MUNICIPAL CORPORATIONS - POLICE POWER - CONTROL OF STREETS - POWER OF CITY TO GRANT EXCLUSIVE GARBAGE DISPOSAL PRIVILEGE

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Municipal Corporations — Police Power — Control of Streets — Power of City to Grant Exclusive Garbage Disposal Privilege — Defendant was arrested and fined for collecting and removing garbage by truck over the streets of plaintiff city in violation of an ordinance which provided that no persons other than the duly authorized employees of the city should collect, remove, convey, or transport garbage by any means whatsoever over the city streets. The state constitution gave municipalities the power to adopt and enforce local police and sanitary measures which did not conflict with the general laws.  

In broad terms, the general code gave the city the power to dispose of garbage, sewage, etc. Defendant claimed that the ordinance conflicted with the code provision and was an unconstitutional taking of private property for public use without compensation. Held, the ordinance did not conflict with the code provision, and the hauling of garbage over the city streets was not an ordinary or customary use, but rather a special use which the city could prohibit entirely if it so desired; nor did the ordinance amount to a taking of private property for public use without compensation under the federal Constitution. City of Canton v. Van Voorhis, 61 Ohio App. 419, 22 N. E. (2d) 651 (1939).

Since the protection of the health of the community is uniformly recognized as an important municipal function, it is considered not only the right, but the duty of a municipal corporation to pass such regulations under its police powers as may be necessary for the preservation of the health of the people. Because garbage is widely regarded as an actual and potential source of disease, and because its emission of noisome odors may interfere with public comfort, municipalities under their police powers may control and regulate its collection and disposal by ordinance. Such ordinances are subject to the limitations that they

1 Ohio Constitution, art. 18, § 3, grants cities and municipalities “authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.”

2 The only statute delegating power to cities or municipalities concerning the collection and disposition of garbage is Ohio Gen. Code (Throckmorton, 1939), § 3649, which grants power “To provide for the collection and disposition of sewage, garbage, ashes, animal and vegetable refuse, dead animals and animal offal and to establish, maintain and regulate plants for the disposal thereof.”


4 Biffer v. Chicago, 287 Ill. 562, 116 N. E. 182 (1917); State v. Lovelace, 118 Wash. 50, 203 P. 28 (1921).


6 “It is a rule that a municipal corporation has no power to treat a thing as a nuisance which cannot be one; but it is equally settled that it has the power to treat as a nuisance a thing that, from its character, location, and surroundings, may become such.” Nash v. District of Columbia, 28 App. Cas. (D. C.) 598 at 601 (1907). “All authorities agree in holding that garbage, in and of itself is a nuisance. . . .” Grand Rapids Board of Health v. Vink, 184 Mich. 688 at 697, 151 N. W. 672 (1915). See also Schultz v. State, 112 Md. 211, 76 A. 592 (1910); Wheeler v. Boston, 233
must be reasonable and directed solely to the legitimate regulation of the subject matter undertaken. Although they may not be passed under the guise of the police power in order to raise revenue, the fact that revenue may incidentally result from the regulation is no objection. The municipality may authorize persons to dispose of their own garbage, or where not prevented by statute, it may provide that the municipality itself shall have the exclusive right of removal. Furthermore, it may grant the exclusive privilege for removal of garbage to some person and prohibit all others from removing or carrying the garbage through the streets. The cost of this service may be imposed upon the


In the majority of jurisdictions, the removal of garbage by the municipality pursuant to ordinance is deemed to be a governmental function. See 14 A. L. R. 1473 at 1477 (1921); 32 A. L. R. 988 (1924); 52 A. L. R. 187 (1928); 60 A. L. R. 101 (1929); Love v. Atlanta, 95 Ga. 129, 22 S. E. 29 (1894); James v. Charlotte, 183 N. C. 630, 112 S. E. 423 (1922). Contra: Silverman v. New York, 114 N. Y. S. 59 (S. Ct. 1909); Pass Christian v. Fernandez, 100 Miss. 376, 56 So. 329 (1911). Loube v. District of Columbia, (App. D. C. 1937) 92 F. (2d) 473 at 475, stating: "If that service be governmental, it does not become private because a charge is made for it, or a profit realized." See also Manning v. Pasadena, 58 Cal. App. 666, 209 P. 253 (1922). But it has been held that the fact that profit incidentally arose from the collection and disposal of garbage made it a proprietary function. Foss v. City of Lansing, 237 Mich. 633, 212 N. W. 952 (1927).

