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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 emergency¹ created by the inability of local governmental units to meet maturing obligations² led Congress to pass an amendment to the National Bankruptcy Act³ 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 Constitution⁵ is limited only by the requirement that laws shall be uniform.⁶

¹ 48 Stat. L. 798, § 78, 11 U. S. C. 301, declares a national emergency to exist.

² 8 J. NAT. ASSN. REFEREES BANKR. 91 (1934); McLeod, "Municipal Debt Moratorium Legislation," 8 J. NAT. ASSN. REFEREES BANKR. 11 (1933); 33 COL. L. REV. 1050 (1933); 43 YALE L. J. 924 (1934).

³ 48 Stat. L. 798, 11 U. S. C., § 301-303 (1934), entitled "Provision for Emergency Temporary Aid of Insolvent Public Debtors and to Preserve the Assets Thereof and for Other Related Purposes."

⁴ GLENN, LIQUIDATION, § 419 (1935); Briggs, "Shall Bankruptcy Jurisdiction Be Extended to Include Municipalities and Other Taxable Subdivisions," 19 A. B. A. J. 637 (1933), appearing also in 8 J. NAT. ASSN. REFEREES BANKR. 70-72 (1934); 21 VA. L. REV. 101-103 (1934).

⁵ U. S. Constitution, Art. I, § 8.

⁶ *International Shoe Co. v. Pinkus*, 278 U. S. 261 at 265, 49 S. Ct. 108 (1929); *In re Reiman*, 20 Fed. Cas. 490 at 496 (1874).

And uniformity is geographical, not personal.⁷ Further, the development of bankruptcy legislation has been notably marked by successive extensions of the act to different classes of debtors,⁸ which have generally been upheld.⁹ 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.¹⁰ 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.¹¹ Thus if distributable property is not a jurisdictional requirement, municipalities would seem to be a proper subject of bankruptcy legislation.¹² It is further argued that such a law is a violation of state sovereignty.¹³

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."

⁸ The Bankruptcy Act was extended to include agricultural compositions by section 75, Act of March 3, 1933, 47 Stat. L. 1470, § 1, 11 U. S. C., § 203 (1933); to railroads engaged in interstate commerce by section 77, Act of March 3, 1933, 47 Stat. L. 1474, § 1, 11 U. S. C., § 205; to corporations by section 77B, Act of June 7, 1934, 48 Stat. L. 912, 11 U. S. C., § 207.

⁹ The inclusion of other than traders in *Hanover Nat. Bank v. Moyes*, 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.

¹¹ *Continental Illinois Bank & Trust Co. v. Chicago, R. I. & P. Ry.*, 294 U. S. 723, 55 S. Ct. 595 (1935); *Canada Southern Ry. v. Gebhard*, 109 U. S. 527 at 535, 3 S. Ct. 363 (1883). Also see, *In re Reiman*, 20 Fed. Cas. No. 11,673 (1874); *In re Central Funding Corp.*, (C. C. A. 2d, 1935) 75 F. (2d) 256, upholding § 77B.

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 municipality¹⁶ 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 state¹⁸ authorizing municipalities to file petitions under the act need not be open to objection under the contract clause¹⁹ 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 creditors²¹ 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 utiliza-

tended to Include Municipalities and Other Taxable Subdivisions," 19 A. B. A. J. 637 (1933); Seasongood, "Municipal Administration and Bankruptcy, 9 J. NAT. ASSN. REFEREES BANKR. 84 (1935).

¹⁴ See Wood, "Constitutionality of Summers Municipal Relief Bill," 10 AM. BANKR. REV. 175 (1934). But compare statement in *In re Bay City Irrigation District*, (D. C. Tex. 1905) 135 F. 850 at 854: "it would be against public policy to hold such a corporation amenable to the acts of Congress relating to bankruptcy."

¹⁵ 48 Stat. L. 801, 11 U. S. C., § 303c (11) (1934), states that the court "shall not by any order or decree in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the taxing district."

¹⁶ 48 Stat. L. 798, 11 U. S. C., § 303 (a) (1934): "Any municipality or other political subdivision of the state . . . may file a petition stating that . . . [it] is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of readjustment of its debts."

¹⁷ 48 Stat. L. 802, 11 U. S. C., § 303K (1934): "Nothing contained in this chapter shall be construed to limit or impair . . . the power to require the approval by any governmental agency of the State of the filing of any petition hereunder and of any plan of readjustment. . . ." It may be that section 80K recognizes the right of a state to prevent a municipality from resorting to bankruptcy but the act avoids the issue and so it is not necessary to consider the effect of a paramount federal bankruptcy law in a case in which the state refuses to give its consent to the filing of a petition.

¹⁸ In September 1934, California passed chapter 4, § 3, Extra Sess. 1934, granting consent to taxing districts to file petitions under sec. 80.

¹⁹ U. S. Constitution, Art. 1, § 10, cl. 1.

²⁰ See Wood, "Constitutionality of Summers Municipal Relief Bill," 10 AM. BANKR. REV. 175 (1934); also the principal case, 10 F. Supp. 832 at 841 (1935), argues: "The maximum relief administered by the state is a partial waiver of its immunity against federal action affecting its own governmental action. The impairment of contracts is brought about by the national law and not by the state measure. . . ." See *Clark v. Barnard*, 108 U. S. 436, 2 S. Ct. 878 (1883), and *Gunter v. Atlantic Coast Line Ry.*, 200 U. S. 273, 26 S. Ct. 252 (1906).

²¹ *Sturges v. Crowninshield*, 4 Wheat. (17 U. S.) 122 (1819).

²² Spicer, "Municipal Bank Act," 28 AM. POL. SCI. REV. 1072 (1934); 7 J. NAT. ASSN. REFEREES BANKR. 164-166 (1933). But compare Briggs, "Shall Bankruptcy Jurisdiction Include Municipalities and Other Taxable Subdivisions," 19 A. B.

tion of the federal bankruptcy power appears to be the most feasible device for accomplishing such enforcement.²³

P. M. C.

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

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).