Extraterritorial Powers of Municipalities in the United States

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WHOSO desireth to discourse in a proper manner concerning Corporated Towns and Communities, must take in a great variety of matter, and should be allowed a great deal of Time and Preparation. The subject is extensive and difficult.

—Thomas Madox (*Firma Burgi*, 1726)

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I

INTRODUCTION

Broadly conceived, a municipality in American law is a subordinate public authority created by a superior governmental authority and vested with the legal rights of a corporation. Cities, villages, towns, counties, and special districts may be designated municipal corporations by law. In this study, the term "municipality" refers only to cities, towns, and villages, unless otherwise specified.

Boundaries

Municipal corporations must have definite boundaries. A specific territory is considered to be one of the necessary attributes of a municipality. This partially distinguishes it from private corporations.. State statutes require that boundaries of proposed municipalities be clearly set forth in the petitions for incorporation. Courts have held failure to do so constituted sufficient grounds on which to declare the incorporation void.[1] Corollary to this concept of a definite territory for each municipality is the idea that the powers and functions of each shall be exercised only within its own boundaries.[2]

Reflection immediately reveals that municipalities are not self-sufficient (Cf. Anderson, 2). They frequently need to go outside their boundaries to obtain an adequate water supply; to locate installations or institutions of various kinds, such as parks and sewage disposal works; their bridges and ferries often extend into outside areas, and nuisances near the borders need abatement to protect the health, safety, and welfare of municipal residents. These problems are especially acute in areas where "urban agglomerations" have arisen.

Meaning of "Power"

The term "power" when used in this study refers to two different things, although they are not always readily separable. First, "power" refers to that ability or capacity for exercising control or authority over an area and persons therein. In terms of the traditional classification of municipal powers, this

[1] *Furrh v. State,* 6 Tex. Civ. App. 221, 24 S.W. 1126 (1894); *State v. Bilbey,* 60 Kan. 130, 55 Pac. 843 (1899).

[2] This viewpoint has been expressed repeatedly by the courts. Cf. *Western New York Water Co. v. City of Buffalo,* 213 App. Div. 458, 210 N.Y.S. 611 (1925); *Safe Way Motor Coach Co. v. City of Two Rivers,* 256 Wis. 35, 39 N.W. (2d) 847 (1949).

might be termed the "governmental" power. Second, "power" refers to the ability of the municipality to do business or to provide services in its capacity as a corporation. This *corporate* power is exercised extraterritorially more frequently than the *governmental* power. These are not always readily separable, as seen in the fact governmental power is often used to implement the corporate. Eminent domain may be used to obtain land for a source of water supply, for a sewage or garbage disposal plant, or to build a dam to generate electricity for a municipal power system. Police power may be used to protect such property. Sometimes municipalities are faced with a serious problem in this regard. They may possess property beyond their boundaries for a variety of purposes to which they are not permitted to extend their police supervision. The power to police may not accompany the power to acquire.

Inherent Right of Local Self-Government

The authority of municipalities to exercise extraterritorial powers raises a fundamental question concerning the nature of local government. This question particularly relates to the place of cities in our governmental system, which in turn involves the question of power—both within and without corporate limits. A conflict exists between the doctrine of an inherent right of local self-government and the principle that cities have only the powers conferred upon them by state constitutions or statutes. The conflicting views have been stated as follows in the *Harvard Law Review* (21):

> An accurate determination of the constitutionality of the delegation of extraterritorial governmental powers involves a consideration of two conflicting political conceptions—that of the municipal corporation as a creature and organ of the state, and the never-laid ghost of the "inherent right to local self-government."

Although courts have generally rejected the latter idea, it has been aptly characterized as a "never-laid ghost."

The doctrine of an inherent right of local self-government was first given judicial expression by the supreme court of Michigan in *People ex rel. Le Roy v. Hurlbut.*[3] In this case, the power of the Michigan legislature to appoint permanent members of the board of public works of Detroit was questioned. The court held that such appointments for purely municipal purposes could be made only by municipal authority. Even though this decision was based on a provision of the Michigan constitution, Judge Cooley gave classic expression to the doctrine under consideration:

> And the question, broadly and nakedly stated can be nothing short of this: Whether local self-government in this state is or is not a mere privilege, conceded by the legislature in its discretion, and which may be withdrawn at any time at pleasure?[4]

Judge Cooley answered this question in the negative. He then gave vigorous

[3] 24 Mich. 44 (1871).
[4] Ibid., pp. 94-95.

expression to his reasoning, which has become the standard defense of those who advocate an inherent right of local self-government:

> We must assume either an intention that the legislative control should be constant and absolute, or, on the other hand, that there are certain fundamental principles in our general framework of government, which are within the contemplation of the people when they agree upon the written charter, subject to which the delegations of authority to the several departments of government have been made. That this last is the case, appears to me too plain for serious controversy. The implied restrictions upon the power of the legislature, as regards local government, though their limits may not be so plainly defined as express provision might have made them, are nevertheless equally imperative in character. . . .
>
> The circumstances from which these implications arise are: *First,* that the state constitution has been adopted in view of a system of local government, well understood and tolerably uniform in character, existing from the very earliest settlement of the country, never for a moment suspended or displaced, and the continued existence of which is assumed; and, *second,* that the liberties of the people have generally been supposed to spring from, and be dependent upon that system.[5]

The essense of Judge Cooley's argument was: Even if the state constitution had contained no provision relating thereto, there were certain rights enjoyed by municipalities because of traditions and precepts implicit in their heritage (Cf. Easton, 8, 1).

Although Judge Cooley gave the doctrine of an inherent right of local self-government its classic judicial statement in the *Hurlbut* case and later referred to it approvingly,[6] he was by no means alone. Courts have voiced the same idea in several states: especially Indiana, Texas, Nebraska, Iowa, Kentucky, and Montana.[7] Examination of the pertinent cases in these states reveals this doctrine has been repudiated in Nebraska, seriously questioned in Texas, and only hesitatingly promulgated in Iowa. In Kentucky and Montana a distinction between the governmental and corporate functions has been made, and the right of local self-government associated only with the latter. In Indiana, this right at one time received unqualified endorsement but was later repudiated, the cases in which the endorsement appeared being chronologically close together.[8] Favorable reference has been made to this doctrine in other state courts without making it the basis for any decisions.[9] On the other hand, decisions by various courts are replete with positive denials of any inherent right of local self-government. The prevailing judicial attitude was clearly

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[5] Ibid., pp. 97-98.

[6] *People ex rel. Board of Park Commissioners v. Common Council of Detroit,* 28 Mich. 228 (1873).

[7] Appendix.

[8] *City of Logansport v. Public Service Commission,* 202 Ind. 523, 177 N.E. 249 (1931).

[9] Appendix.

expressed by the United States Supreme Court in *Barnes v. District of Columbia:*

> A municipal corporation, in the exercise of all of its duties, including those most strictly local or internal, is but a department of the State. The legislature may give it all the powers such a being is capable of receiving. . . . Again, it may strip it of every power, leaving it a corporation in name only; . . . it may itself exercise directly within the locality any or all of the powers usually committed to a municipality.[10]

Regardless of any logic which may be advanced in support of the doctrine of an inherent right of local self-government, it is not accepted by courts today.

Some 50 years ago, Amasa M. Eaton (8, 2) presented the historical basis for this doctrine. He inquired whether the right was not "one of the common law rights brought over from England by our ancestors and never surrendered." Mr. Eaton relied largely on that portion of the Magna Charta which provided that "the city of London shall have all its ancient liberties and free customs . . . and . . . all other cities, boroughs, towns, and ports shall have all their liberties and free customs."[11] In regard to America, he placed considerable emphasis on the history of Rhode Island. There were independent towns in that area before the state of Rhode Island ever came into existence. Mr. Eaton maintained that these towns, particularly Providence, Portsmouth, and Newport, possessed powers which they never surrendered when they became a part of the state. Furthermore, "as new towns were incorporated they were granted the same benefits, privileges, and liberties that were enjoyed by the four original towns or colonies that existed before there was any united colony" (Eaton, 8, 3). One of these was the right to manage their local affairs.

From that point Mr. Eaton proceeded with a weak analogy between the system of towns forming Rhode Island and the system of states forming the United States (Eaton, 8, 4): "As the original thirteen states constituted the Union of the United States, so did the four original colonies or towns constitute the united colony, subsequently the state. As new states came into the Union upon the same footing as the old states, so new towns became a part of Rhode Island upon the same footing as the old towns."

This weak analogy becomes apparent when we ask: Why do the states of the Union continue to enjoy the large number of unenumerated powers that have historically belonged to them? The answer obviously lies in the federal form of government created by the national Constitution. The central government was thereby delegated certain enumerated powers. It is not a government of residual powers, as are the state governments. Nowhere in the constitution of Rhode Island or of any other state can one find any attempt to make exhaustive enumeration of the powers which that state posseses. Instead, a fundamental principle of our government is that the states (and the people)

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[10] 91 U.S. 540 (1875).

[11] Section 16 (section 13 in some versions).

possess the undefined residuum of power which must rest somewhere in any system of government.

In the same year in which Mr. Eaton published the first part of his study, the supreme court of Rhode Island recognized the concept of an inherent right of local self-government, although it did not voice agreement with it. The court conceded that the settlements of Providence, Portsmouth, and Newport were "unique." "Unlike other colonies, they were made before and without a charter of any kind."[12] The court would not commit itself on the significance of this historical occurrence. Instead, it avoided the issue by adding: "Towns and cities are recognized in the constitution, and doubtless they have rights which cannot be infringed. What the full limit and scope of these rights may be cannot be determined in the decision of this case."[13] The court apparently meant that the towns and cities of Rhode Island have been guaranteed certain rights *by the constitution* which may not be infringed by the legislature, a viewpoint remote from any concept of "inherent" rights. Later, the supreme court of Rhode Island specifically repudiated the idea of any right of local self-government for the municipalities of that state.[14]

An examination of conditions surrounding the rise of municipalities in England reveals many of them existed long before they had any charters. Originally, these charters were little more than confirmations of powers and privileges which the cities and towns already enjoyed. Municipal corporations developed in England as an outgrowth of the evolutionary development of the relationships between inhabitants of the manors and their lords, who were the first to grant charters to towns. These charters made very little change in the status of towns. As observed by one early writer: "In ancient times, little Difference was made (for ought that I have observed) between a populous town that was gildated or incorporated, and one that was not gildated or incorporated." (See Madox, 32.) The history of London illustrates this point. London was a settled place some 2,000 years ago, but it did not receive its first charter until the 12th century (Gomme, 15, 1). According to J. F. Dillon (7), Henry I granted the first charter to London between 1100 and 1125.

The practice of granting charters to English cities did not become general until the 14th century. Incorporation by charter was made a precondition to the ownership of land at that time. This made it a legal necessity. The English kings had worked diligently to discover some way to convince the cities and towns that it was important to receive a charter from the sovereign. They finally arrived at the land ownership method.

During medieval times in England, municipalities were free from control or interference by any superior authority. According to Gomme (15, 2), "In

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[12] *City of Newport v. Horton*, 22 R. I. 196, 47 Atl. 312 (1900).
[13] Ibid., p. 204.
[14] *City of Providence v. Moulton*, 52 R. I. 236, 160 Atl. 75 (1932).

medieval days every municipal authority assumed what power it chose, or at all events a great variety of powers, and legislation and charter were used to check this assumption rather than to increase it." The use of charters granted by a superior authority to decrease and circumscribe the time-honored powers and privileges of municipalities was by no means a novel development in English law when it appeared in this country. That is the important point for the purpose of this study. The practice of chartering municipal corporations constituted no departure from the practice with which our English forefathers were familiar.

Historical Aspects of Extraterritoriality

The rule that municipal corporations generally cannot exercise powers beyond their boundaries without legislative authorization is so basic to our system of municipal law that it is difficult to realize cities have not always been so restricted. The development of such restrictions has constituted a reversal of the situation existing through a large part of the recorded history of the Western World, including ancient Greece and Rome.

In Greece the situation was implied in the term "city-state." Power resided in a number of independent, autonomous cities, which recognized no superior authority. Each city had a surrounding area attached to it, over which it exercised control without hindrance from any source. Each city possessed a sphere of control outside its own boundaries, a situation just as normal then as is the reverse today. In Rome, the situation was even more striking. Roman Empire history is essentially a record of the far-flung dominion of a single municipality, with sovereignty not only over the whole of Italy but also over the largest empire then known to history. Ample exercise of extraterritorial authority by this great city is illustrated in the construction of hundreds of miles of roads to facilitate its military activities. Like many modern cities, Rome had a water problem, and to solve it, some 360 miles of aqueducts are reputed to have been built.

Examining extraterritorial powers possessed by the early cities of England is especially relevant to a study of such powers for cities in the United States. It is important to get some clear notion concerning developments in that country, since, as noted by the United States Supreme Court, "Our system of local and municipal government is copied in its general features from that of England."[15] Understanding the evolution of English cities and the methods employed by them in the attempt to perform their functions over a period of many years is valuable in any effort to comprehend the nature and problems of cities in the United States at the present time.

As late as the 17th century, the English municipal corporation possessed no certain, designated area over which it exercised all its authority. The

[15] *The Mayor v. Ray,* 19 Wall. 468 (1873), p. 476.

Webbs (55, 1) have maintained it was "not primarily a territorial expression" and for many years each English municipality was essentially a "bundle of jurisdictions relating to persons." These jurisdictions varied from one municipality to the other, as well as from one function to the other. It was always assumed that these corporations possessed some geographical center from which their authority radiated, but the areas over which they exercised different powers varied. For example, the judicial powers of the local magistrates were generally restricted to the county where the municipality was located. On the other hand, control exercised by a municipal corporation over the conduct of markets would extend over one area, while its control over the conservation of wildlife would extend over another—perhaps far into adjacent counties. Some municipalities possessed admiralty jurisdiction that often extended miles up rivers, as well as along the seashore. As examples of such far-reaching admiralty jurisdiction, Vine (53,1) points out that "the jurisdiction of Rochester extended on the Medway to Sheerness, distant twenty miles; that of Bristol to Holmes, twenty-five miles from the city; Newcastle upon Tyne had jurisdiction on ten miles of the river below the town and seven above it . . ." This prevalent condition was recognized in the Municipal Corporation Act of 1835, which states: "metes and bounds of every borough . . . should include the whole of the *liberties of the borough . . . as the same* were then taken to be." "Liberties" referred particularly to the widespread areas in which the inhabitants of a locality enjoyed certain customary privileges since commonly municipal corporations acquired dominion over manors located outside their boundaries and exercised control over them like a lord (Webbs, 55, 2).

Evolution of London history is especially illuminating in regard to powers enjoyed by cities in early English history. Lundinium was one of the important cities of the Roman Empire, deriving its powers from the external sovereign Rome. According to Gomme (15, 3), the Romans "municipalised" Britain. Under the program of "municipalisation," each city had its *territorium,* a surrounding area over which the city exercised governmental authority, under the auspices of the external sovereign. The *territorium* of a city extended to the *territorium* of the nearest city or to some natural boundary like a dense forest, large swamp, or major river. The *territorium* of London thus extended to the *territorium* of Rochester, the two cities being located some 30 miles apart. Accordingly, the radius of the *territorium* of any city varied at different points. When the Romans left Britain, these cities were, for all practical purposes, independent; and they proceeded to exercise whatever authority they could muster over surrounding territory; in some cases by means of conquest. "Between the external sovereign from whom the municipal constitution was first derived, namely the Roman empire, and the external sovereign who forced his sanction upon the prescriptive municipal constitutions, namely, the Plantagenet King, Edward III, there is the lapse of

many centuries." (See Gomme, 15, 4). During this period the many rights and privileges developed that were later "recognized" in early charters, and later still were made to depend for their existence, if they existed at all, upon charters granted by the newly developed external sovereign.

In 1917, the supreme court of Oregon divided the powers that a city or town might exercise into two classes: "ntramural" and "extramural."[16] Although the court did not mention the fact, it was indebted to the Roman language and practice for its application of these terms to powers exercised within and without the territorial limits of a municipality. In this context the term referred to the existence of cities whose boundaries were marked by walls, a condition characteristic of major Roman cities. Each Roman city was regularly provided with an open area around it, called the *pomoerium*, which served a variety of purposes. Cemeteries were located there, since the Romans did not bury their dead inside a city or town. Amphitheaters were sometimes located in this area. In addition, this unbuilt ring around the cities possessed military significance both in Roman and later times. It enabled the defenders of a city to set up a line of defense some distance from the walls of their city if they were sufficiently strong, and they could view any attackers for a distance before they reached the town.

The Problem Today

It is clear that as little as 500 years ago our English forefathers were accustomed to a system of local government in which the exercise of extraterritorial powers by cities and towns was the rule rather than the exception. By the time America was colonized, the situation had changed. Cities and towns on this side of the Atlantic Ocean were organized according to principles only recently developed in the mother country. The colonial cities were granted extraterritorial powers in their charters. In the Dongan Charter of New York, reference was made to a burial place "without the Gate of the Citty" and to a ferry from New York to Long Island, established by the former (Reed and Webbink, 43, 1). The Baltimore charter of 1796 granted power to the city to prevent any introduction of contagious diseases within 3 miles of its limits. Control over navigation of the Patapsco River within 4 miles of the city also was authorized (ibid., 2). The press of problems faced by municipalities today is making it more and more necessary that once again their extraterritorial jurisdiction be increased. This must be accomplished through grants of power by the state governments, which possess control over them, rather than through default.

Although extension of territorial authority of municipalities in various fields has been advocated as a remedy for many problems plaguing local governments today, such action creates new problems at the same time it solves

[16] *State v. Port of Astoria,* 79 Or. 1, 154 Pac. 399 (1917).

old ones. Particularly important is the problem of conflicting jurisdictions. As long as municipalities remain within their own boundaries in the exercise of their powers, this problem is solved on the basis of boundary line locations. In direct proportion as this basis is disregarded, jurisdiction must be defined in terms of *functions*. As noted earlier, this method of definition would be nothing new in the history of our institutions. It was characteristic of England in medieval times. Another problem associated with the extension of municipal authority in this manner arises from competition among cities for spheres of control and influence. This may produce an attitude of rivalry, easily productive of disharmony rather than mutual cooperation. Nevertheless, the trend is toward expansion of such powers, both in relation to exercise of control as well as provision of a variety of services.

The following chapters will be concerned primarily with an examination of this question: IN WHAT FIELDS, AND TO WHAT EXTENT, HAVE MUNICIPALITIES IN THE UNITED STATES BEEN PERMITTED TO EXERCISE POWERS BEYOND THEIR BOUNDARIES? While attempting an answer to this query, examination will be made of pertinent statutory provisions and court decisions. The courts do not "grant" municipalities the authority to go beyond their boundaries, but they may "find" such authority through statutory interpretation or appeal to precedent. On the other hand, even though a state legislature may have authorized municipalities to perform a wide variety of functions outside their boundaries, a strict interpretation of these grants by the courts may serve to cripple very seriously any attempt to take advantage of them. In addition to general statutory provisions on the subject, many municipalities are given certain extraterritorial powers in special charters granted them by the legislature of their state. The great number of these charters and their inaccessibility render impossible a detailed examination of their provisions, but it seems safe to assume that powers granted therein generally bear a close resemblance to those granted municipalities in the same states according to provisions of general statutes.

In order to obtain some insight into the extent to which municipalities have made use of extraterritorial authority granted them, letters were sent to all cities over 50,000 population in the United States and to municipal leagues in the various states. Information furnished by cities and municipal leagues replying is referred to throughout the study.

II

WATER AND SEWAGE

As previously indicated, courts generally have held municipalities are limited in the exercise of their powers to the area included within their boundaries. This is particularly true in regard to governmental powers, but it is also significant with relation to corporate powers. Extraterritorial exercise of powers in either of these categories may be authorized by specific statutory provisions although the fact that providing their inhabitants with an adequate supply of water for drinking or other purposes is among the most important functions performed by municipalities, ownership and operation of a water system is considered by courts in cases involving municipal liability in tort to be a corporate rather than a governmental function.

Most state statutes specifically empower municipalities to go beyond their boundaries to obtain an adequate supply of water. The practice of granting extraterritorial authority to protect sources of water from contamination, and necessary structures from damage, is not so widespread. Municipalities often do not possess authority to sell water that they have brought from sources outside their boundaries to customers located outside. Some courts have held that statutory authority to construct and operate waterworks for the purpose of providing inhabitants with water does not necessarily imply power to furnish water to outsiders.[1]

Provision of Water for Residents

Municipalities usually obtain water from one or more of four sources: wells, lakes, rivers, or catchment areas. Only the smaller municipalities are generally able to obtain sufficient water from wells. No problem of extraterritoriality usually occurs under these circumstances, as the source of supply is most often located within municipal boundaries. Many cities obtain water from lakes adjacent to them or located only a short distance away. This is particularly true of cities located on or near the Great Lakes. (Cf. Knapp, 27.) Rivers are the third major source from which municipalities obtain water. In those cases where a river marks one boundary of the municipality, or flows through it, problems relating to extraterritoriality seldom appear. Catchment areas form the fourth major source of municipal water supply. Complete absence or inadequacy of nearby sources may necessitate the development of such areas some distance from a city. Development of these areas may be required in some instances by the extremely contaminated condition of a nearby river, rendering it unfit as a source of drinking water. The need to

[1] Appendix.

develop distant watersheds is especially acute for larger cities in the western part of the country; and in some cases, in the eastern part as well.

Los Angeles and San Francisco have been faced with very serious problems in this regard. Portland, Oregon, and Seattle, Washington, have had to contend with similar ones of less severity. In 1908, Los Angeles began the construction of a 238-mile-long aqueduct to the Owens River, which is not very far from the Nevada border. In 1918, this longest aqueduct in the world was completed. During the latter 1930's, Los Angeles constructed the Mono Basin addition to the Owens River Aqueduct, connected with the northern end of the Owens River Valley. Since the intake from the Owens River is located 112 miles south of Mono Lake, much of the water for Los Angeles travels 350 miles. The major portion of San Francisco's water is now obtained from the Hetch Hetchy project on the Tuolumne River in Yosemite National Park, about 200 miles from the city. Construction of this project was begun in 1913. The first delivery of water was made in 1934. (Cf. Eckart, 10.)

The statutes of practically all states, with the exception of those in New England, empower municipalities to acquire and develop extraterritorial sources of water supply. No specific geographical limitations are imposed on the area over which municipalities may exercise such authority in two-thirds of the states. Statutes in these states authorize municipalities to obtain, construct, maintain, and operate waterworks "within or without their boundaries." Although wording of authorizations varies considerably among the states, the results are essentially the same.

When statutes provide for waterworks to be acquired by "purchase or otherwise," the chief alternative to purchase is condemnation, either of already existing works, or of land, property, and easements necessary for their construction. Specific authorization is usually granted municipal corporations to use eminent domain to obtain necessary property. Absence of a specific reference to condemnation or eminent domain does not constitute a bar to the exercise of this power. Although the rule in this regard is not absolutely settled, it is generally accepted if municipalities are authorized to construct or improve public works outside their limits and if they are empowered to condemn property for such purposes within their limits, they are by implication authorized to do the same outside their limits.

States restricting the area in which municipalities may obtain, construct, and operate waterworks impose a variety of limitations. Indiana extends the jurisdiction of cities and towns 25 miles beyond their boundaries.[2] In Iowa, cities of over 50,000 population may acquire waterworks "within their corporate limits," while other cities and towns may obtain them "within or with-

[2] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-7203.

out their corporate limits."[3] This type of legislative restriction, discriminating against larger cities in favor of smaller ones, is very uncommon. No limitations are imposed on cities of the first class and special charter cities in Missouri.[4] The first classification reflects the more serious problem likely to be faced by larger cities in their efforts to obtain an adequate supply of water. The provision relating to special charter cities reflects the early practice of incorporating municipalities by special charter and granting them powers that differed from city to city. Missouri varies the distance which cities may go in search of water, and the permissible jurisdiction of cities is progressively decreased until it extends only 5 miles in the case of fourth-class cities[5] Similar restrictions exist in Nebraska.[6]

New Mexico authorizes cities and towns to construct waterworks "without their limits," with no reference to any geographical limitation.[7] Municipalities in that state are also empowered to condemn property for waterworks, "both within and without their corporate limits and for a distance of two (2) miles outside of the same."[8] Here the difference in limitations rests on the method used to obtain the property. No restriction is placed on the construction of waterworks, but a rather severe restriction is imposed on the extraterritorial exercise of eminent domain. Pennsylvania municipalities are restricted in their search for water to the counties in which they are located.[9] A municipal corporation in West Virginia may construct and operate a waterworks system "within the area included in a ten-mile extension of the corporate limits."[10]

Two limitations generally exist even in those states that impose no specific geographical restrictions on the area over which municipalities may exercise certain powers. The area of the state itself constitutes one of these limitations. No state can empower its municipalities to go beyond its boundaries and exercise authority in another state, unless the other state has granted permission.[11] Several states have granted permission to cities and towns in adjoining states to acquire property for various purposes within their boundaries. The second limitation results from the fact one municipality generally cannot exercise governmental authority within the boundaries of another municipality, unless it has been granted specific authority to do so by the state legislature or has obtained permission from the other municipality. Cities sometimes solve problems arising from this limitation by joint ownership and operation of

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[3] *Ia. Code Anno.* (1949), secs. 399.1 and 397.1.
[4] *Rev. Stats. of Mo.* (1949), secs. 73.010 and 81.190.
[5] Ibid., secs. 77.530 and 79.380.
[6] *Rev. Stats. of Neb.* (1943), secs. 14-366, 16-241, 16-601, 17-926.
[7] *N. M. Stats.* (1941), sec. 14-1849.
[8] Ibid., sec. 14-3701.
[9] *Purdon's Pa. Stats. Anno.* (1940), Title 53, sec. 1321.
[10] *W. Va. Code* (1949), sec. 591(1).
[11] *Langdon v. City of Walla Walla,* 112 Wash. 446, 193 Pac. 1 (1920).

waterworks, an act frequently authorized by statute. If a municipality wishes to exercise only its *corporate* powers and *purchase* land and property in another municipality, just as any other corporation would do, this limitation would not be significant.

A review of statutory provisions, in states which place specific geographical limitations on the power of municipalities to develop a water supply, reveals these limitations exist in terms of one or more of four factors: (1) specific mileage, (2) population, (3) type of action used to obtain the necessary property, and (4) area. The first, specific mileage, is found either alone or in connection with population or type of action in all states imposing limitations except Pennsylvania, the only state to express a limitation in terms of the county in which the municipality is situated. A limitation of 10 miles appears more frequently than any other. The range is from 2 miles in New Mexico to 75 in Nebraska. In these two states the type of action used to obtain the property constitutes a basis for the determination of distance permitted by statute. In each state the power to exercise eminent domain is restricted more severely than the power to obtain the necessary property by purchase or some other method.

The constitutions of Michigan, Ohio, and Utah specifically empower municipalities to acquire (by eminent domain or otherwise), construct, and operate public utilities within or without their corporate limits. The California and Wyoming constitutions authorize municipalities to obtain water for their inhabitants, but no specific extraterritorial authority is granted.[12] Legislatures in these last two states have granted such authority.

Control Over Source of Water and Waterworks Located Outside

Municipalities in 27 states are empowered by general statute to exercise some degree of police control over extraterritorial sources of water and waterworks.[13] These states may be divided into those that place specific geographical limitations on the exercise of such authority, and those that do not. Slightly over half of the 27 states are included in the former category. Arkansas, Mississippi, and Virginia authorize municipalities, regardless of size, to extend jurisdiction 5 miles beyond their limits to prevent or punish pollution or damage to the source of water, or to the waterworks.[14]

Colorado limits the authority exercised by its municipalities in a different and much less stringent manner. The cities of Colorado have police jurisdic-

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[12] Const. of Mich., Art. VIII, sec. 23; Const. of Ohio, Art. XVIII, sec. 4, held to be self-executing in *Pfau v. Cincinnati,* 142 Ohio St. 101, 50 N.E.(2d) 172 (1943); Const. of Utah, Art. XI, sec. 5; Const. of Calif., Art. XI, sec. 19; Const. of Wyo., Art. XIII, sec. 5.

[13] Appendix.

[14] *Ark. Stats.* (1947), sec. 19-2317; *Miss. Code* (1942), sec. 3627; *Code of Va.* (1950), sec. 15-715.

tion "over the stream or source from which water is taken as far as five miles above the point from which it is diverted."[15] Coupled with the absence of any limitation on the distance a city may go in search of water, this provision creates a considerable degree of flexibility. The limitation in Utah is similar; the only difference being that it authorizes jurisdiction for 15 miles above the intake.[16]

Illinois places a limit of 10 miles on the jurisdiction of municipalities "to prevent or punish any pollution or injury to the stream or source of water for the supply of waterworks."[17] For the preservation of its waterworks from injury or pollution, every city in Indiana may extend its jurisdiction 25 miles.[18] The limitation in Iowa, 5 miles above the source from which the water is taken, appears the same as that of Colorado.[19] Iowa imposes a limitation on the distance municipalities may go *in search* of water. Colorado does not. Since this limitation is 10 miles in Iowa, the maximum distance a municipality in that state may exercise police authority in such matters is 15 miles.[20]

The statutory references found in Michigan to extraterritorial control over sources of water are relatively unimportant because the responsibility for controlling the pollution of "all waters of the state of Michigan" has been placed in the hands of a Stream Control Commission.[21] The statutes of Minnesota make little reference to the problem. Cities of the fourth class may prevent pollution of "any creek, river, pond, lake or watercourse within or adjacent to the city."[22] Missouri varies the authority granted municipalities in such matters according to population, ranging from no limitation for cities of the first class to a 5-mile limitation for cities of the fourth class.[23] North Dakota and South Dakota place a limitation of 1 mile on their municipalities.[24] Ohio, West Virginia, and Wyoming impose limitations of 20, 15, and 10 miles, respectively.[25]

An examination of the statutory provisions of states placing specific geographical limitations on the exercise of extraterritorial supervision over sources of water and waterworks by municipalities, shows the most common

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[15] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10. *Cf. Warner v. Town of Gunnison,* 2 Colo. App. 430, 31 Pac. 238 (1892); *City of Durango v. Chapman,* 27 Colo. 169, 60 Pac. 635 (1900).

[16] *Utah Code Anno.* (1953), sec. 15-8-15.

[17] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 75-3.

[18] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-7203.

[19] *Ia. Code Ann.* (1949), sec. 397.26.

[20] Ibid., sec. 399.1.

[21] *Comp. Laws of Mich.* (1948), Ch. 323.

[22] *Minn. Stats.* (1945), sec. 411.40.

[23] *Rev. Stats. of Mo.* (1949), secs. 77.530, 79.380, and 82.240.

[24] *N. D. Rev. Code* (1943), sec. 40-0501(61); *Code of Laws of S. D.* (1942), sec. 45-0201(37).

[25] *Page's Ohio Gen. Code Ann.* (1937), sec. 12-784; *W. Va. Code* (1949), sec. 494; *Wyo. Comp. Stats.* (1945), sec. 29-2310(3).

limitation is 5 miles, the most restricted is ½ m[illegible] and the first class of cities of Missouri are not limited. Other grants run 10, 15, and 20 miles. Missouri appears to be the only state that has correlated the size of its cities with the extent of extraterritorial authority possessed by them.

Ten states grant some or all municipalities a degree of authority over sources of water and property necessary for the transmission, purification, and storage of water, *without* any specific geographical limitation.[26] Only seven states place no geographical limitation of any type on the efforts of municipalities to obtain water and exercise extraterritorial regulatory authority in relation thereto. Municipalities in three states—Kansas, Nebraska, and New Mexico—are limited in the distance they may go from their boundaries to locate water and build waterworks. Regulatory authority granted to cities in these 10 states may pertain only to extraterritorial municipal property, or it may pertain also to the sources from which water is taken.[27]

Sale of Water Outside Limits

The general laws of about two-thirds of the states specifically authorize municipalities to sell water outside their boundaries. The authorization is usually an unqualified grant of power, but sometimes certain conditions are indicated. Idaho requires the charges made to extraterritorial customers "shall be reasonable and shall be uniform and equal to all alike."[28] This provision limits the power of the municipalities to determine the rates charged for outside services and places the final decision in the courts to determine what is "reasonable" and "uniform." Michigan is more specific, authorizing cities to contract with other cities and villages for the sale of water on the condition that "the price charged shall not be less than nor more than double that paid by consumers within their own territory."[29]

Mississippi follows a plan similar to that in Michigan. The charge to extraterritorial customers may not be "greater than twice the rate charged by such municipality for its services within the municipality."[30] This provision sets a maximum but not a minimum charge for outside service in relation to charges within the municipality. A New Jersey municipality may supply consumers outside its limits "upon the same or as favorable terms and conditions, as water shall be furnished to dwellers within such municipality."[31]

Six states impose geographical limitations on the area in which all or

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[26] Alabama, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, and Texas.

[27] Alabama, Kansas, Nebraska, Oregon, and Texas refer to property only. Montana, Nevada, and New Mexico refer to property and the source from which the water may come. In Idaho and Oklahoma, separate authority is granted to protect the source of water supply.

[28] *Ida. Code* (1947), sec. 50-1132.

[29] *Comp. Laws of Mich.* (1948), sec. 123.141.

[30] *Miss. Code* (1942), sec. 3577.

[31] *Rev. Stats. of N. J.* (1937), Title 40, sec. 62-85.

some cities may sell water. Mississippi and Montana restrict cities to a distance of 3 miles.[32] In Kentucky and Ohio the limitation is 5 miles.[33] Cities in
3966.
Pennsylvania may sell water to customers in the counties in which the cities are located.[34] Minnesota permits any city of the first class to furnish water to, and extend its mains into, any municipality "whose territory is contiguous to such city."[35]

A third type of restriction relates to the quantity of water a municipality may sell outside its boundaries. As in the case of the price that municipalities may charge, Michigan specifically limits the quantity of water sold to outside customers to a maximum of 25 per cent of that which they furnish within their corporate limits.[36] A few states limit municipalities to the sale of "surplus" water—water in excess of the requirements of the customers within their territory.[37]

Many cities sell water outside their limits in those states that make no specific statutory authorization in regard to the matter in their general statutes. Provisions of the charters of individual cities are one source of such authority. Another source stems from court decisions that authority to provide water for residents empowers a city to supply water outside its limits, whenever necessary or convenient for the accomplishment of the main purpose.[38]

A city empowered by general statutes or its charter to furnish water to persons, businesses, or other governmental units located in the area around its borders will not necessarily do so. According to the courts, statutes conferring on a city authority to contract to furnish water to nonresidents does not impose on the city the duties of a public service corporation. When such contracts are made, the primary factor is the interest of the municipality.[39] By furnishing water to outside customers, a city is exercising business powers and may conduct such business to obtain the greatest benefit for the city and its inhabitants.[40] A municipality thus cannot be compelled to furnish such extraterritorial service, unless it has entered a valid contract to do so.[41] Once
of Atlanta, 178 Ga. 575, 173 S.E. 853 (1934).
it embarks upon a program of making such extensions, it may not discriminate unreasonably among customers.[42]

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[32] *Miss. Code* (1942), sec. 3577; *Rev. Codes of Mont.* (1947), sec. 11-1001.
[33] *Ky. Rev. Stats.* (1948), sec. 96.150; *Page's Ohio Gen. Code Anno.* (1937), sec.
[34] *Purdon's Pa. Stats. Anno.* (1940), Title 53, sec. 1205.
[35] *Minn. Stats.* (1945), sec. 456.29.
[36] *Comp. Laws of Mich.* (1948), sec. 117.4f(3).
[37] Appendix.
[38] Appendix.
[39] *Childs v. City of Columbia,* 87 S.C. 566, 70 S.E. 296 (1911).
[40] *Nelson v. County of Wayne,* 289 Mich. 284, 286 N.W. 617 (1939); *City of Colorado Springs v. Colorado City,* 42 Colo. 75, 94 Pac. 316 (1908).
[41] *Barratt v. City of Osawatomie,* 131 Kan. 50, 289 Pac. 970 (1930); *Collier v. City*
[42] *Reigle v. Smith,* 287 Pa. 30, 134 Atl. 380 (1926); *City of Altoona v. Public Utility Commission,* 168 Pa. Super. 264, 77 Atl.(2d) 740 (1951).

