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MUNICIPAL CORPORATIONS - RESCISSION BY ELECTORATE OF APPROVAL TO ISSUE BONDS - USE OF REFERENDUM POWER TO PREVENT ACTION BY THE MAJORITY

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MUNICIPAL CORPORATIONS — RESCISSION BY ELECTORATE OF APPROVAL TO ISSUE BONDS — USE OF REFERENDUM POWER TO PREVENT ACTION BY THE MAJORITY — At their annual meeting, the voters of a Vermont city approved the issuance of municipal bonds to finance erection of a sewage disposal plant. Before further action was taken, a group of citizens, acting in accordance with a charter provision,¹ presented the mayor with a petition containing one hundred signatures which demanded that a special meeting be called to vote on a proposal to rescind the approval previously given. The voters refused to rescind. Twice thereafter petitions were filed with the mayor asking that special meetings be called to reconsider the question, but on each of these occasions the petitions failed for want of a sufficient number of signatures. Finally, a fourth petition containing the requisite number of signatures was filed demanding a special meeting. In the meantime, the city council by resolution authorized the bond issue, although no bonds were actually executed or sold. When the mayor refused to call another special meeting plaintiff taxpayer sued to enjoin the city and mayor from issuing bonds until a special meeting should have been called. Defendants' demurrer to the bill was overruled by the county court, and on appeal to the Supreme Court of Vermont, *held*, affirmed. In the absence of restrictive legislation and until rights have "vested" in third parties, a statutory power conferred on a minority of voters to obtain a referendum may be used to force successive elections on a proposal to rescind prior approval, notwithstanding that the effect thereof may be to thwart indefinitely action by the majority. *Denicore v. City of Burlington*, (Vt. 1950) 70 A. (2d) 582.

Statutes or constitutional provisions commonly require municipal corporations to submit to the electorate for approval any proposal to issue bonds as a condition precedent to valid issuance.² Rejection of such a proposal by the voters at one election does not ordinarily prevent re-submission at a subsequent election.³ Whether or not an approval once given at the polls may later be rescinded

¹ Sec. 25 of the charter of the City of Burlington provides: "Special meetings of all the legal voters of said city shall be called by the mayor upon request by resolution of the board of aldermen or on petition of one hundred legal voters for any legal purpose beyond the jurisdiction of the city council. . . ." Principal case at 585.

² For example: Ala. Code (1940) §12-97; Ga. Code Ann. (1935) §§87-201, 87-504; Miss. Code Ann. (1942) §4320; Mo. Rev. Stat. (1944) §6373 et seq.; N.C. Gen. Stat. (1943) §160-387. See collection of cases in 5 McQUILLIN, MUNICIPAL CORPORATIONS 1388 (1944).

³ Leading cases are collected in 98 Am. Dec. 672 (1868); also 43 AM. JUR. 355 (1942); 1 JONES, BONDS AND BOND SECURITIES 219 (1935). *Contra*: *Comms. of Johnson County v. Thayer*, 94 U.S. 631 at 641 (1876).

is a question on which few courts have been required to rule.⁴ It is clear that if rights have "vested" in third parties, approval given by the electorate cannot be disturbed.⁵ In the absence of such "vested" rights, it would seem that a majority of voters with the power either to grant or withhold its approval at the polls should have also the power to withdraw an approval once given.⁶ However, there is support for the view that once a proposal to issue bonds has been adopted at the polls, the power of the voters is exhausted, in the absence of statutory authorization for re-submission.⁷ In the principal case, the court was concerned with a general charter provision authorizing a referendum to be called "for any legal purpose beyond the jurisdiction of the city council . . . on the petition of one hundred legal voters. . . ."⁸ After determining that rescission by the electorate of its prior approval was a legal purpose beyond the jurisdiction of the council, the court concluded that the statute necessarily conferred on a minority of one hundred voters the absolute power to stay issuance of the authorized bonds pending submission of the proposal to rescind.⁹ It was strongly urged that such a ruling vests a minority with a virtual veto by which the expressed will of the majority may be frustrated indefinitely. The few decisions which have considered such an argument are in accord with the principal case in rejecting the argument as being inappropriate when addressed to the judiciary rather than to the legislature.¹⁰ It is true that legislatures of a few states have sought to curb any possible abuse of the referendum power by expressly providing for a minimum time interval between successive elections on the same issue.¹¹ However, even in the absence of express restriction it would seem that a court might find in the canons of statutory construction authorization for qualifying the referendum power in a proper case.¹² Otherwise, to permit a statutory pro-

⁴ See 79 A.L.R. 434 (1932).

⁵ *Looney v. Consolidated Independent School District*, 201 Iowa 436, 205 N.W. 328 (1925); *Benjamin v. Township of Malaka*, 50 Iowa 648 (1879).

⁶ *Hibbs v. Board of Directors of Adams Township*, 110 Iowa 306, 81 N.W. 584 (1900); *Christopher v. Robinson*, 164 Ky. 262, 175 S.W. 387 (1915); *Kirchner v. Directors of School Township of Wapsinoc*, 141 Iowa 43, 118 N.W. 51 (1908); *Stoddard v. Gilman*, 22 Vt. 568 (1850).

⁷ *People ex rel. I.M. Ry. Co. v. Waynesville*, 88 Ill. 469 (1878); cf. *People ex rel. Osborn v. Bellport*, 119 Misc. 357, 196 N.Y.S. 459 (1922). See also 5 McQUILLIN, MUNICIPAL CORPORATIONS 1438 (1944); but note that authorities cited therein are distinguished by the Vermont court in the principal case at p. 585.

⁸ Principal case at 585.

⁹ *Id.* at 586.

¹⁰ *State ex rel. Saylor v. Walt*, 66 S.D. 14, 278 N.W. 12 (1938); *Independent School District No. 68 of Faribault County v. Rosenow*, 185 Minn. 261, 240 N.W. 649 (1932); 79 A.L.R. 434 (1932); 122 A.L.R. 775 (1939).

¹¹ For example: Ohio Gen. Code (Page, 1937) §2293-22; Pa. Stat. Ann. (Purdon, 1931) §53-1876. See *Graymount v. Stott*, 160 Ala. 570, 49 S. 683 (1909); *Ennis v. Town of Herndon*, 168 Va. 539, 191 S.E. 685 (1937).

¹² Some courts have refused to interfere with elections to authorize the incurring of indebtedness or the issuance of bonds on the ground that such matters are political in nature and beyond the control of the courts. *Cox v. Moore*, (Tex. Civ. App. 1938) 119 S.W. (2d) 189. 5 McQUILLIN, MUNICIPAL CORPORATIONS 1383 (1944). Regarding the applicable canons of construction, see 3 SUTHERLAND, STATUTORY CONSTRUCTION §5402 et seq. (1943).

cedure for effecting a referendum to be turned into a virtual veto by calling elections in quick succession would be to sanction usurpation by the minority of an absolute power which the legislature obviously did not intend to create.

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