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Municipal Corporations - Validity of Covenant to Maintain Parking Meters in Bond Issue to Finance Off-Street Parking Facilities

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MUNICIPAL CORPORATIONS—VALIDITY OF COVENANT TO MAINTAIN PARKING METERS IN BOND ISSUE TO FINANCE OFF-STREET PARKING FACILITIES—An act of the state legislature authorized the issuance of municipal bonds to finance off-street parking facilities.[1] The city was authorized to pledge revenue from existing on-street parking facilities to service the bonds but was to retain the right to change the location of the parking meters and other on-street facilities for enumerated reasons so long as the change did not materially lessen the revenue to be derived from those facilities.[2] Acting in pursuance of authority granted by the enabling act, the city covenanted to maintain its parking meters subject to the reservations required by the act. In an action for a declaratory judgment, one contention of the plaintiff was that the covenant attempted to barter away police powers. On appeal from the judgment sustaining the constitutionality of the act and the validity of the covenants and pledges under it, *held,* affirmed as modified. Although the legislature may authorize the city to pledge revenue from such on-street parking facilities as it may maintain, a covenant to maintain the meters or to guarantee the revenue which they will produce is an ineffective attempt to barter away the police powers. *Sammons v. City of Beaufort,* (S.C. 1954) 83 S.E. (2d) 153.

Almost since the advent of the automobile, municipalities have struggled with the problem of providing adequate traffic control and parking space for the growing number of cars on the streets. The use of the parking meter began as a possible solution to this critical problem, and has survived a number of constitutional attacks.[3] Its use was upheld as a police power action necessary for the public welfare.[4] If the profit derived did not unreasonably exceed the

[1] S.C. Code (1952) §§59-361 to 59-415.

[2] S.C. Code (Supp. 1954) §59-566.4.

[3] State ex rel. Harkow v. McCarthy, 126 Fla. 433, 171 S. 314 (1936); Opinion of the Justices, 297 Mass. 559, 8 N.E. (2d) 179 (1937); Bowers v. Muskegon, 305 Mich. 676, 9 N.W. (2d) 889 (1943). See also 130 A.L.R. 316 (1941).

[4] Andrews v. City of Marion, 221 Ind. 422, 47 N.E. (2d) 968 (1943); Louisville v. Louisville Automobile Club, 290 Ky. 241, 160 S.W. (2d) 663 (1942); Hendricks v. Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940). See also cases cited in note 3 supra. But see M. H. Rhodes, Inc. v. City of Raleigh, 217 N.C. 627, 9 S.E. (2d) 389 (1940). See generally 130 A.L.R. 316 (1941).

expenses, the argument that the use of the meter was an improper revenue measure in disguise was rejected.[5] Once the use of the on-street parking meter received court approval, the next step to alleviate congestion was the development of off-street parking facilities to handle the overflow of traffic. The pledge of meter receipts to service off-street parking bond issues provides a convenient and effective use of those funds.[6] In recent years, this device has been used successfully and has received court approval.[7] However, a pledge of the meter receipts, coupled with a covenant to maintain and operate all existing meters, would constitute an ineffective attempt to barter away the very police power which is invoked in justification of the meters in the first instance.[8] On the other hand, a pledge of the revenue from such meters as the city may choose to maintain does not guarantee any payment should the city discontinue the use of all meters.[9] The situation in the principal case stands between the two extremes in that the city retains the right to make certain changes as long as the revenue produced is not materially lessened.[10] Similar covenants have had the approval of other courts,[11] but the court in the principal case concludes that the covenant actually gives rise to an invalid promise to maintain the meters themselves. The conclusion is justified since the city should have the right to remove all parking meters, an act which cannot be done without violation of the covenant forbidding material reduction of the revenue. One might argue that a more binding covenant on the part of the city is necessary to stimulate

[5] The tendency is to find the use of the meters a regulatory and not a revenue measure despite some suggestion of profit. However, it is uniformly stated that meters will not be allowed when the police power is only a disguise for a statute primarily intended for the production of revenue. See cases cited in notes 3 and 4 supra.

[6] The surplus revenue should not be excessive. See note 5 supra. The use of the parking meter revenue is limited. Chase v. Sanford, (Fla. 1951) 54 S. (2d) 370 (cannot be used to build public docks); Panama City v. State, (Fla. 1952) 60 S. (2d) 658 (cannot be used for reconstructing or paving streets). Thus, use of the receipts to retire off-street parking bonds is a legal method for utilizing otherwise accumulating surplus funds for the public benefit.

[7] On the operation of off-street parking facilities by a municipality, see cases cited in notes 9 and 11 infra. But see Britt v. Wilmington, 236 N.C. 446, 73 S.E. (2d) 289 (1952). For a collection of cases see 8 A.L.R. (2d) 373 (1949).

[8] Surely a city could not covenant to refrain from using meters if such use truly is a public welfare measure. Similarly, a city which enacts such a measure in the public interest cannot covenant not to repeal it in the future. See, generally, 11 AM. JUR., Constitutional Law §254 (1937); 16 C.J.S., Constitutional Law §179 (1939).

[9] Such covenants have been used. Brodhead v. Denver, 126 Colo. 119, 247 P. (2d) 140 (1952) (pledge of receipts from meters which might be maintained); State ex rel. Gordon v. Rhodes, 158 Ohio St. 129, 107 N.E. (2d) 206 (1952) (reserved right to remove all meters if desirable).

[10] See reservations required by statute cited in note 2 supra.

[11] Poole v. Kankakee, 406 Ill. 521, 94 N.E. (2d) 416 (1950); State ex rel. Bibb v. Chambers, (W.Va. 1953) 77 S.E. (2d) 297; Gate City Garage, Inc. v. Jacksonville, (Fla. 1953) 66 S. (2d) 653; Wayne Village President v. Wayne Village Clerk, 323 Mich. 592, 36 N.W. (2d) 157 (1949). The Illinois and West Virginia decisions squarely meet the delegation of police powers argument with the answer that sufficient reservations were made by the city. Only the dissent mentioned the question in the Florida opinion, and the Michigan decision did not discuss the point.

the sale of the bonds.[12] Such an argument, however, ignores the fact that the purpose in using meters was to control traffic rather than to produce revenue.[13] Indeed, the use of meters would not be constitutional were their purpose otherwise. A city would incur great expense should it have to hire policemen to patrol the parking areas now regulated by these mechanical devices.[14] Finally, it is quite unlikely that a city would remove or discontinue the use of meters already installed merely to avoid bond payments. The pledge of the revenue from the meters which the city operates should thus provide adequate security to the bondholders without limiting the discretion necessarily reserved to future city councils.

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[12] It may be possible that a covenant to maintain the rates at a level sufficient to meet bond payments would create an indebtedness beyond the authorized municipal limit. See Miller v. City of Buhl, 48 Idaho 668, 284 P. 843 (1930). But see generally 146 A.L.R. 328 (1943).

[13] In order to justify the use of the meters, the city must argue that their use is for the public welfare. In order to justify a binding agreement to maintain the meters, the city must take the converse position and deny that their use constitutes a police power measure.

[14] If it should appear that the use of the meters is not necessary to patrol parking areas, the basis for their constitutional existence disappears.