There is an exception to the rule that municipalities cannot be required to furnish water outside their boundaries. If a municipality acquires a water system which, at the time of acquisition, is furnishing water to persons in an area larger than that of the municipality, it cannot cease to furnish such water, especially when no alternative source is immediately available.[43]

Municipalities supplying water to extraterritorial customers commonly establish rates different from those charged customers within their boundaries. Contrary to common practice, many cities supply water to customers outside their limits at the same rate as those within. A city may choose to forego profit on the service which it renders to customers inside its boundaries and at the same time require it of those outside.[44] Such lack of uniformity has been held *not* to constitute unlawful discrimination on the ground extraterritorial customers have no right to receive service at the same charge as that made to residents.[45]

Methods used by municipalities to determine variations in rates between residents and nonresidents are not uniform. They may generally be divided into two categories: (1) those charging outside customers the city rate, plus a flat amount, which commonly varies between 25 cents and 1 dollar per month; and (2) those charging outside customers the amount their bill would be if they were located in the city, plus a percentage of that bill, usually varying from 10 to 50 per cent. There are many variations of these two basic methods.[46]

Authority possessed by a municipality to sell water outside its limits does not necessarily mean it is empowered to extend its mains to customers outside.[47] Cities often require nonresidents wishing to obtain water from the municipal system to construct necessary pipe lines to the city limits. Cities sometimes construct such lines on the basis of an agreement with those customers who agree to reimburse the cities for construction costs and maintain the lines in good repair. A city may bear the expense of such extensions if it feels assured that income resulting from extensions will amount to a certain per cent of necessary capital investment. Rates to outside customers are sometimes related to costs, return on investment, profit, or some other economic

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[43] *Fellows v. City of Los Angeles*, 151 Cal. 52, 90 Pac. 137 (1907); *Durant v. City of Beverly Hills*, 39 Cal. App.(2d) 133, 102 Pac.(2d) 759 (1940); *North Little Rock Water Co. v. Water Works Commission of Little Rock*, 199 Ark. 773, 136 S.W.(2d) 194 (1940).

[44] *Borough of Ambridge v. Pa. Public Utility Commission*, 137 Pa. Super. 50, 8 Atl. (2d) 429 (1939); *City of Altoona v. Public Utility Commission*, 166 Pa. Super. 246, 77 Atl.(2d) 740 (1951).

[45] *Durant v. City of Beverly Hills*, 39 Cal. App.(2d) 133, 102 Pac.(2d) 759 (1940). For unusual ruling to contrary, see *City of Montgomery v. Greene*, 180 Ala. 322, 60 So. 900 (1913).

[46] For situation in Oregon, cf. Bureau of Municipal Research and Service, "Extraterritorial Water Service of Cities in Oregon."

[47] *City of Sweetwater v. Hammer*, 259 S.W. 191 (Tex. Civ. App., 1923).

consideration. The same is true of the broader question of whether such service should be extended. Refusal by a city to extend water service to contiguous areas may hasten annexation of those areas. The same result may flow from a policy of charging customers in such places much higher rates than those inside the city.

Some states provide that a city assuming the role of a vendor of water, especially outside its boundaries, acts as a business concern and is subject to supervision by the state public service commission in regard to rates.[48] Argument for such regulation comes from extraterritorial customers who cannot effect a change in policies even though they may feel these policies are unfair. A number of years ago the courts of Colorado held this distinction sufficient to warrant state regulation of extraterritorial service, although the state regulatory commission at that time did not possess authority to regulate conditions of service within cities.[49] A number of years later the courts of Colorado ruled that although the City and County of Denver furnished water to the City of Englewood, from a municipal water system, that did not subject its action to control by the public utilities commission.[50]

An attempt by the Arizona utilities commission to claim jurisdiction over extraterritorial service by municipal utilities was ruled unconstitutional.[51] Some states require cities to obtain certificates of convenience and necessity from a state public utilities commission before they may construct distribution systems outside their limits.[52] Courts have generally refused to review the reasonableness of rates charged by municipalities for service outside their boundaries.[53] On the other hand, courts have frequently reviewed the reasonableness of rates with reference to service furnished within cities.[54]

Extension of Sewage Disposal Systems Outside Municipal Limits

Municipalities in most states are empowered by general statutory provisions to extend sewers outside their limits to facilitate the adequate disposal of sewage. As in the case of the provision of water, municipalities in those states not providing such general statutory authority are not necessarily denied

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[48] Cf. *City of Wheeling v. Benwood-McMechen Water Co.*, 115 W.Va. 353, 176 S.E. 234 (1934); *City of Altoona v. Public Utility Commission*, 168 Pa. Super. 246, 77 Atl. (2d) 740 (1951); *State v. Department of Public Service*, 186 Wash. 378, 58 Pac.(2d) 350 (1936); *City of Phoenix v. Wright*, 52 Ariz. 227, 80 Pac.(2d) 390 (1938).

[49] *Lamar v. Wiley*, 80 Colo. 18, 248 Pac. 1009 (1926).

[50] *City of Englewood v. City and County of Denver*, 229 Pac.(2d) 667 (1951).

[51] *Phoenix v. Wright*, 52 Ariz. 227, 80 Pac.(2d) 390 (1938).

[52] Cf. *Central States Electric Co. v. Incorporated Town of Randall*, 230 Ia. 376, 297 N.W. 804 (1941).

[53] Cf. *City of Phoenix v. Kasun*, 54 Ariz. 470, 97 Pac.(2d) 210 (1939).

[54] Cf. *Chicago v. Northwestern Mutual Life Insurance Co.*, 218 Ill. 40, 75 N.E. 803 (1905); *Butler v. Karb*, 96 Ohio 472, 117 N.E. 953 (1917).

its exercise. Some are granted such power by individual charters. Courts have frequently held that the power of municipalities to go beyond their boundaries in order to construct and maintain proper sewage disposal systems may be implied.[55]

Many state statutes allow municipalities to obtain property outside their limits for the development of an adequate sewage disposal system by means of purchase, lease, gift, or eminent domain. The area in which such authority may be exercised is specifically limited in nine states. Indiana and Kansas impose a maximum of 5 miles.[56] New Mexico places the most severe restriction on its municipalities; namely, 2 miles.[57] In Missouri, cities over 100,000 population are limited to the counties in which they are located; while third- and fourth-class cities are limited to 10 and 5 miles, respectively.[58] In Nebraska, cities of the metropolitan class are granted 75 miles, while cities of the first class are restricted to 10 miles.[59] Idaho places a maximum of 10 miles on the jurisdiction of cities in such matters, and those in West Virginia are limited to 15 miles.[60] Alabama and Pennsylvania restrict municipalities to the counties in which they are located.[61]

Two implicit limitations generally exist on the efforts of municipalities to obtain property outside their boundaries to facilitate adequate disposal of sewage. These limitations are: boundaries of the states, and the corporate area of other municipalities. A few states grant municipalities specific permission to obtain lands in other states for sewers,[62] always on the condition that adjoining states must authorize such action before the permission can be implemented. The situation in regard to the area of other municipalities is confused. Municipalities have been authorized in some instances to construct sewers or sewage disposal works in other municipalities without the consent of the latter.[63] If such works threaten to create a nuisance in a municipality, it may refuse to allow the construction.[64] Some state statutes specifically require obtaining consent of the municipality in which the works are to be constructed.[65]

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[55] Appendix.

[56] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-4203(1). Other cities apparently are restricted to 4 miles. Ibid., sec. 48-1902(7). *Gen. Stats. of Kans.* (1935), secs. 12-622 and 13-1018b.

[57] *N. M. Stats.* (1941), sec. 14-3701.

[58] *Mo. Rev. Stats.* (1949), secs. 77.530, 79.380, and 82.240.

[59] *Rev. Stats. of Neb.* (1943), secs. 14-366 and 16-601.

[60] *Ida. Code* (1947), sec. 50-3321; *W. Va. Code* (1949), sec. 494.

[61] *Code of Ala.* (1940), Title 37, sec. 603; *Purdon's Pa. Stats. Anno.* (1940), Title 53, sec. 1321.

[62] Cf. *N. D. Rev Code* (1943), sec. 40-3410; *S. D. Code* (1939), sec. 45,0201(82).

[63] *Van Brunt v. Town of Flatbush,* 128 N.Y. 50, 27 N.E. 973 (1891); *Philadelphia Trust, Safe Deposit and Insurance Co. v. Merchantville,* 75 N.J.L. 451, 66 Atl. 170 (1907); *Village of Ridgewood v. Hopper,* 13 N.J. Misc. 775, 181 Atl. 150 (1934).

[64] *Bacon v. City of Detroit,* 282 Mich. 150, 275 N.W. 800 (1944); *Deyo v. City of Newburgh,* 138 App. Div. 465, 122 N.Y.S. 835 (1910).

[65] Cf. *Rev. Stats. of N. Y.* (1937), sec. 40:63-2.

Control Over Extraterritorial Sewage Disposal Works

Eight states specifically provide in their general statutes for the exercise of police supervision by municipalities over extraterritorial sewers and sewage disposal works.[66] Of these, only two place specific geographical limitations on the area over which such authority may extend. Kansas imposes a limitation of 5 miles on its cities of the second and third classes.[67] Missouri limits its third-class cities to 10 miles and its cities over 100,000 population to the counties in which they are located.[68] For two reasons, policing problems, in relation to extraterritorial sewage disposal works, are not so difficult as in relation to waterworks. First, in the case of sewage, the only problem is to prevent damage to installations. In the case of water it is also necessary to prevent pollution, perhaps over an extended area. Second, it is seldom necessary to extend sewage disposal works as far beyond the boundaries of municipalities as waterworks. Since destruction of public property is everywhere considered a crime, apprehension and punishment of persons who commit such acts is generally entrusted to law enforcement officers whose jurisdiction extends over the area in which the property is located.

Extension of Sewer Services Beyond Boundaries

The general statutes of 12 states specifically authorize municipalities to extend sewer services beyond their boundaries.[69] These authorizations provide for connections with one or more of three classes of customers: (1) other political subdivisions and public institutions, (2) businesses and associations of various kinds, and (3) individual property owners. These grants of authority are usually unqualified, leaving such matters as the area to be serviced, rates to be charged, and other conditions of service to the discretion of each municipality. Nebraska provides that cities shall not incur any expense in extending sewers beyond their boundaries. A further requirement is that such extraterritorial service shall be "in excess of the requirements of the inhabitants of such city."[70] In Wyoming, municipalities may provide "surplus sanitary sewer facilities" outside their limits.[71] Pennsylvania appears to be the only state placing a specific geographical limitation on the area in which such service may be provided. That state allows extensions to persons, corporations, institutions, and municipalities "in the counties in which said cities are located."[72]

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[66] Florida, Illinois, Kansas, Missouri, Oregon, Texas, Washington, and West Virginia.
[67] *Gen. Stats. of Kas.* (1949), sec. 12-851.
[68] *Rev. Stats. of Mo.* (1949), secs. 77.530 and 82.240.
[69] Appendix.
[70] *Rev. Stats of Neb.* (1943), sec. 16-685.
[71] *Wyo. Comp. Stats.* (1945), sec. 29-804 (1947 Supp.).
[72] *Purdon's Pa. Stats. Anno.* (1940), Title 53, sec. 12198-3248.

Tennessee provides an indefinite limitation in that it permits cities adjoining or in proximity to each other to contract for the use of each others' sewer systems.[73] In contrast to some provisions mentioned in relation to water, no states place statutory limitations on the charges made for sewer service. Nebraska comes closest to the imposition of a specific limitation when it provides that cities and villages may extend their sewage systems outside their boundaries "under the same conditions as nearly as may be within such corporate limits."[74] This provision leaves considerable discretion in the hands of municipalities concerning rates charged to outside customers.

Statutory authorization imposes no duty on municipalities to furnish sewer service beyond their boundaries. Even though a city permits nonresidents to use its sewer system for a number of years, it may withdraw such permission at will and require nonresidents to discontinue their use of the system.[75] Cities may be authorized to impose a fine for discharging sewage from buildings outside their limits into their mains without a permit required by ordinance.[76]

Provision of an adequate supply of water and disposal of sewage in an urban community are tasks of great importance. The health and welfare of the inhabitants of any municipality depend to a great extent on the degree of success with which these problems are met. General realization on the part of state legislators that they cannot be adequately provided for solely within the boundaries of respective municipalities has resulted in fairly generous grants of extraterritorial powers necessary to their successful accomplishment. A greater number of municipalities exercise extraterritorial powers in relation to these two functions than any others.

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[73] *Anno. Code of Tenn.* (1934), secs. 3337-3339.

[74] *Rev. Stats. of Neb.* (1943), sec. 18-508.

[75] Cf. *Davisworth, et al. v. City of Lexington,* 224 S.W.(2d) 649 (Ct. of Appeals of Ky., 1949); *Barr v. City Council of Augusta,* 58 S.E.(2d) 820 (Ga. Sup. Ct., 1950).

[76] *City of Lexington v. Jones,* 289 Ky. 719, 160 S.W.(2d) 19 (1942).

III

ELECTRICITY, GAS, TRANSPORTATION FACILITIES, AND COMMUNICATION SYSTEMS

Municipally owned and operated water supply systems outnumber those in private hands about four to one. Nearly all sewage disposal systems are governmentally owned and operated. The picture is different with regard to other utilities. Approximately 25 per cent of cities in the United States own plants for the generation of electricity or systems for its distribution. About 5 per cent own gas manufacturing and distribution systems, or distribution systems alone. Administration of these utilities is often located in a department of public works, especially in smaller cities. Where operation of the utility is a sufficiently large undertaking, it is often administered by a separate department, board, commission, or independent corporation created by municipal authority. These agencies frequently are authorized to serve customers outside municipal limits in addition to supplying services to local residents.

Constitutional Provisions

Authority for municipalities to provide utility services, both within and without their boundaries, is usually found in statutory grants. In a few instances, such grants are found in state constitutions. The California constitution authorizes municipalities to establish and operate public works to supply their inhabitants with light, power, heat, transportation, telephone service, and "other means of communication."[1] Municipalities are empowered by the same provision to supply such services to persons outside their boundaries, even those residing in other municipalities, subject to the consent of such municipalities.

The Michigan constitution allows any city or village to own and operate, "either within or without its corporate limits," public utilities to supply light, heat, power, and transportation to the municipality and its inhabitants. Each municipality may also sell heat, power, and light beyond its corporate limits "to an amount not to exceed 25 per cent of that furnished by it within the corporate limits."[2] Each municipality is authorized also to operate transportation lines beyond its limits, provided it possesses a population of 25,000 or more.

According to the Ohio constitution, "any municipality" may acquire and operate "any public utility" within or beyond its corporate limits for the purpose of supplying the products or service of such utility to the municipality or its inhabitants. The use of eminent domain for this purpose is author-

[1] Art. XI, sec. 19.
[2] Art. VIII, sec. 23.

ized. No reference is made to supplying such products or services to extra-territorial customers.[3]

In the Utah constitution, "cities" are authorized "to furnish all local public services" and obtain and operate for that purpose "public utilities local in extent and use." They may use eminent domain to acquire the necessary property "within or without the corporate limits." These powers must be exercised "subject to restrictions imposed by general law for the protection of other communities."[4] This provision clearly implies that cities may be restrained by law from the free exercise of such powers within the limits of other municipalities, particularly without their consent.

Provision of Electricity and Gas to Residents

Most states provide in their general laws for the exercise by municipalities of extraterritorial powers in relation to gas and electric works.[5] Statutes frequently authorize a municipal corporation to obtain (by purchase or otherwise), construct, and operate gas or electric works to supply their products to the municipality and its inhabitants. Some states, instead of specifying a particular type of utility, incorporate a general grant of authority in their statutes which includes the specific types of enterprises. Arizona authorizes each municipal corporation to "engage in any business or enterprise which may be engaged in by any person by virtue of a franchise" and to acquire, construct, and operate such enterprises "within or without its corporate limits."[6] Arkansas refers to any "public service or commodity" in a similar authorization.[7]

Illinois, without any reference to location, empowers municipalities "to acquire, construct, own, and operate any public utility the product or service of which . . . is or is to be supplied to the municipality or its inhabitants."[8] Each municipal corporation in New York may construct, own, and operate "any public utility service within or without its territorial limits."[9] Oregon municipalities may acquire and operate electric light and power plants within and without their boundaries, "when the power to do so is conferred by or contained in their charter or act of incorporation."[10] Louisiana cities and towns may obtain property "within or without the corporate limits" for "all proper municipal purposes." This provision is immediately followed by reference to electric light plants.[11]

Statutes of most states authorize municipal corporations to use eminent

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[3] Art. VIII, sec. 4.
[4] Art. IX, sec. 5.
[5] Appendix.
[6] *Ariz. Code Anno.* (1939), sec. 16-602.
[7] *Ark. Stats.* (1947), sec. 73-264.
[8] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 49-1.
[9] *Thompson's Laws of N. Y.* (1939), Art. 14-A, sec. 360(2).
[10] *Ore. Rev. Stats.* (1953), sec. 225.020.
[11] *La. Rev. Stats.* (1950), Title 33, sec. 361.

domain, if necessary, to acquire property needed to construct utilities. In the absence of such specific grant, the general rule is that if a municipality is authorized to construct or improve public works outside its limits and is empowered to exercise eminent domain for such purposes within its limits, it is by implication authorized to do the same outside. This is not universally true, and courts in some cases have held such authority not to be implied.[12] Such problems are seldom involved in the purchase of already existing and functioning works because parts of these works are likely to be within municipal boundaries and are considered as a unit along with those parts located outside.[13] This rule may not apply if the portion of the utility situated outside the purchasing municipality is located within the boundaries of another municipality.[14]

Since the general laws of the states or the charters of the individual municipal corporations usually make specific provision for construction and operation of public works or certain types of utilities, courts seldom have held this type of authority to be implied in any general grant of power.[15] Reluctance on the part of courts to sanction the implication of this authority, even when exercised within municipal limits, has been applied to its exercise extraterritorially. The supreme court of California has stated the general rule well: "In certain instances, owing to the urgency of extreme expediency or necessity, express authority is dispensed with and the power of the municipality to perform certain acts beyond its boundary is implied as incidental to the existence of other powers expressly granted."[16]

Does a municipality have the power, in the absence of express legislative authority, to furnish service to customers outside its corporate limits from a public utility that it has been expressly authorized to own and operate? Although the courts have not been in agreement, a majority have replied in the negative.[17] There is a tendency in the later cases to give more support to the minority view.[18] This trend is somewhat limited in significance because it has been largely related to the extraterritorial disposal of the "surplus" products of municipal utilities. Courts in several states have held that municipal corporations authorized to provide service to their inhabitants may sell surplus electrical energy or water to outside customers without express legislative authority.[19] The Utah Supreme Court held that a municipality in constructing its

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[12] Cf. *J. Blach and Sons, Inc. v. Hawkins,* 238 Ala. 172, 189 So. 726 (1939).
[13] Cf. *Central Power Co. v. Nebraska City,* 112 F.(2d) 471 (1940).
[14] Cf. *Long v. Town of Thatcher,* 62 Ariz. 55, 153 Pac. (2d) 153 (1944).
[15] Cf. *Town of Mansfield v. Cofer,* 145 Ga. 549, 89 S.E. 410 (1916).
[16] *Mulville v. City of San Diego,* 183 Cal. 734, 192 Pac. 702 (1920), p. 703.
[17] Appendix.
[18] 98 ALR 1001.
[19] Cf. *Municipal League v. Tacoma,* 166 Wash. 82, 6 Pac.(2d) 587 (1931); *Tucson v. Sims,* 39 Ariz. 168, 4 Pac.(2d) 673 (1931); *Valcour v. Morrisville,* 194 Vt. 119, 158 Atl. 83 (1932); *Mt. Jackson v. Nelson,* 151 Va. 396, 145 S.E. 355 (1928).

electrical plant *should* consider the future and provide for the anticipated needs of a greater population. For this purpose it should provide a plant that would produce more electricity than required by present needs. Meanwhile, the municipality ought to be allowed to dispose of its surplus to customers beyond its limits.[20]

Although willing to sanction extraterritorial sale of surplus utility products, courts in some instances have ruled such authority did not include the power to extend the requisite lines beyond municipal limits.[21] Under these circumstances, consumers must provide the necessary means of transporting the utility from the boundaries of the municipality, which commonly charges a fee for the privilege of making connections with its facilities.

Geographical Limitations

Most states place no geographical limitations on the area in which municipalities may exercise authority in order to supply their inhabitants with gas and electricity. Indiana, Nebraska, New Mexico, and West Virginia impose specific limitations. According to the statutes of Indiana, "For the purpose of building . . . gas works, electric light works or a heating and power plant with all necessary appurtenances . . . every city shall have jurisdiction for twenty-five (25) miles beyond the limits of each city or town . . ."[22]

Nebraska's situation is complicated by diverse jurisdictions granted to cities of various classes. Cities of the metropolitan class are authorized to acquire, by purchase or eminent domain, property for gas plants "or other municipal utility purposes or enterprises" within 75 miles of their boundaries.[23] Cities of the primary class may acquire, construct, and operate gas and electric plants "to and through municipalities within ten miles of the limits of said city."[24] This provision does not place any specific geographical limitations on the action of these cities unless other municipalities are involved. Although Nebraska cities of the first class may acquire property for gas and electric works without any reference to location, the right of condemnation for these purposes "shall extend for a distance of ten miles from the corporate limits of the city."[25] The implication is that municipalities of this class may purchase such works without being subject to geographical limitations. If they wish to condemn property for the construction of these works or already constructed plants or works, they must remain within 10 miles of their boundaries.

Cities of the second class and villages in Nebraska may construct, purchase, or otherwise acquire a gas or electric plant and distribution system "either within or without the corporate limits of the city or village," in addi-

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[20] *Muir v. Murray City,* 55 Utah 368, 186 Pac. 433 (1919).
[21] Appendix.
[22] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-7203.
[23] *Rev. Stats. of Neb.* (1943), Sec. 16-601.
[24] Ibid., sec. 15-722.
[25] Ibid., sec. 16-601.

tion to the necessary property.[26] Use of eminent domain is specifically authorized. Since no geographical limitation is applied to cities of the second class and villages, these municipalities possess greater latitude in such matters then larger cities. The situation is further complicated by authorizing any city or village that owns and operates an electric light and power plant and distribution system to extend its facilities beyond municipal limits and acquire or construct plants and transmission systems "for such distance and over such territory within this state as may be deemed expedient."[27] Since this provision is accompanied by an authorization to sell power outside municipal limits, its purpose is apparently to facilitate such sales.

New Mexico municipalities with a population of 1,000 or more may erect and operate gas and electric works "within or without the municipal limits," and no reference is made to a geographical limitation.[28] Municipalities in this state are restricted to 2 miles beyond their limits in the use of eminent domain relative to such works.[29] Municipal corporations in West Virginia may erect gas and electric light works within or without their limits. Whenever this power "cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits," it shall extend as required for its "reasonably efficient exercise *within* corporate limits, but it "shall not extend more than one mile beyond the corporate limits," nor into another municipal corporation.[30]

As noted earlier in discussing water and sewage, two limitations exist in relation to the extraterritorial exercise of powers pertaining to the establishment and operation of utilities, regardless of whether or not they are explicitly provided in the statutes of the respective states. These limitations consist of the boundaries of the states and of other municipalities. Power granted to a municipality to establish utilities beyond its boundaries without geographical limitations cannot be exercised in another state unless that state has granted permission. Several states have done this.[31] Unless specifically empowered to do so by statute, one municipality may not exercise its powers within the area of another municipality without the consent of that municipality.[32]

Police Regulations

Three states authorize cities to exercise police power over electric and gas works that they own and operate beyond their boundaries. Indiana cities possess jurisdiction for 25 miles beyond their limits for the preservation and

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[26] Ibid., secs. 17-905 and 17-906.
[27] Ibid., sec. 70-501.
[28] *N. M. Stats. Anno.* (1941), sec. 14-2101.
[29] Ibid., sec. 14-3701.
[30] *W. Va. Code* (1949), sec. 494.
[31] Cf. *Langdon v. City of Walla Walla,* 112 Wash. 446, 193 Pac. 1 (1940).
[32] Appendix.

protection of such works.[33] Iowa provides that for the purpose of maintaining and protecting heating and gas plants, and electric light and power plants, the jurisdiction of its cities and towns shall extend over the territory occupied by such works. No geographical limitation is mentioned.[34] Kansas provides: "Police jurisdiction is . . . granted and extended to cities of the second and third class, over all lands and grounds upon which . . . power, light, telephone lines and ways of access thereto are located . . . to the same extent and with like force and effect without as within the limits of such cities."[35] In those states where no such provisions exist, apprehension of persons damaging or interfering with these works generally rests in the hands of county and state law enforcement officers.

Sale Outside Boundaries

Approximately two-thirds of the state specifically authorize municipalities by general law to sell the products of their electric and gas plants to extraterritorial customers. As noted earlier, power to make such sale has been held in some cases to be implied as incidental to power to provide utility services within municipal boundaries. In the majority of states granting this extraterritorial authority, no geographical limitation is placed on the area in which municipalities may sell the products of their utilities. In Alabama, a city is restricted to "surrounding territory"; in Arkansas, it may extend service "into the rural territory contiguous to such municipality."[36] Such provisions impose an elastic limitation in terms of area, but by implication they prohibit extension of service into other incorporated areas.

Minnesota, Mississippi, and Nebraska impose specific geographical limitations on the extraterritorial area in which municipalities may provide gas or electric service. Municipal corporations in Minnesota owning and operating an electric light and power plant, may sell electricity to outside customers "within the state but not to exceed a distance of 30 miles from the corporate limits of the municipality."[37] In Mississippi, all municipalities owning such plants may "supply customers living outside and within a radius of three miles of the corporate limits."[38]

The situation in Nebraska is more complicated. Cities of the first class are empowered to sell electricity beyond their boundaries without any specific geographical limitation.[39] In order to implement this authorization, they may "construct, maintain, and operate the necessary rural transmission lines for a

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[33] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-7203.
[34] *Ia. Code Anno.* (1949), sec. 397.26.
[35] *Gen. Stats. of Kans.* (1949), sec. 12-851.
[36] *Code of Ala.* (1940), Title 37, sec. 360; *Ark. Stats.* (1947), sec. 73-264.
[37] *Minn. Stats.* (1945), sec. 455.29.
[38] *Miss. Code* (1942), sec. 3577.
[39] *Rev. Stats. of Neb.* (1943), sec. 16-685.

distance of fifteen miles from the corporate limits."[40] Cities of the second class and villages are prohibited from constructing and maintaining transmission lines outside their limits for the purpose of selling electricity, power, and steam to outside customers.[41] This provision does not prohibit the sale of such products so long as the purchaser or someone else assumes responsibility for contruction and maintenance of transmission lines. A municipal corporation may be authorized to sell products of its municipal enterprises without at the same time being empowered to construct and maintain the means by which the distribution is accomplished.[42]

Absence from the general statutes of authority for cities and towns in a state to supply products of municipal utilities to customers beyond their boundaries, and refusal by courts to imply such authority do not necessarily indicate the complete absence of such power. Individual municipal charters may authorize provision of such services. Although constitutional home rule does not grant cities power to make extraterritorial sales, four of the states that make no provision for such sale are constitutional home rule states.[43] Many cities in nonhome rule states, governed by charters granted by special act of their respective state legislatures, are granted authority thereby to engage in such activities.[44] In these states there is a lack of uniformity concerning the power of cities to make extraterritorial sales of utility services.

Although courts are divided as to whether authority to obtain and operate a municipal utility for the benefit of the inhabitants of a municipality implies power to sell products of the utility to customers beyond municipal boundaries, they generally agree that, in the absence of legislative authority, a municipality cannot operate a utility primarily for the benefit of outside customers.[45] This generalization has been questioned, although not specifically denied, by the supreme court of Nebraska:

> On principle . . . as the business of maintaining and operating a municipal electric plant and selling current therefrom is wholly outside the truly governmental powers and functions of such city, the place of furnishing or receiving the electric current would be in no manner controlled by the situs of the same with reference to the corporate boundaries of the cities involved . . ."[46]

The weight of opinion and logic seems to favor the view that any power to acquire electric or gas plants for the city's use, and for the purpose of sell-

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[40] Loc. cit.

[41] Ibid., sec. 17-904.

[42] Cf. *Dyer v. City of Newport,* 123 Ky. 203, 94 S.W. 25 (1906); *Taylor v. Dimmitt,* 336 Mo. 330, 78 S.W.(2d) 841 (1935).

[43] Arizona, California, Colorado, and New York.

[44] Cf. *H.O.L.C. v. Mayor, et al., of Baltimore,* 175 Md. 676, 3 Atl.(2d) 747 (1939).

[45] Appendix.

[46] *City of Curtis v. Maywood Light Co.,* 137 Neb. 119, 288 N.W. 503 (1939), p. 126. Cf. *Incorporated Town of Sibley v. Ocheydan Electric Co.,* 194 Ia. 950, 187 N.W. 560 (1922).

ing the products thereof to its inhabitants, implies authority to sell *surplus* power outside city limits, when such sale does not impair the usefulness of the system for municipal purposes.[47] According to the supreme court of Virginia: "It would . . . be unreasonable to hold that the surplus energy of a municipal electric plant should be denied others in the community, separated only from the city by an invisible geographical or political line . . ."[48]

The significance of "surplus energy" is not limited to those instances where authority for sale is implied. Municipalities are in some instances authorized by law to sell *only* the surplus products of municipal utilities.[49]

Michigan provides an illustration of a severe legal limitation on the amount of power and light which cities and villages may provide beyond their boundaries. The Michigan constitution limits such sales "to an amount not to exceed 25 per cent of that furnished by it within the corporate limits."[50] Such a specific limitation renders determination unnecessary of what is "surplus." Since the primary object of a municipal corporation is to care for the needs of its inhabitants, determination of the amount constituting the surplus is based on their needs.[51] Once these needs have been satisfied in relation to the product of a municipal utility, the remainder may be considered surplus. The exact amount of this surplus will vary from time to time. A fundamental question still remains. How large may this surplus be? May a municipal utility construct a plant designed to produce many times the amount of electricity or gas needed by its inhabitants for the purpose of engaging in the power business in surrounding territory in the guise of producing a surplus? Although not often tried, such an act has been held ultra vires.[52]

Regulation of Rates and Service

Municipal corporations that possess authority to extend the services of their utilities to extraterritorial customers are not always free to regulate such service as they may desire, or to charge whatever rates they may wish. In some 20 states, municipalities have been subjected to regulation by public utilities commissions in regard to such matters, while in only half of these have they been subjected to similar regulation in regard to service rendered within their boundaries. This regulation is specifically provided by statute in some states.[53] In others, it has resulted from judicial decision, particularly where

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[47] *Municipal League of Bremerton v. City of Tacoma,* 166 Wash. 82, 6 Pac.(2d) 587 (1931); *Dyer v. City of Newport,* 123 Ky. 203, 94 S.W. 25 (1906).

[48] *Light v. City of Danville,* 168 Va. 181, 190 S.E. 276 (1937).

[49] *Muir v. Murray City,* 55 Utah 368, 186 Pac. 433 (1920); *City of Allegan v. Iosco Land Co.,* 254 Mich. 560, 236 N.W. 883 (1931).

[50] Art. VIII, sec. 22.

[51] *Greaves v. Houlton Water Co.,* 140 Me. 158, 34 Atl.(2d) 693 (1944).

[52] *Williamson v. City of High Point,* 213 N.C. 96, 195 S.E. 90 (1938).

[53] Cf. *Ark. Stats.* (1947), sec. 73-264; *Vt. Stats.* (1947), sec. 9749.

cities have offered utility services to anyone who wished them instead of merely contracting with a few customers to provide services.[54]

Regulation of municipal utility services by state commissions takes a variety of forms. One is the certificate of convenience and necessity. Municipalities are seldom subjected to this type of regulation. The various state legislatures may undoubtedly impose such a requirement, but they generally have not done so. In a number of instances, state courts and commissions have ruled that municipalities are not included within the meaning of statutory provisions requiring the acquisition of a certificate of convenience and necessity. In some states, the statutes expressly exclude municipalities.[55] Courts have reached a contrary conclusion in a few cases.[56]

Regulation of extraterritorial municipal utility services through control over rates by a state utilities commission is more common practice than regulation by means of the certificate of convenience and necessity. The supreme court of Indiana, in the leading case of *City of Logansport v. Public Service Commission of Indiana,*[57] emphasized that a state has the power to regulate the rates charged by a municipal utility without regard to the place where the service may be provided. This is true, said the court, regardless of whether the power to operate the utility is considered to be implied or inherent, or is acquired by legislative grant. Although full power to regulate rates exists, its exercise often depends upon whether service is provided within or without municipal boundaries.

Courts and public utilities commissions of several states have ruled municipal corporations may own and operate public utilities that are not under the jurisdiction of the commission insofar as their operations within municipal boundaries are concerned, but business outside these limits is subject to commission regulation[58] The public service commission of Montana has exercised authority over extraterritorial extensions of service of municipal water systems as well as rates charged within municipal limits.[59] The Pennsylvania public service commission has regulated rates charged by cities for water service beyond their boundaries.[60] Courts in several states have upheld the power

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[54] Cf. *Lamar v. Wiley,* 80 Colo. 18, 248 Pac. 1009 (1926); *City of Englewood v. City and County of Denver,* 229 Pac.(2d) 667 (Colo., 1951); *Valcour v. Morrisville,* 110 Vt. 93, 2 Atl.(2d) 312 (1938).

[55] Cf. *Humphrey v. Pratt,* 93 Kans. 413, 144 Pac. 197 (1914); *Springfield Gas and Electric Co. v. Springfield,* 292 Ill. 236, 126 N.E. 759 (1920).

[56] Cf. *Wisconsin Traction, Light, Heat and Power Co. v. Menasha,* 167 Wis. 1, 145 N.W. 231 (1914); *Public Service Commission v. Helena,* 52 Mont. 527, 159 Pac. 24 (1916).

[57] 202 Ind. 523, 177 N.E. 249 (1931).

[58] Cf. *City of Olive Hill v. Public Service Commission,* 305 Ky. 248, 203 S.W. 68 (1947); *Star Investment Co. v. Denver,* PUR 1920B, 684.

[59] *Re Laurel,* PUR 1921D, 817; *Re Billings,* 23 PUR(NS) 442 (1938).

[60] *Atwell v. Franklin,* PUR 1931C, 399; *Shirk v. Lancaster,* 313 Pa. 158, 169 Atl. 557 (1933).

of the utilities commissions to regulate municipal utility rates for extraterritorial service.[61] The power of the commissions to regulate these rates has been denied on statutory or constitutional grounds in other states.[62]

In the absence of commission control, some courts have ruled that when a municipal utility offers service to all outside customers who may desire it, the utility becomes subject to the common law duties of a public utility, including provision of service at a "reasonable" rate. Extraterritorial customers must generally accept the terms for service specified by the municipal utility.[63] Such customers usually are charged higher rates than those in the city, and courts have very rarely refused to sanction a differential between rates charged to residents and nonresidents.[64]

Transportation Facilities and Communications Systems

Although 10 states in their general laws specifically authorize some or all municipalities to construct and operate transportation facilities beyond their boundaries, only a small number of cities operate such facilities.[65] Existence of specific authorization in the general laws of only 10 states does not necessarily indicate that cities in other states are not permitted to engage in such activities. A few states, including Arizona, New Hampshire, and Virginia,[66] empower some or all municipal corporations to construct and operate "any public works project" or "any public utility" beyond their boundaries. These provisions may be interpreted to include transportation facilities. Individual cities may be authorized to engage in such undertakings by special charter provisions. Michigan and Nebraska place a limit of 10 miles on the extraterritorial area into which home rule cities and cities of the first class, respectively, may extend their transpotation facilities.[67]

The general laws of few states specifically empower municipalities to construct or operate telephone or telegraph lines and works outside their corporate limits. A Kentucky city of the third or fourth class may provide itself and its inhabitants with telephone service by works "located within or beyond the boundaries of the city."[68] Special charter cities in Missouri are collectively authorized to obtain property beyond their limits for the operation of tele-

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[61] Appendix.

[62] Appendix.

[63] Appendix.

[64] Cf. *Montgomery v. Greene,* 180 Ala. 322, 60 So. 900 (1913); *Birmingham Electric Co. v. City of Bessemer,* 237 Ala. 240, 186 So. 569 (1939).

[65] Appendix.

[66] *Ariz. Code Anno.* (1939), sec. 16-602; *Rev. Laws of N. H.* (1942), Title VIII, Ch. 54; *Code of Va.* (1950), sec. 75-715.

[67] *Comp. Laws of Mich.* (1948), sec. 117.4g(1); *Rev. Stats. of Neb.* (1943), sec. 15-722.

[68] *Ky. Rev. Stats.* (1948), sec. 96.190.

phone and telegraph systems.[69] Missouri cities of the third class may acquire property without their limits for the erection of telephone and telegraph wires and poles for the efficient operation of waterworks.[70] North Dakota municipalities may purchase and operate any telephone plant, with no reference to location.[71] It appears very few municipalities empowered to own and operate extraterritorial communication systems have taken advantage of their authority.

