

1952

MUNICIPAL CORPORATIONS-POWER OF THE MUNICIPALITY TO EXPEND PUBLIC FUNDS FOR MUNICIPAL ADVERTISING

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Recommended Citation

William A. Bain, Jr., *MUNICIPAL CORPORATIONS-POWER OF THE MUNICIPALITY TO EXPEND PUBLIC FUNDS FOR MUNICIPAL ADVERTISING*, 50 MICH. L. REV. 1383 (1952).

Available at: <https://repository.law.umich.edu/mlr/vol50/iss8/11>

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MUNICIPAL CORPORATIONS—POWER OF THE MUNICIPALITY TO EXPEND PUBLIC FUNDS FOR MUNICIPAL ADVERTISING—A statute allowed any city to set aside a certain amount annually from the general tax fund, which money might be expended under the direction and control of the city council for the purpose of aiding and encouraging the location of industry and other purposes which would increase the population, taxable property, and business prospects of the city. The Burlington City Council appropriated \$2,000 to the Chamber of Commerce, a private non-profit corporation, which was organized for the purpose of advancing the commercial, civic, industrial, and monetary interests of the city. No specification was made as to use, and the Chamber of Commerce used it for general expenses. Plaintiff demanded that the Chamber of Commerce restore the money and that the City Council bring an action to recover it. On refusal, plaintiff brought a taxpayer's action¹ against the Chamber of Commerce and a judgment was rendered in favor of the plaintiff. On appeal,

¹ Common law, *Walker v. Village of Dillonvale*, 82 Ohio St. 137, 92 N.E. 220 (1910), or statutory, *Dowler v. State ex rel. Prunty*, 179 Okla. 532, 66 P. (2d) 1081 (1937), taxpayer's actions are allowed in most jurisdictions to recover public funds illegally paid to municipal officers or third parties; *Webster v. Douglas County*, 102 Wis. 181, 77 N.W. 885 (1899). The taxpayer must show an injury, *McClutchey v. Milwaukee County*, 239 Wis. 139, 300 N.W. 224 (1941), and that the municipal authorities refused to act after a proper demand, *Schulz v. Kissling*, 228 Wis. 282, 280 N.W. 388 (1938). If demand is shown to be futile, it may be excused. *Burns v. Essling*, 154 Minn. 304, 191 N.W. 899 (1923).

held, affirmed. Expenditure of the funds was left to the discretion of the Chamber of Commerce rather than that of the City Council as required by law and was therefore illegal. *Horner v. Chamber of Commerce of the City of Burlington, Inc.*, (N. C. 1952) 68 S. E. (2d) 660.

The legality of expenditures of public funds for advertising will depend on a finding that the municipality is empowered by statute or charter to make such expenditures and that the advertising is a valid municipal or public purpose.² In general, the municipality is limited to powers expressly granted, to those necessarily or fairly implied therefrom, and to those indispensable to the municipal functions.³ This rule may be more liberally construed in regard to municipalities with home-rule charters.⁴ When there is a reasonable doubt as to the existence of the power or an ambiguity in the grant, it will usually be resolved against the municipality.⁵ Conceding that there is a grant of power under statute or charter, it is still essential that there be a public purpose.⁶ Public purpose is variously defined as a necessary and proper governmental function,⁷ a function which affects the inhabitants as a community and not as individuals,⁸ or a function which contributes materially to the health and welfare of the community.⁹ Recent decisions would seem to indicate that a public purpose is one which bears a reasonable relation to the corporate function and which tends to benefit the community and citizens by increasing the facilities, population, business, and industry. The municipality and the legislature will have considerable discretion in the determination of public purposes and this determination will be accepted by the courts unless there is a clear abuse of authority.¹⁰ It is quite clear that funds may not be appropriated to the private purposes of individuals, corporations, and associations even where authorized by statute or charter,¹¹ but the mere fact that the funds go to and are administered by private persons or corporations will not rule out the possibility of a public purpose.¹² Advertising of municipal advantages for the

² *Jacksonville v. Oldham*, 112 Fla. 502, 150 S. 619 (1933).

