Developments in Municipal Corporations - 1950-1960

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At the outset the author would beg the reader's indulgence to alter or limit the subject of his remarks from the topic of "Public Corporations," which he was originally assigned, to that of "Municipal Corporations." While municipal corporations, cities, incorporated towns, villages, and boroughs are public corporations, not all public corporations are municipal corporations. This limitation, while excluding a variety of bodies politic created or authorized by the legislature, such as airport and housing authorities, drainage, fire and flood control districts, and commissions ad infinitum, is more illusory than real because it leaves for treatment what is probably the most expansive general legal topic in the sphere of jurisprudence today. The enormity of the field of municipal activity today gives a vastness and complexity to the field of municipal law which was unknown a few years ago. The increase in municipal duties, services, responsibilities, and activities is due in a large part to the vast economic, social, and scientific changes of the current era and to the tremendous growth in area, population, and importance of urban areas.

Of paramount importance to the City of Chicago was the recent decision in People ex rel. Adamowski v. Wilson. On March 2, 1960, the City Council of the City of Chicago passed an ordinance creating a Police Board of five members appointed by the Mayor, in and with the consent of the City Council, to manage, control, and operate the Police Department. On March 4, 1960, the Police Board recommended to the Mayor that he appoint Orlando W. Wilson, Dean of Criminology at the University of California, Superintendent of Police to act under the direction and control of the Police Board.

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1 Memphis Trust Co. v. Board of Directors, 69 Ark. 284, 62 S.W. 902 (1901).
3 20 Ill.2d 568, 170 N.E.2d 605 (1960).

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Dean Wilson was given a contract for the period of three years under the Purchasing Act to make a survey of the Police Department and make recommendations to the Board as to improvements. The State's Attorney filed four actions in quo warranto which attacked the reorganization of the Police Department. They questioned the power of the City to establish a Police Board and also challenged the authority of the City Council to abolish the office of Commissioner of Police prior to December 31, 1960. They also attacked the qualifications of two members of the Board who were non-residents of Chicago, and the qualifications of Mr. Wilson because he had not resided in Illinois for one year prior to his appointment. The position of the City was upheld in the Circuit Court of Cook County and the action of that court was affirmed by the Supreme Court of Illinois.

The City contended that, under section 23-78 of the Cities and Villages Act providing the power “to prescribe the duties and powers of all police officers,” the City had been given plenary powers, which included the authority to create a Police Board. As support therefore the City relied heavily upon the 1878 Supreme Court decision in Sheridan v. Colvin. The court sustained this approach by saying:

The choice between administration by an individual and administration by a board is made by weighing considerations of relative expediency. The broad powers granted by the General Assembly to the city council to allocate responsibility for the operation of the city government to such city officers, with such powers and duties, as it determines to be necessary or expedient, authorize it to determine whether to commit a particular segment of the city's government to an individual officer, or to a board of officers. The city therefore, did not lack the power to establish a police board.

The City further contended that chapter 24, section 9-87 of the 1959 Illinois Revised Statutes was a special or local law and invalid, in that it discriminated against the City of Chicago contrary to section 22 of article IV of the Constitution of Illinois. Section 9-87 provides inter alia:

No person shall be eligible to any municipal office unless he is a qualified elector of the municipality and has resided therein at least one year preceding his election or appointment. However, in municipalities with less than 200,000

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6 78 Ill. 237 (1875).
Plaintiff admitted that the two non-resident members of the Board possessed "technical training or knowledge" within the meaning of section 9-87, but urged that this was immaterial since the population of the City of Chicago is in excess of 200,000. The Supreme Court recognized that legislative classification based upon population is valid if there is a reasonable relationship between the objective sought to be accomplished by the law and the population differences fixed by the General Assembly. But in the absence of such a relationship, legislative classification upon the basis of population is discriminatory and invalid. It said that a plain objective of section 9-87 is to give municipalities the opportunity to utilize, in the management of municipal affairs, the services of those persons who have special technical training and knowledge without regard to their place of residence. The court held: "Because the population classification of section 9-87 operates, without discernible justification to deprive the largest city, whose problems are more likely to be complex, of expert assistance which is available to all other cities, it violates the provisions of section 22 of article IV of the constitution."

When Mr. Wilson was appointed, he was a citizen and resident of California. In disposing of plaintiff's contention that Mr. Wilson was an officer and therefore subject to the requirement of the statute that he be a resident at least one year before his appointment, the court held: "In the performance of his duties, he is subordinate to the Police Board, his actions are subject to its control and direction, and it may remove him for cause. For these reasons we are of the opinion that he is an employee, and not an officer." The decision of the Supreme Court in this case is of vital importance to the welfare of the City of Chicago because it recognizes that there are situations requiring the exercise of broad police powers in the solving of complex problems faced by a large city.

**MOVIE CENSORSHIP—THE "DON JUAN" DECISION**

On January 23, 1961, the Supreme Court of the United States rendered its opinion finding the Censorship Ordinance of the City of

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10 *People ex rel. Adamowski v. Wilson, 20 Ill.2d 568, 581, 170 N.E.2d 605, 613 (1960).*

11 *Id.* at 583, 170 N.E.2d at 614.
Chicago constitutional.\textsuperscript{12} Section 155-1 of the Municipal Code of the City of Chicago requires submission of all motion pictures for examination prior to their public exhibition.\textsuperscript{12} The petitioner, a New York corporation, applied for a permit as Chicago's ordinance required, and tendered the license fee, but refused to submit the film known as \textit{Don Juan} for examination. The permit was refused and the petitioner brought suit in the United States District Court, seeking injunctive relief ordering the issuance of the permit without submission of the film, and also seeking to restrain the city officials from interfering with the exhibition of the picture, on the sole ground that the provision of the ordinance requiring submission of the film constituted, on its face, a prior restraint within the prohibition of the first and fourteenth amendments to the Constitution of the United States. The District Court dismissed the complaint on the grounds that neither a substantial federal question nor even a justiciable controversy was presented.\textsuperscript{14} The Circuit Court of Appeals, Seventh Circuit, affirmed the District Court, finding that the case presented merely an abstract question of law since neither the film nor evidence of its contents was submitted.\textsuperscript{15}