[69] *Rev. Stats. of Mo.* (1949), sec. 81.190.
[70] Ibid., sec. 88.633.
[71] *N. D. Rev. Code* (1943), sec. 40-3301.

IV

PUBLIC WAYS AND MISCELLANEOUS PROPERTY

Many states in their general laws empower municipalities to maintain a variety of extraterritorial property, such as streets, bridges, ferries, cemeteries, hospitals, playgrounds, docks, and dumps. Although in many instances use is not made of this authority, a large amount of such property is owned and maintained by cities across the country.

Streets

In spite of the fact that half of the states in their general laws authorize municipalities to extend, maintain, or regulate streets outside their boundaries, only 6 of the 32 cities that provided information on this question indicated use of such authority.[1] The exercise of this power seems to be much less common than its possession. The corporation counsel of Rochester, New York, recognized that the city did "appear" to have authority to acquire and maintain public ways outside its limits, but he knew of "no instance where that authority has been exercised."[2] As indicated by the assistant attorney of Milwaukee, these matters are usually handled by counties and townships in areas outside the cities.[3] A city may be involved by indirection, as in the case of Berkeley, California. During World War II, Berkeley contributed funds to Contra Costa County to be used for the improvement and maintenance of a road beyond the city's boundaries that was felt to be a necessary means of secondary evacuation of Berkeley residents in the event of enemy attack.[4] The city attorney of Charlotte, North Carolina, noted that the city might spend money to connect a city street with a state highway outside the city.[5]

When extraterritorial authority is granted to municipal corporations in regard to public ways, the grant is often contingent upon the existence of municipal property or undertakings located beyond corporate boundaries. Arkansas municipalities may develop, construct, and maintain harbors and ports and "works of improvement incidental thereto," including highways within or without their corporate limits.[6] Cities and towns in California may maintain all necessary roads to transport gravel from gravel beds that they own and operate within their respective counties.[7] Illinois cities and villages may

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[1] Berkeley, Glendale, and South Gate, California; Denver, Colorado; Lubbock, Texas; and Charlotte, North Carolina.

[2] Letter, April 9, 1952.

[3] Letter, September 29, 1952.

[4] Letter, city attorney of Berkeley, April 25, 1952.

[5] Letter, April 2, 1952.

[6] *Ark. Stats.* (1947), sec. 19-2721.

[7] *Deering's Calif. Gen. Laws* (1944), Act 5172. Cf. *Southlands Co. v. City of San Diego,* 211 Cal. 646, 297 Pac. 521 (1931).

construct and maintain roads running to ferries and bridges owned by them within 5 miles of their boundaries.[8] In Kansas, authority to construct extraterritorial roads is contingent upon ownership of cemeteries beyond municipal boundaries.[9] Minnesota municipalities may improve "main highways" leading to and from bridges that they have constructed "over any navigable stream constituting a boundary thereof."[10] In New Jersey, any municipality may acquire and maintain streets, avenues, and boulevards leading to municipal parks, playgrounds, and beaches located beyond their boundaries.[11]

The incidental nature of extraterritorial authority in relation to public ways has been noted often. According to the city attorney of Lubbock, Texas, that city "may acquire, maintain, and regulate public ways beyond the corporate limits if found by the governing body to be required and closely related to city functions."[12] Tacoma, Washington, may exercise such authority only in connection with the operation of public utilities.[13] The principle involved was expressed by the supreme court of California in *Mulville v. City of San Diego:*

> In certain instances, owing to the urgency of extreme expediency or necessity, express authority is dispensed with and the power of the municipality to perform certain acts beyond its boundary is implied as incidental to the existence of other powers expressly granted.[14]

An examination of Table 1 reveals statutory authority granted to, as well as geographical restrictions imposed upon, municipalities in various states relative to extraterritorial power over streets. Ten states impose more or less stringent limitations on the area in which municipalities exercise authority in respect to streets. These limitations vary from 30 miles in Colorado to 1 mile in West Virginia, with 5 miles most common. The Oregon provision, authorizing cities to change street names within 6 miles of their boundaries, is unique and of very recent origin. Little use has been made of this authority thus far.

Regulation

Seven states authorize municipalities to exercise regulatory authority over extraterritorial streets.[15] Colorado cities of the first and second classes "have full police power and jurisdiction" over lands that they have obtained beyond their limits for boulevards, avenues, and roadways.[16] In Illinois, the "approaches" to extraterritorial bridges and ferries owned and controlled by

[8] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 27-1.
[9] *Gen. Stats. of Kans.* (1949), sec. 12-1412.
[10] *Minn. Stats.* (1945), sec. 164.24.
[11] *Rev. Stats. of N. J.* (1937), Title 40, sec. 61-1.
[12] Letter, April 4, 1952.
[13] Letter, corporation counsel of Tacoma, March 31, 1952.
[14] 183 Cal. 734, 192 Pac. 702 (1920), p. 703.
[15] Colorado, Illinois, Missouri, Nebraska, Texas, West Virginia, and Wisconsin.
[16] *Colo. Stats. Anno.* (1935), 1949 Replacement, sec. 375.

Table 1. Extraterritorial Powers of Municipalities Relative to Streets

State	Scope of power	Geographical limitations	Statutory authority
Arkansas	Highways—incidental to public works	No	*Ark. Stats.* (1947), sec. 19-2721.
California	Roads—incidental to gravel beds	No	*Deering's Calif. Gen. Laws* (1944), Act 5172
Colorado	Boulevards, avenues, and roadways	30 miles	*Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 374.
Illinois	Roads—incidental to ferries and bridges	5 miles	*Ill. Rev. Stats.* (1951), Ch. 24, sec. 27-2.
Indiana	Streets and alleys — first-class cities — within contiguous platted territory	4 miles	*Burns Ind. Stats.* (1933), 1950 Replacement, secs. 48-190 and 48-1097.
Iowa	Roads—incidental to gravel pits	No	*Acts of 54th General Assembly*, Ch. 151, sec. 38.
Kansas	Roads—contingent upon cemeteries	No	*Gen. Stats. of Kans.* (1949), sec. 12-1412.
Michigan	Boulevards—home rule cities	No	*Comp. Laws of Mich.* (1948), sec. 117.4e.
Minnesota	"Main highways"—incidental to bridges	10 miles	*Minn. Stats.* (1945), sec. 164.24.
Mississippi	Highways and turnpikes	3 miles	*Miss. Code* (1942), sec. 3449.
Missouri	Boulevards—first-class cities	No	*Rev. Stats. of Mo.* (1949), sec. 90.070.
Nebraska	Streets, alleys, avenues, and boulevards—first-class cities		*Rev. Stats. of Neb.* (1943), secs. 16-601, 16-609, 14-366, 17-713, and 18-1208.
	Power to purchase property therefor	No	
	Power to appropriate property therefor	10 miles	
	Same for cities of metropolitan class	No	
	Same for cities of second class and villages	5 miles	
	Maintenance of roads, highways, or boulevards	6 miles	
	Avenues to cemeteries—cities of primary class	No	
New Jersey	Streets, avenues, and boulevards—incidental to parks, playgrounds, and beaches	No	*Rev. Stats. of N. J.* (1937), Title 40, sec. 61-1.
New Mexico	Streets, alleys, and highways	2 miles	*N. M. Stats.* (1941), sec. 14-3701.
North Carolina	Streets	No	*The Gen. Stats of N. C.* (1943), sec. 160-204.
Ohio	"Park boulevards"—joint construction with other municipalities	No	*Page's Ohio Gen. Code Anno.* (1937), sec. 3852-4.
Oklahoma	Streets, alleys, or boulevards—Tulsa	No	*Okla. Stats.* (1941), Title 11, sec. 1291.
Oregon	Cities authorized to change street names	6 miles	*Ore. Rev. Stats.* (1953), sec. 227.120.
South Dakota	Boulevards	No	*S. D. Code* (1939), sec. 450201(98).
Tennessee	Highways, streets, and boulevards	No	*Anno. Code of Tenn.* (1934), sec. 3528(15).
Texas	Streets, alleys, boulevards, and "other public ways"—in counties with population over 350,000	No	*Vernon's Tex. Stats.* (1948), Art. 969b, sec. 1.
Virginia	Roads, streets, and avenues—cities over 100,000	5 miles	*Code of Va.* (1950), sec. 15-772.
West Virginia	Roads and streets	1 mile	*W. Va. Code* (1949), sec. 494.
Wisconsin	Boulevards and pleasure drives	No	*Wis. Stats.* (1951), sec. 27.08(a).

Table 2. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO BRIDGES AND FERRIES

State	Scope of power	Geographical limitations	Statutory authority
Alabama	Ferries	On rivers constituting dividing line between 2 counties, at points touching municipalities	*Code of Ala.* (1940) Title 37, sec. 372, and Title 23, sec. 53.
Arkansas	Bridges—incidental to ports and harbors	No	*Ark. Stats.* (1947), secs. 19-2720 and 19-2721.
Illinois	Bridges and ferries	No	*Ill. Rev. Stats.* (1951), Ch. 24, secs. 27-1 and 27-2.
Iowa	Bridges and ferries	5 miles	*Ia. Code Anno.* (1949), sec. 383-1; *Acts of 54th General Assembly,* Ch. 151, sec. 23.
Kansas	Bridges—cities of first class	"Within a reasonable distance"	*Gen. Stats. of Kans.* (1949), sec. 13-1025b.
Louisiana	Bridges—cities and towns on navigable streams	Location on stream	*La. Gen. Stats.* (1939), sec. 3957.
Minnesota	Bridges—municipalities on streams forming boundary of state and "over any navigable stream constituting a boundary thereof." Ferries—towns, villages, and fourth-class cities may "assist" in the maintenance of same on roads leading into them.	Location on stream	*Minn. Stats.* (1945), secs. 164.13, 164.24, 163.10, and 441.26.
Mississippi	Bridges	No	*Miss. Code* (1942), sec. 3538.
Missouri	Bridges—cities over 100,000 and special charter cities—also tunnels and viaducts	"Within a reasonable distance"	*Rev. Stats. of Mo.* (1949), secs. 234-340 and 90.070.
Nebraska	Bridges—cities of primary and first classes may license and regulate those terminating in their limits. Cities of the metropolitan class may purchase or condemn bridges—also, tunnels and viaducts	2 miles	*Rev. Stats. of Neb.* (1943), secs. 19-1201 and 14-1201.

Table 2. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO BRIDGES AND FERRIES *(Continued)*

State	Scope of power	Geographical limitations	Statutory authority
North Dakota....	Bridges	No	*N. D. Rev. Code* (1943), sec. 24.0810.
Oklahoma.....	Bridges—cities of first class may contract with county or "any public service corporation" for their construction and maintenance	County	*Okla. Stats.* (1941), Title 69, sec. 187.
Oregon.....	Bridges—all municipalities except villages	No	*Ore. Rev. Stats.* (1953), sec. 382.505.
Pennsylvania.....	Bridges—cities of third class—also, tunnels and viaducts	"Partly without and partly within" city limits	*Purdon's Pa. Stats. Anno.* (1930-40), sec. 53-12198-3101.
Texas.....	Bridges—nonhome-rule and nonspecial-charter cities may acquire bridges "over a river between the State of Texas and the Republic of Mexico"		*Vernon's Tex. Stats.* (1948), Art. 1015g, sec. 1.
Virginia.....	Bridges and ferries — cities and towns may "contribute funds" to building, improvement, or purchase of bridges or the establishment and operation of ferries	40 miles	*Code of Va.* (1950), sec. 33-129.
Washington.....	Ferries	1 mile	*Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 5476.
Wisconsin.....	Bridges—any municipality on navigable waters forming boundary between Wisconsin and another state may construct and maintain bridges over same	"Commencing at a point within or near the limits"	*Wis. Stats.* (1951), sec. 86.21.

cities and villages "are subject to the municipal control and ordinances of the city or village, the same as though the bridge or ferry and the approaches thereto, were situated within the corporate limits of the city or village."[17] First-class cities in Missouri may control and regulate boulevards that they have established beyond their ilmits.[18]

Nebraska cities of the first class may "control" streets, avenues, and alleys within or without their limits.[19] Texas grants each of its incorporated cities and towns located in counties with a population over 350,000 police power over streets, boulevards, alleys, and other public ways acquired by them within or without their corporate limits.[20] West Virginia cities may acquire and maintain roads and streets within 1 mile of their limits and prevent "by proper fines and penaltes" the littering of these streets with trash.[21] Wisconsin municipalities may exercise "police supervision" over boulevards and pleasure drives developed and maintained by them partly within and partly without their limits.[22]

Bridges and Ferries

Table 2 sets forth the statutory authority and limitations of municipalities in various states with respect to extraterritorial bridges and ferries. The general laws of 18 states grant municipalities extraterritorial authority in regard to this type of property. The statutes of Missouri, Nebraska, and Pennsylvania also refer to extraterritorial tunnels and viaducts, which cities may construct in relation to bridges.[23]

Alabama, Illinois, Iowa, Minnesota, and Virginia authorize extraterritorial construction of both bridges and ferries. Minnesota is the only state in which the power to construct and maintain bridges and ferries is granted specifically to implement the maintenance of extraterritorial roads. Twelve states authorize extraterritorial construction of bridges only. Washington grants extraterritorial authority to its cities and towns relative to ferries without granting such authority relative to bridges. In Arkansas, the extraterritorial powers of municipalities in relation to bridges are incidental to those pertaining to ports and harbors.

A number of states grant authority to construct and maintain extraterritorial bridges only to cities of certain classes. In Kansas, Missouri, Nebraska, Oklahoma, and Pennsylvania, the size of the city or the class to which it belongs determines its powers in these matters. In Minnesota, this is true in regard to ferries. In that state any city of the first class may contract with the

[17] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 27-3.
[18] *Rev. Stats. of Mo.* (1949), sec. 90.080.
[19] *Rev. Stats. of Neb.* (1943), sec. 16-609.
[20] *Vernon's Tex. Stats.* (1948), Art. 969b, sec. 1.
[21] *W. Va. Code* (1949), sec. 494.
[22] *Wis. Stats.* (1947), sec. 27.14(1).
[23] Cf. *Hauessler v. St. Louis*, 205 Mo. 656, 103 S.W. 1034 (1907).

county in which it is located, or "any public service corporation," to construct and maintain bridges over streams within the county. It is perhaps debatable whether this is correctly considered a grant of extraterritorial authority in view of the fact that the actual power to construct and maintain such bridges is not granted to the city. Instead, the statute provides for the accomplishment of the purpose by indirection through contracts with other agencies. The fact remains that under this provision a city of the first class may *effect* the construction and maintenance of bridges beyond its limits even though it may not perform the work itself.

In Louisiana, Minnesota, Texas, and Wisconsin, the distinction among municipalities pertaining to extraterritorial bridges rests on different bases. In Louisiana, cities and towns located on navigable streams may construct bridges across these streams; in Wisconsin and Minnesota, municipalities bordering on streams which form a boundary of the state may construct and maintain bridges over these streams. Nonhome rule and nonspecial charter cities in Texas may acquire extraterritorial bridges located "over a river between the State of Texas and the Republic of Mexico."

Eleven states impose geographical limitations upon the area in which municipalities may acquire, build, or maintain extraterritorial bridges or ferries. In some states these limitations are indefinite, while in others they are definite; in some they are stringent, while in others they are lenient. For example, Kansas and Missouri allow municipalities to exercise such powers "within a reasonable distance" from their boundaries, while the cities of the metropolitan class in Nebraska are limited to 2 miles and the cities and towns of Virginia to 40 miles.

Some states specifically empower municipalities to acquire and maintain such facilities in conjunction with other governmental units.[24] This type of arrangement is found in Alabama, Minnesota, and Virginia. Alabama municipalities may aid in the construction of bridges and ferries between adjoining counties, which assume the major portion of the financial burden, if they are benefited thereby.[25] Any town, village, or fourth-class city of Minnesota may appropriate money "to assist in the improvement and maintenance of roads lying beyond its boundaries and leading into it, and of ferries and bridges thereon . . ."[26] In Virginia, any town or city may "contribute funds or other aid" toward the building or maintenance of bridges or ferries.[27] Although it is not clear to whom the funds may be contributed, the intent to make it possible for these municipalities to cooperate with other governmental units in such undertakings is apparent.

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[24] Appendix.

[25] *Code of Ala.* (1940), Title 23, sec. 53.

[26] *Minn. Stats.* (1945), secs. 163.10 and 441.26. Cf. *Peterson v. City of Jordan,* 135 Minn. 384, 160 N.W. 1026 (1917).

[27] *Code of Va.* (1950), sec. 33-129.

REGULATION

Municipalities in four states may regulate and control bridges or ferries that they have acquired or constructed beyond their boundaries. Alabama and Washington provide for "regulation" and "control."[28] Nebraska not only provides for "regulation" of extraterritorial bridges constructed by its cities of the metropolitan class, it also grants its cities of the primary and first classes authority to "license and regulate" all toll bridges that terminate within their boundaries.[29] In Illinois, municipal bridges and ferries, "when outside the corporate limits, are subject to the municipal control and ordinances of the city or village, the same as though the bridge or ferry and the approaches thereto, were situated within the corporate limits of the city or village."[30]

As indicated previously in regard to other types of extraterritorial property, absence from the general laws of a state of authority for municipalities to acquire and maintain bridges or ferries beyond their limits does not necessarily mean that none of the cities of the state enjoy such authority, since it may be granted by individual charter.[31] Courts have been willing to recognize the existence of implied authority to provide such facilities.[32] A few states delegate to municipalities certain regulatory authority over ferries operating outside their limits from a terminus within their limits, even though they do not possess authority to acquire or construct such ferries.[33]
1053 (1892).

MISCELLANEOUS PROPERTY[34]

Considered collectively, the states grant municipalities authority to acquire and maintain a wide variety of extraterritorial property, in addition to the categories already discussed. There is considerable variation in the amount and diversity of such authorizations. Even in those few states that make no such grants in their general laws, some municipalities maintain miscellaneous extraterritorial property on the basis of special charter provisions.

It is possible in some states for municipalities to own and maintain various types of extraterritorial property without specific authorization. This authority arises chiefly from two sources. It may be implied from a grant of power to provide certain facilities or services to the inhabitants of the city. It is generally conceded, for example, that a city possessing authority to provide

[28] *Code of Ala.* (1940), Title 37, sec. 372; *Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 5476.

[29] *Rev. Stats. of Neb.* (1943), sec. 19-201.

[30] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 27-3.

[31] Cf. *Roy v. Kansas City,* 224 S.W. 132 (Mo. App., 1920).

[32] Cf. *Southlands Co. v. City of San Diego,* 211 Cal. 646, 297 Pac. 521 (1931).

[33] Cf. *City of Bellaire ex rel. Sedgwick v. Bellaire, etc. Ferry Co.,* 105 Ohio St. 247, 136 N.E. 899 (1922); *Arkadelphia Lumber Co. v. Arkadelphia,* 56 Ark. 370, 19 S.W.

[34] Including cemeteries, hospitals, recreational and sanitary facilities, penal and charitable institutions, wharves and docks, dams, levees and dikes, schools, canals, quarries, drainage facilities, and other minor types of property.

water for its inhabitants may acquire the necessary property, extraterritorial or otherwise.[35] The same is true in some states in regard to other services, such as electricity, gas, and sewage facilities. This does not mean that a city may acquire any property that may be "convenient" or "useful" for such purposes; the property must be "necessary" or "indispensable."[36] Although this may be important as a possible source of municipal authority, the extent of its use is difficult to ascertain.

The second major source from which power to acquire miscellaneous extraterritorial property arises is found in grants of authority to acquire "property" or "real estate" beyond municipal boundaries. This type of grant is common and takes a variety of forms. Louisiana municipalities may acquire property "within or without the corporate limits for all proper municipal purposes."[37] Second-class cities in Minnesota may acquire property "wherever located, for any public or charitable purpose . . ."[38] Any Tennessee city may acquire and maintain property "within or without the city or state" and hold real estate for "corporate purposes" beyond its limits.[39] In four states, the term "public buildings" is used in the statutory authorization.[40] Although this type of provision does not remove all questions concerning the ability of a city to acquire miscellaneous extraterritorial property, it does provide the local unit with greater flexibility.

Specific Types of Property

Table 3 summarizes the power of municipalities in the various states in regard to the acquisition of different kinds of extraterritorial property. A number of significant facts are revealed. More states authorize municipalities to own and maintain cemeteries beyond their limits than any other type of property.[41] Most states grant this power unconditionally, but a few impose limitations. Idaho, Kansas, Nebraska, Oklahoma, and Wyoming place limitations upon some or all of their cities in terms of acreage. Minnesota, Missouri, and Virginia impose limitations in terms of the distance from their boundaries that cities may go to obtain land for cemeteries.

Next to cemeteries, more states empower cities to acquire and maintain hospitals beyond their boundaries than any other form of property. Eleven states impose geographical limitations on the area in which this authority may

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[35] Eugene McQuillin, op. cit., sec. 35.17.

[36] Appendix.

[37] *La. Rev. Stats.* (1950), Title 33, sec. 361.

[38] *Minn. Stats.* (1945), sec. 501.11.

[39] Appendix.

[40] *Ark. Stats.* (1947), sec. 35-901, limiting the authority to 5 miles; *Comp. Laws of Mich.* (1948), granting power only to home rule cities; *Okla. Stats.* (1941), Title 11, sec. 563, pertaining to cities over 2,000 population; *Wyo. Comp. Stats.* (1945), sec. 29-303, granting authority to cities of the first class.

[41] According to the Colorado Municipal League, 32 of 38 cities surveyed maintained extraterritorial municipal cemeteries. Letter, April 30, 1952.

be exercised. The limitations vary from 3 to 20 miles. A few states limit cities and towns in such matters to the county or counties in which they are located or to "the vicinity" of their corporate area.

Some 20 states grant municipalities authority to acquire and maintain extraterritorial property or facilities of a "recreational" nature. Seven states specifically refer to "recreational" centers of facilities. In addition to general recreational facilities and playgrounds, municipalities in some states may establish and maintain a variety of specific types of facilities for recreational purposes, including golf courses, athletic fields, stadiums, auditoriums, libraries, convention halls, swimming pools, museums, gymnasiums, camps, and forests.

Municipalities in 10 states may maintain extraterritorial penal institutions. The type of penal institution most commonly specified is the workhouse. Michigan, Pennsylvania, and Texas place no geographical restrictions on the area in which municipalities may exercise this power. In Alabama and Washington, each city or town is restricted to the county or counties in which it is located. Kansas, Louisiana, Mississippi, and Missouri impose specific limitations varying from 3 to 20 miles. The second most commonly authorized type of extraterritorial penal institution is the house of correction. Missouri, Pennsylvania, and Texas impose no geographical limitations on the construction of these institutions. As in the case of workhouses, cities and towns in Alabama are limited to the county or counties in which they are situated. Kansas imposes a limitation of 5 miles, while Louisiana and Mississippi impose a limitation of 3 miles. A few states empower municipalities to establish and maintain other types of extraterritorial penal institutions, such as detention homes, work farms, reform schools, prisons, and jails. Construction and maintenance of extraterritorial charitable institutions is authorized by four states, which impose geographical limitations ranging from 5 to 20 miles.

Municipalities in one-third of the states are empowered by general law to establish and maintain some type of extraterritorial sanitary and health facilities, other than sewers. In *City of Champaign v. Harmon,*[42] the court held that under a general grant of power to buy and hold real property, a municipal corporation may buy and hold property beyond its corporate limits for pesthouses, cemeteries, and other purposes connected with sanitary conditions in the municipality. Six states specifically authorize extraterritorial pesthouses, with territorial restrictions ranging from none in Mississippi to 3 miles in North Carolina. Municipalities in Alabama and Georgia are limited to the county and the "vicinity," respectively. In 12 states, municipalities are expressly empowered to provide extraterritorial facilities for garbage collection, reduction, or disposal. The geographical limitations are liberal in every state except North Carolina, where the limitation in regard to crematories and incinerators is 3 miles. California and Pennsylvania limit cities to the county or

[42] 98 Ill. 491 (1881).

counties in which they are located, while Florida provides that no municipality may locate garbage collection and disposal plants within another municipality.

Arizona and Oklahoma empower municipalities to acquire and maintain quarantine stations within or without their limits. Virginia grants the same authority, provided the cities and towns first obtain the consent of the county. In Iowa, New Jersey, New York, and Wyoming, municipalities may establish dumping grounds without any territorial limitations, while in Arizona the only limitation is that they may not locate such facilities within one mile of any incorporated area. The special charter cities of Missouri may construct and maintain toilets beyond their limits, and in Oregon every incorporated city over 5,000 population may acquire property within or without its limits for comfort stations.

Table 3 also reveals that 12 states expressly grant municipalities power to maintain extraterritorial markets, and 8 of these impose no geographical limitations. Cities and town in Alabama are restricted to their "police jurisdiction" (1½ or 3 miles, according to population), while Nebraska limits the power of condemnation of property for markets to 10 miles. No municipal corporation in West Virginia may establish markets beyond one mile of its boundaries.

Municipalities in 15 states may construct and maintain extraterritorial wharves, docks, landings, piers, and similar property. Only Alabama and Louisiana place specific geographical limitations on the extraterritorial area in which such authority may be exercised—5 miles in each state. In 9 states, similar authority is granted in regard to dams, levees, dikes, bulkheads, embankments, and similar property. Of these, only Indiana and Kansas impose geographical limitations of 4 and 10 miles, respectively.

Extraterritorial construction of municipal "drains" and "drainage systems" is authorized in 7 states. A similar authorization in regard to schools is found in 3 states. In Tennessee, power to acquire extraterritorial sites for schools has been held to be implied in a charter provision authorizing a municipality to hold real estate outside its limits for corporate purposes.[43] In California, Colorado, Kansas, Missouri, and Ohio, municipalities may construct canals beyond their limits. In Colorado, this power stems from a constitutional provision granting "corporations" the right of way across public and private lands for the construction of ditches, canals, and flumes.[44]

California, Missouri, and South Carolina specifically authorize municipalities to acquire and operate extraterritorial quarries. In California, cities and towns are limited to the county or counties in which they are located; in Missouri and South Carolina, there are no such restrictions. Municipalities in

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[43] *Reams v. Board of Mayor and Aldermen of McMinnville,* 155 Tenn. 222, 291 S.W. 1067 (1927).

[44] *Town of Lyons v. City of Longmont,* 54 Colo. 112, 129 Pac. 198 (1913).

Table 3. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO MISCELLANEOUS PROPERTY

State	Scope of power	Geographical limitations	Statutory authority
Alabama	Cemeteries	No	*Code of Ala.* (1940), Title 37, sec. 478.
	Hospitals, poorhouses, houses of correction, workhouses, and pesthouses	County	Ibid., sec. 495
	Wharves and landings	5 miles	Ibid., sec. 475
	Markets	Police jurisdiction (1½ to 3 miles)	Ibid., sec 498
	Crematories	No	Ibid., sec. 496
	Fireproof buildings for storage of explosives	No	Ibid., sec 472
Arizona	Cemeteries	No	*Ariz. Code Anno.* (1939), sec. 16-207.
	Quarantine stations	No	Ibid., sec. 16-602
	Garbage reduction plants	No	Loc. cit.
	Dumping grounds	Not located within 1 mile of any incorporated area	Ibid., sec 16-611
Arkansas	Cemeteries	No	*Ark. Stats.* (1947), sec. 19-2323.
	Wharves and market places	No	Ibid., sec. 35-902
	Public buildings	Eminent domain authorized for 5 miles	Ibid., sec 35-901
California	Cemeteries—cities under first class	No	*Deering's Calif. Gen. Laws* (1944), Act 5186.
	Playgrounds	No	Ibid., Act 6371
	Piers, docks, wharves, quays, and canals	No	Ibid., Act 5207
	Garbage disposal sites	County	Ibid., Act 5198
	Gravel beds and quarries	County	Ibid., Act 5172
Colorado	Cemeteries	No	*Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10.
	Recreational facilities and playgrounds	No	Ibid., Ch. 136, sec. 1
Florida	Hospitals, jails, garbage collection and disposal plants, and golf courses	Not in another municipality	*Fla. Stats.* (1949), sec. 180.02.
Georgia	Hospitals and pesthouses	"In the vicinity"	*Ga. Code* (1933), sec. 88-402.
	Playgrounds and recreation centers	No	Ibid., sec. 69-602
Idaho	Cemeteries	80 acres	*Ida. Code* (1947), sec. 50-1127.
Illinois	Cemeteries	No	*Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-84.
	Hospitals	No	Ibid., sec. 41-1
	Playgrounds and recreation centers—cities under 150,000	No	Ibid., sec. 57-1
	Stadiums and athletic fields—cities over 30,000 whose limits coincide with township limits	10 acres	Ibid., sec 64-1
	Sanitaria and auxiliary institutions for TB patients	No	Ibid., sec. 72-1
	Drains	No	Ibid., sec. 35-3

Table 3. Extraterritorial Powers of Municipalities Relative to Miscellaneous Facilities (Continued)

State	Scope of power	Geographical limitations	Statutory authority
Indiana	Cemeteries	No	*Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-6012.
	Auditoriums and other recreational facilities	No	Ibid., sec. 48-2601
	Levees	4 miles	Ibid., secs. 48-1902(14) and 48-4601
	Sea-walls, docks, and "other improvements"—cities "situated upon or adjoining" a harbor connected with a navigable stream or lake		Ibid., sec 48-5201
	Construction of works for flood protection	County	Ibid., secs. 48-4705, 48-4706, 48-4707, and 48-4708
Iowa	Cemeteries	No	*Acts of 54th Gen. Assembly*, Ch. 151, sec. 24.
	Infirmaries	No	Ibid., sec 23
	Crematories	No	Ibid., sec 32
	Garbage and refuse disposal plants, city dumps, and drainage systems	No	Ibid., secs. 19 and 20
	Wharves, docks, and piers	No	Ibid., sec. 23
	Markets	No	Loc. cit.
	Hospitals	No	*Ia. Code Anno.* (1949), sec. 3807.
	Property for flood protection	No	Ibid., sec. 395.2
Kansas	Cemeteries—3d class cities	80 acres	*Gen. Stats. of Kans.* (1949), sec. 15-1001.
	Hospitals, workhouses, houses of correction, and pesthouses		
	1st class cities	5 miles	Ibid., sec. 13-414
	2d class cities	20 miles	Ibid., sec. 14-428
	3d class cities	No	Ibid., sec. 15-432
	Poorhouses—2d class cities	20 miles	Ibid., sec. 14-428
	Pens, pounds, and buildings for impounding animals—1st and 2d class cities	No	Ibid., secs. 13-435 and 14-419
	Flushing ditches—1st class cities	5 miles	Ibid., sec. 13-1014
	Drains, canals, levees, and embankments to prevent floods	10 miles	Ibid., sec. 12-635
Louisiana	Cemeteries, schoolhouses, abbatoirs, and public markets	No	*La. Rev. Stats.* (1950), Title 33, sec. 361.
	Hospitals, workhouses, and houses of correction	3 miles	Ibid., sec. 402
	Landings and wharves—cities and towns over 1,000	5 miles	Ibid. sec. 403
	Land for maintenance of navigation channels and improvement of watercourses	No	Ibid., Title 34, secs. 361 and 362
Michigan	Home rule cities authorized to provide for acquisition of: city halls, police and fire stations, camps, zoological gardens, museums, libraries, cemeteries, wharves, landings, levees, watchhouses, prisons, workhouses, penal farms, "institutions," hospitals, markets, office buildings, and "public buildings of all kinds"	No	*Comp. Laws of Mich.* (1948), sec. 117.4e.
	Fourth-class cities authorized to acquire property for prisons, workhouses, and "other necessary public uses"	No	Ibid., sec. 100.2

Table 3. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO MISCELLANEOUS PROPERTY *(Continued)*

State	Scope of power	Geographical limitations	Statutory authority
Minnesota	Cemeteries, libraries, and school institutions	10 miles	*Minn. Stats.* (1945), sec. 501.11.
	Docks and warehouses—villages located on international body of navigable water		Ibid., sec. 458.01
	Municipal forests—1st class cities	No	Ibid., sec. 459.07
Mississippi	Cemeteries, schoolhouses, and pesthouses	No	*Miss. Code* (1942), secs. 3396 and 3424.
	Hospitals, workhouses, and houses of correction	3 miles	Ibid., sec. 3442
	Docks, wharves, terminal facilities, storage facilities, incinerators, warehouses, and cotton compresses	No	Ibid., sec. 3538
Missouri	Cemeteries	Cities of 2d class limited to 4 miles; cities of 3d and 4th classes limited to 3 miles; cities over 100,000 limited to county	*Rev. Stats. of Mo.* (1949), secs. 214.010, 75.270, 77.120, 79.430, and 82.240.
	Hospitals, workhouses, and poorhouses	Cities of 3d class limited to 10 miles, and those of 4th class to 5 miles; cities over 100,000 limited to county	Ibid., secs. 73.010, 77.530, and 79.380
	Wharves and docks—cities of 1st class	No	Ibid., sec. 73.110
	Special charter cities authorized to acquire property for: libraries, art galleries, museums, auditoriums, convention halls, refrigeration plants, fountains, bathing places, watering troughs, toilets, markets, abbatoirs, medical dispensaries, laboratories, infirmaries, hospitals, poorhouses, charitable institutions, employment agencies, pawn shops, jails, city halls, engine houses, houses of correction, reform schools, workhouses and farms, detention homes, morgues, cemeteries, crematories, quarries, wharves, docks, and canals	No	Ibid., sec. 81.190
Montana	Cemeteries	No	*Rev. Codes of Mont.* (1947), sec. 11-948
	Hospitals	No	Ibid., sec. 11-947
	Athletic fields and stadiums	No	Ibid., sec. 62-210
Nebraska	Cemeteries		
	cities of the primary class	No	*Rev. Stats. of Neb.* (1943), sec. 15-239.
	cities of the first class	80 acres	Ibid., sec. 16-241
	cities of the second class and villages	160 acres	Ibid., sec. 17-296
	Hospitals		
	cities of the first class	No	Ibid., sec. 16-241
	cities of the second class and villages	160 acres	Ibid., sec. 17-296

Table 3. Extraterritorial Powers of Municipalities Relative to Miscellaneous Property (*Continued*)

State	Scope of power	Geographical limitations	Statutory authority
	Public squares and market places	No	Ibid., sec. 14-366
	cities of the metropolitan class	Eminent domain limited to 10 miles	Ibid., sec. 16-601
	cities of the first class		
	Dams and swimming pools—cities of the second class and villages	5 miles	Ibid., sec. 17-947
Nevada	Cemeteries and hospitals	No	*Nev. Comp. Laws* (1929), sec. 1128.
New Hampshire	Dams—towns	On any body of water, part of which lies in the town	*Rev. Laws of N. H.* (1942), Title VIII, Ch. 51.
New Jersey	Communicable disease hospitals	No	*Rev. Stats. of N. J.* (1937), Title 30, secs. 9-73 and 9-28.
	Pesthouses	No	Ibid., sec. 9-28
	Playgrounds, beaches, and places for public recreation	No	Ibid., sec. 61-1
	Lands for deposit of ashes and other wastes	No	Ibid., sec 66-3
	Lands for wharves, piers, docks, and harbor structures	No	Ibid., sec. 68-1
New Mexico	Cemeteries	No	*N. M. Stats.* (1941), secs. 14-1832 and 14-2709.
	Dikes, dams, embankments, and ditches for flood prevention	No	Ibid., sec. 14-2801
New York	Cemeteries	No	*Cahill's Consol. Laws of N. Y.* (1930), Ch. 26. sec. 160.
	TB hospitals—cities of the first class	No	Ibid., Ch. 22, sec. 140
	Athletic fields and playgrounds—villages authorized to accept and lease land for same	3 miles	Ibid., Ch. 65, sec. 169 and Ch. 65, sec. 169, 1937 *Supplement*
	Markets, playgrounds, libraries, hospitals, dumps, and disposal plants—villages	No	Ibid., Ch. 65, sec. 89
	Gardens, parade grounds, recreation grounds—cities and villages may accept property in trust for same	"Near"	Ibid., Ch. 26, sec. 73
	Dumps—towns	No	Ibid., Ch. 63, sec. 220
	Drains, dams, culverts, and bulkheads for flood protection	No	Ibid., sec. 89(15) of Village Law, 1948 *Dec. Supplement*
	Docks	One end must be within limits	Ibid., sec. 89(65)
North Carolina	Cemeteries, playgrounds, wharves, markets, or drainage systems	No	*The Gen. Stats. of N. C.* (1943), secs. 160-204, 160-2
	Hospitals, pesthouses, slaughterhouses, incinerators, rendering plants, and crematories	3 miles	Ibid., sec. 160-203