³ *New Jersey Good Humor, Inc. v. Borough of Bradley Beach*, 124 N.J.L. 162, 11 A. (2d) 113 (1940); *Moreland v. City of San Antonio*, (Tex. Civ. App. 1938) 116 S.W. (2d) 823. For a most extreme view see *City Affairs Committee of Jersey City v. Bd. of Commissioners of Jersey City*, 134 N.J.L. 180, 46 A. (2d) 425 (1946), where the court held that the city could advertise to defeat a constitutional amendment although the city's power to advertise was limited to advertising its advantages.

⁴ 1426 Woodward Ave. Corp. v. Wolff, 312 Mich. 352, 20 N.W. (2d) 217 (1945).

⁵ *New Jersey Good Humor, Inc. v. Borough of Bradley Beach*, supra note 3. But compare *City Affairs Committee of Jersey City v. Bd. of Commissioners of Jersey City*, supra note 3.

⁶ *Davis v. City of Taylor*, 123 Tex. 39, 67 S.W. (2d) 1033 (1934). But see *Roseville v. Tulley*, 55 Cal. App. (2d) 601, 131 P. (2d) 395 (1942), where public purpose was sufficient.

⁷ *Ketchie v. Hedrick*, 186 N.C. 392, 119 S.E. 767 (1923).

⁸ *Stanley v. Jeffries*, 86 Mont. 114, 284 P. 134 (1929).

⁹ *City of Tombstone v. Macia*, 30 Ariz. 218, 245 P. 677 (1926).

¹⁰ *Jacksonville v. Oldham*, supra note 2; *Roseville v. Tulley*, supra note 6.

¹¹ Annotated, 112 A.L.R. 571 (1938).

¹² *City of Fernandina v. State*, 143 Fla. 802, 197 S. 454 (1940); *Stewart v. Polk County Supervisors*, 30 Iowa 9 (1870); *State ex rel. Trustees of La Crosse Public Library v. Bendley*, 163 Wis. 632, 158 N.W. 306 (1916).

purpose of promoting trade, business, and industry is now accepted as a valid purpose,¹³ but this has not always been so.¹⁴ Advertising for other purposes has frequently been held illegal.¹⁵ The facts in the principal case indicate that the City Council gave the funds to the Chamber of Commerce without retaining any control over them and that the Chamber of Commerce devoted the funds to its own general expenses. It is apparent that the City Council did not comply with the statute which requires that the money be expended under the direction and control of the Council and that the transaction has the appearance of an appropriation to private purposes. The usual rule of strict interpretation of municipal powers would lead to a conclusion that the expenditure is illegal, and this would be so even if there is a public purpose.¹⁶ While the court did not pass on the question of public purpose, a finding that an expenditure to advertise the advantages of a community is a public purpose would be in accord with the weight of authority. Had the City Council supervised and directed the spending of the money for specific advertising projects, an opposite result might well have been reached even though the funds were given to a private corporation.¹⁷ It is clear that the method in which the funds are expended may invalidate the appropriation in spite of the fact that it is for a public purpose and that the specific action is authorized by law.

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¹³ *Sacramento Chamber of Commerce v. Stephens*, 212 Cal. 607, 299 P. 728 (1931); *Jacksonville v. Oldham*, supra note 2; *Davis v. City of Taylor*, supra note 6.

¹⁴ *Loeb v. Jacksonville*, 101 Fla. 429, 134 S. 205 (1931). But see *Jacksonville v. Oldham*, supra note 2, where the Florida court upheld the right of the city to advertise after a statute authorizing such advertising had been passed by the legislature.

¹⁵ Advertising proposed bond issues, *Elsenu v. Chicago*, 334 Ill. 78, 165 N.E. 129 (1929); campaign to influence selection as state capital, *Shannon v. City of Huron*, 9 S.D. 356, 69 N.W. 598 (1896); advertising to defeat proposed statute, *Port of Seattle v. Superior Court*, 93 Wash. 267, 160 P. 755 (1916). But compare *City Affairs Committee of Jersey City v. Bd. of Commissioners of Jersey City*, supra note 3.

¹⁶ *Anderson v. San Antonio*, 123 Tex. 163, 67 S.W. (2d) 1036 (1934).

¹⁷ *Sacramento Chamber of Commerce v. Stephens*, supra note 13. See also *City of Fernandina v. State*, supra note 12; *Stewart v. Polk County Supervisors*, supra note 12; *State ex rel. Trustees of La Crosse Public Library v. Bentley*, supra note 12.