The Supreme Court of the United States, in a five-to-four decision upholding the validity of the ordinance, was careful to limit its findings to the narrow issue presented. It was careful to stress the fact that the petitioner refused to submit the motion picture for review prior to exhibition because of petitioner's contention that even if the picture was obscene, "it may nonetheless be shown without prior submission for examination."\textsuperscript{16} It carefully limited the scope and effect of the decision. It reiterated that the issue was "the censor's basic authority" and did not involve "any statutory standards employed by the censor or procedural requirements as to the submission of the film."\textsuperscript{17}

Mr. Justice Clark, who delivered the opinion of the Court, defined the limitations to be placed upon the power of prior restraint under

\textsuperscript{12} Times Film Corp. v. City of Chicago, 365 U.S. 43 (1961).
\textsuperscript{13} \textit{CHICAGO, ILL., MUNICIPAL CODE} § 155-1 (1939).
\textsuperscript{14} Times Film Corp. v. City of Chicago, 180 F. Supp. 843 (N.D. Ill. 1960).
\textsuperscript{15} Times Film Corp. v. City of Chicago, 272 F.2d 90 (7th Cir. 1960), \textit{cert. denied}, 362 U.S. 917 (1960).
\textsuperscript{16} Times Film Corp. v. City of Chicago, 365 U.S. 43, 47 (1961).
\textsuperscript{17} \textit{Ibid.}
the provisions of the first and fourteenth amendments. He made it clear that "prior restraint" was the exception and in the case of motion pictures should be limited "against the dangers of obscenity in the public exhibition of motion pictures." Mr. Justice Clark concluded that "certainly petitioner's broadside attack does not warrant, nor could it justify on the record here, our saying that—aside from any consideration of the other 'exceptional cases' mentioned in our decisions—the State is stripped of all constitutional power to prevent, in the most effective fashion, the utterance of this class of speech."

Mr. Chief Justice Warren, writing for the dissenters, conceded that the "protection afforded the First Amendment liberties from previous restraint is not absolutely unlimited." However, he was of the opinion that licensing or censorship was not considered within the "exceptional cases" discussed in *Near v. Minnesota.*

The fact that Times Film refused to submit the motion picture prior to exhibition becomes of primary importance in examining the divergent views of Mr. Justice Clark, for the majority, and Mr. Chief Justice Warren, for the dissenters. Mr. Justice Clark stated the issue to be "whether the ambit of constitutional protection includes complete and absolute freedom to exhibit, at least once, any and every kind of motion picture." Mr. Chief Justice Warren took issue with this statement and defined the issue to be "whether the City of Chicago . . . may require all motion picture exhibitors to submit all films to a police chief, mayor or other administrative official, for licensing and censorship prior to public exhibition within the jurisdiction."

Mr. Chief Justice Warren presumed the unexhibited motion picture not to be obscene, whereas the petitioner claimed that the nature of the film was irrelevant and stated that even if this "film contains the basest type of pornography, or incitement to riot, or forceful overthrow of orderly government, it may nonetheless be shown without prior submission for examination." Further evidence of divergent views of the issues involved may be observed by comparing the statement of Mr. Chief Justice Warren that the Court's decision "gives official license to the censor, approving a grant of power to city officials to prevent the showing of any motion picture these officials deem un-

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18 *Id.* at 49.
19 *Id.* at 49-50.
20 *Id.* at 53.
21 283 U.S. 697 (1931).
23 *Id.* at 55.
24 *Id.* at 47.
worthy of a license," with Mr. Justice Clark's denial that "we, of course, are not holding that city officials may be granted the power to prevent the showing of any motion picture they deem unworthy of a license."

While Mr. Justice Clark, and the majority of the Court, were of the opinion that prior restraint of obscene and pornographic motion pictures is not prohibited by the the first and fourteenth amendments, and while Mr. Chief Justice Warren, and the concurring dissenters, were of the opinion that prior restraint may be used in "exceptional" instances, but not by "licensing and censoring" motion pictures, Mr. Justice Douglas declared that the first amendment does not permit censorship or prior restraint of motion pictures.

Although the opinion of the Court in the Don Juan case is limited to censorship of obscene motion pictures, it is, nevertheless, an extremely important decision in municipal law. This is the first decision by the Supreme Court of the United States squarely passing upon the issue of prior restraint and censorship as applied to motion pictures. Laying aside all personal opinions and previous court decisions limiting the right of censorship pertaining to other media of expression, it is apparent that the motion picture has an impact on the viewer, not present in any other form of expression. This is especially true when the motion picture is obscene. The public welfare requires that a municipality have the power to censor motion pictures. In view of this necessity, the opinion of the Supreme Court of the United States is morally and legally sound.

THE DOCTRINE OF GOVERNMENTAL IMMUNITY

Probably the most talked about decision in the field of municipal law during the past ten years is Molitor v. Kaneland Community Unit Dist. No. 302, wherein the following broad principles were announced:

1. The doctrine of governmental immunity generally, is a court-created doctrine.
2. The attempt of the courts to classify functions of municipal corporations into "proprietary" or "governmental" and to fix liability accordingly, has produced incongruities in the law.
3. The doctrine of governmental immunity found its way into Illinois on

\[^{25}\text{Id. at 55.}\]
\[^{26}\text{Id. at 50.}\]
\[^{27}\text{Id. at 78.}\]
\[^{28}\text{18 Ill.2d 11, 163 N.E.2d 89 (1959).}\]
the basic premise that "the King can do no wrong" which premise can no longer be justified.

