAW OF ZONING 68 (1930).

[17] ELLIOTT, MUNICIPAL CORPORATIONS, 3d ed., §§ 68, 72 (1925).

[18] Egan v. City of Miami, 130 Fla. 465, 178 So. 132 (1938), upheld a Miami ordinance regulating tourist camps, tent cities, and trailer camps.

[19] Other Michigan cities having, in 1938, time limits on trailers were: Birmingham, St. Joseph, Royal Oak, and Sault Ste. Marie. In addition, Birmingham and Sault Ste. Marie have provisions for the consent of property owners before permit for a camp can be issued.

The American Municipal Association reported, in January 1938, that over fifty cities had decided, in 1937, that the problem, though in its infant stage, could not be solved simply by prohibiting trailer parking and occupancy within the city limits. They passed laws to limit the staying period, regulate sanitation, and in a few cases, to arrange for police protection and other municipal services. 53 AM. CITY 5 (Jan. 1938).