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J.Murdoch Dawley

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SPECIAL LEGISLATION IN MINNESOTA

SPECIAL LEGISLATION AND MUNICIPAL HOME RULE IN MINNESOTA: RECENT DEVELOPMENTS

By J. Murdoch Dawley*

In 1892 the Minnesota constitution was amended to include the present provisions relating to special legislation. The so-called "home rule" amendment was adopted in 1896 and slightly modified in 1898. Since that time a considerable body of law on these two subjects has arisen as a result of numerous decisions made by the Minnesota court in cases involving these amendments. It is the purpose of this paper to determine what the developments in this body of law have been during the past nine years.¹

I. SPECIAL LEGISLATION

The laws which have been construed by the Minnesota supreme court in this period have been so varied that it is difficult to determine how they should be grouped for discussion. A grouping by subject matter of the statutes themselves, that is by the results which were desired, is not satisfactory, for it would mean practically as many groups as there are statutes. A grouping by the unit of government involved, such as city, village, county, school district, and the like is not much better because the laws in any one of these groups do not bear much relation to the others in that group, either in subject matter or in the principles of law laid down by the court. However, as every one of the statutes to be discussed has been attacked on the basis of the classification involved, the most satisfactory grouping would seem to be by basis of the classification set forth in the statutes, even though these groups may occasionally overlap.

Area.—A basis of classification which has been frequently employed, either alone or in combination with other factors, is that of

*Instructor in Political Science, University of Minnesota. The author wishes to express his appreciation for the helpful suggestions and criticisms of Professor William Anderson, Chairman of the Political Science Department at the University of Minnesota, under whose supervision this paper was prepared.

¹For the historical background of the amendments, and the developments of the law concerning them before 1923 see Anderson, Special Legislation in Minnesota, (1923) 7 MINNESOTA LAW REVIEW 133, 187, and Anderson, Municipal Home Rule in Minnesota, (1923) 7 MINNESOTA LAW REVIEW 306.
the area of the unit to which the law applies. In the cases relating to area there seems to be visible a trend towards an even more liberal attitude on the part of the court on the subject of classification than was shown before. It might be called a transition from a positive rule to a negative rule. Formerly, the court has always shown in some detail that there has been a satisfactory relationship between the bases of classification and the objects to be accomplished. They have acted as if the burden was upon them and the party upholding the constitutionality of the law to show that the classification was valid and reasonable. Lately, however, there has been a tendency not to go into great detail in such matters, but simply to announce that classification is a legislative duty, that the court will assume that the legislature has made a reasonable and valid classification unless the court can see no reasonable grounds whatsoever for applying different rules to those areas or persons included within the classification than the rules applied to those excluded. This may be a difference only in the statement of their doctrine, but it does seem more liberal than the doctrine formerly enunciated. This trend can be illustrated by an examination of four cases, each one of which deals with a statute concerning classification, in which area was an important element.

A case which has been cited in almost every controversy on special legislation since its decision is that of *State v. Cloudy and Traverse*. Chapter 357, Laws 1921 provided that "in every county of this state in which the assessed valuation of real and personal property, exclusive of moneys and credits, exceeds $250,000,000, and the total territory of each such county exceeds 5,000 square miles" the county auditor was to levy a special school tax, the proceeds to be distributed among districts producing less than a stated per-pupil revenue. The court admitted that the statute was applicable only to Saint Louis County, and said that it was bad if it was arbitrary and only another way of naming that county. But it held that there is a sufficient relation between such a large area plus such a large assessed valuation and the purpose of the statute, the purpose being to give the poorer districts help from the larger ones. The court then went on to point out that the communities involved are sparsely settled and have a relatively small amount of taxable value, while the per-pupil cost of education is high. The large total valuation shows

\[\text{(1924) 159 Minn. 200, 198 N. W. 457.}\]
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that somewhere in the county there is property which could be used to aid these poorer districts.

There follows a statement which appears to be somewhat inconsistent with what has gone before. This statement is, "That pupils in poor districts in other counties, situate like those benefited in Saint Louis, will not be benefited, does not establish an improper classification." And in the same opinion, the court already had held that if the statute was based on differences reasonably justifying such legislation it would be held valid. Justice Stone in a dissenting opinion raises this very question. The justification of the classification was that there were some poor and some opulent school districts. If that is the justification, then how is the total area of the county germane to such a relationship? If the resources are sufficient, what difference does it make whether the county has more or less than 5,000 square miles of territory? He quotes Professor Anderson's article, emphasizing the latter's assertion that the so-called "sweeping clause" of article IV, section 33, forbidding the enactment of special laws "in all cases when a general law can be made applicable," seems to be entirely dead, and suggests that inasmuch as the law under discussion concerns a situation where a general law could be made applicable that "this undisguised special act" is invalid. This argument seems sound enough, and doubtless embodies the ideas of the framers and adopters of the "sweeping clause," but it did not appeal to any of the other judges, and is not again heard of. As a matter of fact, the majority decision was another step towards the doctrine which the court is enunciating today, although the present broad statement of it was not made in this case.

In the next case involving area the court was, however, prepared to outline its most liberal doctrine. A state statute had provided that salaries of officers of ten-town school districts should be according to a certain scale: $200 a year where the district had thirty public schools; $400 where it had thirty to sixty-one schools, etc., with the provision that where such districts contained less than thirty public schools and maintained a high school, the annual compensation of the officers could be fixed at the annual school meeting. The defendant school district fell in the last of these classes, and fixed salaries at $600 annually. The court upheld this, and instead of spending much time in showing just how the classification was germane to the subject and why this particular

3Minn. G. S. 1913, sec. 2719.
type of school district should have special and individual needs it said:

"The question of classification is primarily for the legislature. It is not enough that we do not see all the facts justifying the classification. To declare the statute unconstitutional we must say that the legislature could not reasonably and intelligently make the classification."