7 19 R. C. L. 805 (1917); 43 C. J. 379 (1927); Dreyfus v. Boone, 88 Ark. 353, 114 S. W. 718 (1908); In re Vandine, 6 Pick. (23 Mass.) 187 (1828); Consumers' Co. v. Chicago, 313 Ill. 408, 145 N. E. 114 (1924); City of Rochester v. Gutherle, 211 N. Y. 309, 105 N. E. 548 (1924).


10 Retan v. Salt Lake City, 63 Utah 459, 226 P. 1095 (1924).

11 Ex parte Zhizhuzza, 147 Cal. 328, 81 P. 955 (1905); Ex parte London, 73 Tex. Ct. 208, 163 S. W. 968 (1913); Wallis v. Fidelity & Deposit Co. of Md., 155 Wash. 618, 285 P. 656 (1930).


Where the municipality enters into a contract with an independent contractor for the removal of garbage, such contracts seemingly would come within a charter requirement that municipal contracts be let to the lowest responsible bidder. It has been held that the removal and disposal of garbage is "public work" so as to come within a charter provision requiring that public work be let to the lowest responsible bidder. State v. Butler, 178 Mo. 272, 77 S. W. 560 (1903); but see Farmers Loan & Trust Co. v. Mayor of New York, 4 Bosw. (17 N. Y. Super. Ct.) 80 (1859). And in State v. Lovelace, 118 Wash. 50, 203 P. 28 (1921), the ordinance provided that the contract be let to the highest bidder. The court held the ordinance valid where it appeared that the contract was in fact let to the person best equipped and who would perform it with the lowest charge to the people served. See also Dreyfus v. Boone, 88 Ark. 353, 114 S. W. 718 (1908).
Such an ordinance, providing that the city may grant an exclusive privilege, is not void under the Fourteenth Amendment of the federal Constitution as being legislation in restraint of trade or establishing an unlawful monopoly. It is deemed merely to be an exercise of the police power in the interest of public health, and not an undertaking to run, establish, or license a business of any kind. Nor do such ordinances amount to a taking of private property for public use without compensation. The courts unanimously agree that although garbage has been discarded as food for human consumption it may still have value as food for animals or for rendering purposes. However, this value is so slight in comparison to the danger to the public which would result were the owner allowed to dispose of it himself, that the property rights of the individual in the noxious materials must be subordinated to the public good. It is presumed that the slight loss which the owner suffers is compensated by the common benefit derived from the regulation. The court in the present case was correct in holding that the hauling of garbage over the city streets was not an ordinary or customary use and could be prohibited by the city if it so desired. This result seems warranted in view of the fact that numerous difficulties of control and supervision tending to defeat the purpose of the ordinance would be presented if any person in his discretion were allowed to use the streets for this purpose. Such a prohibition by the city appears to be merely a reasonable exercise of the police power for the purpose of protecting the health of the community.

California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 26 S. Ct. 100 (1905). The theory was that as the city could in the protection of health compel the owner to dispose of the garbage at his own expense, the person to whom the exclusive privilege is granted is in disposing of the garbage performing a duty which rested on the householder and for which he should pay.

“It was held [in the Slaughter-House Cases, 16 Wall. (83 U. S.) 36 (1873)] that the grant of an exclusive right or privilege in pursuance of the exercise of the police power of the state, in the promotion of health and comfort, was not only not forbidden by the Fourteenth Amendment to the Constitution, but was clearly within the power of a state legislature and was not a monopoly at common law. The prohibitions of the common law against monopolies extended only to such franchises and agreements as tended to restrict trade, and had no application to mere police regulations in the interest of public health or morality.” State v. Robb, 100 Me. 180 at 188, 60 A. 874 (1905). See also, City of Grand Rapids v. De Vries, 123 Mich. 570, 82 N. W. 269 (1900).


However, it has been pointed out in a recent case that the rising price of food stuffs and feed and the scientific development of processes for the reduction of fats has given a great value to garbage, and these facts, coupled with modern refrigeration are making it possible to preserve and handle this material so as not to menace health. In view of this, there may occur a change in the established rule. Jansen Farms v. Indianapolis, 202 Ind. 138, 171 N. E. 199 (1930). See Donovan v. Town of New Windsor, 132 Misc. 860, 231 N. Y. S. 82 (1928).

“The disposition of garbage... justifies careful inspection and regulation on the part of the public authorities in order to secure its prompt removal and disposition, at