POWER OF MUNICIPALITIES TO AMEND THEIR OWN CHARTERS

A municipality is a legal corporate entity formed by Charter derived from a sovereign authority, to establish and maintain over the persons and property within a prescribed area, a local governmental agency subordinate to the sovereign authority, with such powers for local government, improvement and convenience as may be prescribed by law. The authority conferred may be for purposes of local regulation and also for corporate municipal purposes. The first is governmental in its nature, the other is in the nature of business enterprise. Authority to enact local ordinances, to enforce police regulations, to punish for municipal offenses and to impose property and license taxes, is governmental. Authority to supply fuel, water, lights and other useful conveniences for the inhabitants and property within its limits, is in its nature corporate as distinguished from governmental. A municipality being a subordinate governmental agency can lawfully exercise only such authority as is conferred by law, either expressly or by implication from that expressly given. Where authority is expressly given, all the power that is fairly necessary to the effective exercise thereof, may be implied in the absence of some controlling provision or principle of law applicable to the particular case. All reasonable doubts as to the existence of authority are resolved against the municipality, but where authority appears, a large latitude is allowed in the exercise of the authority, when the law applicable thereto is not thereby violated. The powers of municipalities are usually found in the charters granted; but they may appear in other applicable statutes. In the absence of organic limitations the sovereign lawmaking power has plenary authority over the existence and powers of a municipality, when private rights are not illegally affected by any action taken. Congress may establish, maintain or abolish municipalities or may authorize the same to be done within the territory not included in a sovereign State. The States may establish, maintain or abolish municipalities within their respective borders. As the charter and other statutes under which a municipality may exist and operate, constitute its chart of authority within which it must confine its operations, it is of course not within the power of the

municipality to change its charter authority unless such power is legally conferred by the sovereign from which the charter was received. Whether the power to change its own charter may be legally conferred upon a municipality is the pertinent enquiry here. Several States by organic provision expressly authorize the legislature to confer upon municipalities power to amend their charter rights. The decisions in such States are not to be considered here. In practically all the sovereign States of America the lawmaking power is by the Constitution vested in a Senate and House of Representatives, and from this express provision an implied principle of constitutional law is deduced and enforced that the legislature cannot delegate to any other authority the general lawmaking power of the State. From necessity and by immemorial usage this implied principle has not been regarded as denying to the legislature the right within its discretion to authorize municipalities to adopt ordinances that have the force of law within the proper sphere of their operation, where such ordinances and their enforcement are reasonable and do not violate any provision or principle of law applicable thereto. The legislature cannot legally authorize a municipality to exercise the general lawmaking power of the State, or to enact or to alter or to repeal a statute; but the legislature may enact a statute declaring what the law shall be and may make the enforcement of the statute depend upon a definite contingent event to be determined by municipal action. It is within the power of the legislature to confer upon a municipality appropriate authority for municipal purposes and to make the power conferred depend upon ratification by the municipality. Likewise the legislature may by appropriate statute make an existing law cease to operate as municipal authority upon the happening of a stated contingent event to be determined by the municipality. This may be done by a statute authorizing the municipality to take definitely defined action and declaring that upon such action taken the stated statute authority will be superseded; or it may be done by a statute authorizing definite municipal action and repealing all inconsistent statutes upon the authorized action being taken. These general propositions have perhaps been rescued from serious controversy.

In jurisdictions where special or local laws are forbidden or where uniformity is required in conferring governmental powers upon municipalities or where some peculiar circumstances appar-

ently control, it has been held that statutes attempting to authorize municipalities to alter or amend their own charters are invalid because they are violative of the implied principle of constitutional law that legislative power cannot be delegated, which principle is devolved from an express vesting of the legislative power of the State in a Senate and House of Representatives. See *Dexheimer v. City of Orange,* 60 N. J. L. 111, 36 Atl. Rep. 706; *Elliott v. City of Detroit,* 121 Mich. 611, 84 N. W. Rep. 820; *In Re Municipal Charters,* 86 Vt. 562, 86 Atl. Rep. 307; *State ex rel. Muller v. Thompson,* 149 Wis. 488, 137 N. W. Rep. 20, 28 Ann. Cas. 774, 43 L. R. A. (N. S.) 339.

