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MUNICIPAL CORPORATIONS-METHODS OF DETACHING OUTLYING DISTRICTS

MUNICIPAL CORPORATIONS—METHODS OF DETACHING OUTLYING DISTRICTS. —Since the power to restrict boundaries is legislative in nature, territory which has once become part of an incorporated community can be detached

only by the authority of a statute, and the corporation, the courts, and even the people are powerless to act unless so authorized. 1. DILLON, MUNCIPAL CORPORATIONS, 4th ed. sec. 356. But when the town is booming and each farmer sees himself swept into wealth by the subdivision and sale of his property, who worries about detaching land? It is only when the boom has passed and the farmer finds himself still engaged in agriculture, and burdened with city taxes that he becomes intensely interested in the question by whom and under what conditions his land may be detached.

Such was the plight of one Zajicek, the plaintiff. He petitioned to the circuit court as provided by statute and showed that his land was agricultural, that it received no benefit from being in the city, that the city had no need of the land for municipal purposes, and that the city received no benefit other than taxes. He claimed that this entitled him to an order of detachment under the South Dakota statute which simply provided that "if upon the hearing the court shall find that the request of the petitioners ought to be granted and can be granted without injustice to the inhabitants interested, the court shall so order." S. D. Rev. Code (1919) sec. 6558. The city contended that this was all a settled matter, because the denial seven years before of a similar petition by the same plaintiff, made the present suit *res judicata.* The supreme court held, however, that the previous judgment was not *res judicata,* for there might be many reasons for either exclusion or inclusion after a lapse of seven years, depending upon whether or not the city had kept its promise of growth and development, and that the facts shown justified an order of exclusion under the statute. *Zajicek v. City of Wessington* (S. D. 1928) 220 N.W. 913.

Since the detachment proceedings depend upon statutes, it is of interest to observe how the statutes have taken care of the matter. Though by no means uniform, the methods generally adopted are special election, petition to some board or council, or petition to a court. In the case of special election, it is usually provided that the owners of the land or a percentage of the electors shall petition the county board of supervisors or the city council asking that a special election be held. Mich. Comp. Laws (1915) sec. 2844 *et seq.* (applicable to villages) as amended Pub. Acts (1919) No. 395 and Pub. Acts (1925) No. 90; Mich. Comp. Laws (1915) sec. 3309 *et seq.* (applicable to home rule cities) as amended Pub. Acts (1925) No. 337; Minn. Gen. Stat. (1923) sec. 1122; Page's Ohio Gen. Code (1926) sec. 3577. In Minnesota the ballots of the whole municipality, including the district to be detached, may be counted together, and a majority is sufficient. In Michigan the votes of the territory to be detached are counted separately from those in the remaining district, and a majority in each is required. In Florida a two-thirds majority is required in each district. Fla. Comp. Gen Laws (1927) sec. 3048.

Where the power to detach is granted to a board or council a question arises as to the constitutionality of the delegation of such power by the legislature. However, if the legislature declares a general policy and fixes the standard to control in given cases, an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and the standards apply. 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed. p. 83. A common set of standards is found in the Minnesota statute: that the land must be used solely for agricultural purposes, that it may be detached from

the municipality without unreasonably affecting the symmetry of the settled portion, that it is not necessary for the exercise of the police power or other powers of the municipality. Minn. Gen. Stat. (1923) sec. 1120½. Where the findings of fact correspond with the standards set out an order of detachment is mandatory. *Cavert v. Board of Commissioners of Renville County,* 153 Minn. 360, 190 N.W. 545. Under the Minnesota statute the board of county supervisors hears the petition and their decision is reviewable only on the grounds that the board had no jurisdiction, that it exceeded its jurisdiction, or "that its action is against the best interests of the territory affected." In Indiana there is no definite standard, the city council making such order "as shall be just and equitable." Burns' Ind. Ann. Stat. (1926) sec. 11217. However, an appeal is allowed to the circuit court where the matter is tried *de novo* and the lack of a definite standard does not make the statute unconstitutional. Burns' Ind. Ann. Stat. (1926) sec. 11221; *Livengood v. Covington,* 194 Ind. 633, 144 N.E. 416. Since the council is an interested party it has been argued that proceedings before it under the Indiana statute constitute a denial of the due process of law required by the federal Constitution. I IND. L. J. 156. In Michigan it seems that only cities of the 4th class may detach property by petition to a board, Mich. Comp. Stat. (1915) sec. 2890. The procedure is somewhat different in that the city council upon resolution petitions the board of county supervisors for an order of detachment. No provision seems to have been made for either the land-owners or the electors to petition. After petition the board of county supervisors publishes notice and hears all interested parties upon the issue of detachment. "After such hearing and due consideration of such petition, it shall be the duty of the board of supervisors to order and determine as to whether the prayer contained in the petition or any part thereof shall be granted." It will be noticed that the statute contains no standard to guide the board in their determination. This casts some doubt upon the constitutionality of the statute, since the general rules of delegation of power require a standard. Cooley, *op. cit.,* p. 83. There seem to be no Michigan decisions upon the subject. Nor does there seem to be any method of appeal from the order of the board provided by statute. It is merely stated that such orders shall be *prima facie* evidence of the change of boundaries and the regularity of the proceedings in all courts. It is probable that the modes of review applicable to administrative tribunals could be used here, but the problem has not been before the Michigan court.

Where the power to detach is delegated to a court there is the added question whether it is a judicial function, so that the courts may exercise it. The statutes certainly make it judicial in form by requiring service on the mayor of the city, hearing of evidence on both sides, etc. Some treat it as a suit in equity, Neb. Comp. Stat. (1922) sec. 4263; Iowa Code (1924) sec. 5617, and others as an action at law, *Heebner v. Orange City,* 44 Fla. 159, 32 So. 879. But in substance the action is administrative and this is borne out by *Zajicek v. City of Wessington, supra,* which holds that the decision of the court in such a case is not *res judicata.* This caused difficulty in *City of Galesburg v. Hawkinson,* 75 Ill. 152, where the court held that the power was legislative in nature and could not constitutionally be delegated to the courts. However, though the *Galesburg* case seems still to be the law in Illinois (see *North v. Board of Education,* 313 Ill. 422, 425, 145 N.E. 158, 159), the weight of au-

thority upholds the constitutionality of these statutes conferring the power to detach upon the courts. *Town of St. John v. Gerlach,* 197 Ind. 289, 150 N.E. 771; *Lyon v. City of Payette,* 38 Idaho 705, 224 Pac. 793; *Callen v. Junction City,* 43 Kan. 627, 23 Pac. 652. As to standards, the statutes are more lenient in the discretion they allow to courts than in the case of commissions. Some set out definite requirements of fact similar to those set out in the Minnesota statute above, and a finding of the required facts makes the order of detachment mandatory. Idaho Comp. Stat. (1919) sec. 4105, amended Laws (1921) ch. 111; *Lyon v. City of Payette, supra.* More often the court is allowed discretion, the statute providing for detachment "if justice and equity require," or if the request "ought to be granted," or if the land "should be disconnected." Neb. Comp. Stat. (1922) sec. 4263; S. D. Rev. Code (1919) sec. 6558; Colo. Comp. Laws (1921) sec. 9240. But the courts, in the exercise of their discretion, seem to require a showing of fact similar to that particularly set out in the Minnesota and Idaho statutes before granting an order of detachment. *Lorimor v. Lorimor,* 196 Ia. 774, 195 N.W. 199; *Klosterman v. City of Elkton* (S. D. 1928), 220 N.W. 910. Thus, *Zajicek v. City of Wessington, supra,* seems in accord with other decisions on the subject.