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THE PORT DISTRICT: GENERAL CONSIDERATIONS  
OF AN IMPORTANT TYPE OF MUNICIPAL COR-  
PORATION, WITH EMPHASIS ON  
ILLINOIS DISTRICTS

NATURE OF A PORT DISTRICT

A port district is a political subdivision which is neither a county, a city nor a town.<sup>1</sup> This descriptively indefinite statement serves to distinguish the subject matter of this comment from various governmental units whose territorial jurisdiction sometimes coincide with or overlap that of a port district. Investigation reveals that a more definitive statement is difficult.

In an effort to improve natural facilities for water commerce, state legislatures have created instrumentalities to deal with the special problems of port development. Whatever, the name—be it “port,” “port authority,” “port district,” “harbor commission,” or some such term—the powers and the duties of such instrumentality are expressly set out in statutory enactment fulfilling the objectives of a particular state legislature.<sup>2</sup> A cross-country tabulation of powers and duties is clearly impossible in a comment such as this.

This is not to indicate that port authorities are found solely in this country. The Port of London, for example, was created to accomplish the same general ends as American port districts, i.e., administration, improvement, registration and licensing. Like its American counterparts, it derives its authority from legislation (Act of Parliament) plus ownership of the land and water with which it must deal (part of the Thames River).<sup>3</sup>

HELD TO BE MUNICIPAL CORPORATION

As stated above, port districts are products of special legislative action. In many states, municipal corporations are the only kind which can be established by *special law*. Around the turn of the century, therefore, courts found that a classification of port districts was necessary in order to determine the validity of legislative action incorporating special bodies to regulate the use of and improve the facilities of harbor areas.

Thus, in 1891, the Oregon Supreme Court analyzed the term “municipal corporation” and found it designates a “public corporation,” one which exercises some of the functions of government, i.e., one established for

<sup>1</sup> *Straw v. Harris*, 54 Ore. 333, 103 P. 777 (1909).

<sup>2</sup> E.g., N.Y. Consolidated Laws Ann. (McKinney, 1957) c. 65, §§ 6401 to 6700; Ill. Rev. Stat. (1957) c. 17, §§ 152 to 178; Rev. Code of Wash. (1952) c. 91, § 91.04.010 et seq.

<sup>3</sup> For a brief, well-written analysis of this Port, consult: Perkins, *The Port of London Authority*, Municipal Law Service Letter, Vol. 7, No. 9, pp. 4 to 8 (November 1957).

“municipal purposes.” Maintenance of a ship canal, reasoned the court, is such a “municipal purpose.” The Port of Portland was, therefore, a municipal corporation, validly created as such and rightly given the power to borrow money and levy taxes in furtherance of its purposes.<sup>4</sup> *Paine v. Port of Seattle*<sup>5</sup> presents a rationale based on the Washington Constitution for the establishment of what was at that time a new type of municipal corporation. Section 6, Article 8 of this constitution had established limitations of indebtedness applicable to counties, cities, towns, school districts and “other municipal corporations.” Thus, the right to establish “other municipal corporations” was inferred.

Certain states have strict constitutional prohibitions against the establishment of *any* corporation through *special act*. Because of such prohibition, the classification as a municipal corporation has in some instances prevented the establishment of port agencies in such states.<sup>6</sup> However, courts have been known to interpret the strict wording to apply only to private or business corporations.<sup>7</sup>

Probably the most recent case on this type of municipal corporation concerns the Port Authority of Duluth.<sup>8</sup> In 1957, the Minnesota Legislature had adopted three acts, providing for, among other things, financial aid from the state, county and City of Duluth to enable the Port Authority to carry out necessary functions, i.e., to reclaim land and construct terminal port facilities. Plaintiff taxpayer claimed three provisions of the Minnesota Constitution were violated: Article 4, Section 33 and Article 9, Section 1, both prohibiting taxation for private purposes, and Article 10, Section 2 forbidding the formation of corporations other than those for municipal purposes. It was contended that government aid was unnecessary as the Port had, up to that time, been extensively developed through the efforts of private industry.

Justice Knutson of the Minnesota Supreme Court, in the Duluth case, gives an excellent historical treatment of port supervision as a governmental function. Essentially a prerogative of the sovereignty in many parts of the Old World,<sup>9</sup> the establishment and maintenance of ports is shown to be considered in America, “a project of [distinctive] public interest and purpose . . .”<sup>10</sup> so as to render the supervisory body “an arm

<sup>4</sup> *Cook v. Port of Portland*, 20 Ore. 580, 27 P. 263 (1891).

<sup>5</sup> 70 Wash. 294, 126 P. 628 (1912).

<sup>6</sup> *Rosencranz v. Evansville*, 194 Ind. 479, 143 N.E. 593 (1924); *Farrell v. Port of Columbia*, 50 Ore. 169, 91 P. 546 (1907).

