

# Michigan Law Review

---

Volume 54 | Issue 7

---

1956

## Municipal Corporations - Police Power - Delegation of Power to Patrol Highways to Private Corporation

George Kircos  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Business Organizations Law Commons](#), [Law Enforcement and Corrections Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

George Kircos, *Municipal Corporations - Police Power - Delegation of Power to Patrol Highways to Private Corporation*, 54 MICH. L. REV. 1016 (1956).

Available at: <https://repository.law.umich.edu/mlr/vol54/iss7/16>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

MUNICIPAL CORPORATIONS—POLICE POWER—DELEGATION OF POWER TO PATROL HIGHWAYS TO PRIVATE CORPORATION—Defendant was stopped for speeding in Comstock Township, Michigan, and given a "violation ticket" by an employee of Charles Services, Inc., a private corporation which patrolled the highway under an arrangement with the township. At the trial defendant objected to the admission of evidence establishing him as the driver of the speeding vehicle on the ground that it was obtained by one not authorized by law to arrest him. On appeal from conviction, *held*, affirmed. Evidence obtained by the employee of Charles Services, Inc., is admissible because defendant did not sustain the burden of proving that the employee was not a deputy sheriff with proper authority to arrest. Further, the objection to evidence on such grounds is proper only on a motion to suppress in advance of trial. One justice vigorously dissented on the ground that delegation of police power is illegal and evidence made available as a result of such delegation should be suppressed. *People v. Robinson*, 344 Mich. 353, 74 N.W. (2d) 41 (1955).

The police power is characterized as an inherent attribute of sovereignty belonging to the states.<sup>1</sup> Because it is part of the state's general welfare power, it should certainly not be abdicated, bargained away or alienated

<sup>1</sup> 11 AM. JUR., Constitutional Law §245 (1937).

so that ultimate control by the electorate is lost.<sup>2</sup> This argument is frequently advanced when local governments attempt to delegate police power.<sup>3</sup> In the principal case, the dissenting justice, relying upon the loss of control argument, poses the following syllogism: police power is inherent and cannot be bargained away; patrol of the highway by the municipality is an exercise of the police power; a delegation granting a corporation the power to patrol the highways is therefore illegal. However, inspection reveals that what is involved in the principal case may not be a pure instance of "police power delegation." The police power has been defined as the power to enact and enforce laws concerning the safety, welfare, and morals of the people.<sup>4</sup> However, the definition is often restricted to the enactment of such laws.<sup>5</sup> Such a restriction seems to be an oversight since police power, being inherent with the government as a whole, must necessarily include enforcement as well as enactment. It does, however, indicate that police power may be separated into two categories with enforcement being considered as merely *administrative* and therefore capable of delegation.<sup>6</sup> But because the maintenance and operation of a police force is held to be a *governmental* function,<sup>7</sup> a contradiction develops since governmental functions, unlike proprietary functions, cannot be delegated.<sup>8</sup> At the root of this contradiction may be the use of the word "delegation." Courts will strike down any attempt by a municipality to grant an individual or corporation<sup>9</sup> the power to *enact* laws.<sup>10</sup> On the other hand, there is no objection to a sheriff appointing a deputy with authority and duties regulated by law<sup>11</sup> and who is generally confined to ministerial functions.<sup>12</sup> This is not a complete delegation but is an ap-

<sup>2</sup> See, generally, *Interurban Ry. and Terminal Co. v. Public Utilities Commission*, 98 Ohio St. 287, 120 N.E. 831 (1918); *Jones Hollow Ware Co. v. Crane*, 134 Md. 103, 106 A. 274 (1919); *Shea v. Olson*, 185 Wash. 143, 53 P. (2d) 615 (1936).

<sup>3</sup> 2 McQUILLAN, MUNICIPAL CORPORATIONS, 3d ed., §10.38 et seq. (1949). A state government is allowed to delegate its police power to local governments. See *Ex parte Cencinino*, 31 Cal. App. 238 at 243, 160 P. 167 (1916). This is usually done by statute. See, e.g., Mich. Comp. Laws (1948; Supp. 1952) §§78.23 (f) (villages), 91.1 (ordinances) (fourth class cities), 117.3 (j) (home rule cities).

<sup>4</sup> *State v. Riedell*, 109 Okla. 35, 233 P. 684 (1925); *In re Main*, 162 Okla. 65 at 68, 19 P. (2d) 153 (1933).

<sup>5</sup> 32 WORDS AND PHRASES 743 (1940).

