MUNICIPAL CORPORATIONS-CONSTITUTIONALITY OF MUNICIPAL DEBT READJUSTMENT ACT

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Bankruptcy Law Commons, Business Organizations Law Commons, and the State and Local Government Law Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol34/iss5/14

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
Municipal Corporations—Constitutionality of Municipal Debt Readjustment Act—To avail itself of the remedial provisions of the National Bankruptcy Act as amended by section 80, the Imperial Irrigation District, a taxing district within the State of California, filed a petition for the readjustment of its debts. Pursuant to the requirements of section 80 the petition alleged that the District was unable to meet its debts and that a plan of readjustment had been accepted by 87.31 per cent of the creditors. Contestants, owners of petitioners' bonds, intervened. Held, section 80 of the National Bankruptcy Act as applied to the readjustment of the debts of an irrigation district existing under the laws of the State of California was constitutional. In re Imperial Irrigation District, (D. C. Cal. 1935) 10 F. Supp. 832.

The national emergency 1 created by the inability of local governmental units to meet maturing obligations 2 led Congress to pass an amendment to the National Bankruptcy Act 3 which in substance authorizes a taxing district to effect a composition of its debts through a federal bankruptcy court. It is generally said that the nature of municipalities is such that they do not fall within the subject of bankruptcies since there is no estate available for creditors. 4 But the power to legislate on the subject of bankruptcies granted to Congress by the Constitution 5 is limited only by the requirement that laws shall be uniform. 6

And uniformity is geographical, not personal. Further, the development of bankruptcy legislation has been notably marked by successive extensions of the act to different classes of debtors, which have generally been upheld. Moreover, recent decisions seem to indicate that the release of the bankrupt from the obligation to pay is just as important as the distribution of the bankrupt's property among his creditors. The operation of the bankruptcy act has been extended to permit compositions with creditors even without an adjudication of bankruptcy and numerous cases uphold reorganizations and extensions where there is no distribution of assets. Thus if distributable property is not a jurisdictional requirement, municipalities would seem to be a proper subject of bankruptcy legislation. It is further argued that such a law is a violation of state sovereignty.

7 Hanover Nat. Bank v. Moyses, 186 U. S. 181 at 190, 22 S. Ct. 857 (1902): "The general operation of the law is uniform although it may result in certain particulars differently in different states."


9 The inclusion of other than traders in Hanover Nat. Bank v. Moyses, 186 U. S. 181, 22 S. Ct. 857 (1902) and of railroads in Continental Illinois Bank & Trust Co. v. Chicago, R. I., & Pac. Ry., 294 U. S. 648, 55 S. Ct. 595 (1935), was held constitutional. But compare Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 55 S. Ct. 854 (1935), where the Court held section 75, subsection 3 relating to agricultural compositions unconstitutional in so far as it affected pre-existing mortgages, in violation of the Fifth Amendment. Congress passed an amendment to section 75 on August 28, 1935, to correct objections suggested by the United States Supreme Court in the Radford decision, supra. 49 Stat. L. 942.

10 In Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 55 S. Ct. 854 (1935), the Court said at 295 U. S. 588: "The discharge of the debtor has come to be an object of no less concern than the distribution of his property." In re Landquist, (C. C. A. 7th, 1934) 70 F. (2d) 929.


12 43 Yale L. J. 924 at 972 (1934). But see Glenn, Liquidation, § 419 (1935). But the principal case suggests that even if distributable property is a requisite that municipalities will still fall within the bankruptcy law since the property they hold in a proprietary capacity is subject to execution.

13 The recent case of In re Cameron County Water Improvement District No. 1, (D. C. Tex. 1934) 9 F. Supp. 103, dismissed a petition of a Texas irrigation district seeking relief under the act. The court stated that the exercise of the bankruptcy power over a state agency organized for the performance of a governmental function is an unconstitutional impairment of state sovereignty. However, since the consent of the state to the filing of the petition was not obtained the holding on constitutionality seems doubtful. Cf. In re East Contra Costa Irrigation District, (D. C. Cal. 1935) 10 F. Supp. 175, where in a case similar to the principal case, § 80 was held to be constitutional. Wood, "Constitutionality of Summers Municipal Relief Bill," 10 Am. Bankr. Rev. 175 (1934). Also see Briggs, "Shall Bankruptcy Jurisdiction Be Ex-
But because of the plenary nature of the bankruptcy power it would seem that its exercise should not be unconstitutional merely because it affects state sovereignty indirectly.\(^{14}\) It would seem that a favorable debt readjustment would aid governmental operation rather than impair it. Further, the act recognizes and attempts to safeguard the political powers possessed by a state over its units.\(^{15}\) Proceedings are voluntary on the part of the municipality\(^{16}\) and, if the state should require, its consent must be obtained before a taxing district may file a petition under the act.\(^{17}\) Legislation by a state\(^{18}\) authorizing municipalities to file petitions under the act need not be open to objection under the contract clause\(^{19}\) but can be considered as a partial waiver of state immunity against federal interference with its own governmental action.\(^{20}\) Inasmuch as the contract clause is a bar to state legislation operating upon already existent creditors\(^{21}\) and unanimous consent of bondholders is practically impossible, it would seem that some method of enforcing a plan of readjustment of municipal debts acceptable to the municipality and a majority of its creditors against a dissenting minority is essential.\(^{22}\) The utili-
tion of the federal bankruptcy power appears to be the most feasible device for accomplishing such enforcement.\textsuperscript{23}

P. M. C.

A. J. 637 (1933), in which it is suggested that the state can take care of its own problems.

\textsuperscript{23} See generally on the constitutionality of § 80, 35 Col. L. Rev. 428 (1935); 43 Yale L. J. 924 at 972 (1934); Gordon, The New Bankruptcy Act, Introductory Explanation, c. 6, p. 385 (1935).