<sup>7</sup> *Webb v. Port Commission of Morehead City*, 205 N.C. 663, 172 S.E. 377 (1934).

<sup>8</sup> *Visina v. Freeman*, 252 Minn. 177, 89 N.W. 2d 635 (1958).

<sup>9</sup> *Internal Revenue v. Ten Eyck*, 76 F.2d 515 (C.A. 2d, 1935).

<sup>10</sup> *Marchant v. Baltimore*, 146 Md. 513, 521, 126 A. 884, 887 (1924).

and agent of"<sup>11</sup> the state government. The benefit to a principal harbor of a state is sufficiently "public" so that lands taken for that purpose are taken for a public use.<sup>12</sup> The Minnesota court concluded, since state establishment and maintenance of a port "is but an incident of its power to control its navigable waters,"<sup>13</sup> action on the part of private industry in this regard did not detract from the government's right to exercise this function. Clearly, the port authority is "an agency of the state. . . ."<sup>14</sup>

#### RECENT DEVELOPMENT IN ILLINOIS

Beginning in 1874, Illinois has exercised, through systematic legislation, its functions of improving and supervising the use of Illinois water; state action was accomplished through the agency of the Department of Public Works and Buildings.<sup>15</sup> Port districts, however, are a development of this past decadé. Four port districts have thus far been established: The Chicago Regional Port District (1951),<sup>16</sup> the Waukegan Port District (1955),<sup>17</sup> the Joliet Regional Port District (1957),<sup>18</sup> and the Tri-City Regional Port District (1959).<sup>19</sup>

#### THE CHICAGO REGIONAL PORT DISTRICT

The Chicago Regional Port District is "a political subdivision, body politic and municipal corporation,"<sup>20</sup> governed and administered by a nine-member board, of which five members are appointed by the Governor of Illinois and four members by the Mayor of Chicago.<sup>21</sup> The District has been tested and found constitutional.<sup>22</sup> Its validity was established by the Illinois Supreme Court in a 1954 opinion which gives an excellent resume of the proprietary and supervisory powers and duties of the Port District.<sup>23</sup>

<sup>11</sup> *Port of New York Authority v. J. E. Linde Paper Co.*, 127 N.Y.S.2d 155, 158, 205 Misc. 110, 113 (1953).

<sup>12</sup> "It is not necessary that the entire community should directly enjoy or participate in an improvement or enterprise in order to constitute a public use. . . ." *Moore v. Sanford*, 151 Mass. 285, 290, 24 N.E. 323, 324 (1890).

<sup>13</sup> *Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958).

<sup>14</sup> *Ibid.*, at 647.

<sup>15</sup> Ill. Rev. Stat. (1957) c. 19, §§ 8 to 106.

<sup>16</sup> *Ibid.*, at §§ 152 to 178.

<sup>19</sup> Ill. Rev. Stat. c. 19 §§ 285 to 317 (Supp., 1959).

<sup>17</sup> *Ibid.*, at §§ 179 to 212.

<sup>20</sup> Ill. Rev. Stat. (1957) c. 19, § 154.

<sup>18</sup> *Ibid.*, at §§ 251 to 282.

<sup>21</sup> *Ibid.*, at 163.

<sup>22</sup> *People v. Chicago Regional Port District*, 4 Ill.2d 363, 123 N.E.2d 92 (1954).

<sup>23</sup> "The District has no power to incur any obligations for salaries and expenses until authorized by the General Assembly and appropriations are made therefor. . . . It has power to acquire and accept by lease, gift or otherwise, any property and rights useful for its purpose and to aid in the development of adequate channels, ports,

Several claims of unconstitutionality were examined, necessitating an analysis of the District.

1. *Proprietary powers*—The State of Illinois and City of Chicago had relinquished all rights and interest in the bed of Lake Calumet to the Port District, so as to enable the District to develop Calumet Harbor. In order to further facilitate the District's functions, it was given the power to acquire any navigable waters of the state which were within the District area. This was claimed to violate the Illinois Constitution of 1870 (separate section three) which at that time prohibited the sale or lease of any canal or waterway owned by the state unless such action was first approved by a majority vote at a general election. The court interpreted this section as prohibiting the passage of state waters into the control of private interests. The Port District, as an "alter-ego of the State"<sup>24</sup> and an agency to improve public transportation, is not such an interest.