Table 3. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO MISCELLANEOUS PROPERTY *(Continued)*

State	Scope of power	Geographical limitations	Statutory authority
North Dakota....	Cemeteries	No	*N. D. Rev. Code* (1943), sec. 40-0501 (46).
Ohio.....	Cemeteries	No	*Page's Ohio Gen. Code Anno.* (1937), sec. 4154.
	Hospitals for contagious diseases	No	Ibid., sec. 4452
	Land for "conservation of forest reserves"	No	Ibid., sec. 3939(23)
	Canals and watercourses—construction and improvements	Located partly in limits or in "adjacent" territory	Ibid., sec. 3623
Oklahoma.....	Cemeteries	1-80 acres	*Okla. Stats.* (1941), Title 8, sec. 41.
	Hospitals, quarantine stations, and garbage reduction plants—cities over 2,000	No	Ibid., Title 11, sec. 563
Oregon.....	Property for public squares, memorial monuments or buildings, pioneer museums, sites for meeting places for veterans, auto camp grounds, playgrounds, and comfort stations	No	*Ore. Rev. Stats.* (1953), sec. 226.320.
Pennsylvania.....	Playgrounds, swimming pools, public baths, bathing places, indoor recreation centers, and gymnasiums—boroughs	No	*Purdon's Pa. Stats.* (1930-40), Title 53, sec. 14902.
	Playgrounds and poorhouses—cities	No	Ibid., secs. 1553, 1558, and 12198-3703
	Hospitals, prisons, poorfarms, workhouses, houses of correction, and garbage incinerating plants	County or adjacent county	Ibid., secs. 12198-3601 and 1321
	Tracts of land for growth of trees—cities	No	Ibid., sec. 12198-3830
	Wharves—cities	In adjacent waters	Ibid., sec. 12198-3901
	Hospitals for contagious diseases—cities of the second class may purchase land for same	County	Ibid., sec. 9676
South Carolina..	Cemeteries	No	*Code of Laws of S. C.* (1942), sec. 7309.
	Playgrounds, athletic grounds, stadiums—cities over 50,000	5 miles	Ibid., sec. 7553
	Rock quarries	No	Ibid., sec. 7359
	Slaughter pens—municipalities over 5,000	No	Ibid., sec. 7472
	Property for improvement and protection of waterfronts—cities of 50,000 or more located on navigable streams	No	Ibid., sec. 7554
South Dakota.....	Cemeteries and swimming pools	No	*S. D. Code* (1939), secs. 45.0201 (40) and 45.0201 (98).
Tennessee.....	Public grounds, squares, wharves, subways, and drains	No	*Anno. Code of Tenn.* (1939), sec. 3528 (15).
	Powder magazines	No	Ibid., sec. 3494

Table 3. EXTRATERRITORIAL POWERS OF MUNICIPALITIES RELATIVE TO MISCELLANEOUS PROPERTY *(Continued)*

State	Scope of power	Geographical limitations	Statutory authority
Texas	Hospitals, playgrounds, incinerators, and garbage disposal plants—cities and towns in counties with over 350,000 population	The State	*Vernon's Tex Stats.* (1948), Art. 969b, sec 1.
	Workhouses, and houses of correction	No	Ibid., Art. 1015, sec. 19
	Recreation grounds, camps, and accommodations—in connection with toll bridge	No	Ibid., Art. 1015g, sec. 5
	Wells, pumps, hydrants, cisterns, and reservoirs	No	Ibid., Art. 1015(30)
Utah	Cemeteries and hospitals	No	*Utah Code Anno.* (1953), sec. 15-8-62.
Vermont	Lands for growing wood and timber	No	*Vt. Stats.* (1947), sec. 7088.
	Hospitals—town or village	In county or adjacent county in Vermont or another state	Ibid., sec. 3649
Virginia	Cemeteries	"Near"	*Code of Va.* (1950), sec. 15-6.
	Land for growth of trees—with consent of county, city, or town in which located	No	Ibid., secs. 10-48 and 10-49
	Quarantine grounds—with consent of county	No	Ibid., sec. 15-6
	Hospitals—with consent of county	"Near"	Ibid., sec. 32-130
Washington	Cemeteries—cities of 1st and 2d classes	No	*Remington's Rev. Stats. of Wash. Anno.* (1932), secs. 8966 and 9034 (51).
	Hospitals—2d class cities	No	Ibid., sec 9034(51)
	Bathing beaches and public camps	No	Ibid., sec. 9319
	Dikes, levees, and embankments for flood protection	No	Ibid., sec. 9355
	Jails, workhouses, workshops, stockades, and other places of confinement	County	Ibid., sec. 10204
West Virginia	Cemeteries, crosswalks, drains, gutters, markets, and incinerators	1 mile	*W. Va. Code* (1949), sec. 494.
Wisconsin	Cemeteries and parking areas	No	*Wis. Stats.* (1951), secs. 62-22 and 157.50.
	Lands for forestry purposes	No	Ibid., sec. 66.27
	Breakwaters and protection piers	Shores of adjoining lakes or rivers	Ibid., sec. 30.05
Wyoming	Cemeteries and hospitals	80 acres for cemeteries	*Wyo. Comp. Stats.* (1945), secs. 29-430(23), 29-303, and 38-201.
	Markets and public buildings—1st class cities	No	Ibid., sec. 29-303
	Dumping grounds—1st class cities	No	Ibid., sec. 29-319
	Pens, pounds, buildings, hospitals (Cheyenne)	No	Ibid., secs. 29-3418(17) and 29-3418(32)
	Cemetery (Rawlins)	No	Ibid., sec. 29-3515

some states may acquire extraterritorial quarries without specific statutory authorization.[45]

In Kansas and Oregon, cities may acquire property for extraterritorial public squares. Oregon also authorizes acquisition of extraterritorial property for auto camp grounds and memorial monuments and buildings. Any Wisconsin city may acquire property "within or without the city" for vehicle parking areas. Mississippi municipalities may acquire cotton presses outside their boundaries. In North Carolina, they may acquire and maintain slaughterhouses and rendering plants within 3 miles of their limits, while in South Carolina, cities with a population of 5,000 or more may establish slaughter pens beyond their boundaries. Louisiana cities may obtain property within or without their limits for abbatoirs.

This survey indicates that municipalities in the United States may acquire, own, and maintain a wide variety of extraterritorial property. Some states grant certain classes of municipalities authority to acquire many types of property, while others grant very little, if any, such power. The acquisition of extraterritorial miscellaneous property is often authorized to implement the protection of the public health, safety, and welfare. This is indicated by the fact that cemeteries, hospitals, and penal and charitable institutions are among the most frequently authorized property. In some states, extraterritorial property may be acquired to protect municipalities against floods.

Regulation

Municipalities in nine states are expressly authorized to "regulate" some types of miscellaneous extraterritorial property, most commonly cemeteries. Alabama municipalities may regulate hospitals, poorhouses, workhouses, houses of correction, pesthouses, and markets that they have established beyond their limits.[46] Cities and villages in Illinois may regulate "all persons approaching or coming within the limits of the sanitarium or grounds thereof" which they have established beyond their boundaries.[47] In Mississippi, cities and villages may regulate hospitals, workhouses, and houses of correction constructed by them within 3 miles of their limits[48] Missouri cities of the first class may regulate wharves and docks that they have erected outside their boundaries, including regulation of the rates of wharfage.[49] The relative infrequency of such authorizations is probably due to the fact that state laws pertaining to the use of public property are considered sufficient for the protection of extraterritorial municipal property.

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[45] Cf. *Schneider v. City of Menasha,* 118 Wis. 298, 95 N.W. 94 (1903), where the city was held to have authority to purchase an extraterritorial stone quarry implied from express authority to grade streets and purchase and hold real estate necessary or convenient therefor. Cf. also, *City of Somerville v. City of Waltham,* 170 Mass. 160, 48 N.E. 1092 (1898).

[46] *Code of Ala.* (1940), Title 37, secs. 447 and 498.

[47] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 72-8.

[48] *Miss. Code* (1942), sec. 3442.

[49] *Rev. Stats. of Mo.* (1949), sec. 73.110.

V

AIRPORTS AND PARKS

Airports

Although most states in their general laws expressly grant municipalities authority to construct and operate extraterritorial airports, such specific authorization does not appear to be generally necessary. This situation stems from the fact that courts have been liberal in their decisions pertaining to this area of municipal authority. This atttitude has been well expressed by Oscar L. Pond (41,1):

> One of the most interesting and striking illustrations of the attitude of our courts toward an increase of the sphere of municipal activity is found in their treatment of the power of municipal corporations to establish and maintain airports. While the municipalities have not been permitted to erect or maintain and operate steam or interurban stations in connection with their municipal activities, practically all the courts, in passing on the question, have found that municipal corporations have the power and are authorized to provide and operate airports, involving extensive expenditures in acquiring large tracts of land within or near the city limits. . . . The decisions all seem to recognize the importance of fostering this new method of rapid transportation.

The courts generally take the view that municipalities may acquire and own airports on the basis of grants of power to further "corporate" or "municipal" purposes. In the leading case of *State ex rel. Walla Walla v Clausen,*[1] the court held that a statute authorizing all cities and towns to acquire, maintain, and operate airports, declaring them to be a municipal purpose, and empowering the cities to exercise eminent domain therefor, construed in connection with other statutory provisions empowering them to acquire property "for any and all corporate purposes" within or without their limits, was sufficient to authorize the extraterritorial acquisition and maintenance of an airport, even though the first statute made no mention of the location of airports. Municipalities may be upheld in the exercise of such authority based on an authorization pertaining to "public utilities,"[2] or to the acquisition of land for "park purposes."[3]

In most states, no geographical limitations accompany statutory grants of authority relative to airports, but a few states do impose them.[4] No Florida municipality may locate an extraterritorial airport within the limits of another municipal corporation.[5] Cities and towns in Maine and first-class cities in

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[1] Appendix.

[2] Cf. *State ex rel. Chandler v. Jackson,* 121 Ohio St. 186, 167 N.E. 396 (1929); *State ex rel. Hile v. Cleveland,* 26 Ohio App. 265, 160 N.E. 241 (1927).

[3] Cf. *Wichita v. Clapp,* 125 Kans. 100, 263 Pac. 12 (1928).

[4] They are not to be implied. *In re Petition of Detroit,* 308 Mich. 480, 14 N.W.(2d) 140 (1942). Cf. *City and County of Denver v. Board of Commissioners of Arapahoe County,* 113 Colo. 150, 156 Pac.(2d) 101 (1945).

[5] *Fla. Stats.* (1949), sec. 180.02.

Pennsylvania must obtain the consent of local governing authorities when they seek to acquire land for extraterritorial airports.[6] Cities of the first-class in Indiana, those of the second class in Pennsylvania, and the municipalities of Vermont are restricted to the counties in which they are located.[7] New York municipalities are generally limited to 10 miles beyond their boundaries, and second-class cities in Indiana are limited to 6 miles.[8] In Idaho, cities and villages may obtain extraterritorial lands for airports not exceeding 1280 acres.[9] Minnesota provides that "any two contiguous cities of the first class" may create a Metropolitan Airport Commission, which shall "control and have jurisdiction over any . . . airport within 25 miles of the city hall of either city."[10]

A few states specifically authorize municipalities to acquire and operate airports outside the state boundaries.[11] In acquiring such lands, municipalities are considered to act in their corporate capacity.[12] West Virginia and Wisconsin grant municipalities in adjoining states permission to maintain and operate airports within their boundaries.[13] Other states may extend such permission without including it in statutory provisions.

Numerous cities have availed themselves of the opportunity to acquire and maintain extraterritorial airports. Of the 32 cities that supplied information on this point, over half indicated they maintained such facilities. Ten different states were represented in these replies, which do not adequately represent the extent to which cities avail themselves of the opportunity to establish extraterritorial airports. This may be illustrated by the fact that although no city in Virginia supplied any information on this point, the League of Virginia Municipalities stated that many cities in Virginia maintain airports outside their boundaries.[14] On the other hand, the Connecticut Public Expenditures Council[15] and the Illinois Municipal League[16] indicated no municipalities in their states had exercised extraterritorial authority in relation to airports, although the laws of those states provide for it. The Arkansas Municipal League noted an interesting example.[17] Arkansas authorizes the city of Texarkana to acquire and improve an airport in Texas, but Texas prohibits its

[6] *Rev. Stats. of Me.* (1944), Ch. 21, sec. 17; *Purdon's Pa. Stats. Anno.* (1930-40), Title 53, sec. 3800-1. Cf. *Wentz v. City of Philadelphia,* 301 Pa. 261, 151 Atl. 883 (1930).

[7] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 14-401; *Purdon's Pa. Stats. Anno.* (1930-40), Title 53, sec. 3800-1; *Vt. Stats.* (1947), secs. 3818, 3821, and 3822.

[8] *Cahill's Consol. Laws of N. Y.* (1930), 1948 *Dec. Supp.,* Gen. Mun. Law, sec. 350; *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 14-505.

[9] *Ida. Code* (1947), sec. 21-401.

[10] *Minn. Stats.* (1945), secs. 360.101 and 360.123.

[11] Appendix.

[12] *McLaughlin v. City of Chattanooga,* 180 Tenn. 638, 177 S.W.(2d) 823 (1944).

[13] *W. Va. Code* (1949), sec. 586; *Wis. Stats.* (1951), sec. 114.11(3).

[14] Letter, executive secretary, April 2, 1955.

[15] Letter, director of Municipal Consulting Service, April 10, 1952.

[16] Letter, municipal consultant on law of municipal corporations, April 2, 1952.

[17] Letter, executive director, April 1, 1952.

cities from acquiring property or spending money outside the state. Therefore, Texarkana, Arkansas, and Texarkana, Texas, have jointly built an airport, sewage disposal system, and library—all in Texas.

REGULATION

Of those states that grant extraterritorial power in relation to airports, two-thirds expressly permit municipalities to exercise regulatory authority over them and adjacent territory. Colorado, Georgia, Kansas, Maryland, Michigan, Nebraska, North Dakota, Oregon, South Carolina, South Dakota, and Tennessee extend to municipalities a general authorization to "regulate" or "police" extraterritorial airports.[18] Cities and towns in Louisiana may "police" such airports and enforce zoning regulations to protect the approaches thereto.[19] Arkansas cities are restricted in their zoning activities to the area within 5 miles of an extraterritorial airport.[20]

Each Alabama municipality may condemn or purchase "the right to abate or remove any structure, building, tower, pole, wire, tree, woods, or other thing" located within one-fourth of a mile from its airports, if these things have been found to constitute a menace to the safety of aircraft using the airports.[21] In order to provide free air space for the safe ascent and descent of aircraft and the safe use of any airport maintained by them, cities of the first-class in Indiana may establish restricted zones "for a distance not more than fifteen hundred (1,500) feet in any and all directions from the boundaries of such airport or aviation field," within which "no building or other structure shall be erected high enough to interfere with the descent of an aircraft . . ." These cities may also prevent the erection or require the removal of "all buildings, towers, poles, wires, cables, and other structures" within such a zone.[22] In this way, the specific extraterritorial regulatory activities in which the municipalities may engage are more definitely outlined. Municipalities in New Mexico may prevent the construction of or remove any hazards "adjacent to" airports that they own and operate within or without their limits.[23]

Arizona provides for the exercise of regulatory authority over extraterritorial airports in a different manner. Where an airport is owned or controlled by a political subdivision in that state and a hazard area pertaining to the airport is located outside the limits of the subdivision, that subdivision and the subdivision in which the hazard area is located may create a joint airport zoning board. This board has the same authority to adopt and enforce zoning

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[18] Appendix.

[19] *La. Rev. Stats.* (1950), Title 2, secs. 131 and 384.

[20] *Ark. Stats.* (1947), sec. 74-302.

[21] *Code of Ala.* (1940), Title 4, sec. 30. Cf. Title 4, sec. 34.

[22] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 14-497. Cities of the second class possess similar authority within 600 feet of the airport. Ibid., sec. 14-505.

[23] *N. M. Stats.* (1941), sec. 27-209.

regulations as is granted to the cooperating subdivisions within their own territory.[24] A comparable provision is found in Montana, but it goes one step further in providing:

> If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area . . . and if that political subdivision has refused to join in creating a joint airport zoning board . . . the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question.[25]

In the event of conflict of regulations, "the regulations of the political subdivision owning or controlling the airport shall govern and prevail."[26] Arkansas cities may "promulgate, administer, and enforce airport zoning regulations even though all or a part of the airport in question, or all or a part of the area to be zoned up to five miles beyond the airport, is located outside its corporate limits and within the territory of another subdivision."[27]

Cities and towns in Maine and North Carolina may promulgate and enforce zoning regulations to protect the approaches of any airport owned by them and located outside their corporate boundaries.[28] Nevada municipalities are empowered to "perform any duties necessary or convenient for the regulation of air traffic" at airports maintained by them beyond their limits.[29] Any city, village, or town in New York may purchase or condemn the right to "abate or remove any flight hazard" within the "flight hazard area," which is defined as "the approach and turning zones which lie within three thousand feet of such airport . . . or within such greater distance as the Federal Civil Aeronautics Administration or its successor may declare to be necessary with respect to any particular airport . . ."[30] The municipalities of Texas and Virginia may obtain easements outside extraterritorial airports to assure safe operation.[31]

In the quarter century during which airport zoning ordinances have been in effect throughout the country, very few contests involving their validity have reached the highest court of any state.[32] There is general public acceptance of airport zoning by municipalities.

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[24] *Ariz. Code Anno.* (1939), sec. 48-133(b). Cf. sec. 48-101.

[25] *Rev. Codes of Mont.* (1947), sec. 1-712.

[26] Loc. cit. Municipalities in Montana may also appoint airport police "with full police powers" to protect extraterritorial airports. Ibid., sec. 1-815.

[27] *Ark. Stats.* (1947), sec. 74-302.

[28] *Rev. Stats. of Me.* (1944), Ch. 21, sec. 10; The Gen. Stats. of N. C. (1943), sec. 63-31.

[29] *Nev. Comp. Laws* (1929), secs. 289 and 291.

[30] *Cahill's Consol. Laws of N. Y.* (1930), 1948 *Dec. Supp.*, General Municipal Law, sec. 355.

[31] *Vernon's Tex. Stats.* (1948), Art. 46d-2; *Code of Va.* (1950), sec. 520.

[32] Cf. *Yara Engineering Corp. v. City of Newark,* 132 N.J.L. 370, 40 Atl.(2d) 559 (1945); *Rice v. City of Newark,* 132 N.J.L. 387, 40 Atl.(2d) 551 (1945).

PARKS

Municipalities in about three-fourths of the state are empowered by general law to acquire and maintain extraterritorial parks. Some municipalities in the remaining states are authorized to provide these facilities by special laws or individual charters.[33] This power may be implied from a general grant of authority, such as power to acquire extraterritorial land for a "public use." Such an authorization may be found in general laws or individual charters. Florida municipalities may acquire and lease land and buildings within or beyond their corporate limits, an authorization considered sufficient to provide for extraterritorial parks.[34] Cities and villages in Idaho may acquire lands outside their boundaries for the "health and general welfare of such municipalities respectively." Extraterritorial parks have been established on the basis of this authorization.[35] A charter provision granting a city power to acquire land beyond its limits for a public or corporate purpose may be considered to grant similar authority.[36]

Generalizations pertaining to the acquisition of extraterritorial parks are subject to qualification in some states on the basis of the method used to acquire the property. A grant of authority to acquire property beyond municipal limits for parks usually provides a variety of methods of acquisition, including purchase, condemnation, donation, or lease. In the absence of *specific* authorization, the courts may be reluctant to permit cities to condemn extraterritorial property for parks, even though they have been empowered to "acquire" it[37] A few states specifically limit the ways in which such property may be obtained. Arizona municipalities may lease or obtain by gift from the United States or other governmental agency real property within or without their boundaries for parks.[38] Cities with a population of 5,000-100,000 in Illinois and those of the third and fourth classes in Missouri may purchase extraterritorial land for parks.[39] Cities of the fourth class in Indiana may accept such land as a gift for the purpose of establishing a memorial forest preserve or park.[40] Cities of the third class in Kansas and all municipalities in Mississippi may acquire property for extraterritorial parks by purchase or donation while those in North Dakota are limited to purchase or

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[33] Appendix.

[34] *Fla. Stats.* (1949), sec. 481.02; letter, attorney general of Florida, dated January 18, 1952.

[35] Appendix.

[36] Cf. *Allison v. City of Phoenix,* 44 Ariz. 66, 33 Pac.(2d) 967 (1934); *City of Quitman v. Jelks and McLeod,* 139 Ga. 238, 77 S.E. 76 (1913).

[37] Cf. *City of Birmingham v. Brown,* 241 Ala. 203, 2 So.(2d) 305 (1941).

[38] *Ariz. Code Anno.* (1939), sec. 16-1502.

[39] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 52-5; *Rev. Stats. of Mo.* (1949), secs. 77.140 and 79.390.

[40] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-5705.

devise.[41] Cities and villages in Minnesota may receive such property in trust.[42]

Nearly half of the states granting municipal corporations authority to acquire and maintain extraterritorial parks place some limitation on the area in which this power may be exercised. Some states impose specific limitations, ranging from 1 to 75 miles. Others impose indefinite limitations. Any city in Illinois with a population of 5,000-100,000 may purchase land for parks "in and around the city," and cities under 15,000 may acquire such land "by purchase or otherwise" within 4 miles of their corporate limits.[43] All cities in Kentucky may acquire land for parks "at any place reasonably accessible" to the inhabitants of the cities.[44] Cities and villages in New York may hold property in trust for parks "within or near" their boundaries.[45] Municipal boards of park commissioners in Ohio may establish parks within their respective cities or in territory "contiguous" thereto.[46] Connecticut provides that no town or borough may locate an extraterritorial park in another incorporated city.[47]

The statutory provision in Pennsylvania is unique:

> It shall be lawful for the cities of this commonwealth to purchase, acquire, enter upon, take, use, and appropriate private property, for the purpose of making . . . and maintaining public parks. . . . Provided, that where such private property is outside of the city, it may be annexed thereto by ordinance of said city.[48]

Of the cities supplying information relative to the exercise of authority to establish extraterritorial airports and parks, one-third indicated use of such authority to acquire parks. Approximately one-fifth indicated they made no use of such power. The remainder either made no reply on this point or merely referred to the statutory authorization without indicating whether it had been used. Replies from most state municipal leagues were also inadequate on this point. The state organizations in Connecticut, Illinois, and New Jersey indicated that no municipalities in their states exercise such powers.[49]

Regulation

Of the 35 states specifically empowering municipalities to establish and maintain extraterritorial parks, 22 expressly authorize the exercise of mu-

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[41] *Gen. Stats. of Kans.* (1949), sec. 15-901; *Miss. Code* (1942), sec. 3396; *N. D. Rev. Code* (1943), sec. 40-4901.

[42] *Minn. Stats.* (1945), sec. 501.11.

[43] *Ill. Rev. Stats.* (1951), Ch. 24, secs. 52-5 and 52-8.

[44] *Ky. Rev. Stats.* (1948), sec. 97.060.

[45] *Cahill's Consol. Laws of N. Y.* (1930), Ch. 25, sec. 73.

[46] *Page's Ohio Gen. Code Anno.* (1937), sec. 4060. Cf. *City of Nashville v. Vaughn,* 155 Tenn. 498, 14 S.W.(2d) 716 (1929); *Booth v. City of Minneapolis,* 163 Minn. 223, 203 N.W. 25 (1925).

[47] *Gen. Stats. of Conn.* (1949), Title IV, sec. 664.

[48] *Purdon's Pa. Stats.* (1940), Title 53, sec. 1553. Cf. *City of Pueblo v. Stanton,* 45 Colo. 523, 102 Pac. 512 (1909).

[49] Letter, Connecticut Public Expenditure Council, April 10, 1952; letter, municipal consultant on law of municipal corporations, Illinois Municipal League, April 2, 1952; letter, New Jersey State League of Municipalities, April 9, 1952.

nicipal authority over these parks. Municipalities in four states may exercise "jurisdiction" over extraterritorial parks,[50] while an equal number of states grant authority to "regulate" or "control" them.[51] The statutes of seven states specfically refer to "police" control over extraterritorial municipal parks.[52] In the remaining states, control over these parks apparently lies in the hands of law enforcement agencies of other units of government, especially counties.

This discussion indicates that those states granting municipalities extraterritorial powers relative to airports and parks may limit the exercise of these powers in regard to (1) methods of acquisition, (2) geographical area in which they may be acquired, and (3) degree of control. Some states simply grant municipalities authority to "acquire" extraterritorial parks and airports, without any specifications concerning the methods that may be used. Others restrict the ways in which they may be obtained by eminent domain, purchase, donation, "or otherwise." Many states place no geographical limitations on the area in which such power may be exercised; others impose limitations ranging from 1 to 75 miles; a few express limitations in terms of acreage. Some states grant municipalities no regulatory authority over extraterritorial airports and parks; others grant complete police supervision. In some states it is possible for municipal corporations to acquire such facilities in the absence of specific statutory or charter authorization, particularly where a grant of power to acquire extraterritorial "property" or "facilities" for public purpose exists.

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[50] *Ark. Stats.* (1947), sec. 35-910; *Deering's Calif. Gen. Laws* (1943), Act 6731; *Ia. Code Anno.* (1949), sec. 370.20; *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-1-7.

[51] *Okla. Stats.* (1941), Title 11, sec. 1215, and Title 50, sec. 16; *Page's Ohio Gen. Code Anno.* (1937), sec. 3658-1; *Rev. Stats. of Mo.* (1949), sec. 90.080; *Rev. Stats. of Neb.* (1943), sec. 15-210.

[52] *Code of Ala.* (1940), Title 37, sec. 477; *Burns Ind. Stats.* (1933), 1950 Replacement, secs. 48-5705 and 48-5707; *Minn. Stats.* (1945), secs. 440.37 and 440.40; *Ore. Rev. Stats.* (1953), sec. 95.1720; *Wis. Stats.* (1951), sec. 27.14(1); *Ky. Rev. Stats.* (1948), sec. 97.255; *Rev. Stats. of N. J.* (1937), Title 40, secs. 61-25 and 61-26.

VI

EXTRATERRITORIAL EXERCISE OF THE POLICE POWER

"As a general rule municipal police power and ordinances operate only within the municipal area, and the police power of a municipal corporation cannot be exercised outside its boundaries without special authorization."[1] The general laws of most states grant municipalities authority to exercise some phase of police power beyond their limits.[2] A few states restrict the exercise of this power to a few types of extraterritorial property owned and maintained by cities, especially airports and parks. California municipalities have "jurisdiction" over extraterritorial parks, boulevards, and playgrounds, as well as streets and avenues leading thereto from the municipalities, "and over persons and property therein."[3] South Dakota cities may exercise jurisdiction over "any ground or park" owned by them within one mile of their limits, "for the purpose of promoting the health . . . of the community . . ."[4]

In Georgia, Louisiana, Maine, and Maryland, municipalities may extend police authority to airports owned and operated beyond their boundaries.[5] Iowa, Kentucky, and New Jersey grant similar jurisdiction to some cities in regard to extraterritorial parks.[6] Ohio municipalities may provide cemeteries beyond their limits, "and the police powers of the corporation shall extend to those places."[7] An Ohio municipal corporation owning and using lands beyond its limits for a "municipal purpose" may provide "all needful police or sanitary regulations for the protection of such property and . . . prosecute violations thereof in the municipal or police court of such municipality."[8]

Extraterritorial extensions of the general police power of municipalities may be placed in two broad categories. In one category belong those regulations imposed as a condition to the exercise of an activity within municipal limits by persons or businesses located outside those limits, such as the sale of milk or bakery goods or the provision of laundry service. In the other category belong the extraterritorial regulations that are not imposed as a condition to the exercise of such intracity activities. Regulations in the first category are more easily and generally sustained by the courts, since the munici-

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[1] Eugene McQuillin, op. cit., sec. 24.57. Appendix.

[2] Appendix.

[3] *Deering's Calif. Gen. Laws.* (1944), Act 6371.

[4] *S. D. Code* (1939), sec. 45.0201.

[5] *Ga. Code* (1933), sec. 11-201; *La. Rev. Stats.* (1950), Title 2, secs. 131 and 384; *Rev. Stats. of Me.* (1944), Ch. 21, sec. 10; *Anno. Code of Md.* (1951), Art. 1A, sec. 35. Maryland grants additional extraterritorial police jurisdiction to some cities by special law.

[6] *Ia. Code Anno.* (1949), sec. 370.20; *Ky. Rev. Stats.* (1948), sec. 97.255; *Rev. Stats. of N. J.* (1937), Title 40, secs. 61-25 and 61-26.

[7] *Page's Ohio Gen. Code Anno.* (1937), sec. 4154.

[8] Ibid., sec. 3648-1.

pality does not in a strict sense extend its regulations beyond its limits. Instead, it merely provides that any person or business located outside its boundaries must submit to certain municipal controls or regulations as a necessary condition to doing business inside. Regulations belonging to the second category are more difficult to sustain, and frequently they have been held void by the courts. This second type of extraterritorial police authority must be authorized by statutory provision, and such grants of power may be reviewed by the courts to determine whether they are necessary to the implementation of police authority within municipal limits. They may also be reviewed to determine their constitutionality.[9]

HEALTH

More states grant municipalities authority to exercise extraterritorial police power in order to protect and promote public health than for any other purpose. Some states specifically grant very general authority in such matters. The Florida statutory provision is typical: "Any municipality is hereby authorized and empowered to extend and execute all of its corporate powers . . . outside of its corporate limits . . . as may be desirable or necessary for the promotion of the public health . . ."[10] The only limitation is found in the requirement that such authority "shall not extend or apply within the corporate limits of another municipality."[11] North Dakota municipalities are granted power within one-half mile of their limits.[12] Illinois municipalities are granted jurisdiction "in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations."[13] Montana cities may exercise similar authority "in and over all places within five miles of the boundaries" for similar purposes.[14] Boards of health in Arkansas cities of the first and second classes have "jurisdiction for one (1) mile beyond the city limits . . ."[15] Mayors of second-class cities in Idaho may enforce health or quarantine ordinances within 5 miles of the boundaries of their cities.[16] Similar broad authority may be incorporated in special legis-
matters, excepting taxation, within one-half mile of the corporate limits of the city."
lation referring to a single city.[17]

Most states that grant extraterritorial authority pertaining to health are

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[9] One of the rare instances where a grant of authority has been declared unconstitutional is found in *Malone v. Williams,* 118 Tenn. 390, 103 S.W. 798 (1907).

[10] *Fla. Stats.* (1949), sec. 180.02.

[11] Loc. cit.

[12] *N. D. Rev. Code* (1943), sec. 40-0601.

[13] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 8-1. Cf. *City of Chicago v. National Brick Co.,* 331 Ill. App. 614, 43 N.E.(2d) 647 (1948).

[14] *Rev. Codes of Mont.* (1947), sec. 11-802.

[15] *Ark. Stats.* (1947), sec. 82-203.

[16] *Ida. Code* (1947), sec. 50-326. These mayors are also granted jurisdiction in "all

[17] Cf. *Harrison v. Mayor, etc. of Baltimore,* 1 Gill 264 (Md. 1843); *State v. Rice,* 158 N.C. 635, 74 S.E. 582 (1912).

quite specific as to the type of regulation that may be exended beyond municipal boundaries. The area in which such authority may be exercised is usually circumscribed in a definite fashion. In Alabama and North Carolina, the "sanitary ordinances" of cities and towns are given extraterritorial effect. In North Carolina, they are limited to 1 mile from the corporate boundaries, while in Alabama they extend throughout the "police jurisdiction" of the municipalities.[18] The most common extraterritorial authority granted to municipalities in regard to health pertains to quarantine laws and other regulations designed to prevent the introduction of contagious diseases into cities and towns. Limits of the exercise of such authority range from 1 mile in Michigan to 12 miles in Nevada and Utah.[19]

Variations of this type of authority are found in a few states. Local boards of health in Delaware may direct the removal of any "noisome matter" within 1 mile of their respective municipal boundaries, if such "matter" constitutes a health hazard.[20] Fourth-class cities in Minnesota may prevent "infected" boats, vessels, or cars from coming within or "near" their corporate limits.[21] Virginia cities and towns may "prescribe the quarantine to be performed by all vessels arriving within the harbor or vicinity of such city or town . . ."[22]

Several states authorize municipalities to exercise certain incidental powers related to the protection of public health. Alabama cities and towns may regulate markets and inspect food products offered for sale within their police jurisdiction, with special emphasis on the preparation of fresh meats.[23] Any city or village in Wisconsin may "regulate or prohibit the emission of dense smoke into the open air within its limits and one mile therefrom."[24] In order to prevent the pollution of rivers, streams, and waterways, the jurisdiction of Indiana cities is extended 10 miles beyond their boundaries.[25] Every second-class city in Washington may prevent or punish "the defilement or pollution of all streams in or through its corporate limits and a distance of five miles beyond its corporate boundaries . . ."[26] In some instances, cities have been granted authority by special law to enforce sanitary regulations over particular pieces of extraterritorial property conveyed to them.[27]

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[18] Appendix.

[19] Appendix.

[20] *Rev. Codes of Del.* (1935), Ch. 25, sec. 11. These local boards are granted jurisdiction also over any vessels within the same area, if they have any contagious disease on board.

[21] *Minn. Stats.* (1945), sec. 411.40.

[22] *Code of Va.* (1950), sec. 32-72.

[23] *Code of Ala.* (1940), Title 37, sec. 492.

[24] *Wis. Stats.* (1951), sec. 146.10.

[25] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407(13). Cf. sec. 48-1902.

[26] *Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 9034(53).

[27] Cf. *City of Shreveport v. Wilkinson,* 182 La. 783, 162 So. 621 (1935); *City of Shreveport v. Case,* 198 La. 702, 4 So.(2d) 801 (1941).

The primary motivation behind grants of extraterritorial authority to municipalities in the field of public health is to enable them to protect and promote the health of their inhabitants. In nearly every instance, statutory provisions granting such authority impose a definite geographical limitation on the area in which it may be exercised. To what extent do cities make use of this authority?

Replies pertinent to this question were received from 32 cities and 16 state municipal leagues. Approximately one-third of the cities indicated that they made no use of such power; over two-thirds of the state municipal leagues indicated cities in their states generally made little or no use of such power.[28] Several cities, including Glendale and South Gate, California, and Augusta, Georgia, indicated the control of health matters outside municipal boundaries lay in the hands of county officials.[29] On the other hand, the city attorney of Sacramento, California, stated: "Our police power is very broad and authorizes us to control such matters as may be necessary to promote the general welfare of the citizens of this city and the State."[30]

Regulation of Milk

Regulation of dairies and dairy herds by municipalities in the area beyond their boundaries has been the subject of considerable controversy, although courts have generally sustained such regulations.[31] A few states specifically empower municipalities to inspect and exercise control over dairies and dairy herds located outside their limits if these dairies supply milk or milk products for sale or consumption within the municipalities.[32] The fact such exercise of power is intended to guarantee a supply of pure milk *within* the municipalities has caused some courts to declare ordinances designed to accomplish this purpose have no extraterritorial effect, regardless of the fact they operate upon businesses not located within the municipality.[33] A number of cities, including Davenport, Iowa, Omaha, Nebraska, Charlotte, North Carolina, Ft. Worth, Texas, and Syracuse, New York, report they possess no extraterritorial authority over milk producers *except* to prohibit the sale of

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[28] State leagues indicating their cities made little or no use of such power are those of Arizona, Colorado, Connecticut, Michigan, Minnesota, Montana, New Jersey, Oregon, Rhode Island, Washington, and Wisconsin. Those indicating their cities use this authority are in Arkansas, Idaho, Illinois, Texas, and Virginia.

[29] Letter, city attorney of Glendale, dated August 5, 1952; letter, city attorney of South Gate, dated April 21, 1952; letter, city attorney of Augusta, dated April 3, 1952.

[30] Letter, April 1, 1952.

[31] 55 ALR 1182. Cf. *Prescott v. City of Borger,* 158 S.W.(2d) 578 (Tex. Ct. of Civ. App., 1942) to the contrary.

[32] Cf. *Code of Ala.* (1940), Title 37, sec. 492; *Ark. Stats.* (1947), secs. 19-3401 and 19-3402; *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10; *Minn. Stats.* (1945), sec. 461.03; *Rev. Stats. of Mo.* (1949), sec. 75.110(40); *Wyo. Comp. Stats.* (1945), sec. 46-513.