(4) Generally, liability follows negligence and the doctrine of governmental immunity runs directly counter to this basic concept.20

The *Molitor* case involved a school district, but subsequent attempts to so limit its sweeping declarations were quickly set aside in *List v. O'Connor*,30 where the contention was made that the decision did not settle the question as to park districts. In meeting this contention the Supreme Court observed: "It seems clear under the Molitor case that . . . the decision of that case relating to a school district would, obviously, have equal application to park districts."31 And again in *Lynwood v. Decatur Park Dist.*,32 the court said: "While the holding of the Molitor case was confined to school district, it is clear that the foregoing principles would apply to other municipal corporations as well."33

The seventy-first Illinois General Assembly took steps immediately to neutralize the impact of the *Molitor* case by legislatively re-establishing immunity from tort liability for counties,34 park districts,35 and forest preserve districts,36 and for all claims in excess of $10,000 against public school districts and not-for-profit private schools.37

Attention is called to the fact that in the *Molitor* case and in each of its subsequent companion cases an affirmative act of negligence was the basis upon which the court found the doctrine of governmental immunity unpalatable. It is submitted that when confronted with a case of *pure* governmental immunity, untarnished by the intervening affirmative act of negligence, the *Molitor* decision will not be extended, and that the doctrine of governmental immunity will stand.

30 19 Ill.2d 337, 167 N.E.2d 188 (1960).
31 *Id.* at 340, 167 N.E.2d at 190.
33 *Id.* at 435, 168 N.E.2d at 186. At this point the court cited as follows cases in which it had been determined that the principles of *Molitor* applied: "Peters v. Bellinger, 19 Ill.2d 367, 166 N.E.2d 581 (cities); List v. O'Connor, 19 Ill.2d 337, 167 N.E.2d 188 (park districts); and . . . Miller v. City of Chicago, 25 Ill. App.2d 56, 165 N.E.2d 724 (park districts)." *Ibid.*
34 *ILL. REV. STAT.* ch. 34, § 301.1 (1959).
36 *ILL. REV. STAT.* ch. 574, § 3a (1959).
Support for this premise will be found in the recent Illinois Appellate Court cases of *Adamczyk v. Zambelli* and *Olipra v. Zambelli*. The plaintiff in each of these cases sustained personal injuries as a result of a fireworks explosion during a local street parade in Chicago. The parade had been licensed by the City, as had an intended fireworks display at a designated location. Two City policemen were assigned to guard the money collected as the parade progressed along its route, and to direct traffic when the parade came to an intersection. Unknown persons on the truck carrying the fireworks to the site of the display exploded a bomb causing the projection of shrapnel, which injured plaintiffs in these suits. The City of Chicago was made party defendant in both suits for the failure of its police to enforce the ordinance prohibiting shooting of fireworks in the street. The Appellate Court specifically noted the finding in the *Molitor* case, as well as the apparent extension thereof in *Peters v. Bellinger* and *Pree v. Hymbaugh*, and stated: “This and other cases cited involve affirmative negligent or wilful acts by municipal employees . . . . Municipal Corporations, not being insurers against accident, are not liable for every accident occurring within their limits.” The court concluded as follows:

>[W]e hold that the exercise of a city’s police power is a governmental function for the benefit of the public and general welfare. A municipality is not liable in tort for the failure of its policemen to prevent and stop others from violating the law. . . . [Citations omitted.] The wrong was not in the City but in those who improperly and unlawfully used the street.

Another example of the courts refusal to make the municipality an insurer for all injuries sustained on its streets and alleys may be found in *Weiss v. City of Chicago*. Here, a five-year old boy suffered severe burns from an unattended rubbish fire in a public alley. In sustaining the directed verdict which had been awarded the city at the close of plaintiff’s case the Appellate Court said: “To hold the City responsible for plaintiff’s injuries . . . , would be to impose an oppressive

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38 25 Ill. App.2d 121, 166 N.E.2d 93 (1960), *petition for leave to appeal denied by Illinois Supreme Court*.


43 *Id.*, at 128, 166 N.E.2d at 97.

and unreasonable burden and shift the care of a child from its parents to strangers. The court also held, as a matter of law, that common alley rubbish fires are not one of the dangerous street and alley conditions which the City must guard against.

One final tort case which might be mentioned because of its implication on municipalities is Swenson v. City of Rockford. In this case, where plaintiff fell on a sidewalk, she testified that she knew that it was defective, had used it four or five times a week for ten years, and though she saw the ridge in the pavement before she fell, she nevertheless proceeded to place her left foot upon said ridge. On these facts, the Appellate Court found the plaintiff guilty of contributory negligence as a matter of law and reversed the judgment of the Circuit Court. The Supreme Court reversed the Appellate Court by saying: "The use of a defective sidewalk by a person who has knowledge of the defect is not contributory negligence per se . . .", and directed that the question be submitted to the jury as a question of fact rather than one to be decided by the court as a question of law. It is difficult to envision a fact situation more favorable to the municipality. Thus, from the court's holding in this extreme factual background, it appears that the defense of contributory negligence as a matter of law is no longer available to cities, and that in each case its determination is for the jury.

URBAN RENEWAL

The provision of low-rent public housing and the elimination and prevention of slums and urban blight constitute comparatively recent accretions to local governmental functions. In 1945, the case of Zurn v. City of Chicago brought Illinois into the impressive list of states wherein favorable court decisions have established the constitutionality of laws authorizing slum clearance and urban redevelopment. This landmark case provided the solid basis upon which Chicago's vigorous Urban Renewal Program is founded and set the judicial tone for decisions during the past decade.

An urban redevelopment or urban renewal project connotes a fu-
ture use of the project area generally by private enterprise for residential, commercial, industrial, or other purposes, and in part by public agencies, in accordance with comprehensive community planning requirements. A vital ingredient to the effective operation of an urban renewal project is the authorization of the use of eminent domain in the carrying out of its objectives. The principle supporting that authorization is that ending a slum under supervision and control of public authority is a "public use." In the Zurn case, the court dismissed the contention that the Neighborhood Redevelopment Act authorized the taking of private property for private rather than public purposes by ruling: "The taking of property for the purpose of the elimination, redevelopment and rebuilding of slum and blight areas, meets all the requirements of a public use and public purpose within the principles of the law of eminent domain." The court also pointed out that the fact that land might subsequently be returned to private use had no effect on the validity of the statute, since the redevelopment itself was the public use and purpose.