2. *Municipal in purpose and design*—Article IV of Section 22 of the Illinois Constitution of 1870 prohibits the establishment of corporations by *special law*. Noting that *special laws* have been used to establish municipal corporations such as the Sanitary District of Chicago, the Chicago Park District and the Chicago Transit Authority, the court concluded that the constitutional provision applies to only three types of municipal corporations. These are cities, towns, and villages.<sup>25</sup>

In order to determine whether or not the District is a municipal, i.e., public corporation, it was necessary to establish whether the proprietary and administrative powers conferred by Section 156, Chapter 19, Illinois Revised Statutes (1957) are public powers. Since transportation has been declared to be a public purpose in Illinois,<sup>26</sup> it follows logically that powers designed to promote marine transportation are given for a public purpose.

Further, supervision and control is entrusted, not to private individuals,

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harbors or terminals or port facilities . . . to apply for and accept federal grants, loans or appropriations . . . to procure and enter into insurance and indemnity contracts . . . to borrow money for port facilities, property and equipment, and to issue revenue bonds and certificates in payment of same. . . . The district has no power to levy taxes for any purpose. . . . The act provides that it shall be unlawful to make any fill or deposit of rock, earth, sand or other materials, or build any wharf, pier, etc., over, or within 40 feet of any navigable waters within said Port District, without a permit therefor, and provides penalties for the violation of said provision. . . ." *Ibid.*, at 367, 96.

<sup>24</sup> *Ibid.*, at 370, 97.

<sup>25</sup> *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E.2d 4 (1945); *Kocsis v. Chicago Park District*, 362 Ill. 24, 198 N.E. 847 (1935); *Sanitary District v. Ray*, 199 Ill. 63, 64 N.E. 1048 (1902); *Wilson v. Board of Trustees*, 133 Ill. 443, 27 N.E. 203 (1890).

<sup>26</sup> *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E.2d 4 (1945); *People v. Wood*, 391 Ill. 237, 62 N.E.2d 809 (1945).

but to a board whose members are subject to control by state and city authorities.<sup>27</sup> The District is, in all respects, a municipal, i.e., public corporation.

Since every municipal corporation exercises monopolistic powers, the exclusive jurisdictional control exercised by the Port District within its statutorily defined area is free from constitutional objections from that source.<sup>28</sup>

3. *No power of taxation*—Section 161 of Chapter 19 of Illinois Revised Statutes (1957) specifically denies to the district the power of taxation for *any* purposes. Indebtedness incurred, evidenced through bonds issued or otherwise, are to be “payable solely from the revenue or income derived. . . .” This method of financing public works—whereby the state, to the knowledge of the bondholder, assumes no obligation—has been judicially approved as utilized by the Chicago Transit Authority<sup>29</sup> and the Illinois State Toll Highway Commission.<sup>30</sup>

4. *Rules and regulations*—Legislative powers are granted by Section 172 in regard to the power to make rules and enforce them through penalties. The court viewed this as a proper delegation in order that a body validly created may accomplish its purposes. In the same vein, money appropriated to the District is necessary so that the Port District may make improvements acting in its capacity as agent of the state.

The Chicago Regional Port District Act was thereby declared valid and free of all constitutional objections raised, thus impliedly providing a firm basis for the development of similar port districts in Illinois. The universally predicted growth of commerce on the Great Lakes, however, will probably cause conditions calling for the delegation of other powers in addition to those judicially sanctioned.

#### POLICE POWER POSSIBILITIES

It is noteworthy that two of the four districts in Illinois, Waukegan and Tri-City, are each specifically given the power to “exercise police

<sup>27</sup> In regard to the authority of the mayor to appoint a certain number of members to the Board, and to otherwise act in cooperation with the governor, it was decided that the delegation of this power was “solely within the discretion of the legislative branch.” The court refused to find any unconstitutional infringement on the powers of the governor. *People v. Chicago Regional Port Dist.*, 4 Ill.2d 363, 280, 123 N.E.2d 92, 102 (1954).

<sup>28</sup> The power to require special procedure in personal injury actions brought against municipal corporations is also well established. Thus, Section 174 validly requires a written statement of particulars to be filed within six months after the date that cause accrued or the injury was received, and that the commencement of the suit be within one year of such date. *Ibid.*, at 378, 101.

<sup>29</sup> *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E.2d 4 (1945).

<sup>30</sup> *People v. Illinois State Toll Highway Commission*, 3 Ill.2d 218, 120 N.E.2d 35 (1954).

powers in respect [to its property] and to employ and commission police officers and other qualified persons to enforce [rules and regulations]."<sup>31</sup> It is difficult to tell whether the "police" are thereby rendered officers of the state for the purpose of making arrests<sup>32</sup> or mere watchmen for the purpose of imposing fines upon those who violate district regulations. Also doubtful is the ability of the Districts by their own action to declare the violation of a regulation to be a misdemeanor.<sup>33</sup>