[33] Appendix.

their products within municipal boundaries unless they submit to inspection by local health officers in order to assure compliance with standards.[34]

Courts generally uphold local ordinances requiring milk or milk products sold within municipalities to meet certain requirements as a valid exercise of municipal police power, so long as regulations bear a reasonable relationship to the health of local residents. A number of cities, including Milwaukee, Los Angeles, Seattle; Rochester, New York; Waterloo, Iowa; and Corpus Christi, Texas, report they regulate milk brought into their limits.[35] These regulations frequently take the form of requirements which dairies must meet if they wish to supply milk to the city. The logic of such regulations was well indicated in Illinois over a quarter-century ago: "What avail to regulate the sale of milk in Quincy if one may bring it into the city with no regard to sanitary conditions and teeming with bacteria?"[36]

Courts in some instances have refused to sanction the exercise of extraterritorial power related to this object on the ground the method used was "unreasonable."[37] An excellent discussion of the fundamental problem was posed by the exercise of such regulatory authority by municipalities is found in the Georgia case of *Moultrie Milk Shed, Inc. v. City of Cairo.*[38] This case involved an attempt to obtain an injunction to prevent Cairo from enforcing an ordinance prohibiting the sale of milk in the city unless it had been pasteurized in a plant situated in Grady County, where Cairo is located. The court raised this basic question:

> Where shall the line marking the limit to which legislation to protect the public may encroach upon freedom of the individual to engage in competitive and legitimate business be drawn? . . . If this city is held by this court to be justified in restricting the trade in milk as is here done, it would constitute a precedent requiring a holding by this court tomorrow that all other cities could lawfully . . . exclude foods such as syrup and pickles produced in Cairo from the markets in other cities unless they were processed in a plant situated within the county in which such cities were located.[39]

The court ruled that the location of the pasteurizing plant outside Grady County bore "no reasonable relation to the matter of protecting the public health which would justify a classification of the petitioner differently from that given another whose pasteurizing plant is located in Grady County."[40] In

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[34] Reply to questionnaire dated March 26, 1952, and addressed to the city attorney of Davenport; letters from city attorneys of Omaha, Charlotte, and Ft. Worth, April 2, 1952, April 2, 1952, and March 31, 1952, respectively; letter from director of Bureau of Municipal Research of Syracuse, April 15, 1952.

[35] Replies to questionnaire; of 32 cities replying, 18 indicated municipal regulation of the extraterritorial production of milk for sale within the city.

[36] Appendix.

[37] Appendix.

[38] 206 Ga. 348, 57 S.E.(2d) 199 (1950).

[39] 57 S.E.(2d), p. 202.

[40] Ibid., p. 203.

other words, said the court, the location of the plant "has nothing whatever to do with the purity of the milk."

In other instances, courts have denied municipalities such authority simply on the ground it was not authorized by the state legislature, and therefore could not be exercised.[41] This basis for determining the validity of such regulations makes it unnecessary to pass upon their reasonableness. Even when the legislature has granted such authority to municipalities, courts may still pass upon the reasonableness of its exercise under the particular circumstances of any given case.

Regulation of Sale of Meat

State laws and local ordinances do not reflect the same concern in regard to meat as in the case of milk. This may be due to a number of factors, such as the degree to which the federal government has provided for inspection of meat and the fact that meat is not as easily contaminated as milk. Alabama cities are specifically empowered to inspect premises on which meat is sold outside their limits (within their police jurisdiction) and to enforce sanitary and slaughtering regulations pertaining thereto, the same as if they were within the corporate limits.[42] A few states authorize cities to "regulate the management" of slaughterhouses within a specified area beyond their boundaries, but the context within which this authority is generally granted indiccates it is designed to enable cities to prevent maintenance of a nuisance in this area, rather than to guarantee the quality of meat.[43] Los Angeles, California, and Rochester, New York, impose regulations pertaining to meat shipped into the city; and Corpus Christi, Texas, controls extraterritorial slaughterhouses through inspection.[44]

Although not so numerous as those dealing with milk, a number of cases have dealt with atempts by municipalities to regulate the slaughtering of meat outside their boundaries. The Texas Court of Civil Appeals voided as discriminatory an ordinance prohibiting the sale in Greenville of meat unless slaughtered in the city's abbatoir, or, if slaughtered elsewhere, unless it bore a federal inspection stamp. The court held the ordinance to be discriminatory because it imposed federal inspection on intrastate dealers and at the same time merely required the equivalent of such standards at the city's abbatoir.[45] Contrarily, the supreme court of California ruled that a city had

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[41] Appendix.

[42] *Code of Ala.* (1940), Title 37, sec. 492. Cities and towns may also "establish a system of inspecting" slaughterhouses in their police jurisdiction. Ibid., sec 499.

[43] Cf. *Code of Ala.* (1940), Title 37, sec. 499; *Minn. Stats.* (1945), sec. 411.40; and *Utah Code Anno.* (1943), sec. 15-8-66.

[44] Letter, deputy city attorney of Los Angeles, April 14, 1952; letter, corporation counsel of Rochester, April 9, 1952; letter, assistant city attorney of Corpus Christi, October 31, 1952.

[45] Appendix.

power to impose conditions on the operation of an abbatoir outside the city as a condition to the sale of meat in the city.[46] The supreme courts of Oregon and South Carolina have upheld similar ordinances.[47]

Welfare

The second major subdivision of the police power is the protection and promotion of the public "welfare." The terms "health" and "welfare" are not mutually exclusive. "Welfare" is the broader term. States frequently authorize municipalities to perform certain extraterritorial functions which, although they may be related in some way to the health of the community, are intended to enhance the general comfort and well-being of local residents. Extraterritorial power in this category most frequently extended to municipalities is authority over cemeteries and burial of the dead. Over one-third of the states grant such authority to some or all cities. Authorizations vary in detail from state to state, but they generally fall into one of two categories: (1) regulatory authority over extraterritorial cemeteries maintained by cities, or (2) regulating burial of the dead within a specified distance from municipal boundaries, regardless who owns and maintains the burial grounds.

Cities are granted both types of authority in some instances, as in Alabama, where cities and towns may exercise "police jurisdiction" over all lands acquired by them for cemeteries and "regulate or prohibit the establishment or use of private cemeteries within the police jurisdiction of the city or town . . ."[48] Limitations imposed on the extraterritorial area in which municipalities in the different states may exercise this authority vary from 1 mile in Colorado, Illinois, and South Dakota, to no specific limits in Arkansas, Nebraska, Nevada, Ohio, Oklahoma, Utah, and Wyoming.[49]

Another major field of extraterritorial regulatory authority designed to protect public welfare pertains to various "unwholesome" or "noxious" businesses or establishments, such as slaughterhouses, packing houses, soap factories, and tanneries, as well as to handling and storing dangerous materials, such as explosives. One-third of the states grant municipalities permission to exercise such authority.[50] The grants assume a variety of forms, and the area in which the power may be exercised varies from 1 to 4 miles. The most common type of authorization is a grant of power to municipalities to prohibit or regulate these and similar establishments where any "nauseous, offensive or

Cf. *State ex rel. Humphrey v. Franklin,* 40 Kan. 410, 19 Pac. 801 (1868).

[46] *City of Oakland v. Brock,* 60 Pac.(2d) 522 (Cal. App., 1936). Cf. *City of El Paso v. Jackson,* 59 S.W.(2d) 822 (Comm. of App. of Tex., 1933).

[47] *Sterrett and Oberle Packing Co. v. City of Portland,* 79 Ore. 260, 154 Pac. 410 (1916); *Ex Parte Boyle,* 128 S.C. 535, 123 S.E. 9 (1924).

[48] *Code of Ala.* (1940), Title 37, secs. 477 and 478.

[49] Appendix.

[50] This power may not be implied from authority to prevent the introduction of contagious diseases into a city. *State v .Temple,* 99 Neb. 505, 156 N.W. 1063 (1916).

unwholesome business" may be carried on.[51] Power to regulate and direct the location of such businesses in an area outside their limits does not empower cities to prohibit their establishment within that area.[52]

Colorado cities and towns may "direct the location and regulate the management" of unwholesome businesses within 1 mile of their limits.[53] The laws of Indiana and Minnesota provide similar authority, plus the power to prohibit the maintenance of any unwholesome or noxious business within a certain area around their boundaries.[54] Cities in Nevada and Utah may regulate the location, management, and construction of packing houses, canneries, slaughterhouses, tanneries, butcher shops, distilleries, and similar establishments within 1 mile of their limits. They may also prohibit any "offensive or unwholesome" business or establishment within 1 mile of their boundaries, with special reference to privies, pigstys, barns, and corrals, as well as regulate their location.[55] South Carolina imposes no geographical limitations on the extraterritorial area in which municipalities may permit and regulate slaughter pens.[56]

Statutory provisions in Oklahoma and West Virginia are different from those in other states. Oklahoma prohibits the establishment of packing plants within one-half mile of an incorporated city without the consent of the city.[57] The prohibition thus stems directly from a state law, while cities are empowered to make exceptions to it. West Virginia cities are authorized "to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome . . ." If this power cannot be "reasonably and efficiently exercised by confining the exercise thereof within the corporate limits," it may be extended as necessary up to a maximum of 1 mile beyond the corporate limits.[58]

Several states authorize municipalities to abate or remove "nuisances" outside their boundaries, without specifying what constitutes a nuisance. First-class cities in Idaho may "declare what shall be deemed nuisances" and remove and abate them within 3 miles of their limits.[59] Cities in Kansas may not only abate nuisances but may also bring action to enjoin any nuisance that is "about to be created" within 3 miles of their boundaries.[60] The power of Montana cities and towns to abate extraterritorial nuisances is limited to terri-

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[51] Appendix.

[52] *City of Elkhart v. Lipschitz,* 164 Ind. 671, 74 N.E. 528 (1905).

[53] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10.

[54] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407(10)—4 miles; *Minn. Stats.* (1945), sec. 411.40—1 mile.

[55] *Nev. Comp. Laws* (1929), sec. 1128; *Utah Code Anno.* (1943), secs. 15-8-66 and 15-8-67. Cf. *N. M. Stats.* (1941), sec. 14-1834.

[56] *Code of Laws of S. C.* (1942), sec. 7472.

[57] *Okla Stats.* (1941), Title 2, sec. 671.

[58] *W. Va. Code* (1949), sec. 494.

[59] *Ida. Code* (1947), sec. 50-135.

[60] *Gen. Stats. of Kans.* (1949), secs. 13-1417.

tory occupied by their public works.[61] Without this specific type of authorization, it is doubtful that municipalities may declare what shall constitute a nuisance and abate it outside their limits, even though they possess the power to prohibit any offensive or unwholesome business or establishment.[62]

A few states specifically grant municipalities authority to prevent or regulate storage of gunpowder or other combustible or explosive materials within a certain area around their boundaries, ranging from 1 to 3 miles.[63] Even the grant of such power to a city by its charter may not be sufficient to justify its exercise in the absence of general statutory authority.[64] In Alabama, an ordinance prohibiting the keeping, use, handling, sale, or manufacture of fireworks within a city's police jurisdiction was upheld in the absence of any specific statutory reference to such matters.[65]

Less than one-fourth of the 32 cities supplying information, in reply to a questionnaire on this point, indicated that they exercised any extraterritorial authority over unwholesome or noxious businesses outside their limits. A number indicated that control over such matters outside municipal boundaries lay in the hands of state or county authorities. The Arizona and Arkansas municipal leagues stated that, in general, the municipalities of those states do not have authority to regulate or prohibit noxious businesses outside their corporate limits.[66] The Illinois Municipal League noted that cities in that state can prevent nuisances within 1 mile of their limits, apparently on the theory such authority is sufficient to provide for the specific type of regulation under consideration. According to the League of Virginia Municipalities, "Generally speaking, the police power of municipalities in Virginia extends one mile beyond the corporate limits."[67] These statements to the effect that municipalities of a particular state possess certain authority that they may exercise beyond their boundaries gives no indication of the frequency with which the local units use this power.

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[61] *Rev. Codes of Mont.* (1947), sec. 11-966.

[62] Cf. *St. Bernard Poultry Farm v. City of Aurora,* 98 Colo. 158, 54 Pac.(2d) 684 (1936); *State v. Franklin,* 40 Kan. 410, 19 Pac. 801 (1887); *City of Rockford v. Hey,* 366 Ill. 566, 9 N.E.(2d) 317 (1937); *City of Topeka v. Cook,* 72 Kan. 595, 84 Pac. 376 (1906).

[63] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10—1 mile; *Ida. Code* (1947), sec. 50-37—3 miles; *Rev. Codes of Mont.* (1947), sec. 11-923—3 miles; *S. D. Code* (1939), sec. 45.0201(30)—1 mile from city and property; *W. Va. Code* (1949), sec. 494—1 mile.

[64] *City of Duluth v. Orr,* 115 Minn. 267, 132 N.W. 265 (1911). Cf. *Gutowski v. Mayor, etc. of Baltimore,* 127 Md. 502, 96 Atl. 630 (1916).

[65] *Chappell v. Birmingham,* 236 Ala. 363, 181 So. 906 (1938).

[66] Letter, executive director, Arkansas Municipal League, April 1, 1952; letter, executive secretary, Arizona Municipal League, March 31, 1952.

[67] Letter, municipal consultant on law of municipal corporations, Illinois Municipal League, April 2, 1952; letter, executive secretary, League of Virginia Municipalities, April 2, 1952.

MORALS

The third major subdivision of the police power concerns the protection of the public "morals." As mentioned in regard to welfare, this term is not clearly distinguishable in all cases from the other categories in which police power operates. Powers granted to municipalities in this category are usually designed to curb gambling, intoxication, and sexual irregularities. Relatively few states grant municipalities extraterritorial authority in regard to these matters. In these days of rapid transportation, their regulation, in order to be at all effective, must be on a state-wide basis at least. Even state boundaries no longer represent a realistic limitation.

Seven states expressly grant municipalities authority to suppress bawdy houses and houses of assignation or to prevent vice and immorality within a specified area outside their boundaries, ranging from 1 to 4 miles.[68] It may be possible for municipalities to suppress such establishments as nuisances if they are granted extraterritorial authority in regard to nuisances.[69]

The noticeable absence of litigation dealing with this subject indicates that municipalities have generally been willing to leave regulation of such matters in the hands of state and county authorities. Further evidence to this effect is found in the fact none of the cities providing information for this study indicated exercise of extraterritorial authority in relation to these problems. A number specifically stated they exercised no extraterritorial jurisdiction in this field and indicated that bawdy houses, houses of prostitution, and similar establishments were regulated by state or county authorities when located outside municipal boundaries.[70]

Six states empower municipalities to suppress gambling and gaming within a specified area outside their boundaries, ranging from 1 to 4 miles.[71] As in the case of bawdy houses and houses of ill fame, there is a noticeable absence of litigation dealing with attempts by municipalities to regulate or suppress gambling beyond their boundaries, indicating such matters are usually controlled by state or county officers.[72] Several cities in reply to a questionnaire gave essentially the same reply in regard to regulation of gambling as they gave in regard to bawdy houses.

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[68] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10—3 miles; *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-57—3 miles; *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407—4 miles; *S. D. Code* (1939), sec. 45.0201—1 mile; *Utah Code Anno.* (1943), sec. 15-8-41—3 miles; *W. Va. Code* (1949), sec. 494—1 mile; *Wyo. Comp. Stats.* (1945), sec. 29-430(11)—1 mile.

[69] Appendix.

[70] Appendix.

[71] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10—3 miles; *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407(13)—14 miles; *S. D. Code* (1939), sec. 45.0201—1 mile; *Utah Code Anno.* (1943), sec. 15-8-41—3 miles; *W. Va. Code* (1949), sec. 494—1 mile; *Wyo. Comp. Stats.* (1945), sec. 29-430—1 mile.

[72] Cf. *Murray v .City of Roanoke,* 64 S.E.(2d) 804 (Va., 1951).

The general laws of few states grant municipalities authority to regulate places where liquor and other intoxicating beverages are sold outside their boundaries. Indiana, Missouri, and Wyoming municipalities possess such authority for 4 miles, ½ mile, and 1 mile from their limits, respectively.[73] No city supplying information for this study indicated that it exercised regulatory authority over extraterritorial businesses selling liquor. There have been a number of judicial proceedings involving the validity of various attempts by municipalities to regulate such matters outside their limits. Almost without exception, cities have been upheld in attempts to regulate places outside their boundaries where intoxicating beverages are sold, provided that such regulations are confined to a prescribed area as specified by statute. Regulation of this type frequently is in the form of authority to grant or refuse licenses.

In addition to gambling, prostitution, and intoxication, a few states extend authority of municipalities over certain other activities, the regulation of which may be considered as designed to protect the morals of the people. Some states empower municipalities to prevent fights, obscenity, and similar "disorderly conduct" for a specified distance beyond their limits.[74] Montana cities and towns may regulate or prohibit dance halls within 3 miles, and prize fights and boxing matches within 5 miles of their limits.[75] Similar power is granted to Oregon cities in regard to boxing and wrestling matches.[76]

Miscellaneous

In addition to the above major aspects of extraterritorial regulatory authority under the police power, a few states grant cities power to regulate or control a variety of things that cannot be readily included in any of the foregoing classifications. Indiana empowers cities to regulate distilleries and breweries, quell riots, and restrain and punish vagrants, beggars, thieves, and other criminals, all within 4 miles of their boundaries.[77] Montana cities may prevent and punish fights, riots, loud noises, and other "acts or conduct calculated to disturb the public peace" within 3 miles of their limits.[78] Nevada cities may regulate breweries, distilleries, livery stables, and blacksmith shops within 1 mile of their boundaries.[79] South Carolina extends the police jurisdiction of its cities and towns over all prisoners in transit between their corporate area and rock quarries owned by them.[80]

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[73] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407(13); *Rev. Stats. of Mo.* (1949), sec. 80.090; *Wyo. Comp. Stats.* (1945), sec. 29.430(11).

[74] *Rev. Codes of Mont.* (1947), sec. 11-927—3 miles; S. D. Code (1939), sec. 45.0201—1 mile; *Anno. Code of Tenn.* (1934), sec. 3336—1 mile; *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10—3 miles.

[75] *Rev. Codes of Mont.* (1947), secs. 11-921 and 11-973.

[76] *Ore. Rev. Stats.* (1953), sec. 463.120.

[77] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 38-1407(13).

[78] *Rev. Codes of Mont.* (1947), sec. 11-927. Cf. *S. D. Code* (1939), sec. 45.0201.

[79] *Nev. Comp. Laws* (1929), sec. 1128.

[80] *Code of Laws of S. C.* (1942), sec. 7359.

The foregoing examination reveals that although the general rule is that the police power of municipalities is restricted to their corporate area unless special authorization is provided, cities, towns, and villages often exercise regulatory authority beyond their limits. Different states grant necessary authorization in relation to a wide variety of subjects for the purpose of protecting and promoting the health, welfare, and morals of local residents. Exercise of such powers by individual cities and towns has given rise to much litigation. Decisions most often have been in favor of the municipality on the basis of specific statutory authorization. The area in which the exercise of this power is permitted varies not only with the specific type of authority exercised or subject regulated but also from state to state.

VII

EXTRATERRITORIAL JURISDICTION OF POLICE AND FIRE DEPARTMENTS

Police Protection

In order that municipalities may enforce certain local ordinances and state laws outside their boundaries, some states have extended the jurisdiction of local courts and police officers beyond the corporate limits. As noted previously, each city in Alabama possesses an extraterritorial "police jurisdiction" in which it may enforce laws, and the local recorders are vested with "full jurisdiction in criminal and quasi-criminal matters" within these areas.[1] The extent of this authority is unusual, even when compared with the other three states that make similar grants of authority.[2] Under certain conditions, the jurisdiction of the police officers of each city and town in North Carolina is extended over the entire township in which the city or town is located.[3] The jurisdiction of town marshalls in Indiana extends over the whole county.[4] Similar authority is granted to police officers and watchmen in North Dakota cities for a distance of 1½ miles beyond municipal boundaries.[5]

No city supplying information concerning extraterritorial police authority made any reference to the use of this type of authority. The League of Virginia Municipalities noted that, "Generally speaking, the police powers of municipalities in Virginia extend one mile beyond the corporate limits."[6] As noted in regard to other municipal powers, extraterritorial authority may be granted to city police by special charter, but any such grant must be in accord with general state law.[7]

Another aspect of the extraterritorial authority of municipal police pertains to their power to issue and enforce writs and processes beyond their boundaries. Colorado, Nebraska, and New Mexico specifically extend to municipalities authority to issue and enforce writs and processes anywhere in the

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[1] *Code of Ala.* (1940), Title 37, sec. 595.

[2] Appendix.

[3] *The Gen. Stats of N. C.* (1943), sec. 7-215.

[4] *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-206. Cf. C. M. Kneier, "Territorial Jurisdiction of Local Law Enforcement Officers," 9 *N. C. Law Rev.* 283-90 (April 1931), footnote 18.

[5] *N. D. Rev. Code* (1943), sec. 40-2005.

[6] Letter, executive secretary, April 2, 1952.

[7] Cf. *Campbell v. Bryant,* 104 Va. 509, 52 S.E. 638 (1905), where a special act incorporating Madison Heights and providing that the mayor should have the power and authority of a justice of the peace for 1¼ miles beyond the town limits and that the sergeant of the town should have authority within the same territory was declared void in view of a general law provision confining civil and criminal jurisdiction of town authorities to 1 mile beyond corporate limits and a constitutional provision requiring the legislature to enact general laws for the organization and government of cities and towns.

counties in which they are situated.[8] If local courts are considered as state courts, their writs and processes may be served anywhere within the state. This situation exists in California.[9]

A method of making local writs and processes enforceable throughout the state is used in Corpus Christi, Texas, where the assistant city attorney reports they may be executed anywhere in the state if endorsed by the county court.[10] The corporation counsels of Tacoma and Seattle, Washington, report that writs and processes of their local courts are enforceable anywhere in the state.[11] It appears that writs and processes of municipal courts are generally not enforceable outside municipal boundaries.[12]

In order to enforce local ordinances as well as state laws effectively, local police need to be able to pursue and arrest outside their boundaries persons who have violated the law. Although the courts have followed the common law principle of limited territorial jurisdiction for local law enforcement officers, a number of states have empowered such officers to pursue and arrest offenders beyond their corporate limits. Territorial limitations imposed upon the exercise of this power vary considerably among the states. Grants of authority in Colorado, New Mexico, and Washington extend over the entire state.[13] In South Carolina, municipal police officers may pursue and arrest persons only within 1 mile of their boundaries.[14] The most commonly prescribed area in which municipal police officers may exercise extraterritorial authority of pursuit and arrest is the county in which the particular city or town is situated.[15] In Wisconsin, local police officers may pursue offenders into adjoining cities, villages, or towns, and arrest them there.[16] This arrangement is somewhat comparable with that found in Illinois, where statutory provision is made for the inclusion of territory within the limits of adjoining municipalities in a county into a single police district. Police of any of the municipalities included in such a district may go into any part of the district in order "to suppress a riot, to preserve the peace, and protect the lives, rights, and property of citizens."[17]

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[8] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 82; *Rev. Stats of Neb.* (1943), sec. 14-603; *N. M. Stats.* (1941), sec. 14-606. Waterloo, Iowa, may exercise the same authority, according to its city attorney. Letter, March 31, 1952. Cf. *Johnson v. Hilton and Dodge Lumber Co.,* 103 Ga. 212, 29 S.E. 819 (1897).

[9] Memorandum with letter from city attorney of Glendale, California, August 5, 1952. Cf. *Chipman v. Bowen,* 14 Cal. 157 (1859).

[10] Letter, October 31, 1952.

[11] Letters, March 31, 1952 and April 1, 1952, respectively.

[12] Appendix.

[13] *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 82; *N. M. Stats.* (1941), sec. 50-331; *Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 9141.

[14] *Code of Laws of S. C.* (1942), sec. 7365.

[15] Appendix.

[16] *Wis. Stats.* (1951), sec. 66-310.

[17] *Ill. Rev. Stats.* (1951), Ch. 24, secs. 8-5 and 8-6. Cf. *Taylor v. Berwyn,* 372 Ill. 124, 22 N.E.(2d) 930 (1939).

Courts seem inclined to interpret statutory extensions of police authority to extraterritorial areas rather strictly. A number of cities, including Glendale, California; Lakewood, Ohio; Lubbock and Corpus Christi, Texas; Omaha, Nebraska; Charlotte, North Carolina; Waterloo, Iowa; and Tacoma, Washington report that their police may pursue persons beyond their corporate boundaries and arrest them.[18]

Fire Protection

Extraterritorial fire protection does not present the legal problems posed by the exercise of extraterritorial power by municipal police officers. People arrested by local police for the violation of some statute or local ordinance may be quick to question the authority under which action is taken against them. Persons whose property is endangered by fire are not likely to question the authority of firemen who come from a nearby municipality to extinguish the flames. It is common knowledge that local fire departments often go beyond municipal limits to extinguish fires on the basis of voluntary cooperative agreements, which may or not involve formal written contracts. In some instances, cities have refused to extend fire protection beyond their boundaries except on the basis of arrangements for payment for the service. Some municipalilties have refused to extend fire protection in order to exert pressure on outlying areas to become part of the incorporated area. Refusal has been prompted in some instances by concern that a policy of allowing a city's fire apparatus to answer any and all alarms outside city limits might result in an appreciable increase in the fire insurance rates in the city. This is especially true of small cities.

The common rule seems to be that municipalities generally provide some fire protection beyond their limits, either on a contractual or an informal basis.[19] General laws in approximately one-fourth of the states specifically empower municipalities to make arrangements with other governmental units for the purpose of providing extraterritorial fire protection. These agreements are generally authorized under conditions that may be stipulated in the individual contracts.[20] No specific geographical limitations are imposed in most instances.

Although extension of fire protection beyond municipal boundaries is of primary concern to those who live in the surrounding territory, it is not unrelated to the welfare of the city's residents. A conflagration beginning outside city limits may spread to property within the city. Destruction of a

[18] Appendix.
[19] Appendix.
[20] Appendix.

business employing a number of the residents of a city is of vital concern to the city, regardless of the location of the business.[21]

The most vexing problems arising from provision of extraterritorial fire protection relate to liabilities for injuries to persons resulting from the operation of fire equipment beyond municipal boundaries. Extraterritorial use of municipal fire equipment does not alter the general rule of nonliability for injuries resulting from the operation of such equipment.[22] It has been held, contrary to the general rule, that where a municipality charged the owners of property outside the city for the use of municipal fire equipment, the city was not engaged in a governmental function and was liable for injuries to a person whose car was struck by a fire truck belonging to the city, when this truck was negligently operated on the way back to the fire station from a fire outside municipal boundaries.[23]

Another problem raised by the extraterritorial use of fire equipment has been the effect of such use upon statutes relating to rules of the road for fire vehicles. Courts have refused to recognize a distinction based on the location of equipment at the time an accident occurred. According to the supreme court of Maine, "The needs are the same, whether the call comes from within or without the city."[24]

Use of municipal fire equipment to assist in the extinguishment of fires in surrounding unincorporated territory or in nearby municipalities is frequently a matter of mutual aid based upon a gentleman's agreement.[25] These agreements were formalized in many areas during World War II, and state civil defense agencies in recent years have worked to make such agrements more widespread. Agreements may extend across state boundaries, as exemplified by the arrangement between Portland, Oregon, and Vancouver, Washington.[26]

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[21] Cf. *City of Pueblo v. Flanders,* 122 Colo. 571, 225 Pac.(2d) 832 (1950), where the court observed, "... we cannot agree with the unsupported declaration of the trial court that the welfare and public interest of the municipality and the taxpayers therein are neither promoted nor protected by permitting the city's fire department to accept calls... outside the municipality's corporate limits ..." 225 Pac. (2d), p. 834.

[22] Appendix.

[23] *Sand Springs v. Gray,* 182 Okla. 248, 77 Pac.(2d) 56 (1938).

[24] *McCarthy v. Mason,* 132 Me. 347, 171 Atl. 256 (1934). Cf. *Hubert v. Granzow,* 131 Minn. 361, 155 N. W. 204 (1915).

[25] Cf. R. W. Maddox, "Oregon Cities Provide Facilities and Services Outside Their Boundaries," 31 *Western City* 26-27, 55 (February 1955).

[26] Letters: Oregon State fire marshall,. March 25, 1952 and director, Oregon State Civil Defense Agency, March 18, 1952.

VIII

TAXES, SPECIAL ASSESSMENTS, AND LICENSES

Taxes and Special Assessments

Are municipalities authorized to exercise beyond their limits the power of general taxation or the power to levy special assessments? If so, under what circumstances may they exercise this authority? A tangential question raises the problem of taxation of extraterritorial municipal property by other units of government in which such property is located. Although these questions have given rise to considerable litigation, the major aspects of the problem are no longer controversial.

It is clear that, without specific legislative authorization, a municipality may not extend its powers of taxation beyond its territory. This rule has been supported by courts in a long line of decisions.[1] In *Langhorne and Scott v. Robinson,* the supreme court of Virginia examined this question in detail and upheld an act authorizing the council of Lynchburg to tax persons and property for a distance of one-half mile outside its limits for a specific purpose. The court reasoned as follows:

> The whole power of taxation belonged, under the constitution, to the Legislature; . . . where the power of laying a tax has been delegated to . . . local authorities, they may . . . be said to be the representatives of the people, by whom the tax is imposed. . . . And yet, in a legal sense, the tax in any such case is imposed by the representatives of the people in the Legislature; the power which belongs to them alone under the constitution, being exercised . . . by those to whom they have seen fit to delegate it.[2]

In a few instances, courts have been unwilling to sanction the exercise of extraterritorial tax authority by municipalities, even though the power had been extended by legislative action. In the early case of *Wells v. Weston,*[3] the Missouri Supreme Court ruled the state legislature could not authorize a municipal corporation to tax, for its own local purposes, lands lying beyond the corporate limits. Such a grant of power was held to be unconstitutional as an illegal deprivation of property without compensation. The supreme courts of Alabama and Iowa have expressed a similar point of view.[4]

Numerous and thorny problems have been raised by attempts on the part of municipalities to tax businesses and persons partially within the municipality and partially without. The United States Supreme Court early an-

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[1] Appendix.

[2] Appendix.

[3] 22 Mo. 384 (1856).

[4] *White v. City of Decatur,* 225 Ala. 646, 144 So. 873 (1923); *State ex rel. Howe v. Mayor, etc. of Des Moines,* 103 Ia. 76, 72 N.W. 639 (1897). Cf. *City of Prichard v. Harold,* 28 Ala. App. 235, 186 So. 499 (1938); *Board of Trustees of Falmouth v. Watson,* 5 Bush 660 (Ky., 1869).

nounced the rule that any attempt by a municipal corporation to impose a tax for purposes of revenue on persons selling goods within the municipality but who did not have a place of business therein was invalid as applied to individuals or firms doing business in another state as interfence with interstate commerce.[5] A city may impose an occupation tax on a public carrier which transports freight or passengers to or from any point within a city and any point within the state if such a carrier has a depot or place of business within the city and provided that all interstate traffic is excepted.[6]

More than a half-century ago, the Kentucky legislature provided that "all real and personal estate" belonging to corporations with a place of business in a city "shall be subject to assessment and taxation for all local and municipal purposes" by that city. The Kentucky Supreme Court ruled that under this provision franchises of a water company having its main office in Frankfort were taxable by that city, regardless of the fact that the pumping stations, reservoirs, and part of the mains belonging to the company were located outside the city.[7]

A state legislature may authorize municipalities to tax persons outside their boundaries whenever such persons pursue vocations within municipal limits, insofar as their property within these limits is concerned, including salary earned, physical property used, and other types of income. A city may impose occupational taxes on nonresidents who practice professions within the city, as well as those who work for a salary or wage in the city.[8] A city may also impose taxes upon the owners of vehicles whose site of business is outside the city but who use the vehicles to conduct business within the city.[9] Authority to levy such a tax may be denied implicitly or explicitly by statute in any state. This is the case in Illinois, for example, where every municipality is empowered "To license, tax, and regulate vehicles conveying loads within the municipality."[10] Illinois statutes also provide:

> No owner of a motor vehicle or motor bicycle who shall have obtained a certificate from the Secretary of State and paid the registration fee..., shall be required by any city, village, town, or other municipal

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[5] *Robbins v. Shelby County Taxing District,* 120 U.S. 489 (1887).

[6] *City of York v. C, B & Q Railroad Co.,* 56 Neb. 572, 76 N.W. 1065 (1898). Cf. *Lewis and Holmes Motor Freight Corp. v. City of Atlanta,* 195 Ga. 810, 25 S.E. 699 (1943).

[7] *Board of Councilmen of City of Frankfort v. Stone,* 108 Ky. 400, 56 S.W. 679 (1900). Cf. *Johnson v. Harrison Naval Stores Co.,* 108 Miss. 627, 67 So. 147 (1914).

[8] *Angell v. City of Toledo,* 153 Ohio St. 179, 91 N.E.(2d) 250 (1950). Under a statute authorizing cities to tax attorneys residing in the cities, they have no power to tax attorneys having offices and doing business therein, but residing outside. *City of Garden City v. Abbott,* 34 Kan. 283, 8 Pac. 473 (1885).

[9] *Kentz v. City of Mobile,* 120 Ala. 623, 24 So. 952 (1898); *Mason v. Mayor, etc. of Cumberland,* 92 Md. 451, 48 Atl. 136 (1901); *City of Portsmouth v. Miller, Rhoads, and Swartz, Inc.,* 138 Va. 823, 123 S.E. 891 (1924); *Cooper v. Town of Greenwood,* 195 Ark. 26, 111 S.W.(2d) 452 (1938); *Johnson v. City of Paducah,* 285 Ky 294, 147 S.W.(2d) 929 (1943); *Wittenberg et al. v. Mutton,* 280 Pac.(2d) 359 (Ore., 1955).

[10] *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-53.

> corporation within the State other than a city, village, town, or other municipal corporation in which the owner resides to pay any tax or license fee for the use of such motor vehicle or motor bicycle . . ."[11]

Although these provisions seem to be in contradiction, the Illinois Supreme Court has ruled that municipalities can neither levy a wheel tax on vehicles owned and operated by nonresidents nor require a nonresident to pay a tax or license fee for the use of a motor vehicle in the city.[12] Such a tax when imposed upon nonresidents only may be invalidated as a violation of the "equal protection of the laws" clause of Amendment XIV of the Federal Constitution.[13]

As in the case of general taxes, a municipality may not, without specific legislative authority, impose special assessments upon extraterritorial property. This rule has been strictly applied by courts in various states in many cases.[14] Pennsylvania courts have held that where an improvement is constructed jointly by a city or borough, and a township, the city may assess benefits against land lying partially or wholly outside the city but in the township.[15] Although a legislative grant of such authority has been declared unconstitutional in some cases,[16] these grants are usually upheld by the courts.[17]

Cities seldom exercise extraterritorial taxing power. Nineteen of the cities supplying information on this point denied they exercise such authority. Only one mentioned that it did so. The city attorney of Lubbock, Texas, referred to authority to pave streets within 150 feet of the corporate limits and assess the abutting property up to 90 per cent of the paving costs.[18] The city solicitor of Waterloo, Iowa, noted that although the city could not exercise such power directly, it could establish a flood protection district partly within and partly without its corporate limits, and the district could then levy taxes in the whole area.[19] Reports from state municipal leagues support the view that cities exercise little or no extraterritorial taxing power.[20]

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[11] Ibid., Ch. 95½, sec. 32a.

[12] *City of Flora v. Borders,* 342 Ill. 208, 173 N.E. 784 (1931); *American Baking Co. v. City of Wilmington,* 370 Ill. 400, 19 N.E.(2d) 172 (1939). Cf. *City of West Plains v. Noland,* 112 S.W.(2d) 79 (Mo. App., 1937).

[13] *Davis v. Pelfrey,* 285 Ky. 298, 147 S.W. (2d) 723 (1941).

[14] Appendix.

[15] *Petition of City of Pittsburgh,* 110 Pa. Super. 310, 168 Atl. 496 (1933).

[16] *In re House Bill No. 165,* 15 Colo. 595, 26 Pac. 141 (1890).

[17] Appendix.

[18] Letter, April 4, 1952.

[19] Letter, March 31, 1952.