This language, authorizing the combination of public power and private initiative, and the joinder of private and public funds, is the cornerstone of urban renewal and community conservation in Illinois. Subsequent decisions extended the above rationale to allow the use of eminent domain first, in the acquisition of vacant land for residential use, and then, for purposes other than residential, and for the prevention, as well as the elimination, of slums and blight. In upholding the Urban Community Conservation Act and its proviso for eminent domain in the prevention of slums, the court met the argument that the line of demarcation between a public and private use in the employment of eminent domain to eliminate slum areas must be the elimination rather than the prevention of slums, by stating:

[W]e are aware of no constitutional principle which paralyzes the power of government to deal with an evil until it has reached its maximum development. Nor is there force in the argument that if the use of eminent domain in the prevention of slums is permitted "every piece of property within the city

50 Rhyne, Municipal Law 520 (1957).
52 People ex rel. Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953).
54 People ex rel. Gutknecht v. City of Chicago, 3 Ill.2d 539, 121 N.E.2d 791 (1954).
Condemnation under urban renewal is but the final phase of a municipality's never-ending effort to keep itself free from slums, blight, and obsolescence and, in effect, starts the cycle anew. The first step is at the construction level, where plans and specifications must be in conformity with established building standards as set out in building codes for the safety and protection of its citizenry. These standards embrace the latest in building methods and materials and assure the community that modern building will afford the maximum in safety. A more perplexing problem, however, is the securing of these modern safety measures for the occupants and users of the older or pre-ordinance buildings. This is achieved by providing for retroactivity in crucial safety ordinances, and the acceptance of this approach by the Illinois courts of appellate jurisdiction during the past ten years has been of great significance.

The general rule appears to be that, while regulations restricting the use of property do not ordinarily have retroactive effect, municipal corporations in the exercise of their police power may, within reasonable bounds, enact ordinances or regulations having such effect. The judicial sentiment in Illinois in this area appears in the adopted language of City of Seattle v. Hinckley, which has been described by the Illinois Supreme Court as "a landmark case in the field".

There is no merit in the contention that the respondent had any inherent or vested right because he had complied with the law existing at the time he built. There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community. But to be protected against such impairment or perilment is the universally recognized right of the community in all civilized governments—a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power. . . . It would be a sad commentary on the law if municipalities were powerless to compel the adoption of the best methods for protecting life in such cases, simply because the confessedly faulty method in use was the method provided by law at the time of its construction.

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56 People ex rel. Gutknecht v. City of Chicago, 3 Ill.2d 539, 545, 121 N.E.2d 791, 795 (1954).
57 Abbate Bros. v. City of Chicago, 11 Ill.2d 337, 142 N.E.2d 691 (1957).
58 40 Wash. 468, 82 Pac. 747 (1905).
60 City of Seattle v. Hinckley, 40 Wash. 468, 471, 82 Pac. 747, 748-49 (1905).
The retroactive application of municipal fire, safety, and health ordinances to existing buildings received further approval when the Appellate Court stated: "Individuals working in pre-ordinance buildings are entitled to the same degree of fire protection as those working in post-ordinance buildings; and we think that it was the intent of the city council to afford the largest possible measure of protection to all."  

Protection of the safety of persons is one of the traditional uses of the police powers, and the broadening effect which these cases have given to the exercise of that power secure for the community uniform protection afforded by advances in engineering and safety technique. In 1959, court approval was secured for the retroactive application of ordinances providing for handrails on exit stairways, and for automatic sprinkler systems in men's cubicle hotels. Thus, in the short span of four years, impressive authority on the premise has been established.

To more adequately cope with building deterioration and obsolescence, the 1953 Illinois General Assembly added sections 23-70.2 and -70.3 to the Revised Cities and Villages Act, securing for the City of Chicago the power to demolish dangerous and unsafe buildings, or, in the alternative, to procure from a court of competent jurisdiction a mandatory injunction against the owner requiring compliance with building, fire, health, and safety ordinances. Prior to this enactment, these matters were handled under the abatement of nuisance procedure, which was actually an illusory weapon against this very real and pressing evil. In September 1960, the Appellate Court, referring to the abovementioned section 23-70.2, said: "[T]he purpose of the act is clear. It is to give the city a quick and effective means of removing those unused and dilapidated structures that present danger and blight."  

Additional support for the municipality in its fight against slum

64 Ill. Laws 1953, at 1112.
housing is found in *City of Chicago v. Hadesman*, where the court held that to require the City to give notice prior to bringing suit would amount to an invitation to land owners to flout the law until all the legal formalities could be met. The court felt that "such an administration of the housing ordinances would be . . . costly indeed, in terms of human life and in terms of expensive procedure for administration." The court further stated:

. . . [T]he mass inspection method, which is the most thorough-going type of inspection undertaken to date, reflects a growing social consciousness on the part of city officials in behalf of lower bracket income occupants of multiple-housing units; . . . it is clearly a proper and laudable exercise of public powers.

The power to license and control building contractors working within the corporate limits of a municipality is of great importance in maintaining integrity in building repairs and code consciousness in general contractors. Although the statutes are barren of any specific grant of such authority to municipalities, the Supreme Court, in *Concrete Contractors' Ass'n of Greater Chicago v. Village of LaGrange Park*, held that cities have the implied power to so license and regulate. This case was subsequently deemed controlling in *Village of Maywood v. Weglarz* where the Appellate Court sustained the validity of an ordinance licensing carpenters. There is no reason to believe that this regulatory power cannot be further extended to apply to other critical building trades, and thereby afford the city a further means of securing for its citizenry the benefit of its health and safety ordinances by assuring code compliance in all construction work performed.