In other jurisdictions where general laws are required or special laws are forbidden in regulating municipalities, or where both may be used it has been held that the legislature may authorize municipalities to amend their own charters. See *Yazoo City v. Lightcap,* 82 Miss. 148, 33 South. Rep. 949; *Dobbin v. City of San Antonio,* 2 Texas Unreported Cases, 708; *Nelson v. Town of Homer,* 48 La. Ann. 258, 19 South. Rep. 271.

In some jurisdictions it is held that a municipal ordinance not inconsistent with organic provisions has the force of a local law within its sphere of operation, and that to this extent such an ordinance when duly authorized to do so may supersede or supplement in the municipality a general State law. See *Village of St. Johnsbury v. Thompson,* 59 Vt. 300, 9 Atl. Rep. 571; *Plinkiewisch v. Portland Ry., Light & Power Co.,* 58 Ore. 499, 115 Pac. Rep. 151; *City of San Luis Obispo v. Fitzgerald,* 126 Cal. 279, 58 Pac. Rep. 699; *Bearden v. City of Madison,* 73 Ga. 184. See also *Thrower v. City of Atlanta,* 124 Ga. 1, 52 S. E. Rep. 76, 1 L. R. A. (N. S.) 382, and notes.

Is the constitution in reality violated by a statute which purports to authorize a municipality to amend its own charter, when the constitution merely vests the lawmaking power of the State in a Senate and House of Representatives and does not expressly or by *necessary* implication forbid the stated power to be conferred?

The lawmaking power of the legislature of a State is subject only to the limitations provided in the State and Federal Constitutions; and no duly enacted statute should be judicially declared to be inoperative on the ground that it violates organic law, unless it clearly appears beyond all reasonable doubt that under any rational view that may be taken of the statute, it is in positive conflict with some identified or designated provision of constitutional

law. In construing a statute it must be assumed that in its passage the legislature intended to conform to the requirements and limitations of organic law, and to provide a valid effective statute in accord with all the provisions of the constitution affecting the subject. Where one construction of a statute would render it unconstitutional and another construction that is fairly warranted by its terms and purpose, would accord with organic law, the latter construction should be adopted, since legislation is subject to applicable limitations of the constitution, and a valid statute is presumed to have been intended by the lawmaking power in its enactment. A statute should be so construed and applied as to make it valid and effective if its language does not exclude such an interpretation.

It is essentially the duty of the courts to sustain the constitution, and to decline to enforce a statute when its enforcement would violate organic law; yet in exercising the exceedingly delicate and responsible power and duty to declare legislative enactments to be contrary to the constitution, and therefore inoperative, the courts should, to maintain the judicial authority unsullied, be assiduous to keep entirely within their own organic limitations, and to refrain from declining to enforce statutes except in cases of clear and unmistakable violations of the constitution that require judicial action to give effect to the supreme law of the land on the subject, pursuant to the oath taken by all officials to "support * * * * the constitution."

In order to justify the courts in declaring inoperative as a delegation of legislative power, a statute conferring particular duties or authority upon municipalities, it must clearly appear beyond a reasonable doubt that the duty or authority so conferred is a power that appertains exclusively to the legislative department of the State government, and the conferring of it upon the municipality is not warranted under the provisions of the constitution. In vesting the legislative power of the State in the Senate and House of Representatives, the constitution by implication forbids the delegation by the legislature of the general lawmaking power of the State to any other officers; but by immemorial usage based on public necessity this implication does not apply to the powers that may be conferred upon municipalities for local governmental purposes. Where a statute does not violate the Federal or State Constitution, the legislative will is supreme, and its policy is not subject to judicial review. The courts have no veto power and do

not assume to regulate State policy; but they recognize and enforce the policy of the law as expressed in valid enactments, and decline to enforce statutes only when to do so would violate organic law.

A statute may be in whole or in part repealed or superseded or abrogated by implication of law as a result of the due enactment of a subsequent statute covering the same subject, or by the operation of a later statute upon the occurrence of a definitely specified contingent event.

If it is clear from its terms and purpose that the intent of a statute is that it shall supersede another statute upon a stated contingent event, the courts will give effect to such intent, when organic law is not thereby plainly violated, since the intent of the law is its vital force, and the province of the courts is to ascertain and effectuate the valid legislative purpose.

Neither the constitution nor the common law defines the line of separation between the powers that shall be exercised directly by the legislature and those that may be indirectly exercised through delegated authority conferred upon municipal governmental agencies. Where the legislature has authority to provide a governmental regulation, and the organic law does not prescribe the manner of adopting or providing it, or the nature of the regulation does not require that it be afforded by direct legislative act, such regulation may be provided either directly by the legislative, or indirectly by the legislative use of any appropriate instrumentality, where no provision or principle of organic law is thereby violated.