[20] Although Wisconsin cities may exercise some extraterritorial authority in regard to school taxes, the arrangement seems to be somewhat like that relative to flood protection districts in Iowa. (Letter, executive secretary, League of Wisconsin Municipalities, March 31, 1952). Among those denying the existence of such power were the Colorado Municipal League, the League of Virginia Municipalities, the Idaho Municipal League, the Arizona Municipal League, and the Association of Washington Cities. (Letters, dated April 30, 1952, April 2, 1952, April 7, 1952, April 2, 1952, March 31, 1952, and April 7, 1952, respectively).

In regard to taxation by another governmental unit of extraterritorial property owned by a municipality, the general rule is that in the absence of legislation to the contrary, such property when used for a public purpose is free from taxation.[21] Courts in some cases have sanctioned taxation of waterworks when situated outside municipal limits.[22] A conflict appears in decisions regarding extraterritorial property used by cities for electric or gas plants.[23]

LICENSES

Like general taxes and special assessments, municipal licensing is confined to municipal limits unless a broader area for its exercise has been authorized by statutory provisions.[24] Municipalities are more frequently empowered to exercise extraterritorial licensing authority than to levy general taxes and special assessments.[25] Cities are generally authorized to license extraterritorial businesses only for regulation, and the fees must be designed to defray the cost of regulation and not to produce revenue for general use by the cities.[26] According to McQuillin (35, 1):

> It must appear that the city has made a reasonable effort to base license fees against a business done in the police jurisdiction, outside the city, upon the reasonable cost of supervision...: when it appears that the city has made no such reasonable effort and has fixed an arbitrary figure..., it is apparent that the purpose has been to raise revenue and not to supervise.

Courts of different states in a number of cases have voided municipal license fees imposed upon persons engaged in business beyond corporate boundaries on the ground that the fees represented a tax for general revenue.[27] Courts in three states have held that the legislature may not authorize municipalities to exercise licensing power beyond their limits for the purpose of raising revenue for the general fund.[28]

Municipalities must not attempt to impose licenses on extraterritorial businesses in such a way as to subject these businesses to "unreasonable dis-

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[21] Appendix.

[22] Appendix.

[23] Appendix.

[24] *Ham v. Sawyer,* 38 Me. 37 (1854); *City of St. Charles v. Nolle,* 51 Mo. 122 (1872); *De Lay v. City of Chattanooga,* 180 Tenn. 316, 174 S.W.(2d) 929 (1943); *Jones Fine Bread Co. v. City of Groesbeck,* 136 Tex. 123, 148 S.W.(2d) 195 (1941); *Benesh v. Wolf,* 17 N. J. Misc. 35, 4 Atl.(2d) 523 (1934).

[25] Appendix.

[26] *Hawkins v. City of Prichard,* 249 Ala. 234, 30 So.(2d) 659 (1947); *Alabama Gas Co. v. City of Montgomery,* 249 Ala. 257, 30 So.(2d) 651 (1947); *Alabama Power Co. v. City of Carbon Hill,* 234 Ala. 489, 175 So. 289 (1937); *White v. City of Decatur,* 225 Ala. 646, 144 So. 875 (1932).

[27] Appendix.

[28] *City of St. Charles v. Nolle,* 51 Mo. 122 (1872); *Van Hook v. City of Selma,* 70 Ala. 361, 45 Am. Rep. 85 (1881); *White v. City of Decatur,* 225 Ala. 646, 144 So. 875 (1932); *Robinson v. Norfolk,* 108 Va. 14, 60 S. E. 762 (1908); *Alabama Power Co. v. City of Carbon Hill,* 234 Ala. 489, 185 So. 289 (1937).

crimination" or denial of "equal protection of the laws."[29] Such licenses must not directly interfere with, regulate, or burden interstate commerce. Indirect, nondiscriminatory effects may be permitted, but any direct or discriminatory effect on interstate commerce is invalid.[30] Attempts by municipal authorities to apply provisions of licensing ordinances to persons or businesses outside municipal boundaries have been declared invalid in a few instances on the basis of provisions of the ordinances themselves or state statutes that preempted the field.[31]

One of the more important and controversial aspects of this problem has involved the imposition of occupation taxes on out-of-town concerns, especially those doing business in the cities from motor vehicles. Authorities are in disagreement as to whether ordinances levying license fees upon nonresidents but exempting establishments belonging to persons with permanent places of business in the municipalities are valid. Some cases holding against such ordinances may be distinguished on the basis of provisions of the particular ordinance being adjudicated. Courts have held in numerous cases that the difference in classification between residents and nonresidents is justified and there is nothing to show the imposition of a higher fee on nonresidents is unreasonable, capricious, or confiscatory.[32] A nonresident doctor may be required to pay a license fee in order to treat residents of a city.[33]

Even where an attempt is made to levy a license fee against extraterritorial businesses for regulatory purposes, courts may be reluctant to uphold the ordinance. In *Phillip v. City of Siloan Springs*[34] and *Continental Baking Co. v. Mt. Vernon,*[35] ordinances imposing fees to defray expenses of inspection of extraterritorial concerns doing business in the municipalities were upheld. On the other hand, in *Ex parte Blois,*[36] the California Supreme Court voided an ordinance imposing a fee on nonresident bakeries five times that imposed on resident bakeries. The courts felt that in the first two cases fees imposed on extraterritorial businesses were fair, while those imposed in the last case bore no reasonable relation to the effort and expense required to inspect outside establishments. The Oregon Supreme Court likewise voided an ordinance imposing a fee upon peddlers from outside the city but exempting merchants and dealers with regular places of business inside municipal limits.[37]

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[29] Appendix.
[30] Appendix.
[31] Appendix.
[32] Appendix.
[33] *Slocum v. Fredonia,* 134 Kan. 853, 8 Pac.(2d) 332 (1932).
[34] 182 Ark. 137, 30 S.W.(2d) 220 (1930).
[35] 182 Wash. 68, 44 Pac.(2d) 821 (1935).
[36] 179 Cal. 291, 176 Pac. 449 (1918).
[37] Appendix.

Court decision analyses indicate that if a license fee falls equally upon in-town and out-of-town businesses, taking into consideration all taxes and fees paid by in-town concerns, it will be upheld. Courts generally uphold municipal ordinances imposing licenses upon concerns doing business in the city so long as they are not discriminatory and arbitrary upon their face.[38] As a matter of practice, cities generally license persons and concerns doing business within their boundaries for the privilege of doing that business, regardless of the location of their offices, warehouses, or other establishments.[39]

Some cities do not attempt to license businesses beyond their boundaries under any circumstances.[40]

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[38] Appendix.

[39] Appendix.

[40] Indicated in replies from: assistant city attorney of Milwaukee, Wisconsin, September 29, 1952; city attorney, Davenport, Iowa, reply to questionnaire dated March 26, 1952; city attorney, Augusta, Georgia, April 3, 1952; city attorney, Asheville, North Carolina, reply to questionnaire dated March 26, 1952; city attorney, Omaha, Nebraska, April 2, 1952; city attorney, Greensboro, North Carolina, March 31, 1952.

IX

SUBDIVISION REGULATION

The recent rapid growth of suburbs around our cities emphasizes the assertion that "There is nothing more artificial than municipal corporate limits" (14, 1).

Although a prescribed boundary is considered to be an essential characteristic of a de jure municipal corporation, it is becoming progressively more obvious such boundaries do not limit the area in which municipal governments have a vital interest. Migration to the suburbs has created many problems for city governments throughout the United States, not the least of which concerns regulating new subdivisions developed either adjacent to, or very close to, municipal boundaries.[1] In many instances where subdivisions have been allowed to develop free from governmental regulation, the resulting loss in money and adequate facilities has been great. Among other undesirable consequences, these areas are frequently characterized by inadequate streets, utilities, recreational facilities, and irregular and inadequate lots for individual homes.[2] Although these conditions have developed in some instances within municipal boundaries as well as outside them, only the latter problem concerns us here.

In those states where action has been taken to cope with this problem, two methods have been most commonly used. Some 30 states have extended jurisdiction of municipalities a certain distance beyond their limits to exercise a degree of control over subdivisions in the specified area. Courts of various states have experienced little difficulty in upholding such grants of extraterritorial jurisdiction.[3] The major alternative to this arrangement is to be found in the creation of county planning or zoning boards empowered to regulate the subdivision of all land outside municipal boundaries. Provision has been made in some instances for cooperation between municipal and county planning agencies (33). The law may provide that a city's authority over approval of subdivisions beyond its boundaries ceases whenever the county planning commission adopts regulations for the control of such matters.

The specific extraterritorial area over which municipal agencies are granted authority to regulate subdivisions varies from 1 to 6 miles, with 3 miles most common.[4] These limitations often have proved unrealistic in the light of increasingly easy access to outlying areas that are physically part of the municipal area but legally separate and independent. In most states where extraterritorial jurisdiction is granted to cities, provision is made for equal

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[1] Appendix.
[2] Appendix.
[3] Appendix.
[4] Appendix.

division of territory between cities that are located less than twice the authorized distance from each other.

Three methods have been commonly used to insure compliance with recommendations of the municipal agency responsible for granting or withholding approval in relation to extraterritorial subdivisions. First, the statute may provide for the imposition of a fine upon the subdivider for each lot that he sells from an unrecorded plat. Second, cities may be authorized to seek an injunction to prevent such sales. Third, a fine or possible imprisonment may be provided for the officer responsible for recording the property if he records an unapproved plat.[5]

Even the imposition of large fines upon uncooperative subdividers may be inadequate to force them to observe the regulations. This is often true because the subdivider may feel he will gain more by disregarding the requirements for approval, selling the land as he pleases, and paying the fine if necessary. Property owners sometimes circumvent the law by not platting and selling property by metes and bounds. If the law limits the number of parcels he may sell in a given period of time without filing a plat, the owner may slice his holdings into a number of parcels by such sales and then sell the maximum from each resulting parcel.

No state statutes specifically provide that titles to land recorded contrary to law are invalid so far as the purchaser is concerned. They are therefore to be presumed valid, and the purchaser has no legal reason for insisting that the subdivider comply with the law in regard to regulations governing platting. It would seem a statutory provision rendering unmarketable the titles to parcels of land recorded contrary to law should greatly increase the effectiveness of requirements that these parcels be approved by specified agencies prior to their being recorded. The city attorney of Charlotte, North Carolina, has called attention to another possibility in the way of enforcement. Charlotte approves plats within 1 mile of its boundaries. Unless plats within this area are so approved, any improvements on the property may not be considered in any possible future condemnation proceedings; nor will the city extend water or sewer facilities to the property.[6] Another means of enforcement, applicable in some instances, lies in refusal to accept an area for annexation when it has not been platted in accord with municipal requirements. This may be done even in the absence of a general statutory authorization to exercise extraterritorial control. The major difficulty inherent in this practice lies in the fact that the city may become surrounded with areas that have not been properly platted and may in the long run be forced to annex these areas because of other considerations.

Less than half of the 32 cities that supplied information concerning sub-

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[5] Appendix.

[6] Letter, April 2, 1952.

division regulation indicated they exercised authority in regard to such matters beyond their boundaries.[7] The city attorney of Glendale, California, noted an arrangement in relation to his city that has great merit. Although control over subdivisions outside Glendale is in the hands of the County Regional Planning Commission, this Commission "cooperates with the cities by requesting the cities' planning commissions to report to them as to their views on the approval of subdivisions adjacent to or in close proximity to the city."[8] The County Commission is not required to follow the recommendations of the city commissions, "but it frequently does so."[9] Such a cooperative arrangement between municipal planning and zoning agencies and corresponding agencies of the counties in which they are located seems to present the most feasible solution to the many problems involved in the regulation of subdivisions near municipal boundaries.[10] Either, working alone, is in most instances inadequate.

Generally speaking, landowners are free, in the absence of statutory requirements, to do as they please with their land so long as they do not injure others or infringe upon their rights. If the owner of a parcel of land wishes to subdivide it with little or no regard to adequate streets, utilities, recreational facilities, and similar necessities, little or nothing can be done about such action. But as soon as an owner seeks any service from a unit of government or negotiates with another person for the sale of his property, a great deal can be done. It is therefore in relation to such efforts on the part of the property owner that most enforcement provisions operate. If the owner wants the title to his land recorded, he may have to meet certain conditions; if he wants a city to accept and maintain streets or parks in his subdivision, he can be required to observe a plan in laying them out; if he desires utility services from a city, he may be forced to meet the city's terms. Municipalities may be empowered by their state legislatures to accomplish a great deal in the way of regulation of extraterritorial subdivisions through such means.

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[7] Appendix.

[8] Memorandum accompanying letter, August 5, 1952.

[9] Loc. cit.

[10] According to the executive secretary of the League of Virginia Cities, joint control is exercised by municipalities and counties in that state. Letter, April 2, 1952.

X

CONCLUSION

Specific boundaries constitute a fundamental characteristic of municipal corporations in the United States. It is generally accepted that municipal functions generally are to be performed within the areas designated by these boundaries. Minimum reflection reveals that municipalities are by no means self-sufficient. They need to go outside their limits for a variety of purposes, such as the acquisition of water, locations for parks, sites for institutions, and outlets for sewage disposal works. Although municipalities regularly go beyond their limits for a great number of purposes, too little attention has been given to the exercise of extraterritorial power and the problems associated with it.

Fundamental to the law of municipal corporations is the principle that they must obtain their powers from legislative authorizations or from state constitutions. Although the doctrine of an inherent right of local self-government has been termed a "never-laid ghost," it has never been widely accepted in this country. This doctrine is currently of no significance as a source of possible claims to extraterritorial authority.

The need for municipalities to exercise extraterritorial powers has become increasingly acute with the development of large urban areas. Cities, towns, and villages have had to seek relief from state legislatures in the form of authorizations to go beyond their boundaries. These authorizations have been forthcoming more generally than is often realized. Some states have been more generous than others, both in regard to the types of powers granted and the area in which they may be exercised. Although these extensions of municipal authority are needed to meet certain problems, they create others such as the problem of conflicting jurisdictions, which must be defined in terms of functions. Such an arrangement is reminiscent of early English history, and it is not so simple as a determination of jurisdiction by a definite boundary line.

Municipalities generally exercise more "corporate" than "governmental" powers beyond their boundaries. Most states specifically authorize cities to go beyond their boundaries in order that their residents may be guaranteed an adequate supply of safe water. The same is true in regard to facilities for the adequate disposal of sewage. Cities may acquire the necessary property by purchase or condemnation. Both methods of acquisition are usually authorized, but failure on the part of the legislature to make specific provision for the use of eminent domain does not mean that municipalities may not exercise that power. It is generally accepted that where municipalities are empowered to acquire public works outside their limits, they may use eminent domain for that purpose if they may condemn property for the same purposes within their

limits. It is also generally accepted that the power of municipalities to go beyond their boundaries in order to provide adequate sewage disposal systems may be implied.

Most states impose no geographical limitations on the area in which municipalities may acquire or construct waterworks. Where they are imposed, such limitations range from 5 to 75 miles. Two implicit limitations exist generally, state boundaries and the area included in other municipal corporations. These limitations are important only where municipalities wish to condemn land. If they wish to purchase it like any other corporation, these limitations are not significant.

States have been much less willing to extend to municipalities police control over extraterritorial waterworks and sewage systems than to grant authority to acquire them. About half the states make general provision for the exercise of such extraterritorial authority by municipalities in regard to waterworks, while eight grant similar power in regard to sewage disposal works. About half the states granting such power relative to waterworks impose specific limitations on the area in which it may be exercised. These limitations range from one-half mile to 25 miles. Although 10 states grant municipalities a degree of control over such matters without specific geographical limitations, three of these impose an over-all limitation relative to extraterritorial activities in relation to acquisition of water. Only seven states impose no limitations on the acquisition of water and the exercise of extraterritorial regulatory authority over the sources and works necessary to provide the water. Only two states impose limitations on the area in which regulatory authority may be extended in regard to sewage disposal works.

About two-thirds of the states extend to municipalities authority to sell water outside their boundaries. This grant is free in most instances of conditions concerning kinds of customers, rates, quantity of water, and other matters, but a few states impose limitations in regard to these matters. Many municipalities sell water to extraterritorial customers, even in the absence of general statutory authority. This situation stems largely from the presence of authorizations in special laws or charters applicable to individual cities where courts held cities may sell water outside when it is necessary or convenient in order to supply water inside corporate limits.

A dozen states in their general laws authorize municipalities to extend sewer services beyond their limits. Such services may be provided to other political subdivisions, private businesses, and individual property owners. Cities usually are free to determine the conditions under which they will provide such extraterritorial services, as well as the area they will service.

Courts generally have held that a statutory authorization to furnish water to extraterritorial customers does not impose upon cities any duty to do so. When a city provides this service, the chief concern must always be the inter-

est of the city and its inhabitants. Once a city has embarked upon a practice of supplying water to customers beyond its limits, it may not discriminate unreasonably among them.

Municipalities commonly charge extraterritorial customers higher rates than they charge customers within their limits. There is no unformity in regard to this differential, and a great variety of methods for determining charges to outside customers is found in individual states, as well as from state to state. Rates may be used to further certain unrelated purposes, such as early annexation. Municipalities that sell water outside their limits are sometimes subjected to control by state public service commissions in regard to rates.

A great many cities own and operate electric and gas plants and transmission facilities. Authority to provide such services is granted to municipalities by constitutional provisions in a few states, but it usually stems from statutory provisions found in over three-fourths of the states. These provisions are designed primarily to enable municipalities to provide utility services for their own use and the use of their residents. Use of eminent domain to acquire necessary extraterritorial facilities is usually authorized. Municipalities are, as a general rule, empowered to construct facilities outside their limits. If they are authorized to use eminent domain for like purposes within their limits, they may do the same outside. Most states impose no geographical limitations on the area in which municipalities may exercise powers necessary to provide electricity and gas for residents.

Few states empower municipalities to exercise police authority over extraterritorial electric and gas works. Enforcement of state laws prohibiting damage to or interference with such works usually rests with officers of the state, county, or other governmental unit in which they may be located.

Thirty states specifically authorize municipalities to sell the products of their electric and gas plants to extraterritorial customers. Authority to make such sale has been implied from power to provide these services within municipal limits. Few states impose specific limitations on the extraterritorial area in which municipalities may provide gas or electric service.

The weight of opinion favors the conclusion that although municipalities have no implied authority to acquire and maintain utilities primarily for the benefit of extraterritorial customers, they may be considered to possess such authority to sell *surplus* products to outside customers. Municipalities sometimes are empowered by law to sell to outside customers *only* surplus products of municipal utilities.

Municipalities in some states are not free to set the rates for extraterritorial utility services but are subject to regulation by state public utilities commissions. In the absence of commission control, some courts have ruled a municipality offering services to outside customers must provide them at a

"reasonable" rate. Outside customers usually accept the terms of service set by municipal utilities.

Although half the states authorize municipalities to extend or regulate streets outside their limits, few exercise this authority. Such matters are commonly handled by county or township authorities. Authority to maintain extraterritorial public ways may be contingent upon the existence of other extraterritorial municipal property to which the municipality needs access. A number of states that grant such power to municipalities impose rather strict geographical limitations upon its exercise. Few states authorize municipalities to regulate extraterritorial streets and roads that may be constructed by them.

A number of states empower municipalities to construct and maintain extraterritorial ferries or bridges. These grants are often limited to cities of certain classes or those located on navigable streams. Exercise of this power is limited in some states to a specified geographical area outside municipalities.

Municipalities often acquire and maintain a great variety of extraterritorial property. Necessary authorization may be specifically provided in state statutes; it may be implied from authority to provide certain services to local residents; or it may stem from an authorization to acquire extraterritorial "property" or "real estate." Included among miscellaneous extraterritorial property often owned by municipalities are cemeteries, hospitals, recreational facilities, penal and charitable institutions, sanitary facilities, quarantine stations, markets, wharves, docks, piers, dams, levees, dikes, drains, and storage facilities. Authority to regulate such extraterritorial property is not so common as authority to acquire and maintain it.

Airports and parks are two of the most common types of extraterritorial property owned by municipalities throughout the country. The source of authority to acquire such property is usually found in state statutes. Such authorization is not always necessary in view of the fact that courts have been liberal in holding that municipalities may acquire airports on the basis of authority to obtain extraterritorial property for "corporate" or "municipal" purposes. Such authority has also been held to be implied in power to acquire extraterritorial property for "public utilities." Cities may acquire parks beyond their limits on the strength of authorizations to acquire extraterritorial land for a "public use." No geographical limits are usually placed upon such grants of authority relative to airports, but limitations are imposed in about half the states in regard to parks, varying from 1 to 75 miles.

About two-thirds of the states that grant municipalities power to acquire and maintain extraterritorial airports and parks also empower them to exercise regulatory authority over them. This may involve power to zone areas around airports for safety and to remove any structure constituting a hazard. Exercise of this type of extraterritorial power has been contested very seldom in the courts.

States commonly grant municipalities some police authority beyond their boundaries. This authority may be limited to extraterritorial property owned by the municipalities, such as airports, parks, and cemeteries. Extraterritorial police authority may be conditioned upon the exercise of some privilege within municipal boundaries by someone located outside. For example, cities may be empowered to license and inspect dairies or bakeries that wish to sell their products to customers residing within municipal boundaries, even though such businesses are located outside. Municipal ordinances designed to accomplish these purposes have sometimes been held to have no extraterritorial effect. Municipal efforts in this field have been generally upheld by court decisions, so long as they are "reasonable" and do not burden interstate commerce.

Most police powers exercised by municipalities outside their corporate limits are designed to protect and promote the health, welfare, or morals of their residents. Authority extended to municipalities in some states for this purpose is quite general; in others, grants are very specific in nature. The area in which such authority may be exercised is definitely circumscribed in most states, ranging from 1 to 12 miles. Control over such matters outside municipalities is usually exercised by other governmental units, such as counties and townships, in spite of the fact municipalities may possess extraterritorial police authority.

The general criminal jurisdiction of local courts and police has been extended in a few states beyond municipal limits. This type of municipal authority is not common, and its exercise appears to be even less common. The same is true in regard to enforcement of writs and processes issued by local courts. Local police are usually empowered to pursue and arrest beyond municipal boundaries persons who have violated the law within these boundaries. This power most often extends throughout the county in which the municipality is situated.

Extraterritorial fire protection does not pose so many problems as extraterritorial police authority. This is largely a result of the basic difference between the two types of power. Fire protection is primarily a service that concerns at any given time only those people who desire it, whereas police power commonly involves actions against persons who wish to pursue a course of conduct unhampered by coercive authority. Municipal fire departments commonly assist in the extinguishment of fires in surrounding unincorporated territory, either on a contractual or informal basis. This practice stems from the interest of municipalities in not allowing fires to burn unchecked near their boundaries, since fires do not respect those boundaries.

It is clear in regard to taxes and special assessments that a municipality may not extend its power beyond its corporate limits without specific legislative authorization. State legislatures have been very reluctant to grant this authority. Courts have voided such grants in a few cases as constituting a

deprivation of property without compensation. The most difficult questions have arisen from attempts by municipalities to tax businesses that are partially in and partially outside their limits. Such taxes may not burden interstate commerce. State legislatures may authorize the imposition of taxes insofar as that portion of the property within the municipalities is concerned. The same rule applies to persons practicing professions within a municipality but residing outside.

Municipaltities are commonly empowered to extend their licensing authority beyond their boundaries, provided such licensing is for regulation and not for revenue. Courts have ruled a state legislature may not grant municipalities power to license beyond their limits to obtain revenue for the general fund. Nor can such licensing authority be exercised so as to subject extraterritorial businesses to "unreasonable discrimination" or denial of "equal protection of the laws."

Other problems are raised when a municipality attempts to tax out-of-town concerns doing business within its boundaries. Municipalities, in some states, may impose higher license fees upon such extraterritorial concerns than they impose upon similar businesses located within their limits. When these fees bear a reasonable relation to the expense required to inspect the establishments, they are generally upheld. Where no such relation exists, fees may be held to be unfair and void. License fees imposing an equal burden upon in-town and out-of-town businesses will probably be upheld. These fees must not be discriminatory and arbitrary upon their face.

In regard to subdivision regulation, legislative grants to municipalities of extraterritorial regulatory authority have experienced little difficulty in the courts. The area in which this power may be exercised is always specified and ranges from 1 to 6 miles. These limitations are often unrealistic as related to the area in which regulation is needed. An arrangement whereby municipal and county planning agencies cooperate for effective regulation of subdivisions lying close to municipal boundaries appears to offer the best solution to the problem. Units of government responsible for granting or withholding approval of subdivisions must be given adequate authority to enforce their decisions. Violators must be subjected to penalties sufficiently severe to deter them from selling plats of land in violation of established regulations. Any authority to require subdividers to meet certain specifications is otherwise of little consequence.

An examination of the 20th-century problems of municipalities clearly indicates their jurisdiction needs to be defined to a considerable degree in functional terms. An examination of state statutes reveals a realization of the need. State legislatures have taken more or less effective steps to meet this problem. No longer is it correct to say that "the" jurisdiction of municipalities is confined to their boundaries. Accuracy requires recognition that most mu-

nicipalities possess a *number* of "jurisdictions." A municipality may extend its powers over one territory in order to acquire water and over another in order to inspect dairies that supply milk for its residents; it may acquire property for sewage disposal facilities within one area and for parks in another; it may be able to collect taxes only from its residents and at the same time provide a variety of services to nonresidents. These varied jurisdictions present a more complicated but also more realistic picture than the classic view of a municipality exercising its powers solely within its corporate limits.

APPENDIX

I

7. *City of Evansville v. State,* 118 Ind. 426, 21 N.E. 267 (1889); *State ex rel. Jameson v. Denny,* 118 Ind. 382, 21 N.E. 252 (1889); *State ex rel Holt v. Denny,* 118 Ind. 449, 21 N.E. 274 (1889); *State ex rel. Geake v. Fox,* 158 Ind. 126, 63 N.E. 19 (1902).

In relation to Texas, cf. *Ex parte Lewis,* 45 Tex. Cr. 1, 73 S.W. 811 (1903) and *Brown v. City of Galveston,* 97 Tex. 1, 75 S.W. 488 (1903). An interesting situation was presented here due to the existence of two courts of last resort. The former decision was made by the Court of Criminal Appeals, while the latter was handed down by the Supreme Court of Texas, each final in the fields of criminal and civil law respectively. In the *Lewis* case, the court summarized its position as follows: "The legislature is the law-making power . . .; but it has no right . . . to overturn the principles of local self-government which have been handed down to us from our fathers." 73 S.W., p. 818. Judge Brooks, dissenting, noted the important fact that the decision in the *Hurlbut* case on which the majority had relied hinged on the interpretation of a provision of the Michigan constitution. He added that "the opinion of the majority in this case is the only authority extant to-day supporting the position that the unwritten law of the land gives municipal corporations the right of self-government." Ibid., p. 822. In the *Galveston* case the Texas Supreme Court made an interesting reference to *Ex parte Lewis,* "Recognizing the equal authority of that court, we approach the investigation of the question with much hesitancy, because of the delicacy of the duty to be performed." 75 S.W., p. 491. Regardless of its hesitancy, the court concluded: "An examination of cases cited fails to show a single authoritative decision which upholds the doctrine announced . . . in *Ex parte Lewis.*" Ibid., p. 494. The two highest courts of Texas thus expressed two opposing views on local self-government.

In Nebraska the important cases were *State v. Moores,* 55 Neb. 480 (1898), *State ex rel. Attorney General v. Kennedy,* 60 Neb. 300, 83 N.W. 87 (1900), and *Redell v. Moores,* 63 Neb. 219, 88 N.W. 243 (1901). In *State v. Moores,* a state statute authorizing the governor to appoint fire and police commissioners for cities of the metropolitan class was voided as a violation of the right of local self-government. In a dictum in *State v. Kennedy* the court referred to the decision in *State v. Moores* as "thoroughly vicious." In *Redell v. Moores,* the court overruled *State v. Moores* in these words: "After a careful examination of that opinion, and with due appreciation of the learning and ability of the members of the court who concur therein, we beg to say that it does not commend itself to our judgment." 63 Neb., p. 229.

The supreme court of Iowa in one case gave cautious endorsement to the right of local self-government. In *State ex rel. White v. Barker,* 116 Ia. 96, 89 N.W. 204 (1902), a statute authorizing the district court to appoint trustees of waterworks in cities of the first class was held invalid as denying these cities the right of local self-government. The court said cagily: "We are not to be understood as fully approving all that is said in some of the cases regarding the right of local self-government. . . . All that we intend to announce is that written constitutions should be construed with reference to and in the light of well-recognized and fundamental principles back of all constitutions . . . "

The situation in Kentucky has been involved. In *City of Lexington v. Thompson,* 113 Ky. 540, 68 S.W. 477 (1902), the supreme court of Kentucky emphasized the dual nature of a municipal corporation: "A municipality is a state agency for governmental purposes. . . . But a municipal corporation is not merely a public agency of the state. . . . A municipality has a dual character. In its character as a state agency it exercises gov-

ernmental, political, public, and administrative powers and duties. In its capacity as a private corporation it exercises rights and powers inherent in the people in the community . . . which are property rights within the protection of the constitution." 68 S.W., p. 479. In *Campbell County v. City of Newport,* 174 Ky. 712, 193 S.W. 1 (1917), a statute granting authority to the county fiscal court to levy a special tax on property in Newport to defray the expenses of a juvenile court was invalidated. In reference to this arrangement the court said: "It would be taxation without representation in its most offensive form and entirely inconsistent with our whole scheme of local self-government." 174 Ky., p. 719. Some dozen years late the supreme court of Kentucky denied the doctrine of local self-government for municipalities in *Board of Trustees of Policemen's Pension Fund v. Schupp,* 223 Ky. 269, 3 S.W.(2d) 606 (1928), and *Warley v. Board of Park Commissioners,* 233 Ky. 688, 26 S.W.(2d) 554 (1930). The court apparently felt that the matters in these cases involved governmental functions, because it later reiterated its earlier distinctions without indicating that these cases were contra. In *Hatcher v. Meredith,* 295 Ky. 194, 173 S.W.(2d) 665 (1943), reference was again made to the "local self-government of municipal corporations with respect to their 'private' affairs as distinguished from their 'public' or 'governmental' functions."

A similar distinction was indicated in the one important case in Montana, *Hersey v. Nelson,* 47 Mont. 132, 131 Pac. 30 (1913). The court referred to the fact that "the municipal corporation is relieved to a considerable extent from officious, meddlesome legislation which seeks to interfere with its private proprietary functions. The theory of local self-government for municipal corporations is firmly established in this state. 131 Pac., p. 32.

9. Cf. *State v. Lafayette Fire Insurance Co.* 134 La. 78, 63, So. 630 (1913); *People v. Lynch,* 51 Cal. 15 (1875); and Justice Wanamaker's dissent in *State ex rel. City of Toledo v. Lynch,* 88 Ohio St. 71, 102 N.E. 670 (1913). This dissent is a very strong statement of the right of local self-government. In *People v. Batchellor,* 53 N.Y. 128 (1873), the distinction between governmental and corporate functions appears, accompanied by the assertion that municipalities cannot be compelled to embark on an undertaking of a business nature. In *People ex rel. Bolton v. Albertson,* 55 N.Y. 50 (1873), the court asserted that a section of the state constitution which provided that the officers of a municipality should be elected by the electors or appointed by the officers thereof was intended to insure the right of local self-government to the people therein. One of the court's statements seems to imply something a little broader: "This right of self-government lies at the foundation of our institutions, and cannot be disturbed or interfered with . . . without weaking the entire foundation . . ." 55 N.Y., p. 57. Cf. Justice Brown's dissent in *People v. Draper,* 15 N.Y. 532 (1857), and Justice Andrew's dissent in *State ex rel. Bulkeley v. Williams,* 68 Conn. 131, 35 Atl. 24, 421 (1896).

II

1. *Steitenroth v. City of Jackson,* 99 Miss. 354, 54 So. 955 (1911); *Mayor, etc. of City of Gainesville v. Dunlap,* 147 Ga. 344, 94 S.E. 247 (1917); *Mathers v. Moss,* 202 Ark. 554, 151 S.W.(2d) 660 (1941); *Richards v. City of Portland,* 121 Ore. 340, 255 Pac. 326 (1927); *City of Paris v. Sturgeon,* 50 Tex. Civ. App. 519, 110 S.W. 459 (1908); *Western New York Water Co. v. City of Buffalo,* 213 App. Div. 458, 210 N.Y.S. 611 (1925); *Stauffer v. East Stroudsburg Borough,* 215 Pa. St. 143, 64 Atl. 411 (1906). Some courts have made a distinction on the basis of whether municipalities were selling "surplus" water and held that such sale was permissible without specific legislative authorization. *Board of Commissioners of Larimer County v. City of Ft. Collins,* 68 Colo. 364, 189 Pac. 929 (1920); *Smith v. City of Raceland,* 258 Ky. 671, 80 S.W. (2d) 827 (1935).

In *City of South Pasadena v. Pasadena Land and Water Co.,* 152 Cal. 579, 93 Pac. 490 (1908), the supreme court of California held that a grant of power to supply water to a city and its inhabitants authorized a city to supply water to persons outside its limits whenever it was "necessary or convenient" as an incidental function. This viewpoint was reiterated in *Durant v. City of Beverly Hills,* 39 Cal. App.(2d) 133, 102 Pac.(2d) 759 (1940).

13. Alabama, Arkansas, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. The situation in Washington is unusual. Secs. 8966(30), 9034(53), 9127(h), 9175(10), and 9473 of *Remington's Rev. Stats. Anno. of Wash.* (1932) purport to give municipalities authority to pass ordinances with extraterritorial effect for the protection of their water supply. According to Art. 9, sec. 11 of the Washington constitution, "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general law." On the basis of this provision, the supreme court of Washington has held any such grant of extraterritorial authority unconstitutional. *Brown v. Cle Elum,* 145 Wash. 588, 261 Pac. 112 (1927).

37. Cf. *Rev. Stats. of Neb.* (1943), sec. 16-685; *N. D. Rev. Code* (1943), sec. 40-1314; *Okla. Stats.* (1941), Title 11, sec. 303; *W. Va. Code* (1949), sec. 591(86); *Wyo. Comp. Stats.* (1945), sec. 29-2804. In *Corporation of Mt. Jackson v. Nelson,* 151 Va. 396, 145 S.E. 355 (1928), the court said: "Common sense requires us to hold that a city in the possession of surplus water, lawfully acquired, should not permit it to run to waste when it can be sold at a profit." 151 Va., p. 403.

38. Cf. *Durant v. City of Beverly Hills,* 39 Cal. App.(2d) 133, 102 Pac.(2d) 759 (1940); *City of South Pasadena v. Pasadena Land and Water Co.,* 152 Cal. 579, 93 Pac. 490 (1908); *Atkinson v. City of Gadsden,* 238 Ala. 556, 192 So. 510 (1939). In *Farwell v. City of Seattle,* 43 Wash. 141, 86 Pac. 217 (1906), the court interpreted a charter authorization very strictly.

55. *City of Coldwater v. Tucker,* 36 Mich. 474 (1877); *McBean v. City of Fresno,* 112 Cal. 159, 44 Pac. 358 (1896); *Minnesota and Montana Land and Improvement Co. v. City of Billings,* 111 Fed. 972 (1901); *Kelly v. Miller,* 78 Misc. 584, 139 N.Y.S. 991 (1912); *Mulville v. City of San Diego,* 183 Cal. 734, 192 Pac. 702 (1920); *Pioneer Real Estate Co. v. City of Portland,* 119 Ore. 1, 247 Pac. 319 (1926); *City of Cleveland v. Village of Cuyahoga Heights,* 81 Ohio App. 191, 75 N.E.(2d)99(1947). In *Mathers v. Moss,* 202 Ark. 554, 151 S.W.(2d) 660 (1941), the court held that although a municipal corporation is authorized to extend its mains beyond its boundaries to obtain an outlet for its sewage, it may not do so for the purpose of supplying sewage facilities to an outside community. In *Gibson v. Village of Massena,* 109 Misc. 505, 178 N.Y.S. 850 (1919), the court held that the power of a village to purchase land outside its limits for a dump was not to be implied.