**ZONING**

Generally speaking, it is this author's opinion that no other sub-topic under municipal law has had more judicial attention during the past ten years than zoning. The official court reports for the 1950's are liberally sprinkled with cases challenging the validity or reasonableness of zoning provisions. Yet, despite this prominence, very little in the way of substantive development or expansion of the established principles has taken place. Zoning cases by and large are re-

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68 Id. at 158, 149 N.E.2d at 429.
69 Id. at 157, 149 N.E.2d at 429.
70 14 Ill.2d 65, 150 N.E.2d 783 (1958).
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solved within the framework and makeup of the geographical locale in which the subject lots or parcels are found, thus restricting their applicability in future cases involving different parcels. The numerical vastness of the litigation stems jointly from the population boom in newly incorporated suburban areas and from the attempts of the older-established communities to up-date or revise their existing zoning provisions in line with the modern needs and wishes of the residents. That questions of best usage and classification boundaries will always be explosively debatable is the prime reason that a presumption of validity exists and that courts refrain from substituting their judgment for that of the legislative body.

Reasonableness is the key to sustaining zoning provisos and,

... among the particular facts and circumstances to be taken into consideration in determining whether a zoning ordinance is so unreasonable and confiscatory as to constitute an unlawful invasion of private rights are the character of the neighborhood, the zoning classification and use of nearby properties, the extent to which property values are diminished by the particular zoning restrictions involved and the gain to the public compared to the hardship imposed on the individual property owner.

A significant line of cases has come before the court as a direct outgrowth of extensive re-zoning in recent years. The first of these was Deer Park Civic Ass'n v. City of Chicago, wherein a building permit was issued to erect a factory after the passage of an amendatory zoning ordinance, but before its effective date. Under the provisions of the amendatory ordinance, such permit could not have been issued. The court found that the company had entered into contracts for construction and had incurred substantial obligations, had done work pursuant to the permit in reliance on zoning, and had thereby acquired a vested right to continuance of the construction of the building, notwithstanding the subsequent re-zoning. Again, in 1958, the Illinois Supreme Court had before it a matter concerning the retroactive effect of zoning ordinances, and there stated that "the general rule in Illinois" concerning such matters was as stated in the Deer Park case, i.e.:

72 Rams-Head Co. v. City of Des Plaines, 9 Ill.2d 326, 137 N.E.2d 259 (1956); Fox v. City of Springfield, 10 Ill.2d 198, 139 N.E.2d 732 (1957).
Any substantial change of position, expenditures or incurrence of obligations occurring under a building permit or in reliance upon the probability of its issuance is sufficient to create a right in the permittee and entitles him to complete the construction and use the premises for the purpose originally authorized irrespective of a subsequent zoning or change in zoning classification.76

Rules such as the "vested right" rule do much to safeguard the owner from any out-of-pocket loss as a result of re-zoning; however, they also, to an immeasurable extent, undermine the beneficial effects envisioned by the new legislation. Zoning ordinances are in the workings for months, surveys are made, statistics are gathered, conferences and even public hearings are had before they become a reality. During this necessary interim, building permits are issued which, in effect, perpetuate the evil sought to be remedied, because they allow the construction of a structure which will be a non-conforming use before it is completed. It was to this very problem that the court's attention was directed in Chicago Title & Trust Co. v. Village of Palatine,77 and the sympathetic treatment which it was afforded provides the basis for high expectations of expanding judicial consideration in the future. Discussing the pendency of a comprehensive ordinance as grounds for refusal of a building permit the court said:

There has been no decision in Illinois on this precise question. However it has been considered in other jurisdictions and the rule there laid down is that while the municipal authority has no right to arbitrarily or unreasonably refuse or delay the issuance of the permit, the issuance may be delayed when there is under consideration or pending an ordinance under which the issuance of the permit would be prohibited. It is our opinion that this rule is supported by reason as well as by authority.78

It must be noted, however, that the court tempered this language and considerably limited its scope by expressly affirming the aforementioned "vested right" rule of the Deer Park case. Thus, the status of the law seems to have been maintained upon a showing of "substantial work"79 and "good faith"80 reliance on the permit or the prob-

78 Id. at 268, 160 N.E.2d at 699 (1959).
ability of its issuance, regardless of the pendency of the ordinance.

In an exhaustive opinion long overdue in Illinois, *Bright v. City of Evanston*, the Supreme Court for the first time set out the judicial routes to be followed by litigants contesting the validity of zoning provisions. The court decided that one claiming that the ordinance is void in its entirety may seek direct judicial review, without first employing any of the remedies which the ordinance itself provides. Where, however, he claims that applications of a certain classification to his property is not lawful, but does not attack the ordinance as a whole, he may seek judicial relief only after he has exhausted all administrative remedies.

The most recent development in the law of zoning is the acknowledgment that in the trial court's order declaring existing zoning invalid, it is appropriate for the court to frame its judgment or decree with reference to the record before it; and where a specific use was contemplated the relief awarded may guarantee that the owner will be allowed to proceed with that use without further litigation and that he will not proceed with a different use. Hitherto, such orders were limited to a declaration of the invalidity of the zoning as to the particular property, the effect of which was to leave the property unzoned. In discounting the argument that by this procedure the court goes beyond the realm of adjudication and itself becomes a zoning agency, the court said: "The end result of the procedure which we adopt for declaratory judgment and injunction cases does not differ from that in litigation involving mandamus (where the order directs the issuance of the permit) and administrative review (where the order directs that a specific variation be allowed)."

Frontage consent ordinances have long been treated as akin to zoning and have a history in Illinois municipalities which, in many instances, even pre-dates the zoning ordinance. These ordinances, which require the written consent of property owners within a prescribed distance from the maintenance or construction of specified uses (viz., gasoline stations, hospitals, nursing home, etc.), have now, for many years, been virtually impossible to sustain when put to a test against the

81 10 Ill.2d 178, 139 N.E.2d 270 (1957).
backdrop of a specific parcel or use. In *Valkanet v. City of Chicago*, the court examined at great length the state of the law concerning frontage consents, noted the considerable difference of opinion as to the validity of such, and pointed out that the rationale of their holdings was:

[If an ordinance permits a certain percentage of the property owners to impose or create a restriction upon their neighbors' property by the device of consent provisions, such limitation constitutes an invalid delegation of legislative power, but if the consent provision merely waives or modifies a lawful and reasonable legislative restriction or prohibition, it is within constitutional limitations.]