<sup>6</sup> *Rockford v. Hey*, 366 Ill. 526, 9 N.E. (2d) 317 (1937); *Crosbyton v. Texas-New Mexico Utilities Co.*, (Tex. Civ. App. 1942) 157 S.W. (2d) 418.

<sup>7</sup> *Henry v. Los Angeles*, 114 Cal. App. (2d) 603, 250 P. (2d) 643 (1952).

<sup>8</sup> *State ex rel. Gordon v. Taylor*, 149 Ohio St. 427, 79 N.E. (2d) 127 (1948). See, generally, Seasingood, "Municipal Corporations: Objections to the Governmental or Proprietary Test," 22 VA. L. REV. 910 (1936).

<sup>9</sup> See especially: *Booth v. Owensboro*, 274 Ky. 325, 118 S.W. (2d) 684 (1938). See also *Middlesboro v. Kentucky Utilities Co.*, 284 Ky. 833, 146 S.W. (2d) 48 (1940); *State ex rel. Gordon v. Taylor*, note 8 supra; *Pippenger v. Mishawaka*, 119 Ind. App. 397, 88 N.E. (2d) 168 (1949); *Rockford v. Hey*, note 6 supra; *Crosbyton v. Texas-New Mexico Utilities Co.*, note 6 supra.

<sup>10</sup> Cf. 92 A.L.R. 400 (1934); 46 A.L.R. 88 (1927).

<sup>11</sup> *Gray v. De Bretton*, 192 La. 628, 188 S. 722 (1939).

<sup>12</sup> *Blake v. Allen*, 221 N.C. 445, 20 S.E. (2d) 552 (1942).

pointment with the reservation of the power to revoke—a limited delegation.<sup>13</sup> A more complete development of the applicable principle would be that any delegation of the enforcement aspect of police power must be accompanied by effective controls. Under the facts of the principal case, there may have been adequate control.<sup>14</sup> What should properly disturb the dissenting justice, however, is not this mole hill but the mountain that may arise from it. A corporation engaged in this type of law enforcement on a county or state basis would be more difficult to control because of the lessened concentration of public opinion. The auxiliary enforcement that the municipalities may now draw from the sheriff's department or state police force would also be gone.<sup>15</sup> Such possible growth of the exercise of police power enforcement by private corporations may be halted by denying such delegation even at the municipal level. As one possible alternative, a group of municipalities could join together to form a single police force.<sup>16</sup> However, the expense of keeping a sufficient force on hand for normal enforcement requirements with the resultant lack of an effective force at peak periods of the day would still make the corporate hiring system attractive to a civic but budget conscious municipality. But if every municipality within the state should delegate in this manner, the control problems would again become acute. These multiple facets of the enforcement-delegation problem may be best resolved by the legislative process where all the arguments could receive adequate discussion.<sup>17</sup> Certainly if the dissenting justice's total prohibition is not accepted, his warnings should at least point to a policy of hiring corporate enforcement agencies only if they are limited in scope and confined to the lower levels of the government.

*George Kircos*

<sup>13</sup> Cf. *Chicago v. M. and M. Hotel Co.*, 248 Ill. 264 at 269, 93 N.E. 753 (1911).

<sup>14</sup> Charles D. Spencer, president of Charles Services, Inc., views the function of the corporation as a supplementary police force which augments the limited manpower of the sheriff's department and the state police. All employees in this type of work are special deputy sheriffs of Kalamazoo County. The employees are paid an hourly salary out of the hourly rate the corporation receives from the municipality. The corporation is employed for an average of sixty hours a month in Comstock Township. Its services may be rescinded at any time by some of its local government-employers, although in Comstock Township thirty days notice was orally agreed upon. It is conceivable that replacements through the sheriff or state police would not be too difficult if necessary. Mr. Spencer also states: "I personally feel that we may be affected much more rapidly by public opinion because of our conduct than most other law enforcement officers, because we enjoy no civil service status or political term." Letter from Charles D. Spencer, President, Charles Services, Inc., March 7, 1956, on file in the offices of the *Michigan Law Review*.

<sup>15</sup> This statement assumes private corporate police facilities would entirely replace existing state and county facilities, rather than supplementing them.

<sup>16</sup> See, e.g.: Mo. CONST., art. 6, §16; Mich. Comp. Laws (1948) §41.201.

<sup>17</sup> See Fla. Gen. Laws (1955) c. 29668. This statute allows arrests for suspicion of petty larceny, a misdemeanor, to be made by a store merchant or his employee without criminal or civil liability.