69. Florida, Idaho, Illinois, Indiana, Michigan, Nebraska, New Jersey, Pennsylvania, Tennessee, Texas, Vermont, Wyoming.

III

5. Exceptions are Connecticut, Delaware, Georgia, Maine, Maryland, Montana, Nevada, Rhode Island, and Tennessee. Towns, cities, and boroughs in Connecticut are authorized to maintain gas and electric plants *within* their limits. *Gen. Stats. of Conn.* (1949), Title IV, sec. 709. Explanation for the absence of such provisions in Georgia is found in the editorial note appended to Title 69 ("Municipal Corporations") of the *Ga.*

Code (1933). "This title is very fragmentary and incomplete. Georgia's cities and towns are governed by charters which are granted in the first instance and are altered, amended, and repealed by Special Acts of the General Assembly. These must be consulted to determine the rights, powers, and privileges, the limitations and restrictions, and the governmental organization of these corporations." Cf. *Hall v. Mayor and Council of Calhoun,* 140 Ga. 611, 79 S.E. 533 (1913), and *City of Cornelia v. Wells,* 118 Ga. 554, 183 S.E. 66 (1936). Although no similar note is to be found in the *Rev. Code of Del.,* the brevity of the section dealing with municipalities indicates the validity of a similar explanation. In Montana, there is only one public utility owned and operated by a municipality. This is the natural gas utility owned and operated by Saco, Montana. Authority for this enterprise is to be found in sec. 11-988, *Rev. Codes of Mont.* (1947). (Letter, attorney general of Montana, Sept. 28, 1951.) The only municipally owned utilities in Rhode Island are waterworks. Although the *Anno. Code of Tenn.* (1934) has no provision authorizing municipalities to own and operate utilities beyond their boundaries, sec. 3334 provides: "All municipal corporations may, for corporate purposes, hold real estate beyond their limits." According to the supreme court of Tennessee, this provision is sufficient to authorize municipalities to own and use property beyond their boundaries for a wide variety of purposes. (Letter, assistant attorney general of Tennessee, Sept. 13, 1951.)

17. In behalf of the majority view, see *Gainesville v. Dunlap,* 147 Ga. 344, 94 S.E. 247 (1917); *Steitenroth v. Jackson,* 99 Miss. 354, 54 So. 955 (1911); *Kearney v. Bayonne,* 90 N. J. Eq. 499, 107 Atl. 169 (1919); *Western N. Y. Water Co. v. Buffalo,* 213 App. Div. 458, 210 N.Y.S. 611 (1925), reversed in 242 N.Y. 202, 151 N.E. 207 (1926) on different grounds; *Richards v. Portland,* 121 Ore, 340, 255 Pac. 326 (1927); *Stauffer v. East Stroudsburg,* 215 Pa. 143, 64 Atl. 411 (1906); *Childs v. Columbia,* 87 S.C. 566, 70 S.E. 296 (1910); *Paris v. Sturgeon,* 50 Tex. Civ. App. 519, 110 S.W. 459 (1908), affirmed in 58 Tex. Civ. App. 102, 122 S.W. 967 (1909); *Farwell v. Seattle,* 43 Wash. 141, 86 Pac. 217 (1926); *Hyre v. Brown,* 102 W. Va. 505, 135 S.E. 656 (1926). A brief discussion is found at 49 ALR 1239. In behalf of the minority view, see *Omaha v. Omaha Water Co.,* 218 U.S. 180, 30 S. Ct. 615 (1909); *Pike's Peak Power Co. v. Colo. Springs,* 44 C.C.A. 333, 105 Fed. 1 (1900); *Fellows v. Los Angeles,* 151 Cal. 52, 90 Pac. 137 (1907); *Colorado Springs v. Colorado City,* 42 Colo. 75, 94 Pac. 316 (1908); *Larimer County v. Ft. Collins,* 68 Colo. 364, 189 Pac. 929 (1920); *Henderson v. Young,* 119 Ky. 224, 83 S.W. 583 (1904); *Rogers v. Wickliffe,* 29 Ky. L. Rep. 587, 94 S.W. 24 (1906).

21. Cf. *Dyer v. Newport,* 123 Ky. 203, 94 S.W. 25 (1906); *Holmes v. Fayettville,* 197 N.C. 740, 150 S.E. 624 (1929), appeal dismissed, 281 U.S. 700, 50 S. Ct. 353 (1930); *Teague v. Sheffield,* 263 S.W.(2d) 417 (Tex. Civ. App., 1930). *In Yamhill Elec. Co. v. McMinnville,* 130 Ore. 309, 274 Pac. 118 (1929), appeal dismissed, 280 U.S. 531, 50 S. Ct. 159 (1930), it was held that statutes authorizing municipalities to deliver utility services beyond their limits were unconstitutional because they permitted a nontaxpaying municipality to compete with a private corporation.

32. For interesting examples of this problem, see *City of Los Angeles v. City of South Gate,* 108 Cal. App. 398, 291 Pac. 654 (1930), and *City of Los Angeles v. City of Huntington Park,* 32 Cal. App.(2d) 253, 89 Pac.(2d) 702 (1939). The latter case involved a plan by Los Angeles to bring electricity from Boulder Dam by transmission line, which was projected to run through South Gate, Huntington Park, and Vernon. Los Angeles purchased a strip of land 100 feet wide along the entire proposed route through these cities; it then requested them to agree to conditions on which transmission lines might be constructed over their streets. The cities wanted the cables to be run underground and passed ordinances to prohibit construction of overhead lines. Los Angeles instituted proceedings, and the court decided that it could construct overhead lines.

45. *Dyer v. City of Newport,* 123 Ky. 203, 94 S.W. 25 (1906); *Smith v. City of*

Kuttawa, 222 Ky. 569, 1 S.W.(2d) 979 (1928), where it was held that a city may own and acquire property beyond its limits for legitimate city purposes, which must be primarily for the benefit, use, or convenience of the city as distinguished from the public outside. Cf. *Southwestern Bus Co. v. Village of North Olmstead,* 41 Ohio App. 525, 181 N.E. 491 (1932); *Holmes v. City of Fayetteville,* 197 N.C. 740, 150 S.E. 624 (1929); *Spear v. City of Bremerton,* 90 Wash. 507, 156 Pac. 827 (1916); *Taylor v. Dimmitt,* 336 Mo. 330, 78 S.W.(2d) 844 (1934). This idea is found in the constitution of Ohio: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products of service of which is or is to be supplied to the municipality or its inhabitants . . ." Art. XVIII, sec. 4. Cf. *Kennedy v. Nevada,* 222 Mo. App. 459, 281 S.W. 56 (1926), where the court said: "Of course, a municipality has no implied power to engage in a private business."

61. Court decisions: *Ambridge v. Public Utilities Commission,* 137 Pa. Super. 50, 8 Atl.(2d) 429 (1939); *Valcour v. Morrisville,* 110 Vt. 93, 2 Atl.(2d) 312 (1938); *Wheeling v. Benwood-McMechen Water Co.,* 115 W.Va. 353, 176 S.E. 234 (1934); *J. Greenbaum Tanning Co. v. Railroad Commission,* 194 Wis. 634, 217 N.W. 282 (1928); *Milwaukee v. West Allis,* 217 Wis. 614, 258 N.W. 851, 259 N.W. 724 (1935); *Milwaukee v. Railroad Commission,* 217 Wis. 606, 258 N.W. 854 (1935). Commission decisions: *Granada v. Lamar,* 5 PUR(NS) 519 (Colo., 1933); *Frazer v. Pueblo,* 10 PUR(NS) 337 (Colo., 1935); *Re Higginsville,* PUR 1921D, 798 (Mo.); *Towle v. Salem,* 13 PUR(NS) 507 (Neb., 1935); *Siemanski v. Ambridge,* 27 PUR(NS) 305 (Pa., 1939; *Re St. George,* PUR 1926A, 584 (Utah); *Re Clarksburg Water Board,* 23 PUR(NS) 257 (W.Va., 1938).

62. *Phoenix v. Wright,* 52 Ariz. 227, 80 Pac.(2d) 390 (1938); *Phoenix v. Kasun,* 54 Ariz. 470, 97 Pac.(2d) 210 (1939); *Pasadena v. RR Commission,* 183 Cal. 526, 192 Pac. 25 (1920); *Re Henderson-Oroville-Wyandotte Irrigation District,* 213 Cal. 514, 2 Pac.(2d) 803 (1931)—dictum; *Cornhusker Electric Co. v. Fairburg,* 134 Neb. 248, 27 N.W.(2d) 379 (1938); *State ex rel. West Side Improvement Club v. Department of Public Service,* 186 Wash. 378, 58 Pac.(2d) 350 (1936).

63. In *Kiefer v. Idaho Falls,* 49 Ida. 458, 289 Pac. 81 (1930), the court held that the reasonableness of rates charted by municipal utilities was subject to review by the courts. In *Guth v. City of Staples,* 183 Minn. 552, 237 N.W. 411 (1931), the courts were held to be unable to fix rates to be charged by a home rule city for electricity furnished by it to outside customers, regardless of any claims of exorbitance and discrimination. Cf. *Englewood v. Denver,* 229 Pac.(2d) 667 (Colo., 1951). Kansas municipalities are specifically empowered to set extraterritorial utility rates by ordinance. *Gen. Stats. of Kans.* (1949), sec. 12-806.

65. States granting such authority are Louisiana, Michigan, Mississippi, Missouri, Nebraska, Ohio, Oregon, Pennsylvania, South Dakota, and Wisconsin. For judicial discussion of municipal authority to own and operate extraterritorial railroads in Oregon and Ohio, see *Riggs v. Grants Pass,* 66 Ore. 266, 134 Pac. 776 (1913); *Churchill v. Grants Pass,* 70 Ore. 283, 141 Pac. 164 (1914); *State ex rel. Forcheimer v. Le Blond,* 108 Ohio St. 41, 140 N.E. 491 (1923); *Walker v. Cincinnati,* 21 Ohio St. 14 (1871). The last case concerns the participation by Cincinnati in the construction of the Cincinnati Southern Railway between Cincinnati and Chattanooga, Tennessee. The reluctance of the court to concede Cincinnati's authority to raise revenue to engage in this project is clearly indicated by these comments: "These considerations, and the apparent abuse of discretion involved in declaring such a work to be so far *local* in its character as to justify its construction by a single city, at the sole expense of its citizens, all give a high degree of interest to the question. But we must bear in mind that the question is one of legislative *power,* and not of the wisdom, or even of the justice of the manner in which that power,

if it exists, has been exercised. Had we jurisdiction to pass upon the latter question, we should probably have no hesitation in declaring the act under review to be an abuse of the taxing power." 21 Ohio St., pp. 40-41.

IV

24. The importance of such specific authorizations is clearly indicated by decisions such as that rendered in *County Ct. v. Town of Piedmont,* 72 W.Va. 296, 78 S.E. 63 (1913). The supreme court of West Virginia ruled that a town or city had no authority to enter into a contract with the county court of the county in which it might be located to contribute to the expense of building a bridge located without its corporate limits and within another state. Cf. *Abendroth v. Town of Greenwich,* 29 Conn. 356 (1860), where the court ruled that towns could not participate in the provision of bridges over streams constituting a boundary between Connecticut and another state, although they could do so over sreams within the state.

36. There is some disagreement among the courts on this point. Affirmation of such authority is found in *Chambers v. City of St. Louis,* 29 Mo. 543 (1880), and *Schneider v. City of Menasha,* 118 Wis. 298, 95 N.W. 94 (1903). In the *Schneider* case, the court strongly contends that the general rule to the effect that the authority of a municipal corporation does not extend beyond its corporate limits does not apply to business functions, only to its governmental authority. The opposing view is found in *Duncan v. City of Lynchburg,* 2 Va. Dec. 700, 34 S.E. 964 (1900), and *Donable's Administrator v. Town of Harrisonburg,* 104 Va. 533, 52 S.E. 174 (1905). In both these cases, the acquisition of extraterritorial quarries or gravel beds was held ultra vires in the absence of express authority to acquire them. A recent statute authorizes Iowa municipalities to acquire "any lands" within or without their limits "for such public purposes and as an incident to such other powers and duties conferred upon such corporations as make necessary or reasonable the acquisitions of such land . . ." *Acts of 54th Gen. Assembly of Iowa,* Ch. 151, sec. 32.

39. *Anno. Code of Tenn.* (1939), secs. 3528(8) and 3334. Other states having similar provisions: *Comp. Laws of Mich.* (1948), sec. 117.4e(2); *Rev. Stats. of Mo.* (1949), secs. 73.010 and 81.190; *Rev. Laws of N. H.* (1942), Title VIII, Ch. 54; *Cahill's Consol. Laws of N. Y.* (1930), Ch. 22, sec. 20; *Okla. Stats.* (1941), Title 11, sec. 563; *Code of Laws of S. C.* (1942), sec. 7553; *S. D. Code* (1939), sec. 45.0201(13); *Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 8966(6); *Wis. Stats.* (1951), sec. 62.22; *Wyo. Comp. Stats.* (1945), sec. 29-303. Cf. *Reams v. Board of Mayor and Alderman of McMinnville,* 155 Tenn. 222, 291 S.W. 1067 (1927), where the town was held authorized to obtain property beyond its limits for a school on the basis of a general grant of power to hold real estate outside its limits.

V

1. 157 Wash. 457, 289 Pac. 61 (1930). Cf. *State ex rel. Lincoln v. Johnson,* 117 Neb. 301, 220 N.W. 273 (1928); *Hesse v. Rath,* 224 App. Div. 344, 230 N.Y.S. 676 (1928), affirmed in 249 N.Y. 436, 164 N.E. 342 (1928); *Dysart v. St. Louis,* 321 Mo. 514, 11 S.W.(2d) 1045 (1928); and 69 ALR 325. In *Spokane v. Williams,* 157 Wash. 120, 288 Pac. 258 (1930), it was contended that, inasmuch as the airport statute did not specifically authorize that city to take property outside its limits, the city could not extend an airport by condemning land outside. The court held the airport statute was supplemental to the general condemnation statute, which authorized municipalities to acquire property within or without their limits for corporate purposes.

11. *Ark. Stats.* (1947), sec. 74-204; *Fla. Stats.* (1949), sec. 322.02; *Ida. Code* (1947), sec. 21-041; *Ia. Code Anno.* (1949), sec. 330.5; *Comp. Laws of Mich.* (1948), sec. 259.126; *Rev. Stats. of Neb.* (1943), sec. 3-203; *The Gen. Stats. of N. C.* (1943), sec. 63-49; *Ore. Rev. Stats.* (1953), sec. 492.310; *S. D. Code* (1939), sec. 2.0201; *Vernon's Tex. Stats.* (1948), Art. 46d-2.

18. *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 42; *Ga. Code* (1933), sec. 11-201; *Gen. Stats of Kans.* (1949), secs. 3-113 and 3-124; *Anno. Code of Md.* (1951), Art. 1A, sec. 35; *Comp. Laws of Mich.* (1948), sec. 295-126; *Rev. Stats. of Neb.* (1943), sec. 3-203; *N. D Rev. Code* (1943), secs. 2-0201 and 2-0208; *Ore. Rev. Stats.* (1953), sec. 492.310; *Code of S. C.* (1942), secs. 7112-31 and 7112-39; *S. D. Code* (1939), sec. 2.0201; *Anno. Code of Tenn.* (1934), sec. 2726.21.

33. Letters, attorneys general of Delaware and Florida, December 31, 1951, and January 18, 1952. Cf. *Hobart v. City of Minneapolis,* 139 Minn. 368, 166 N.W. 411 (1918); *City of Nashville v. Vaughn,* 158 Tenn. 498, 14 S.W.(2d) 716 (1929). A charter grant may be held void as without legislative authority, regardless of permissive constitutional provision. In *City of Detroit v. Oakland Circuit Judge,* 237 Mich. 446, 212 N.W. 207 (1907), a constitutional provision explicitly authorizing cities and villages to acquire and maintain extraterritorial parks was held not to be self-executing and not to enable home-rule cities to provide for the exercise of such authority in their charters. Statutory implementation renders such action valid. Cf. *Village of St. Clair Shores v. Village of Grosse Pointe Woods,* 319 Mich. 372, 29 N.W.(2d) 860 (1947), where the Village of Grosse Pointe Woods was held to be authorized to acquire and maintain about 43 acres for park purposes in the Village of St. Clair Shores, even without the consent of the latter.

35. *Ida. Code* (1947), sec. 5-903, and letter, attorney general of Idaho, February 13, 1952. Cf. *City of Memphis v. Hastings,* 133 Tenn. 142, 88 S.W. 609 (1904), where a park is determined to be a "public use" so far as the acquisition of land is concerned. According to *In re Mayor of N. Y.,* 99 N.Y. 570, 2 N.E. 642 (1885), "While it is impossible to furnish a perfect definition of what is meant by a city purpose, yet two characteristics it must have. The purpose must be primarily for the benefit, use, or convenience of the city, as distinguished from that of the public outside of it, although they may be incidentally benefited, and the work must be of such character as to show plainly the dominance of that purpose. And then the thing to be done must be within the range of ordinary municipal action." The court ruled that a park at Niagara or in the Adirondacks would not be a "city purpose."

VI

1. Cf. C. M. Kneier, "Territorial Jurisdiction of Local Law Enforcement Officers," *N. C. Law Review* 9:283-90 (April, 1931). Courts have referred to this rule frequently under varied circumstances. *City of New Orleans v. Anderson,* 9 La. Ann. 323 (1854), where the court ruled that an ordinance prohibiting stables could have no extraterritorial effect; *People v. Evans,* 18 Ill. 361 (1857) and *Holmes v. Fihlenberg,* 54 Ill. 203 (1870), where a constitutional provision to the effect that inferior city courts shall have "jurisdiction in such cities" was held to prevent the legislature from authorizing these courts to issue a summons beyond the limits of the city in which they were situated; *Allor v. Board of Auditors of County of Wayne,* 43 Mich. 76, 4 N.W. 492 (1880), holding that municipal courts could not be authorized to try extra-municipal crimes; *Board of Met. Police of City of Detroit v. Board of Auditors of Wayne County,* 68 Mich. 576, 36 N.W. 743 (1888), where an attempted statutory extension of the authority of the metropolitan police board to certain townships in Wayne County was held void; *Blair v. State,* 90 Ga.

326, 17 S.E. 96 (1892), in which the 1890 charter of Columbus was held unconstitutional insofar as it provided for extending municipal police jurisdiction over territory adjacent to the city; in *Sossamon v. Cruse,* 133 N.C. 470, 45 S.E. 757 (1903), the court ruled that a local policeman was not authorized to make an arrest without a warrant beyond the corporate limits of the town, nor to pursue beyond these limits a person who had successfully resisted arrest within them; *Jones v. Hines,* 147 Ala. 624, 47 So. 739 (1908); *City of Oxford v. Buford,* 134 Miss. 635, 99 So. 498 (1924), where an ordinance undertaking to make all misdemeanors under state laws also offenses against the city, without limiting its jurisdiction to those committed within its limits, was held void; according to *Riesser v. Ward,* 193 Ky. 368, 236 S.W. 255 (1922), a police court could not be given jurisdiction outside municipal boundaries, even over offenses committed on property belonging to the city; in *Brittain v. U. S. Fidelity & Guaranty Co.,* 219 Ky. 465, 293 S.W. 956 (1927), the court ruled that a city police officer had no power to make an arrest in his official capacity outside municipal limits; in *American History Society v. Glenn,* 131 Misc. 291, 227 N.Y.S. 174 (1928), a statute authorizing the processes of the New York City Court to be executed in any part of the state was held unconstitutional; *Church v. Board of Supervisors of Fresno County,* 269 Pac. 651 (Cal. App., 1930), where the police court of Fresno was held to have jurisdiction only within city limits on the basis of charter provisions; *People v. City Court of East St. Louis,* 338 Ill. 363, 170 N.E. 210 (1930), holding that the jurisdiction of the city court for the service of original processes was restricted to city limits; in *Weeks v. State,* 132 Tex. Cr. R. 524, 106 S.W.(2d) 275 (1937), the court noted that at common law the policeman's authority is confined to city limits; in *Smeltzer v. Meeser,* 311 Ky. 692, 225 S.W.(2d) 96 (1949), the court observed: "Ordinarily, unless a statute expressly provides otherwise, the exercise of a police power by a municipality is limited to its territorial boundaries." 37 *American Jurisprudence,* Municipal Corporations, sec. 284.

2. "Police power" is used here in the broad sense to include any authority exercised to protect or promote the public health, safety, welfare, and morals. For instances where courts upheld the exercise of extraterritorial police authority not related to any specific function, see these cases: *State ex rel. Stark v. McArthur,* 13 Wis. 428 (1861), where a statute granting the municipal court of Milwaukee jurisdiction over the entire county was upheld on the basis of a constitutional provision authorizing the state legislature to "vest such jurisdiction as may be deemed necessary in municipal courts"; *State v. Fendrick,* 77 Ohio St. 298, 82 N.E. 1078 (1907), involving the exercise of extraterritorial jurisdiction by a local police court, when this jurisdiction had been authorized by statute to extend 4 miles beyond city limits; *Collier v. Duffell,* 165 Ga. 421, 141 S.E. 194 (1927), where the legislative act establishing the corporate limits of Atlanta and conferring jurisdiction on that city beyond its limits was upheld; *Helm v. Commonwealth,* 26 Ky. Law Rep. 165, 81 S.W. 270 (1904), upholding a similar statutory authorization; in *Gahogan v. Fairbanks,* 147 Misc. 685, 265 N.Y.S. 759 (1933) and *Rochester Exp. Ass'n. v. Bogard,* 149 Misc. 200, 267 N.Y.S. 723 (1932), city courts were held to have extraterritorial jurisdiction; *City Transp. Co. v. Pharr,* 186 Tenn. 217, 209 S.W.(2d) 15 (1948), where the court noted that the jurisdicition of municipalities usually is confined to their limits, but there are exceptions where public necessity requires municipalities to exercise police powers beyond their limits. Cf. *Tower v. Agee,* 128 Mo. App. 427, 107 S.W. 999 (1908), where the court observes that police power may be delegated by a state legislature to a municipality over territory immediately adjacent to its limits, where exercise of such authority is necessary to preserve and protect the peace and good order of the municipality and its inhabitants.

18. *Code of Ala.* (1940), Title 37, sec. 9; *The Gen. Stats. of N. C.* (1943), sec. 160-203. The "police jurisdiction" of cities and towns in Alabama depends upon their size.

For cities of 6,000 or more population, it extends over "all adjoining territory within three miles of the corporate limits." For those with less than 6,000, it extends over the adjoining territory "within a mile and a half of the corporate limits . . ." For specific judicial sanction of the application of sanitary ordinances within these limits, see *Coursey v. City of Andalusia,* 24 Ala. App. 247, 134 So. 288 (1931). The police jurisdiction of two cities may not cover the same area. *Homewood v. Woofard Oil Co.,* 232 Ala. 634, 169 So. 288 (1936). Cf. *Standard Chemical and Oil Co. v. City of Troy,* 201 Ala. 89, 77 So. 383 (1917), where the imposition of a license tax was held to be a valid exercise of the police power within this jurisdiction. According to *Mobile v. Orr,* 181 Ala. 308, 61 So. 920 (1913), ordinances under this section must be "reasonable." Ordinances regulating the slaughter, inspection, and sale of meat are enforceable within the police jurisdiction of the respective municipalities under this provision. *Report of the Attorney General of Alabama, 1928-30,* p. 52.

19. *Comp. Laws of Mich.* (1948), sec. 94.1; *Nev. Comp. Laws* (1929), sec. 1128; *Utah Code Anno.* (1943), secs. 15-8-61 and 15-12-2. Similar authority is extended to municipalities in other states over extraterritorial areas ranging from 2 to 10 miles: *Ariz. Code Anno.* (1939), sec. 16-207—2 miles; *Rev. Stats. of Neb.* (1943), secs. 14-103 and 14-219—3 miles; *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407(13)—4 miles; *Ark. Stats.* (1947), sec. 82-204—5 miles; *Ida. Code* (1947), sec. 50-313—5 miles; *Gen. Stats. of Kans.* (1949), sec. 13-415—5 miles; *Miss. Code* (1942), sec. 3234—5 miles; *Rev. Stats of Mo.* (1949), sec. 96,030—5 miles; *Okla. Stats.* (1941), Title 11, sec. 666—5 miles; *Vernon's Tex. Stats.* (1948), Art. 1015, sec. 2—10 miles. Cf. Paul Petty, "Powers of General Law Cities Outside Their Corporate Limits," *Texas Municipalities* 30:38-42 (Feb., 1943); H. P. Kucera, "Powers of Home Rule Cities Outside Their Corporate Limits," Ibid., pp. 77-82 (April 1943).

33. Cf. *State v. Nelson,* 66 Minn. 166, 68 N.W. 1066 (1896); where it was held that the council of Minneapolis might require an applicant for a license to sell milk within the city to consent to inspection by the city health commissioner of the herd from which milk was obtained. Said the court: "This inspection is wholly voluntary on the part of the owner of the dairy or dairy herd. If he does not choose to submit to such inspection, the result merely is that he or the one to whom he furnishes milk cannot obtain a license to sell milk within the city. The ordinance has no extraterritorial operation . . ." 66 Minn., p. 170. In *City of Norfolk v. Flynn,* 101 Va. 473, 44 S.E. 717 (1903), imposition of a fee of 50 cents per cow to cover the expenses of such inspection was upheld and held not to be extraterritorial in its effect on the same grounds. Cf. *Hill v. Fetherolf,* 236 Pa. 70, 84 Atl. 677 (1912), where an ordinance was upheld that provided for licensing only those milk dealers who obtained their milk from dairies, wherever located, that submitted to inspection of their herds by city health authorities.

36. *City of Quincy v. Burgdorf,* 235 Ill. App. 560 (1924), p. 567. Cf. *Witt v. Klimm,* 274 Pac. 1039 (Cal. App., 1929); *La Franchi v. City of Santa Rosa,* 52 Pac. 558 (Cal. App., 1936); *Wright v. Richmond County Dept. of Health,* 182 Ga. 651, 186 S.E. 815 (1936); *Dorsom v. City of Atchison,* 155 Kan. 225, 124 Pac.(2d) 475 (1942); *State v. Elofson,* 86 Minn. 103, 90 N.W. 309 (1902), where the requirement for inspection was upheld, but the charge placed on owners of herds outside Hennepin County was invalidated; *Lang's Creamery, Inc. v. City of Niagara Falls,* 224 App. Div. 483, 231 N.Y.S. 368 (1928); *Korth v. City of Portland,* 123 Ore. 180, 261 Pac. 895 (1927); *McKinna v. City of Galveston,* 113 S.W.(2d) 606 (Tex. Civ. App., 1938); *Adams v. Milwaukee,* 144 Wis. 371, 129 N.W. 518 (1911); *Dean Milk Co. v. City of Madison,* 257 Wis. 308, 43 N.W. (2d) 480 (1950), upholding an ordinance of Madison prohibiting the sale of pasteurized milk in the city unless it had been pasteurized and bottled within 5 miles of the Capitol square and providing that the city health department should not be obligated to inspect

and issue permits for farms supplying raw milk for the city if they were located over 25 miles from the Capitol square. This ordinance was held to impose "an undue burden on interstate commerce" in *Dean Milk Co. v .City of Madison,* 340 U.S. 349, 71 S. Ct. 295 (1951), where the appellant gathered milk from farms in Illinois and southern Wisconsin over 25 miles from Madison and maintained pasteurization plants 65 and 85 miles from Madison. According to the U. S. Supreme Court, "If the city of Madison prefers to rely upon its own officials for inspection of distant milk sources, such inspection is readily open to it without hardship, for it could charge the actual and reasonable cost of such inspection to the producers and processors." 340 U.S., pp. 354-55. The court noted that this would provide a reasonable, nondiscriminatory alternative, "adequate to conserve legitimate local interests." Cf. *Dyer v. City Council of City of Beloit,* 250 Wis. 613, 27 N.W.(2d) 733 (1947), where a similar ordinance was contested. The ordinance provided: "No pasteurized milk shall be sold in the city of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and East Grand Avenue in the city of Beloit." Dyer claimed this provision violated Amendment XIV and Art. I, sec. 8 of the U. S. Constitution. Said the court, "A reasonable exercise of police power is not a trade barrier, and contract rights guaranteed under the Fourteenth Amendment . . . do not have a superior right to the right of a municipality to reasonably protect the health of its citizens." The court then held that the ordinance was "a reasonable exercise of the police power of the city of Beloit." 27 N.W.(2d), pp. 735 and 736. In *City of St. Louis v. Niehaus,* 236 Mo. 8, 139 S.W. 450 (1911), the court ruled that in a prosecution for possessing adulterated milk with intent to sell it in violation of a local ordinance, the fact that the milk was brought into the city from Illinois was insufficient to acquit the defendant on the ground that the milk was not subject to the ordinance because it was part of interstate commerce and therefore under federal control. Cf. *Miller v. Williams,* 12 F. Sup. 236 (1935), involving the validity of a regulation of the health commissioner of Baltimore, Maryland which, in effect, prohibited the sale or use of cream in the manufacture of ice cream in Baltimore when the cream was produced from dairies outside a 50-mile zone, except in an "emergency." This regulation, as applied to a shipper from another state, was held invalid as a burden on interstate commerce.

37. In *Van Gammeren v. City of Fresno,* 51 Cal. App.(2d) 235, 124 Pac.(2d) 621 (1942), the court declared an ordinance of Fresno void as "unreasonable" because it prohibited the sale or delivery of pasteurized milk within the corporate limits unless it had been pasteurized therein when processed under the inspection of the county health authorities. In *Root v. Mizel,* 95 Fla. 979, 117 So. 380 (1928), an inspection fee of 25 dollars per month levied against dairies outside the city limits of Bartow in order that they be permitted to sell milk within the city was held to be "unreasonable." In *State ex rel. Larson v. City of Minneapolis,* 190 Minn. 138, 251 N.W. 121 (1933), an ordinance of Minneapolis requiring all pasteurized milk sold within the city to be pasteurized within its limits was held void on the same grounds.

41. Cf. *City of Rockford v. Hey,* 366 Ill. 526, 9 N.E.(2d) 317 (1937), where an ordinance of Rockford prohibiting the sale of ice cream in the city unless the factories or vendors paid a license fee and were inspected by the city was held void insofar as it purported to extend to factories in other cities; *Higgins v. City of Galesburg,* 401 Ill. 87, 81 N.E.(2d) 520 (1948), where an ordinance that sought to license and inspect milk plants within 10 miles of the municipality was declared void on the ground that Art. 8, sec 1 of the Cities and Villages Act extended the jurisdiction of municipalities only one-half mile beyond their limits for the enforcement of health ordinances. A similar ordinance in Aurora, Illinois, which sought to extend the jurisdiction of that city 25 miles beyond its limits, was voided in *Dean Milk Co. v. City of Aurora,* 404 Ill. 331, 88 N.E.(2d) 827 (1949). Cf *Dean Milk Co. v. City of Waukegan,* 403 Ill. 597, 87 N.E.(2d) 751 (1949),

where it was held that an ordinance could not require all milk sold in the city to be produced in the county in which the city was located. In *Dean Milk Co. v. City of Elgin,* 405 Ill. 204, 90 N.E.(2d) 112 (1950), the court ruled that the decisions in the Galesburg, Waukegan, and Aurora cases were controlling and voided an ordinance providing for an annual milk plant license fee of $10 for plants in the city and a minimum fee of $20 for those outside. Cf. *City of Chicago v. Chicago and N.W. Ry. Co.,* 275 Ill. 30, 113 N.E. 849 (1916), where the court ruled that municipal regulations may indirectly affect production of milk on farms outside the city by requiring milk to be cooled immediately after being taken from the cow and kept cool until transported for delivery. Such regulations, said the court, are valid if reasonable.

45. *City of Greenville v. Pratt,* 214 S.W.(2d) 179 (Tex. Ct. of Civ. App., 1948). Cf. *City of Dallas v. City Packing Co.,* 86 S.W.(2d) 60 (Tex. Ct. of Civ. App., 1935), where an injunction was granted to restrain the city from preventing the packing company from selling meat in the city when the meat bore the inspection brand of the city where the company was located, when these standards were equal to those of the U. S. Department of Agriculture, as were those of Dallas. Cf. *Phillips v. City of Siloam Springs,* 182 Ark. 139, 30 S.W.(2d) 220 (1930), where an ordinance levying an inspection fee on nonresident sellers of bakery goods who transported these goods into the city was held invalid as discriminatory and not within the power of the city. In *Ex parte Blois,* 179 Cal. 291, 156 Pac. 449 (1918), an ordinance of Palo Alto requiring the city health department to inspect laundries at least once a month, and providing for an inspection fee was voided as constituting a discrimination in favor of domestic laundries.

49. Colorado and Illinois municipalities may "establish and regulate" cemeteries within or without their limits, and no geographical limitation is imposed; the authority to prohibit their establishment extends only 1 mile beyond their boundaries. *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, sec. 10; *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-84. In *Dehm v. City of Havana,* 28 Ill. App. 520 (1888), the city was held to have the power to acquire land by purchase or otherwise for a cemetery within or without its corporate area, and the question of whether the purchase of the land was judicious was for the city to determine. Cities of the first class in Washington possess similar authority, although the limitation is 2 miles. *Remington's Rev. Stats. of Wash. Anno.* (1932), sec. 8966(21). Second-class cities are not limited. Ibid., sec. 9034(51). West Virginia municipalities may acquire land "near" their limits for burial of the dead and "regulate interments" therein. *W. Va. Code* (1949), sec. 494. Cf. *Ark. Stats.* (1949), sec. 19-2323; *Burns Ind. Stats.* (1933), 1950 Replacement, sec. 48-1407; *Miss. Code* (1942), sec. 3627; *Rev. Stats of Mo.* (1949), secs. 214.010, 75.270, 77.120, 79.430, and 82.240; *Rev. Codes of Mont.* (1947), sec. 11-248; *Rev. Stats. of Neb.* (1943), secs. 15-239, 15-243, 16-241, 16-245, and 14-103; *Nev. Comp. Laws* (1929), sec. 1122; *Page's Ohio Gen. Code Anno.* (1937), sec. 4154; *Okla. Stats.* (1941), Title 8, sec. 41; *S. D. Code* (1939), sec. 45.0201; *Utah Code Anno.* (1943), sec. 15-8-62; *Wyo. Comp. Stats.* (1945), sec. 38-201.

51. Alabama, Arizona, Illinois, Montana, Washington, Wisconsin, and Wyoming grant this type of authority. Statutory references and the area in which the power may be exercised are: *Code of Ala.* (1940), Title 37, sec. 499—police jurisdiction; *Ariz. Code Anno.* (1939), sec. 16-207—2 miles; *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-89—1 mile; *Rev. Codes of Mont.* (1947), sec. 11-944—3 miles; *Wis. Stats.* (1941), sec. 66.052(1)—4 miles; *Wyo. Comp. Stats.* (1945), sec. 29-318—2 miles (first-class cities). In *Chicago Packing and Provision Co. v. City of Chicago,* 88 Ill. 221 (1878), it was held that the authority granted to cities and villages in Illinois to direct the location and regulate the management and construction of packing houses and similar establishments conferred upon them power to license such businesses as a means of regulation. The fact that the packing house had been licensed by the town of Lake, where it was located, did not ex-

exempt it from the necessity of obtaining a license from Chicago, since it was situated within 1 mile of Chicago.

69. Cf. *Robb v City of Indianapolis,* 38 Ind. 49 (1879), p. 53, where the idea is expressed as dictum. This case invalidated an ordinance penalizing persons who visited a house of ill fame or prostitution within 1 mile of the city. According to state law, "For removal and abatement of nuisances, to carry out and enforce sanitary regulations, and for the apprehension of disorderly persons, vagrants, common prostitutes and their associates . . . the common council shall have jurisdicition two miles beyond the city limits." The court ruled that the ordinance under question had no reference to these specific matters and was therefore void.

70. Memorandum included with letter from city attorney of Glendale, California, August 5, 1952; reply to questionnaire addressed to city attorney of Davenport, Iowa, dated April 4, 1952; letter, city attorney of Omaha, Nebraska, April 2, 1952; letter, city attorney of Lubbock, Texas, April 4, 1952; letter, city attorney of Ft. Worth, Texas, March 31, 1952; letter, city attorney of Greensboro, North Carolina, March 31, 1952; and letter, director of Bureau of Municipal Research, Syracuse, New York, April 15, 1952. Similar denial of the exercise of such authority by cities in their states was expressed by the executive director of the Arkansas Municipal League and the executive secretary of the Arizona Municipal League in letters dated April 1, 1952, and March 31, 1952.

