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THE MINNESOTA RESIDENCE DISTRICT ACT OF 1915.

THE Minnesota Residence District Act of 1915 is an attempt to achieve one step of progress in the general program which the country has had before it for a number of years for the improvement of city life. There has been a continuous struggle in the residence districts of the larger cities to keep them free from commercial and industrial activities as well as from structures which are positively offensive to the sight and hostile to the public safety. Among the more conspicuous of the contests that have been carried on, are those for the suppression of bill-boards, the beautification of grounds adjoining the public ways, and the establishment of residence districts from which business occupations should be excluded.

Prior even to any of these in the state of Minnesota were city ordinances and state laws excluding the liquor business from large portions of the cities of Minneapolis and St. Paul. An ordinance was first resorted to in Minneapolis which confined the retail liquor business to an area in the business sections embracing not more than four or five per cent of the total area of the city. It was sustained by the supreme court, *In re Wilson.*[1] This ordinance was sustained as an act of the police power and in accordance with the universal practice in liquor legislation, made no provision for the payment of damages to any who might be injured.

The war against bill-boards and other forms of out-of-door advertising has been country-wide and has relied upon the police power alone as its weapon. It has succeeded to the extent that restrictions and prohibitions embodied in legislation were designed for the physical and moral safety of the community. It has failed to the extent that its purposes were aesthetic only. Among the very late cases are the decisions in Wisconsin and Rhode Island and in the federal Supreme Court. They cite all or nearly all that precede.[2]

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1. (1884) 32 Minn. 145, 19 N. W. 723.

2. Cream City Bill Posting Co. v. Milwaukee, (1914) 158 Wis. 86, 147 N. W. 25; Horton v. Old Colony Bill Posting Co., (1914) 36 R. I. 507, 90 Atl. 822; Thomas Cusack Co. v. Chicago, (1917) 37 S. C. R. 190.

The discussions in the bill-board cases have frequently pointed out the distinctions between police power and the power of eminent domain, and have often declared that aesthetic considerations alone are sufficient for the latter but not sufficient for the former.

There are but few cases in which aesthetic considerations alone have been the basis of attempts to interfere with private property rights, but there are two cases in which it is distinctly held that such purposes are sufficient to sustain the exercise of eminent domain. One is the famous case of *Attorney General v. Williams,*[3] in which condemnation proceedings were sustained for the purpose of limiting the height of buildings about the historic Copley Square in Boston. One object was the preservation of architectural symmetry which was purely aesthetic, but in that case there was the additional consideration of keeping an open space for the admission of light and air to the public library and other public and semi-public buildings. The statute provided for compensation but the court declared that the statute might perhaps have been sustained without such provision because it involved considerations other than aesthetic. In the case of *In re New York,*[4] the purpose was to control the planting and beautification of a strip of land along a street without taking the right of travel. It was a condemnation case and the appellate division laid down squarely the doctrine that aesthetic considerations were sufficient to justify the statute. The court of appeals affirmed the judgment upon the opinion of the lower court.

Another method of accomplishing city beautification which a few years ago had many stout advocates was called excess condemnation. It consisted in taking more land than was needed for an improvement and re-selling the excess with restrictions. This is said to be common practice in European countries whose legislatures are not bothered by written constitutions. A somewhat careful search of judicial decisions has failed to discover any case in the United States sustaining this procedure. In two cases decided within the same week by courts of the highest authority, excess condemnation was condemned.[5]

3. (1899) 174 Mass. 476, 55 N. E. 77.
4. (1901) 167 N. Y. 624, 60 N. E. 1116.
5. Salsbury Land & Imp. Co. v. Commonwealth, (1913) 215 Mass. 371, 102 N. E. 619, 46 L. R. A. (N.S.) 1196; Pennsylvania Mut. Life Ins. Co. v. Philadelphia, (1913) 242 Pa. St. 47, 88 Atl. 904, 49 L. R. A. (N.S.) 1062.

The Pennsylvania decision is based in part upon the ground that the purposes of excess condemnation so far as they are public, can be otherwise accomplished.

The Minnesota Residence District Act of 1913, Chapter 98, undertakes to empower cities of the first class without making compensation, to

"designate residence districts in such cities wherein only buildings for residences may be erected and maintained including duplex houses, and double houses and prohibiting the erection and maintenance of hotels, stores, factories, warehouses, dry cleaning plants, public garages or stables, tenements and apartment houses."

There is probably no judicial precedent for this act and it seems to be inconsistent with the rules adopted by the highest courts of other states in bill-board cases. The doctrine on which it was based was squarely repudiated by the supreme court of Illinois.[6]

An ordinance of the city of Chicago was held to be void which forbade the construction of a retail store on any street in which all the buildings are used exclusively for residence purposes without the written consent of a majority of property owners on both sides of the street in the block. This case was decided after the Minnesota act of 1913 was passed and before it reached a test in the courts. In July, 1916, however, in *State v. Houghton*[7] the Minnesota act was held to be void with respect to a retail store building. The opinion was by a divided court two of the five judges dissenting. The majority and minority opinions respectively state with full force the arguments and considerations for the opposing views. The question is whether a retail business, for instance a grocery business, carried on in a district otherwise occupied chiefly or wholly by residences is so offensive to the neighborhood that it ought to be excluded by law and without provision for assessment in payment of damages. The minority in this case say yes and the majority say no.

