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MUNICIPAL CORPORATIONS — CONSTITUTIONAL LIMITATIONS ON AMOUNT OF DEBTS — OBLIGATIONS OF OTHER PUBLIC CORPORATIONS AS DEBTS OF CITY — The city of Troy, New York, had obtained federal aid for a Public Works Administration project involving the erection of a new high school building, conditioned upon the city's supplying $786,000 as its share of the cost. The constitutional debt limitation did not permit the city to borrow this amount.[1] The legislature came to the aid of the city and enacted a law providing that the bonds should be issued as "general obligations" of the city school district by the district's board of education.[2] The act expressly stated that the bonds should not be considered as part of the debt of the city of Troy. This action was brought by a taxpayer to enjoin the issuance of the bonds. *Held*, that the act was unconstitutional since the city school district's debts were to be considered as part of the city's debt within the meaning of the constitutional debt limitation. *McCabe v. Gross*, 274 N. Y. 39, 8 N. E. (2d) 269 (1937).

The majority of courts have held contra to the principal case in those instances where the agency creating the indebtedness is a public corporation independent of the city.[3] These holdings have been based on the principle that each corporation can become indebted without regard to the debts of other corporations either within or without its boundaries.[4] The New York court in

[1] N. Y. Constitution (1846), art. 8, § 10.

[2] N. Y. Laws (1937), c. 20.

[3] GRAY, LIMITATIONS OF TAXING POWER AND PUBLIC INDEBTEDNESS, § 2148 (1906); 6 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d rev. ed., § 2373 (1937); Ex Parte City of Newport, 141 Ky. 329, 132 S. W. 580 (1910); Cambell v. Indianapolis, 155 Ind. 186, 57 N. E. 920 (1900); Rash v. City of Madisonville, 148 Ky. 154, 146 S. W. 386 (1912). For instances where the debt was included because the school district was not an independent public corporation, see Walsh v. City of Pineville, 152 Ky. 556, 153 S. W. 1002 (1913); 1 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 192 (1911).

[4] Board of Education of Chicago v. Upham, 357 Ill. 263, 191 N. E. 876 (1934).

the principal case, while affirming this general principle,[5] based its decision on the ground that the debts of the city school district had been considered the debt of the city when this constitutional provision was adopted. Hence, the court reasoned, the constitutional intent should be determined in the light of this circumstance. Most of the courts holding contra have not taken facts of that character into consideration. They apparently take the position that the power of the legislature to create public corporations is limitless and that each corporation is to be considered a separate legal entity for the purpose of determining whether constitutional debt limitations have been exceeded.[6] It is true that a few courts have held that even though an agency is technically independent, if it is in reality a mere agent of the city, its debts will be considered as those of the city; but this doctrine has received little support and is limited in its scope.[7] If the purpose of these constitutional provisions is to protect the taxpayer, as authorities agree,[8] this purpose would seem to be violated by the creation of an independent agency with power to incur debts and levy taxes to pay the same. In this respect a distinction must be made between revenue producing improvements which can be built without increasing the tax burden, and non-revenue producing improvements which necessarily do increase the tax burden.[9] The decision in the principal case, based on historical considerations and the purpose underlying debt limitations, may be indicative of a reversal of the liberal attitude courts have heretofore assumed toward legislative efforts to avoid such limitations.

[5] Adams v. East River Savings Institute, 136 N. Y. 52, 32 N. E. 622 (1892).

[6] Kelley v. Brunswick School District, 134 Me. 414, 187 A. 703 (1936). An outstanding illustration of the result of this judicial tolerance of legislative efforts to avoid constitutional debt limitations is the city of Chicago which has twenty-seven independent taxing agencies. Williams and Nehemkis, "Municipal Improvements as Affected by Constitutional Debt Limitations," 37 COL. L. REV. 177 at 187 (1937).

[7] Reynolds v. City of Waterville, 92 Me. 292, 42 A. 553 (1898); Orvis v. Park Commissioners, 88 Iowa 674, 56 N. W. 294 (1892); GRAY, LIMITATIONS OF TAXING POWER AND PUBLIC INDEBTEDNESS, § 2150 (1906). The doctrine in Maine was apparently limited by Kelley v. Brunswick School District, 134 Me. 414, 187 A. 703 (1936).

[8] 1 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 191 (1911); 6 McQUILLIN, MUNICIPAL CORPORATIONS, 2d rev. ed., § 2364 (1937).

[9] Williams and Nehemkis, "Municipal Improvements as Affected by Constitutional Debt Limitations," 37 COL. L. REV. 177 (1937). For a further discussion of the "special fund" doctrine, see 12 N. Y. UNIV. L. Q. REV. 107 (1934); 72 A. L. R. 687 (1931).