VII

2. North Dakota, Texas, and Virginia. In North Dakota, city police magistrates and village justices of the peace "have concurrent jurisdiction with the justices of the peace of the county in all civil actions and in all criminal actions for offenses against the laws of the state committed within the county wherein the city or village is located." *N. D. Rev. Code* (1943), sec. 48-1801. In Texas, municipal courts are granted "concurrent jurisdiction with any justice of the peace in any precinct in which said city, town, or village is situated" in all criminal cases in which the maximum fine is $200. *Vernon's Tex. Stats.* (1948), Art. 1195. In Virginia, "The jurisdiction of the corporate authorities of each town or city, in criminal matters, shall extend one mile beyond the corporate limits of such town or city; except that such jurisdiction of the corporate authorities of towns situated in counties having a density of population in excess of three hundred inhabitants per square mile, or in counties adjacent to cities having a population of one hundred and seventy thousand or more shall extend only to the corporate limits of such town." *Code of Va.* (1950), sec. 15-560. In addition, "The justices of the peace shall be conservators of the peace within the corporate limits of the cities . . . and within one mile beyond the corporate limits thereof . . ." Ibid., sec. 39-1. Cf. *Reid v. Morton,* 119 Ill. 118, 6 N.E. 414 (1896). A constitutional provision confining the jurisdiction of city courts to the cities in which they are located does not affect the power of these courts to summon grand jurors from beyond city limits. *Miller v. People,* 183 Ill. 423, 56 N.E. 60 (1899).

12. Letter, city attorney of Denver, Colorado, April 23, 1952; letter, city solicitor of Allentown, Pennsylvania, April 15, 1952; letter, city attorney of Lubbock, Texas, April 4, 1952; letter, city attorney of Charlotte, North Carolina, April 2, 1952; and replies to questionnaire of March 26, 1952, by city attorneys of Davenport, Iowa, and Asheville, North Carolina. An interesting set of circumstances is found in *Murphy v. State,* 245 Pac.(2d) 741 (Okla. Crim. App., 1952). Arly Murphy was charged with unlawful possession of intoxicating beverages and was fined and sentenced to 90 days. He sought to have evidence against him suppressed on the ground that the warrant was served and the raid of his premises was conducted illegally by a member of the police force of Okmul-

gee, since his premises were located outside the city. Said the court, "Certainly Blaine Hill, as captain of the Okmulgee police, had no authority to make a raid or serve a search warrant . . . in the county, or outside his own city, when not accompanied by the sheriff or one of his duly authorized deputies." 245 Pac.(2d), p. 743.

15. The Idaho statute, which is typical, provides that whenever a city or town policeman "shall be in the fresh pursuit of an offender against any law . . ., and the offense has been committed within the corporate limits of such city or village, such policemen or marshalls while in such fresh pursuit may go beyond the corporate or geographical limits of such city or village but not beyond the county line of the county in which such city or village is situated, for the purpose of making such arrest." *Ida. Code* (1947), sec. 50-331. Cf. *Vernon's Tex. Stats.* (1948), Art. 999, and *W. Va. Code* (1949), secs. 591(26) and 489, where local police are granted the same authority as the county sheriff. In *Newburn v. Durham,* 88 Tex. 288, 31 S.W. 195 (1895), the court noted that according to statute, the town marshall, in the prevention of crime and arrest of offenders, should possess "like power, authority, and jurisdiction as the sheriff of the county."

18. Memorandum accompanying letter from city attorney of Glendale, August 5, 1952; letter, director of law of Lakewood, April 17, 1952; letter, city attorney of Lubbock, April 4, 1952; letter, assistant city attorney of Corpus Christi, October 31, 1952; letters, city attorneys of Omaha and Charlotte, April 2, 1952; letter, city solicitor of Waterloo, March 31, 1952; and letter, corporation counsel of Tacoma, March 31, 1952. Although the city attorney of Ft. Worth, Texas, did not refer to the power of local officers to pursue offenders, he indicated that they possessed authority to arrest persons beyond municipal boundaries. Letter, March 31, 1952. The city attorney of Davenport, Iowa, indicated that the city officers could not pursue and arrest offenders outside city limits. Reply to questionnaire dated March 26, 1952.

19. In *Hubert v. Granzow,* 131 Minn. 361, 155 N.W. 204 (1915), the court referred to the fact that it is "common knowledge" that city fire departments "almost invariably respond when called upon in such cases." In *Jefferson County Fiscal Court v. Jefferson County,* 278 Ky. 785, 129 S.W.(2d) 554 (1939), a contract between a city and a county whereby the city, upon payment by the county, was to furnish protection for public buildings outside its limits was held ultra vires as to the city and void. According to the Oregon Fire Marshall, a number of intercity agreements exist on the basis of which municipalities have agreed to go to each other's aid in the case of a conflagration, and these agreements may extend across state lines. Letter, March 25, 1952.

20. Cf. *Ill. Rev. Stats.* (1951), Ch. 24, sec. 23-74; *Ky. Rev. Stats.* (1948), sec. 95.380, which provides: "Any city in the state owning or controlling fire apparatus may take it to extinguish fires to any point in the county in which that city is located . . .; or into areas of another county or state, as determined by the city legislative body." (This legislation nullifies the decision in the *Jefferson County* case, *supra*) *Miss. Code* (1942), sec. 3435; *Rev. Stats of Neb.* (1943), sec. 35-408, authorizing rural fire protection districts to contract with municipalities for protection. *Cahill's Consol. Laws of N.Y.* (1930), Ch. 26, sec. 209 of the 1937 *Supp.; The Gen. Stats. of N. C.* (1943), sec. 160-283, where municipalities are authorized to furnish fire protection to property "within an area of not more than twelve miles from the city limits upon such terms as such governing body may determine." *N. D. Rev. Code* (1943), sec. 40.0501(37), empowering municipalities to render assistance within or without the state; *Code of Va.* (1950), secs. 27-1 and 27-2; *Wyo. Comp. Stats.* (1945), secs. 45-101 and 45-103.

22. In *Raynor v. Arcata,* 11 Cal.(2d) 113, 77 Pac.(2d) 1054 (1938), the contention that the defendant municipality was liable where the city's fire chief's car collided with the plaintiff's car while the chief was on his way to a fire outside the city on the ground that he was not performing his official duties was overruled, especially in view of the fact

that the alarm was turned in from a box in the city and that it was sufficiently close to the city to constitute a threat to property therein. Cf. *Brock Hall Dairy Co. v. New Haven,* 122 Conn. 321, 189 Atl. 182 (1937), and *King v. San Angelo,* 66 S.W.(2d) 418 (Tex. Civ. App., 1933).

VIII

1. *Ham v. Sawyer,* 38 Me. 37 (1854), where the court ruled that the exercise of municipal authority by one town over a portion of the territory of another, and the acquiescence of the latter for a period of more than 20 years, will not authorize the former to levy and collect taxes upon persons in such territory; *Town of Cameron v. Stephenson,* 69 Mo. 372 (1879); *Gilchrist's Appeal,* 109 Pa. St. 600 (1885); *Sioux City Bridge Co. v. Dakota County,* 61 Neb. 75, 84 N.W. 607 (1900), holding that a tax levied on a bridge, part of which was within and part without the territorial limits of the body imposing it, was invalid as to that part levied on the portion of the bridge located outside the limits of the local unit; this rendered the whole assessment void unless the tax assessed against the part within the jurisdiction of the taxing body could be readily separated from the portion outside. *Hemple v. City of Hastings,* 79 Neb. 723, 113 N.W. 187 (1907); *Gulf Refining Co. v. City of Knoxville,* 136 Tenn. 253, 188 S.W. 798 (1916); *Turner v. Cobb,* 195 Ia. 831, 192 N.W. 847 (1923); *Merchants' and Farmers' Bank v. City of Kosciusko,* 149 Miss. 835, 116 So. 88 (1928), holding that where a bank located in a city owned property outside the city limits, the city was not entitled to assess for taxes that part of the capital, surplus, and undivided profits invested in real estate located outside; *Plutus Mining Co. v. Orme,* 76 Utah 286, 289 Pac. 132 (1930); *Wauhonise Bridge Co. v. Nebraska City,* 123 Neb. 832, 244 N.W. 793 (1932); *Hardin v. Pavlat,* 130 Neb. 829, 266 N.W. 637 (1936); *Town of Oneida v. Pearson Hardwood Flooring Co.,* 169 Tenn. 449, 88 S.W.(2d) 998 (1936); *Rochelle v. City of Florence,* 237 Ala. 635, 188 So. 247 (1939); *Lawkins v. City of New York,* 277 App. Div. 920, 71 N.Y.S.(2d) 112 (1947). Cf. *Nebraska Telephone Co. v. City of Lincoln,* 82 Neb. 59, 117 N.W. 284 (1908). For a rare instance in which such power has been extended to municipalities, see *N. D. Rev. Code* (1943), sec. 40-4912, authorizing city and village park boards to acquire extraterritorial lands for parks, which "shall be considered for purposes of taxation . . . as being within the territorial limits of the municipality." In *Vernon's Tex. Stats.* (1948), Art. 1185, municipalities are specifically prohibited from exercising tax power over extraterritorial property.

2. 20 Gratt. 661 (Va., 1871), pp. 663-65. Cf. *Certain Lands upon which Town of Lake Placid Taxes are Delinquent v. Town of Lake Placid,* 159 Fla. 180, 31 So(2d) 249 (1947), where it was held that a tax levy, made to procure funds with which to pay bonded indebtedness incurred by the municipality while the lands against which the levy was made were prima facie within the corporate limits of the town, would be presumed valid, regardless of the fact that such lands were later ousted from the jurisdiction of the municipality, although such presumption could be overcome if the lands could not receive any benefits from such a levy. In *State ex rel. Harrington v. City of Pompano,* 136 Fla. 730, 188 So. 610 (1939), the court said: "Where municipal jurisdiction is legally withdrawn from vastly excessive areas that were incorporated by statute in a *de jure* municipality, there may be *de facto* municipal jurisdiction in such a *de jure* municipality to tax all or a part of the excluded areas to pay proportionately for duly authorized municipal bonds duly issued for authorized municipal purposes and sold to *bona fide* purchasers while the excessive areas were, by virtue of a presumptively valid statute, *prima facie* within the *de jure* jurisdiction of a *de jure* municipality." 136 Fla., p. 759. Cf. *Hunnicut v. City of Winter Haven,* 159 Fla. 115, 31 So.(2d) 155 (1947). *Ill. Rev. Stats.* (1951), Ch. 24, secs. 7-42 and 7-43 provide for disconnection of land from a municipality, but

such disconnection "shall not exempt it from taxation for the purpose of paying any indebtedness contracted by the corporate authorities of the municipality, prior to the filing of the petition for disconnection." Such territory "shall be assessed and taxed to pay such indebtedness . . . the same as though the territory had not been disconnected." This provision was upheld in *Richter, et al. v. City of Mt. Carroll,* 398 Ill. 473, 76 N.(2d) 452 (1947). Cf. *Punke v. Village of Elliott,* 364 Ill. 604, 5 N.E.(2d) 389 (1936), and *Geweke v. Village of Niles,* 368 Ill. 463, 14 N.E.(2d) 482 (1938).

14. Cf. *Hundley and Rees v. Commissioners of Lincoln Park,* 67 Ill. 559 (1873), where a special assessment for a park situated partly in two towns was invalidated because the supervisors and assessors of the two towns met together and made the assessment, since the corporate authorities of each town had no authority to participate in assessment of property in the other town. *Drain Commissioner v. Baxter,* 57 Mich. 127, 23 N.W. 711 (1885), where the court observed, "No instance has ever been known in our history where a town representative has been allowed to exercise any governmental power in another town." 57 Mich., p. 129. *Farlin v. Hill,* 27 Mont. 27, 69 Pac. 237 (1902); *City of Lawrenceville v. Hennessey,* 244 Ill. 264, 91 N.E. 670 (1910); *Edmonds Land Co. v. Edmonds,* 66 Wash. 201, 119 Pac. 192 (1911); *City of Ashland v. Meade,* 189 Ky. 100, 224 S.W. 642 (1920); *Pool v. Town of Townsend,* 58 Mont. 297, 191 Pac. 385 (1920); *Harmon v. Village of Arthur,* 309 Ill. 95, 140 N.E. 53 (1923); *Deter v. City of Delta,* 73 Colo. 589, 217 Pac. 67 (1923); *City of Maud v. Tulsa Rig, Reel and Manufacturing Co.,* 165 Okla. 181, 25 Pac.(2d) 792 (1933); *Klich v. Miami Land and Development Co.,* 139 Fla. 794, 191 So. 41 (1939); *Van Voorhis v. Monroe County,* 288 N.Y. 138, 42 N.E.(2d) 6 (1942); *Jordan v. City of Olive Hill,* 290 Ky. 823, 162 S.W.(2d) 229 (1942), where the court ruled that when a portion of defendant's property abutting upon a street was inside and a portion outside the city, the property was not chargeable with the cost of paving that portion of the street bordering property outside the city limits. *Darnall v. Park Commissioner,* 124 W.Va. 787, 22 S.E.(2d) 542 (1942), which raised the question of the power of the board of park commissioners of Huntington to assess property located outside the park district to raise funds for improving a boulevard located wholly within the district. The court noted that the act creating the Board recognized its power to go beyond the city and acquire lands for parks, playgrounds, athletic fields, and boulevards. "So we are brought to the real question at issue, and that is, whether the power conferred by the legislature upon the park board to acquire property outside of the limits of the park district and the City of Huntington for use as a part of the park system lying within the City of Huntington, includes also the power to assess property outside of the park district, for improvement purposes to the same extent that it is empowered to do so within the district." Since the court found no such specific grant of power in the statute, it replied in the negative and observed, "The power to acquire, own and develop property outside of the city is something quite different from the power of exercising a taxing power conferred upon a municipality or park board within the city itself. . . . The voters of that city or district have a voice in the selection of officials who will exercise the powers conferred upon the board. In that way they have some power to circumscribe the actions of the board they have created. No such power exists as to those who own property lying outside of the city . . ." 124 W. Va., p. 794. A request by owners of property that it be included for purposes of assessment in a sewer district created by local ordinance is not sufficient to authorize such action by municipal authorities. *City of Des Plaines v. Boeckenhauer,* 383 Ill. 475, 50 N.E.(2d) 483 (1943).

17. *Hagood v. Hutton,* 33 Mo. 244 (1862); *City of Indianapolis v. Bryan,* 188 Ind. 586, 125 N.E. 38 (1919); *Gadd v. McGuire,* 69 Cal. App. 347, 23 Pac. 754 (1924); *Doane v. Pere Marquette Ry. Co.,* 247 Mich. 542, 226 N.W. 245 (1929). Illustrations of such grants may be found in: *Ida. Code* (1947), sec. 50-135, where cities of the first class are em-

powered to abate nuisances within 3 miles of their boundaries at the expense of the parties maintaining the nuisances and "to levy a special assessment on the land or premises whereon the nuisance is situated . . ."*Minn. Stats.* (1945), sec. 456-29, authorizing first-class cities that maintain and operate water plants to extend the mains into any contiguous city, town, or village and "to assess the cost of extending these mains against the property abutting on the street in which the mains are laid." Cf. *Ore. Rev. Stats.* (1953), secs 224.020, 224.040, 224.090, and 224.110.

21. Cf. *Univ. of Pa. Law Rev.* 77:296 (Dec. 1928) and *N. C. Law Rev.* 19:154. Freedom from taxation has been extended to airports. *City of Toledo v. Jenkins,* 143 Ohio St. 141, 54 N.E.(2d) 656 (1944); *People ex rel. City of Buffalo v. Mazurowski,* 47 N.Y.S.(2d) 657 (1943), disagreeing with *City of Watertown v. Gilmore,* 166 Misc. 323, 2 N.Y.S.(2d) 388 (1938). The exemption does not extend to airports located in other states. *McLaughlin v. City of Chattanooga,* 180 Tenn. 638, 177 S.W.(2d) 823 (1944). Cf. *Town of West Hartford v. the Board of Water Commissioners of the City of Hartford,* 44 Conn. 360 (1877)); *City of Rochester v. the Town of Rush,* 80 N.Y. 302 (1880); *People ex rel. the Mayor, etc. of New York v. the Board of Assessors of the City of Brooklyn, et al.,* 111 N.Y. 505, 19 N.E. 90 (1888); *City of Somerville v. City of Waltham,* 170 Miss. 160, 48 N.E. 1092 (1898); *Perth Amboy v. Barker,* 74 N.J.L. 127, 65 Atl. 201 (1906); *Commonwealth v. Richmond,* 116 Va. 69, 81 S.E. 69 (1914); *Sanitary District of Chicago v. Gibbons,* 293 Ill. 519 (1920); *Town of North Haven v. Borough of Wallingford,* 95 Conn. 544, 111 Atl. 904 (1920); *City of Norfolk v. Board of Supervisors of Nansemond County,* 168 Va. 606, 192 S.E. 588 (1937); *Yoes v. City of Ft. Smith,* 207 Ark. 694, 182 S.W.(2d) 683 (1944); *City of Newcastle v. Lawrence County,* 353 Pa. St. 175, 44 Atl.(2d) 589 (1945). According to the corporation counsel of Rochester, N. Y., that city is liable for taxes on its extraterritorial property "exactly the same as any other property owner." Letter, April 9, 1952.

22. Cf. *Borgman v. City of Ft. Wayne,* 215 Ind. 201, 18 N.E.(2d) 762 (1939); *Newport v. Unity,* 68 N.H. 587, 44 Atl. 704 (1896); *City of Rochester v. Union Free School District No. 4,* 280 N.Y. 531, 19 N.E.(2d) 928 (1939); *In re City of New York,* 183 N.Y. 245, 76 N.E. 18 (1905); *State ex rel. Taggert v. Holcomb,* 85 Kan. 178, 116 Pac. 251 (1911), writ of error denied, 226 U.S. 599, 33 S. Ct. 112 (1912). In *City of Providence v. Hall,* 49 R. I. 230, 142 Atl. 156 (1928), the court observed: "Immunity from taxation must be determined by construction of the Constitution or statutes of the particular state where the question arises. In some states it is held that such property . . . is presumptively immune because owned by a governmental division, and that it is taxable only if expressly so provided by statute. *Whiting v. Lubec* (1922), 121 Me. 121, 115 A. 896. . . . Nowhere is property owned by the city and employed for a governmental use held to be taxable." 142 Atl., p. 158. The court then ruled that through reference to the state statutes over the years, it had been "the settled policy of the state" not to exempt extraterritorial property used to supply water, nor could such exemption be implied.

23. The Vermont Supreme Court has held the part of a municipally owned electric plan used to furnish electricity to other villages and their inhabitants not to be devoted to a public use and therefore subject to taxation. *Village of Swanton v. Highgate,* 81 Vt. 152, 69 Atl. 667 (1908). The same rule is found in *Mayor and Aldermen of City of Knoxville v. Park City,* 130 Tenn. 626, 72 S.W. 286 (1914). The rule in Kentucky is to the opposite effect on statutory authority. *Commonwealth v. Paducah,* 126 Ky. 77, 102 S.W. 882 (1907). Kentucky courts have experienced some difficulty in enforcing tax liens in such cases. *Louisville Water Co. v. Commonwealth,* 89 Ky. 244, 12 S.W. 303 (1889); *Covington v. Highland District,* 24 Ky. Law 453, 68 S.W. 669 (1902). Ohio courts have ruled that gas wells, pipes, and lines are exempt from taxation because they are used for a public purpose. *Toledo v. Hosler,* 54 Ohio St. 418, 43 N.E. 855 (1896).

25. Illustrations of such statutory grants are found in: *Code of Ala.* (1940), Title 37, sec. 498 and sec. 733 of the 1947 *Cum. Supp.; Burns Ind. Stats.* (1933), 1949 Replacement, secs. 36-2506, 36-2512, and 1950 Replacement, sec. 48-1407(40), 48-1407(41), and 48-1407(47); *Rev. Stats. of Mo.* (1949), sec. 30.090; *Rev. Stats. of Neb.* (1943), sec. 19-201; *Nev. Comp. Laws* (1929), sec. 1128; *Remington's Rev. Stats. of Wash. Anno.* (1932), secs. 9127 and 9175; *W. Va. Code* (1949), sec. 494; *Wis. Stats.* (1951), sec. 66.052(1); and *Wyo. Comp. Stats.* (1945), sec. 29-430. Illustrations of judicial sanction of such authority are found in: *Inhabitants of the Town of Fredericktown v. Fox,* 84 Mo. 59 (1884); *Emerich v. City of Indianapolis,* 118 Ind. 279, 20 N.E. 795 (1888); *Lutz v. City of Crawfordsville,* 109 Ind. 486, 10 N.E. 411 (1886); *Flack v. Fry,* 32 W. Va. 364, 9 S.E. 240 (1889); *People v. Raims,* 20 Colo. 489, 39 Pac. 341 (1895); *Jordan v. City of Evansville,* 163 Ind. 512, 72 N.E. 544 (1904); *Walden v. City of Montgomery,* 214 Ala. 409, 108 So. 231 (1926); *City of Andalusia v. Fletcher,* 240 Ala. 110, 198 So. 64 (1940).

27. Cf. *Knauffe v. Delaney,* 25 W.Va. 410 (1885); *Robinson v. City of Norfolk,* 108 Va. 14, 60 S.E. 762 (1908); *Parker v. City of Silverton,* 109 Ore. 298, 220 Pac. 139 (1923); *Charlottesville v. Marks' Shows,* 179 Va. 321, 18 S.E.(2d) 890 (1942); *City of Montgomery v. Montgomery City Lines,* 254 Ala. 652, 49 So.(2d) 199 (1949); *Ex parte Smith,* 100 Fla. 1, 128 So. 864 (1930), where the court ruled that difference in place of production alone afforded no ground for discrimination in *revenue* measures, but added: "The courts frequently have approved classifications resting upon the difference in fact between the business of an itinerant merchant, and the business of a merchant operating at a fixed location, both being engaged in the same character of business. Such classification is not based upon residence, but upon the essentially different methods employed by the two classes in carrying on the same general character of business." 128 So., p. 866. Such a classification may be upheld to prevent frauds and dangers to public health or morals, or as a basis for classification for tax purposes. *Ex parte Baker,* 78 S.W.(2d) 610 (Tex. Ct. of Crim. App., 1935). Cf. *City of Prichard v. Richardson,* 245 Ala. 365, 17 So.(2d) 451 (1944).

29. *Borough of Sayre v. Phillips,* 148 Pa. 482, 24 Atl. 76 (1892); *City of Carrollton v. Bazzette,* 159 Ill. 284, 42 N.E. 837 (1896); *People v. Jarvis,* 46 N.Y.S. 596, 19 App. Div. 466 (1897); *People v. Hervieux,* 134 Misc. 711, 236 N.Y.S. 129 (1929); *Hair v. City of Humboldt,* 133 Kan. 67, 299 Pac. 268 (1931); *Hamilton v. Collins,* 114 Fla. 276, 154 So. 201 (1934); *Southern Lines Linen Supply Co. v. City of Corbin,* 272 Ky. 787, 115 S.W.(2d) 321 (1938); *O'Connell v. Kontojohn,* 131 Fla. 783, 179 So. 602 (1938); *Colonial Baking Co. of Grand Rapids v. City of Fremont,* 296 Mich. 185, 295 N.W. 608 (1941); *Ferran v. City of Palo Alto,* 50 Cal. App.(2d) 374, 122 Pac.(2d) 965 (1942); *Linen Service Corp. of Texas v. City of Abilene,* 169 S.W.(2d) 497 (Tex. Civ. App., 1943). Cf. *Jones Fine Bread Co. v. City of Groesbeck,* 136 Tex. 123, 148 S.W.(2d) 193 (1941).

30. This rule was firmly established in *Real Silk Hosiery Mills v. City of Portland,* 268 U.S. 325 (1925); *City of Roanoke v. Stewart Grocery Co.,* 235 Ala. 23, 176 So. 820 (1937); *Nippert v. City of Richmond,* 327 U.S. 416 (1946); *Robbins v. Shelby County Taxing District,* 120 U.S. 489 (1887); *City of Chicago v. Willett Co.,* 406 Ill. 286, 94 N.E.(2d) 195 (1950). Cf. *Postal Tel. Cable Co. v. Charleston,* 153 U.S. 692, 14 S.Ct. 1094 (1894); *Western Union Tel. Co. v. City of Fremont,* 39 Neb. 692, 58 N.W. 415 (1894).

31. *Gunn v. Mayor, etc. of Macon,* 84 Ga. 365, 10 S.E. 972 (1889); *East St. Louis v. Bux,* 43 Ill. App. 276 (1892); *City of Cairo v. Adams Express Co.,* 54 Ill. App. 276 (1894); *Duncan v. City of Jonesboro,* 175 Ark. 650, 1 S.W.(2d) 58 (1928); *City of Flora v. Borders,* 342 Ill. 208, 173 N.E. 784 (1930); *Commonwealth v. Day,* 287 Ky. 176, 152 S.W.(2d) 597 (1941).

32. Cf. *Campbell Baking Co. v. City of Harrisonville,* 50 F.(2d) 670 (1931), upholding an ordinance that imposed a $200 license fee upon nonresidents delivering merchandise in the city. According to the court, actual sale of bakery products did not take place until the goods were delivered, since delivery and passage of title were essential elements of the sale. Cf. *Jewel Tea Co. v. Troy,* 80 F.(2d) 366 (1935); *American Baking Co. v. Sumter,* 173 S.C. 94, 174 S.E. 919 (1934), appeal dismissed, 293 U.S. 523, 55 S. Ct. 120 (1934); *Centennial Bakery Co. v. Escondido,* 21 Cal. App.(2d) 388, 69 Pac. (2d) 181 (1937); *Sivertsen v. Menlo Park,* 17 Cal.(2d) 197 109 Pac.(2d) 938 (1941); *Sanford v. City Hansen v. Town of Antioch,* 18 Cal.(2d) 110, 114 Pac.(2d) 329 (1941); *of Clanton,* 31 Ala. App. 253, 150 So.(2d) 303 (1943); *City of Carterville v. Blystone,* 160 Mo. App. 191, 14 S.W. 701 (1911); *Jewel Tea Co. v. Town of Bel Air,* 122 Md. 536, 192 Atl. 417 (1937).

37. *Ideal Tea Co. v. City of Salem,* 77 Ore. 182, 150 Pac. 852 (1915). Cf. *Bluebell Potato Chip Co. v. Newberg,* 156 Ore. 75, 66 Pac.(2d) 287 (1937); *Grantham, et al. v. City of Chickasha,* 156 Okla. 56, 9 Pac.(2d) 747 (1932); *Whiddon v. Vickers,* 217 Fla. 222, 172 So. 923 (1937); *State ex rel. Greenwood v. Nolan,* 108 Minn. 170, 123 N.W. 408 (1909).

38. Exercise of this authority is upheld in the following cases: *City Council of Charleston v. Pepper,* 1 Rich. 364 (S.C., 1845); *City of Sacramento v. Calif. Stage Co.,* 12 Cal. 134 (1859); *City of Los Angeles v. S. P. Railroad Co.,* 61 Cal. 59 (1882); *Tomlinson v. City of Indianapolis,* 144 Ind. 142, 43 N.E. (1895); *Ottumwa v. Zekind,* 95 Ia. 622, 64 N.W. 646 (1895); *Southern Ruralist v. Carrollton,* 169 Ga. 112, 149 S.E. 882 (1929); *Fox v. Mayor and Aldermen of Morristown,* 180 Tenn. 316, 174 S.W.(2d) 929 (1930); *Crosswell and Co. v. Bishopville,* 172 S.C. 26, 172 S.E. 698 (1933); *City of Troy v. Holton,* 287 Ill. App. 278, 4 N.E.(2d) 881 (1936); *American Baking Co. v. City of Wilmington,* 370 Ill. 400, 19 N.E.(2d) 172 (1938); *Larson v. City of Rockford,* 371 Ill. 441, 21 N.E.(2d) 396 (1939); *State v. Gamelin,* 111 Vt. 245, 13 Atl.(2d) 204 (1940); *Rossman v. City of Moultrie,* 189 Ga. 681, 7 S.E.(2d) 270 (1940); *Jellico Grocery Co. v. City of Whitesburg,* 286 Ky. 470, 151 S.W.(2d) 35 (1941); *City of St. Louis v. Temple,* 149 S.W.(2d) 888 (Mo. App., 1941); *General Baking Co. v. City of Bellville,* 384 Ill. 459, 51 N.E.(2d) 546 (1943); *Ostroff v. Board of Commissioners of City of Camden,* 7 N. J. Super. 245, 72 Atl.(2d) 880 (1950); *Burrows v. Town of Meigs,* 73 S.E.(2d) 169 (Ga., 1952). Cf. *McRoberts v. City of Sullivan,* 67 Ill. App. 435 (1896).

39. Letters or memoranda from the following: city attorney of Glendale, California, August 5, 1952; deputy city attorney of Pasadena, California, May 7, 1952; city attorney of Berkeley, California, April 25, 1952; city solicitor of Allentown, Pennsylvania, April 15, 1952; deputy city attorney of Los Angeles, California, April 14, 1952; corporation counsel of Rochester, N. Y., April 9, 1952; city attorney of Lubbock, Texas, April 4, 1952; city attorney of New Orleans, Louisiana, April 1, 1952; city attorney of Charlotte, N.C., April 2, 1952; city attorney of Duluth, Minnesota, April 2, 1952; city solicitor of Waterloo, Iowa, March 31, 1952; corporation counsel of Tacoma, Washington, March 31, 1952; corporation counsel of Seattle, Washington, April 1, 1952; director of Bureau of Municipal Research, Syracuse, N. Y., April 15, 1952; assistant city attorney, Corpus Christi, Texas, October 31, 1952.

IX

1. There is some disagreement as to the exact meaning of the term "subdivision." It refers broadly to any change or rearrangement in the division lines of a parcel of property or public thoroughfare. According to H. W. Lautner, this definition is commonly modified by qualifications relative to one or more of four factors: (1) the number

of parcels into which a given area is to be divided and the period of time in which this division is to occur; (2) the area of each of the parcels so produced; (3) the purpose of the division, such as transfer of ownership, building, or agricultural use; (4) the legal method of describing the division, as by recorded plat.

2. Statutory references: *Code of Ala.* (1940), Title 37, sec. 797. According to Mr. York Willbern of the Political Science Department of the University of Alabama, this authority has been "very little used." Letter, March 28, 1952. *Ariz. Code Anno.* (1939), secs. 16-1708, 16-1709, and 16-1819; *Ark. Stats.* (1947), Title 19, secs. 2816 and 2817; *Deering's Calif. Gen. Laws* (1944), Act 5211c, secs. 35 and 75; *Colo. Stats. Anno.* (1935), 1949 Replacement, Ch. 163, secs. 165, 171, and 172; *Ill. Rev. Stats.* (1951), Ch. 24, sec. 53-2; *Burns Ind. Stats.,* 1951 Replacement, Title 53, secs. 53-701—53-744; *Ia. Code Anno.* (1949), sec. 373.12; *Gen. Stats. of Kans.* (1949), secs. 12-704, 12-705, 13-111, and 13-1413; *Ky. Rev. Stats.* (1948), secs. 100.097, 100.360, and 100.720; *Anno. Code of Md.* (1951), Art. 66B, secs. 24, 25, and 28; *Comp. Laws of Mich.* (1948), secs. 125.36 and 125.43; *Minn. Stats.* (1945), secs. 462.26, 462.27, and 471.29; *Rev. Stats. of Neb.* (1943), secs. 14-116 and 18-306; *Nev. Comp. Laws* (1929), secs. 1267 and 1272; *Rev. Stats. of N. J.* (1937), secs. 40:55-6 and 40:55-12; *N. M. Stats.* (1941), sec. 14-223; *N. D. Rev. Code* (1943), sec. 40-4818; *Page's Ohio Gen. Code Anno.* (1937), secs. 4366-2, 4336, and 3586-1; *Okla. Stats.* (1941), Title 11, secs. 1423 and 1424; *Ore. Rev. Stats.* (1953), secs. 227.090, 227.110, and 92.030; *Code of Laws of S. C.* (1942), secs. 7548-1 and 7549; *S. D. Code* (1939), sec. 45.2806; *Anno. Code of Tenn.* (1934), secs. 3493-1—3493-9; *Vernon's Tex. Stats.* (1948), Art. 974a, secs. 1 and 3. According to *Trawalter v. Schaefer,* 142 Tex. 521, 179 S.W.(2d) 765 (1944), the extraterritorial provisions of this article were by implication repealed by Art. 6626, requiring approval of maps and plats by the Court of County Commissioners. Following this interpretation of the law, the Texas legislature amended Art. 6626 so as to require municipal approval of subdivisions within 5 miles of cities as originally provided in Art. 974a. HB 661, *Acts 52nd Legislature* (1951), Ch. 403, p. 745. *Code of Va.* (1950), secs. 15-799 and 15-810; *W. Va. Code* (1949), secs. 523, 534, and 3962; *Wis. Stats.* (1951), secs. 236.06(1) and 62.23(2). A detailed analysis of statutory provisions in the states dealing with urban, county, regional, and state planning is found in *Comparative Digest of the Principal Provisions of State Planning Laws* (Federal Housing and Home Finance Agency, January 1, 1951).

3. Cf. *Prudential Co-Operative Realty Co. v. City of Youngstown,* 118 Ohio St. 204, 160 N.E. 695 (1928); *Ridgefield Land Co. v. City of Detroit,* 241 Mich. 468, 217 N.W. 58 (1928); *Seligman v. Belknap,* 288 Ky. 133, 155 S.W.(2d) 735 (1941); *Mills v. City of Baton Rouge,* 210 La. 830, 28 So.(2d) 447 (1946). In *Stockton v. Bd. of Commissioners of Pittsburgh County,* 184 Okla. 150, 85 Pac.(2d) 403 (1938), the court faced the question of whether the extraterritorial land was platted for "town or city purposes." Said the court, "In the consideration of this question we must recognize at the outset that the extra-mural location of the land is not a decisive factor since lands beyond the corporate limits of a city or town may be platted for municipal purposes in contemplation of future growth." 85 Pac. (2d), p. 405. Additional insight into the attitude of some courts in regard to the role of local planning and zoning agencies may be gleaned from this statement: "In the exercise of the powers conferred by the statute and the ordinances, the zoning board is not the agent of the local governing body. It is a statutory creation for the effectuation of the essential legislative policy." *Lynch v. Borough of Hillsdale et al.,* 136 N.J.L. 129, 54 Atl.(2d) 723 (1947), p. 725. This statement should not be taken to mean that municipal authorities are often empowered to *zone* beyond their boundaries, because they are not. Such authority seems to exist only in relation to extraterritorial airports.

4. Maryland is the only state that limits cities to 1 mile. A limitation of one and

one-half miles is found in Illinois and Wisconsin. In Minnesota, cities (other than those of the first class) are limited to 2 miles. According to a memorandum from the League of Minnesota Municipalities, April 18, 1952, this authorization has been little used. The 3-mile limitation is found in Arizona, Colorado, Kansas, Kentucky (second-class cities), Minnesota (first-class cities), Nebraska, Nevada, New Mexico (cities of 25,000 or more), and South Carolina. Municipalities in North Dakota and Oregon are limited to 6 miles. The Oregon provision has been upheld against the contention of unconstitutionality in *Commercial Investment Co. v. Brown,* Circuit Court, 4th Judicial District, May 28, 1948. Cities and towns in Iowa and South Dakota are authorized to control the platting of "adjacent" and "adjoining" land, while those of West Virginia may prepare plans for the development of territory outside their limits "so far as is reasonably necessary" for protecting the community from inadequate streets, sewers, and "inadequately planned and zoned territory."

5. Alabama authorizes a fine of $100 for the transfer of lots in unapproved subdivisions, and cities may enjoin such transfer. *Code of Ala.* (1940), Title 37, sec. 800. The Arizona provision is typical: "No county recorder shall receive for filing any plat subdividing any lands or lots situated within or adjacent to an incorporated city or town or suburb thereof, or any plat amending, correcting or changing any such plat, unless said plat has indorsed thereon a certificate by the municipal clerk to the effect that such plot has been approved by the legislative body of such city or town." *Ariz. Code Anno.* (1939), sec. 17-1819. Cf. note in *Harvard Law Review* 65:1226 (May 1952).

7. Among those included in this number were Sioux City and Waterloo, Iowa; Augusta, Georgia; Greensboro and Winston-Salem, North Carolina; Lubbock and Corpus Christi, Texas; Omaha, Nebraska; and Peoria, Illinois. According to the assistant corporation counsel of Peoria, "Where a City Plan Commission has been established, and an official Plan has been adopted, the Plan Commission must approve any subdivision within contiguous territory, which is not more than one and one-half miles beyond the corporate limits." It seems that the requirement of this approval is not considered to constitute "control" of these subdivisions. According to the municipal consultant on the law of municipal corporations of the Illinois Municipal League, "Municipalities cannot control subdivisions outside the corporate limits, but a subdivision adjacent to a city or village which has adopted an official plan must harmonize with the general layout of that plan." Letter, April 2, 1952. Among those cities denying the exercise of such authority were Milwaukee, Wisconsin; Lakewood, Ohio; Rochester, New York; Asheville, North Carolina; Macon, Georgia; and Tacoma and Seattle, Washington.

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