A mercantile building usually stands on the street line and is comparatively plain in architecture. The grounds are not ornamented with trees and shrubbery. It brings a more or less con-

6. People v. City of Chicago, (1913) 261 Ill. 16, 103 N. E. 609.

7. (1916) 158 N. W. 1017. And in State ex rel. Roerig v. Minneapolis (Minn., May 11, 1917), the same rule was applied to a four-family flat building.

stant stream of customers and is likely to make a loading platform of the sidewalk. There are few if any who would, other things being equal, select for a residence a location adjoining a store building and there are many who are willing to pay higher prices for lots and higher rentals for houses in neighborhoods that are free from such buildings. One view is that the residence property should be protected by arbitrary law from the lessening of value caused by the store buildings; the other view is that there is nothing immoral or unsanitary about the mercantile building as such and that property owners who find it advantageous to use their lots for such purposes, should not be prevented without compensation in the interest of adjacent residences.

Anticipating that the act of 1913 might not meet with judicial approval, the legislature of 1915 passed Chapter 128 of the laws of that year applying the rule of eminent domain to the establishment of residence districts. The purpose of the act is stated in the first section, to-wit:

"Any city of the first class may, through its council, upon petition of fifty (50) per cent of the owners of the real estate in the district sought to be affected, designate and establish by proceedings hereunder restricted residence districts within its limits wherein no building or other structure shall thereafter be erected, altered or repaired for any of the following purposes, to-wit: hotels, restaurants, eating houses, mercantile business, stores, factories, warehouses, printing establishments, tailor shops, coal yards, ice houses, blacksmith shops, repair shops, paint shops, bakeries, dyeing, cleaning and laundering establishments, billboards and other advertising devices, public garages, public stables, apartment houses, tenement houses, flat buildings, any other building or structure for purposes similar to the foregoing. Public garages and public stables shall include those, and only those operated for gain.

"Nothing herein contained shall be construed to exclude double residences or duplex houses so-called, schools, churches, or signs advertising for rent or sale the property only on which they are placed.

"No building or structure erected after the creation of such district shall be used for any purpose for which its erection shall be prohibited hereunder.

"The term 'council' in this act shall mean the chief governing body of the city by whatever name called."

The remainder of the act confers eminent domain powers and defines procedure. This bill was prepared in great haste and

with a minimum of consultation with others. It is crude and needs amendments in many particulars. The city of St. Paul has conducted a number of important proceedings under the act but none of them has yet resulted in any judicial determination of its validity.

A clear statement of the principles upon which this act of 1915 is based although written apparently without any thought of restricted residence districts, is found in Nichols on Eminent Domain:[8]

"Questions differing but slightly from those already discussed arise in deciding whether a use is public which satisfies no material needs but gratifies the artistic sense of the public or supplies means for public pleasure and recreation. It was felt in former times that land could be taken only to be used by the public for necessary and useful purposes and not for public pleasure and aesthetic gratification. Inroads on this doctrine have been made on all sides, partly by general acquiescence and partly by judicial decisions, until all that is left of it is the possibility that in a close case lack of material advantage to the public may be held to be decisive against the public nature of a taking.

"From the earliest recorded times public money has been spent to make public buildings attractive, and under American constitutions it has long been considered proper for the nation, state or city to erect memorial halls, monuments, and statues and to plan public buildings upon a more expensive scale than if designed for utility alone. The public mind has thus been educated to feel that aesthetic and artistic gratification are purposes public enough to justify the expenditure of public money, and to authorize the exercise of eminent domain in behalf of similar purposes was but a short step beyond."

The cases cited by Mr. Nichols include *Attorney General v. Williams,*[9] and *In re New York.*[10] A general discussion of the same doctrines is found also in *Bunyan v. Coms. of Palisades Interstate Park.*[11]

It is open to question whether there is not unwisdom in some cases in the exercise of the police power to its fullest extent, no matter how desirable the object. Aesthetic ideals are in proper cases well worth paying for. The sense of oppression which often is caused from enforcing ideals by arbitrary power may go far to offset the good that is accomplished. There is no question but that in some instances the exclusion of business from a

8. Nichols, Eminent Domain, second ed., Sec. 55.
9. (1899) 174 Mass. 476, 55 N. E. 77.
10. (1901) 167 N. Y. 624, 60 N. E. 1116.
11. (1915) 167 N. Y. App. Div. 457, 153 N. Y. Supp. 622.

neighborhood causes hardship to individuals. A controlling motive on the part of those who advocate restrictions is often the preservation of their own property values and frankly so. In such cases, if there is no adjustment of damages and benefits someone loses. It may be a very much sounder policy to require those who are benefited to compensate those who lose.

CHELSEA J. ROCKWOOD. *

MINNEAPOLIS.

*Judge, District Court of Hennepin County.