The legislature may confer upon a municipality any power or authority that does not conflict with the State or Federal Constitution; and any power or authority conferred should be so exercised by the municipality as not to violate either organic or other law. Does the conferring of power upon a municipality to amend its own charter violate the State or Federal Constitution? Clearly the Federal Constitution has no application where private rights are not illegally invaded. Where the State Constitution does not forbid the conferring of such a power upon a municipality, and no question of the use of special or general laws is involved, the proposition may or may not be affected by the usual provision of the State Constitution expressed in varying language that the law-making power of the State is vested in the legislature. From this provision is adduced the implied principle of constitutional law

that the lawmaking power vested exclusively in the legislature cannot be delegated.

Where the intent of a statute can be effectuated in a way that conforms to the requirements of organic law, the courts should give that construction and application to the statute.

The legislature cannot legally authorize a municipality to repeal a statute or to exercise general lawmaking power; and an act that in unambiguous terms purports to confer such authority upon a municipality may be judicially adjudged inoperative because in conflict with the provision of the constitution vesting the lawmaking power of the State in the legislature, which power cannot be delegated. But if a statute can be given a construction that will accord with the constitution and express the legislative intent, it should be done, even though the form of the statute might appear *prima facie* to be at variance with organic law. To illustrate: Where a statute authorizes a municipality to adopt regulations for purely municipal subjects that are inconsistent with existing laws, and the statute in terms repeals all laws in conflict with the authority conferred, the enactment may appear *prima facie* to authorize the municipality to change existing statutes; but upon closer analysis the statute may fairly be construed to authorize municipal regulation of a municipal subject, and upon the due adoption of such regulation, the statute by its own force and terms repeals or supersedes all inconsistent laws, leaving the municipal regulation to govern, the regulation being of a character that could have originally been committed to the municipality. When the legislative intent permits such a construction, the courts should give to the enactment the effect that will comport with the constitution.

The authority of the legislature to regulate the powers of municipalities for proper municipal purposes is not curtailed or limited by the usual provision of the constitution that the legislative authority of the State is vested in a Senate and House of Representatives. Nor does the conferring of *quasi* legislative powers upon a municipality for local governmental purposes violate the implied principle of organic law that the legislature shall not delegate its general lawmaking power. See *State v. Westmoreland,* 133 La. 63 South. Rep. 502; *Stoutenburgh v. Hennick,* 129 U. S. 141, 9 Sup. Ct. Rep. 256; *Munn v. Finger,* 67 Fla., 64 South. Rep. 271.

Where the legislature has express authority to prescribe the powers of a municipality and to provide for its government by general or by local laws, the legislature may by appropriate statutes authorize the municipality to adopt ordinances regulating its administrative affairs, and provide that upon the adoption of such ordinances and their ratification in a prescribed manner, the ordinances shall be effective, and that all inconsistent statutes shall be repealed by force of the statute conferring the authority to adopt ordinances on the subject. This does not delegate the general lawmaking power of the State, nor authorize a municipality to repeal a statute. The effect of such a statute conferring power upon a city to amend its charter is to repeal conflicting statutes upon the authorized action being duly taken by the municipality in accordance with express statutory authority in a matter that is purely municipal in its nature and within the power of the legislature to confer in the first instance upon the city. See *Munn v. Finger, supra,* and *City of Jacksonville v. Bowden,* 64 South. Rep. 67 Fla. This is not doing by indirection what cannot be directly done, for the change made in the charter powers given by prior statutes, is accomplished not by the taking of the municipal action, but by the force and operation of the statute which becomes effective to change the prior law upon the happening of a definitely stated contingent event, *viz,* the taking of the authorized municipal action for a municipal purpose.

Thus it seems that when not expressly or by *necessary* implication forbidden to do so by some provision of the constitution, it is within the power of the legislature to enact a statute that in effect operates to repeal all statutes in conflict with municipal action duly taken under the later statute, upon the taking of such action, even though such action is to change the charter powers, when the authority given is for a proper municipal purpose, that could have been conferred upon the city in the first instance, and the repeal of the conflicting statutes is effected by the force of the statute conferring the power upon the municipality. Such statutes do not in effect delegate the legislative power of the State, and do not violate constitutional provisions vesting the legislative power of the State in a Senate and House of Representatives.

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