That this distinction was more imaginary than real, soon became obvious to the court and in *Drovers Trust & Sav. Bank v. City of Chicago* it found frontage consent provisions to be invalid and unconstitutional in the following words:

Since Valkanet we have given the matter further study and feel that the subtle distinction between "creating" and "waiving" a restriction cannot be justified. Each constitutes an invalid delegation of legislative power where the ordinances, as here, leave the ultimate determination of whether the erection of the station would be detrimental to the public welfare in the discretion of individuals rather than the city.

The plaintiff's right to conduct a legitimate business in a district zoned commercial, in which the contemplated business is permitted, can not be left to the whim and caprice of neighboring owners. The procuring or non-procuring of frontage consents has no bearing upon the public health or welfare, and such a requirement is an unwarranted and unauthorized exercise of the police power.

**ANNEXATION OF UNINCORPORATED TERRITORY**

The flourishing of new communities and the expansion of established cities and villages during the '50's gave rise to keen competition for annexation of available unincorporated territory. It was not unusual for several interests to be actively pursuing annexation or incorporation petitions for the same territory at the same time. This clamor for expanded corporate limits or inclusion of a particularly desirable parcel reached what the Supreme Court called "unnatural and obviously unreasonable" consequences in *People ex. rel. Adamowski*

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85 *Id.* at 272, 148 N.E.2d at 769-770 (Emphasis added.)
86 18 Ill.2d 476, 165 N.E.2d 314 (1960).
87 *Id.* at 478, 165 N.E.2d at 315.
88 City of East St. Louis v. Touchette, 14 Ill.2d 243, 150 N.E.2d 178 (1958).
v. Village of Streamwood.\textsuperscript{89} Here the defendant village by ordinance "purported to annex some 75 miles of roadway in the general vicinity of the village, but only a small fraction of the roadways allegedly annexed ran through the village or were contiguous to the village in the sense that the annexed roadway was contiguous to and parallel with the then village limits."\textsuperscript{90} Subsequently the defendant village purported to annex a subdivision several miles away but connected by one of the roadways. The court noted this "spider's web effect" and stated:

Contiguous, for any reasonable interpretation of section 7-8 of the Revised Cities and Villages Act, must mean contiguous in the sense of adjacent to and parallel to the existing municipal limits and cannot, under any circumstances, permit a municipality by annexation ordinances to grab a whole maze of roadways, circumscribing and choking off unincorporated areas and causing them to be completely surrounded by a maze of roadways annexed to a municipality.\textsuperscript{91}

Subsequent to this decision, the question of whether territories are "contiguous" for purposes of annexation or incorporation has received considerable judicial comment, the most recent of which is found in Western Nat'l Bank of Cicero v. Village of Kildeer,\textsuperscript{92} wherein the court held:

[I]n order to be considered contiguous within the meaning of the statute [incorporation of a village], the tracts of land in the territory must touch or adjoin one another in a reasonably substantial physical sense. However, the line of demarcation between the reasonableness and unreasonableness of the continuity cannot be drawn with precision and must be determined from the facts of each case.\textsuperscript{93}

In People ex rel. Gray v. Village of Hawthorn Woods,\textsuperscript{94} the court found that the common boundary connecting for a distance of 128.7 feet met this test of reasonableness. From these decisions and others,\textsuperscript{95} it seems apparent that the court's liberal interpretation of "contiguous" in annexation and incorporation cases is bounded only by that degree of unreasonableness found in the Village of Streamwood plan.

Also spawned in this era of urban expansion was section 7-39a of the Cities and Villages Act, which established a procedure whereby prop-

\textsuperscript{89}15 Ill.2d 595, 155 N.E.2d 635 (1959).
\textsuperscript{90}Id. at 597, 155 N.E.2d at 636.
\textsuperscript{91}Id. at 601, 155 N.E.2d at 638.
\textsuperscript{92}19 Ill.2d 342, 167 N.E.2d 169 (1960).
\textsuperscript{93}Id. at 352, 167 N.E.2d at 175.
\textsuperscript{94}19 Ill.2d 316, 167 N.E.2d 176 (1960).
erty owners whose land has been included within the boundaries of a newly incorporated municipality may disconnect therefrom. The Supreme Court upheld the constitutionality of this procedure in *Bergis v. Village of Sunnyside* and added: "[N]o taxpayer has any vested right in the village as a municipal corporation or any guaranty that its boundaries will remain unchanged or that it may not lose its corporate life. Those hazards are incident to the ownership of property within a city or village." The overwhelming burden which the population boom in the suburban areas placed upon their educational and recreational facilities gave rise to a practice whereby subdividers were required to contribute a certain percentage of their land for these civic purposes, to pay a specified sum per housing unit to defray the added expense of such on the municipality, and in some instances to even construct and equip the facility itself. This practice was brought to the attention of the Supreme Court in *Rosen v. Village of Downers Grove*. There, the village had established a plan commission which tentatively approved plats of subdivision subject to the issuance of a certificate of compliance from the boards of education of the elementary and high school districts in which the property was located. Issuance of the said certificate and final approval of plaintiff's plat was withheld until he had executed an agreement which required him to deposit in escrow the sum of $325 for each lot sold. The money was to be held in escrow for two years, at which time it was to become the exclusive property of the school districts. The court held that section 53-2 of the Revised Cities and Villages Act authorizes the establishment of "reasonable requirements for . . . school grounds," but does not authorize a village to adopt a subdivision control ordinance requiring that a subdivider, as a prerequisite to obtaining planning commission approval of a plat, must dedicate land for "educational purposes" where that term is not restricted to the statutory "school grounds." The court further found that there was no statutory authority for substituting monetary charges for the dedication of land, and that the $325 per lot was based