The New York Waterfront Commission exemplifies a unique type of police power which Illinois may well examine in anticipation of a large waterfront labor force. The Port of New York District is a joint New York-New Jersey agency.<sup>34</sup> Necessarily the Waterfront Commission functioning within this Port is the result of legislation on the part of both states.<sup>35</sup> Since its establishment in 1953, the Commission has been most successful in improving and systematizing conditions of waterfront labor within the Port of New York District, so as to reduce corruption once manifested in the public loading racket and defective watchman system.<sup>36</sup> Violations of provisions of the interstate compact establishing the Commission are deemed "misdemeanor[s], punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than one year, or both."<sup>37</sup>

The Port of Chicago area (as distinguished from the Chicago Regional Port District) extending from Chicago Harbor, Illinois to Gary Harbor, Indiana, for which almost one-half of the traffic is handled in Indiana,<sup>38</sup> pre-

<sup>31</sup> Ill. Rev. Stat. (1957) c. 19, §§ 182 (m), 287 (13).

<sup>32</sup> The London Port Authority polices the docks within its jurisdiction with its own "Police Officers . . . who have all the powers of arrest of a Police Officer in the service of the Crown. . . . They are appointed and paid by the Authority and have the ranks equivalent to those in the Police Forces outside." Authority cited, *supra* note 3, at 6.

<sup>33</sup> Cal. Harbor and Navigation Code (Deering Cal. Codes Ann., 1954) § 6302 gives the Stockton Port District the power to "enact necessary police regulations." Held: This could not give the port, which the California court considered a "mere quasi-municipal corporation," the power to declare a violation of its ordinance to be a misdemeanor and provide for its punishment as such. *Gilbert v. Stockton Port District*, 7 Cal.2d 384, 60 P.2d 847 (1936).

<sup>34</sup> Created by compact April 13, 1921, authorized by c. 144 of the Laws of New York (1921) and c. 151 of the Laws of New Jersey (1921).

<sup>35</sup> N.Y. Unconsolidated Laws (McKinney, 1957) § 6700aa et seq.; N. J. Stat. Ann. (1957) c. 32, § 23-1 et seq.

<sup>36</sup> Consult The Fourth Report of the New York Crime Commission, Williams Press, Inc. (Albany, 1953), and Annual Reports by Waterfront Commission of New York Harbor, 1954 to date.

<sup>37</sup> N.Y. Unconsolidated Laws (McKinney, 1957) § 6700ss; N.J. Stat. Ann. (1957) c. 32, § 23-76.

<sup>38</sup> For an excellent description of the geography of the Port area and consideration of its future growth, read: Mayer, *The Future of the Port of Chicago*, 4 U. of Ill. L. Forum 1, 3 (Spring 1959).

sents an excellent opportunity for bi-state co-operation both in the commercial and supervisory sense. An interstate port authority, to exercise jurisdiction along the shore line between Waukegan, Illinois, and Michigan City, Indiana, was proposed in the Illinois General Assembly in 1957,<sup>39</sup> but failed to pass. Perhaps the future will see Illinois-Indiana action of the New York type.

#### THE TAXING POWER

It was noted earlier that the Chicago Regional Port District is specifically denied the power to tax. Possibly Illinois has through this denial eliminated some constitutional headaches.

A June, 1959, case<sup>40</sup> demonstrates problems arising when the taxing power is delegated. The Port of Seattle was authorized to levy a tax in order to carry out a comprehensive scheme of harbor improvements which the legislature had adopted in 1957.<sup>41</sup> To determine the validity of such tax the reasons for its authorization were examined. The legislature had feared that Seattle was deteriorating as an industrial city and was prompted to grant to the Port the power to condemn "marginal lands." "Marginal lands" were defined in such general terms as to be applicable to all land within the industrial area. The object of such condemnation was to sell lands acquired to private investors for industrial use. The Washington Supreme Court reasoned the plan was to sell the land for private, not public use; therefore, a tax levy to finance the plan is not for a public purpose and is unconstitutional.

#### CONCLUSION

It is obvious that the port districts of Illinois are mere infants, litigation wise. The experience of more tested equivalent agencies in other states is only of questionable guidance value. A state agency must act within its delegated powers, and in doing so necessarily conform to the constitution of its parent state, as this constitution is interpreted by its own state court. The value of any decision concerning the rights or duties of a port district as applied to the port district of any other state must be gauged by a comparative study of all statutory and case law in both states. As traffic on the Great Lakes increases the activity in this area, we can look to Illinois for more judicial pronouncements on port district powers, both granted and implied.

<sup>39</sup> Legislation passed by Indiana in anticipation of an interstate port authority is found in Indiana Stat. Ann. (Burns, 1951) c. 68, §§ 401 to 405.

<sup>40</sup> *Hogue v. Port of Seattle*, 341 P.2d 171 (Wash., 1959).

<sup>41</sup> Wash. Laws (1957) c. 265.