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97 13 Ill.2d 50, 147 N.E.2d 333 (1958); see also Anderson v. City of Rolling Meadows, 10 Ill.2d 54, 139 N.E.2d 199 (1956); Indian Creek v. Petitioners for Disconnection, 27 Ill. App.2d 321, 169 N.E.2d 598 (1960).
98 13 Ill.2d at 52-53, 147 N.E.2d at 335.
upon factors totally unrelated to the proposed subdivision. The court noted that it had sustained the requirement that a subdivider provide curbs and gutters in *Petterson v. City of Naperville*[^101] upon the theory that the developer of a subdivision may be required to assume those costs which are specifically and uniquely attributable to his activities and which would otherwise be cast upon the public. But other than to reiterate this position that the requirements imposed must be related to the needs of the specific subdivision rather than to the needs which stem from the total activity of the community, the court refused to pass upon the question of a municipality’s power to require the dedication of land for school grounds.

**Municipal Servants**

The rights of municipal officers and employees have long been a fertile field for adjudication in Municipal Law. The civil service merit system in the United States has existed for three-quarters of a century. Chicago and Evanston became the first cities in the Middle West to have civil service laws by adopting the same in 1895, and in 1905, Illinois became the nation’s fourth state to adopt a merit system.[^102] The development in this important area during the past ten years has been notable. Only since January 1, 1950, have the decisions of the Civil Service trial board been subject to judicial review under the terms and provisions of the Administrative Review Act.[^103] Prior to that time the avenue available to those aggrieved by the action of the trial board was the grossly inadequate petition for a writ of certiorari, where the only proper inquiry was whether the Commission had jurisdiction and had proceeded legally.

In the past ten years the scope of review by the courts of a final administrative decision has been well defined by the courts. In *Adamek v. Civil Service Comm’n*,[^104] the trial court reversed an order of the Civil Service Commission which, in turn, had found Adamek, a patrolman in the Chicago Police Department, guilty of conduct unbecoming an officer by reason of his having solicited and received a bribe, and ordered his discharge. The Appellate Court, in reversing the trial court and sustaining the discharge of Adamek said:

[^101]: 9 Ill.2d 233, 137 N.E.2d 371 (1956).
[^103]: ILL. REV. STAT. ch. 244, § 149a (1950).
It has apparently become necessary to again state the limitations which the statute and the decisions of the courts have imposed.

... The function of the Circuit Court or Superior Court in acting as the primary court of review of the finding of an administrative agency is much different from its function in passing on the verdict of the jury returned in a case tried before it. In the latter case the court has the duty and right to consider the weight of the evidence and to grant a new trial if the verdict is not sustained by a preponderance of the evidence. In the former it can only set aside the finding of the administrative agency if the finding is against the manifest weight of the evidence. ... 105

The court further stated: "The Supreme Court has repeatedly held that the only function of the courts reviewing orders of administrative agencies is to consider the record to determine if the findings and orders of the administrative agency are against the manifest weight of the evidence. ..." [Citations omitted.] 106 The court then continued:

... The reviewing courts have no authority to try the case anew upon the record or to substitute their judgment for that of the commission or in any manner to modify or revise the commission's order. ... [Citation omitted.] The fact that the court, if it had been hearing the case originally, would have from the evidence reached a conclusion different from that reached by the commission is immaterial. 107

The problem of the trial court substituting its judgment for that of the Civil Service Commission on administrative review came before the Appellate Court in 1955 when that court had for its consideration a number of cases involving police officers who had been discharged after a hearing before the Commission for violation of various rules. The violations included failure to report for duty, leaving post without permission, failure to report involvement in an automobile accident, failure to properly guard a prisoner, so that he escaped, failure to properly account for money taken from a prisoner, and signing the sergeant's name to an inventory of property taken. In each of these cases the plaintiff sought administrative review. In each case, the finding of the Civil Service Commission was reversed by the Circuit Court and subsequently the Appellate Court reversed the trial court and sus-

105 Id. at 15–17, 149 N.E.2d at 468–69.
106 Id. at 17, 149 N.E.2d at 469.
107 Id. at 20, 149 N.E.2d at 471.

tained the Civil Service Commission. In *Nolting v. Civil Service Comm'n*, the court wrote the principal opinion and severely criticized the position taken by the trial court in two of the cases that the punishment of discharge was too harsh and severe for the violations committed. The court said:

It appears to us that these judgments were based on the erroneous assumption that courts have general jurisdiction over orders of the Civil Service Commission and that they may consider the severity of the punishment or matters in mitigation and may enter such orders as appear kind and merciful. These proceedings do not involve contests between litigants over civil rights but are, in effect, appeals from orders of public officials in the executive department to public officials in the judicial department. It is easy in such cases for courts to fall into the error of assuming their function to be charismatic and to take on the character of a supercommission or superchief of police.10

In general, the court's approach in this area seems to have developed into one of "great care and caution before they set aside the acts of the executive department of the government," but one which is nonetheless mindful that the constitutional doctrine of separation of powers is not violated when the findings of an administrative agency are judicially reviewed to determine whether they are contrary to the manifest weight of evidence.11

The *Nolting* case was also authority for the premise that the Commission, being limited by statute in its findings to an order for discharge, had no authority to suspend an employee; however, a 1957 amendment to the act secured this alternative penalty for the Commission.

The approach of "caution" or judicial restraint in interfering with executive action has properly given the municipality that degree of latitude necessary to maintain efficient and effective personnel control. "In fields such as this, courts must recognize that the relationship of the executive department to its employees is involved and that the discipline of an entire department may be affected."12 The court's ad-

10 Supra note 108.
herence to this principle during the past few years has been steadfast. The acknowledgment of the right to cancel or strike a promotional list after two years "on the grounds of unfairness or impropriety as well as on the grounds of 'staleness,'" the recognition that until a department head determines that a vacancy which exists in his department needs filling and requisitions the Civil Service Commission to evidence his determination, such vacancy as a matter of law does not exist, and the declaration to the effect that "civil service employees have no vested right to the performance of any duties or responsibilities once assigned to them," thereby sustaining departmental reorganization or transfer of duties, provide ample testimony of that adherence.

*Kelly v. Chicago Park Dist.* certainly ranks as one of the major civil service decisions in recent times. Every suit for reinstatement from an alleged wrongful discharge is accompanied or followed by an action for back salary. Prior to 1951, the courts took the position that officers, elected or appointed, had a right to the salary attached to the said office and, upon wrongful discharge or removal, were entitled to the *full* salary due to the office upon reinstatement thereto, regardless of any outside earnings. In the *Kelly* case the court recognized that a distinction did exist between civil service employees and officers, and found "that the rules of compensation applicable to public officers do not apply." With this obstacle out of the way, the court readily adopted the principle of "avoidable consequences" in these back salary cases by saying: "We see no basis for a finding that plaintiffs are entitled to be paid for their services twice, when none were rendered. It is our view that the Appellate Court erroneously held that plaintiff's salaries could not be reduced by earnings from outside employment." The duty to mitigate salary losses during the period of wrongful ouster and the right of the municipality to a set off having

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118 409 Ill. 91, 98 N.E.2d 738 (1952).


120 *Kelly v. Chicago Park Dist.*, 409 Ill. 91, 97, 98 N.E.2d 738, 742 (1952).

121 *Id.* at 98, 98 N.E.2d at 742.
been thus established, have subsequently received unanimous case sup-
port.\textsuperscript{122}

\section*{SUNDAY LAWS}

Sunday closing ordinances were the subject of two important Su-
preme Court cases during the past ten years, and the change of focus
which the court evidences in the basic rationale underlying the deci-
sions is particularly noteworthy. In \textit{Humphrey Chevrolet v. City of
Evanston},\textsuperscript{123} the court, in sustaining a “commodity type” ordinance,

stated:

[T]here is no doubt but that an Illinois city may by ordinance, as a valid ex-
cercise of its general police power, prohibit certain business activity on Sun-
day. . . . [Citations omitted.] For Sunday has been observed traditionally as a
day on which the normal, nonessential, nonemergency activity of the business
world ceases. . . . [I]t is everywhere recognized that legislative bodies may
properly act to preserve this deep-rooted, nation wide custom, providing only
that the measures adopted are reasonable.\textsuperscript{124}

Four years later the Supreme Court made no mention of this “deep
rooted, nation-wide custom” or that “Sunday has been traditionally
observed” when it struck down a comprehensive closing ordinance in
\textit{Pacesetter Homes Inc. v. Village of South Holland}.\textsuperscript{125} There, the test
prescribed to determine validity was whether or not the restricted
business actually tended to disturb others in their observance of a reli-
gious holiday. The court said:

A Sunday law which has as its object the promotion of religion or worship
is beyond the scope of governmental power, but one which seeks merely to
protect those desiring to worship from disturbance and distraction by others
is valid. . . . Since the only legitimate purpose of Sunday laws is to enable
others to worship free from disturbance, it follows that activities otherwise
lawful can be prohibited only if they reasonably tend to disturb others.\textsuperscript{126}

The majority opinion in the \textit{Pacesetter} case found that the facts before
it were distinguishable from the \textit{Humphrey Chevrolet} case, saying that
“the object in this case is the maintenance of quiet and order, and the
evil to be remedied is disturbance of others in their religious wor-

\textsuperscript{122} Nolting \textit{v. Civil Service Comm'n}, 7 Ill. App.2d 147, 129 N.E.2d 236 (1955); People \textit{ex rel. Trapp v. Tanner}, 19 Ill. App.2d 138, 153 N.E.2d 246 (1958) (affirms the distinc-
tion between officer or employee, and holds no setoff against officer); People \textit{ex rel. Krich v. Hurley}, 23 Ill. App.2d 246, 161 N.E.2d 884 (1959), aff'd, 19 Ill.2d 548, 169
N.E.2d 107 (1960); People \textit{ex rel. Lasser v. Ramsey}, 23 Ill. App.2d 100, 161 N.E.2d 690
(1959).

\textsuperscript{123} 7 Ill.2d 402, 131 N.E.2d 70 (1955).

\textsuperscript{124} \textit{Id.} at 405, 131 N.E.2d at 72–73.

\textsuperscript{125} 18 Ill.2d 247, 163 N.E.2d 464 (1959).

\textsuperscript{126} \textit{Id.} at 253, 163 N.E.2d at 468.
ship"; whereas the one dissenting voice stated that "the actual disturbance caused by the proscribed activities was not considered in Humphrey." It is this author's expectation that any uncertainty which exists in this area will soon be dispelled by the United States Supreme Court, which currently has before it for its consideration four cases argued in early December 1960, challenging the Sunday Blue Laws of Massachusetts and Pennsylvania and the Sunday Closing Laws of Pennsylvania and Maryland.

CONCLUSION

The above comments, topics, and cases are by no means exhaustive of the ten-year growth in what was at the outset labeled "the most expansive general legal topic in the sphere of jurisprudence today." This author is painfully aware of the gaping holes which have been left by this cursory treatment of the individual areas within the field of Municipal Law. Many of these areas by themselves have, in fact, supplied enough material for papers twice the size of this. An attempt has been made, however, to show that Municipal Law has something within its vast range to satisfy the needs of every practitioner—young or old. It is vibrantly alive, excitingly diversified, and ever-challenging as we in local government try to conquer our new frontiers. Urban living has been and will continue on the upswing in this country, thereby placing the very greatest of importance on that area of legal endeavors called Municipal Law.

127 Id. at 255, 163 N.E.2d at 469.
128 Id. at 256–57, 163 N.E.2d at 930 (dissenting opinion).