Then after suggesting a few ways in which ten-town school districts might differ from those which have a smaller area and a denser population the court says: "There are reasons which we can see for permitting compensation to be voted the school officers, and there may be reasons for doing so which we did not see."
The court has declared that the matter is up to the legislature and that if it sees only a few of the facts justifying the classification, that will be sufficient for there may be others which the legislature had in mind, and as all this is true the court is unable to say that the legislature could not make the classification.4

In 1929, the year following the Gunderson Case, this same doctrine, only stated even more positively, was again laid down.5 Chapter 407, Laws 1925 provided that "every county now or hereafter having within its boundaries any tract or area of 1,000 or more contiguous acres" of the character specified in the law "is hereby declared to be a forest area within this act; and every other county is hereby declared not to be such a forest area nor within this act." It will be noticed at once that this is not a classification according to the area of the county itself, but according to the area of a certain type of land within this area. That being the case, the classification was held to be germane to the subject, for the purpose of the act was to prevent the recurrence of forest fires. Danger of forest fires is naturally greater where the forest areas are larger. The court says:

"The legislature is presumed to have acted with knowledge of all facts necessary to enable it to determine the proper areas to which the act should apply; and its conclusion as expressed in the statute is presumed to be warranted by the facts known to it and is binding on the courts unless they can say that no reasonable ground exists for applying a different rule to counties brought within the act than is applied to those excluded from it. . . . At least we cannot say that there was no reasonable ground in either conditions or public policy for treating one differently from the other."

4Gunderson v. Williams, (1928) 175 Minn. 316, 221 N. W. 231.
This seems to embody the present attitude of the Minnesota court, that it will not declare a law to be unconstitutional on the ground that it is a special law unless it can say that no reasonable ground exists for applying a different rule to the units brought within the statute than that applied to those excluded from it. The result of this doctrine will be simply to render the constitutional limitations more ineffective, and to open the back door wider to the many evasions of the spirit of sections 33 and 34.

This is not to say, however, that the court never holds that there are no such reasonable grounds in existence, for that would not be true. Chapter 234, Laws 1923 is an example in point. It is somewhat long to quote, but it is worthwhile, for it shows to what lengths the legislature will go in its attempts to circumvent the constitutional restriction. The law provides that, “the owners of ninety per cent or more of any contiguous, unplatted tract or tracts of land containing not less than 400 acres, included within the corporate limits of any city of this state containing 10,000 inhabitants or less, and included within the limits of any special or independent school district included within the corporate limits of such city, and used and occupied exclusively for agricultural purposes” may petition for detachment of the land “in all cases where the state of Minnesota owns and occupies a farm of not less than 400 acres in connection with any of its asylums or state institutions, which said farm lies between the platted and settled portion of such city, and the land proposed to be detached.” There was no doubt in anyone’s mind concerning this, and the court declared that there was here no basis for classification whatsoever.\(^6\)

Population.—Population is a basis of classification which in the state constitution is specifically provided for as to cities, the numbers required for each class being enumerated, and the legislature being allowed to pass legislation for any one of the four classes without regard to whether the subject matter is germane to that classification.\(^7\) There is no similar specific provision concerning counties, but such a classification will be satisfactory if it is germane to the subject of the act.\(^8\) This rule has not been departed from in the last few years. One law provided that a county highway engineer should be appointed by the county board

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\(^7\)Minnesota const., art. IV, sec. 36.

\(^8\)State ex rel. Anderson v. Sullivan, (1898) 72 Minn. 126, 75 N. W. 8.
in each county, but that the duties of such county highway engineer, which were specified in the statute, should be performed by the county surveyor in all counties having a population of over 225,000.9 The court distinguished this law from the one which had been declared unconstitutional in *Hjelm v. Patterson*,10 saying that in the present case provision was made for the performance of the duties of highway supervision in every county, large or small, the only difference between counties being in the determination of who should do the supervision, for the highway engineers are appointed and the county surveyors are elected.11 This does not seem to explain the reason for such difference in determination, but at least the court found nothing unreasonable about it.

A second law mentioned above with which the supreme court dealt provided that "any independent school district in any county now or hereafter having a population of not less than 400,000 inhabitants may . . . have power to designate an original site or change an existing site by designation of a new site for a school house, . . ."12 The court decided that the classification here was purely arbitrary, the matter of population not bearing any reasonable or legitimate relation to the purpose which the law was supposed to accomplish.13 This is following the doctrine of *Hjelm v. Patterson*, a case which the court cites.

A third statute which the court held to be based mostly upon population was also declared unconstitutional.14 It is very awkwardly stated, and needs to be read several times before the meaning is clear. The part dealing with classification is as follows:

"In any common school district in counties of this state, now or hereafter having a population of not less than 28,300 nor more than 28,500 inhabitants, including joint school districts, having an area of four sections or more, and assessed valuation of not less than $100,000, and wherein now or hereafter may reside not less than twenty children of school age, wherein there is no school house,"

a petition can be made to the school board, etc.15 The court held in effect that this was but another way of naming Rice County,

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9Minn. Laws 1921, ch. 323.
10(1908) 105 Minn. 256, 117 N. W. 610.
11Malmberg v. Hennepin County, (1923) 156 Minn. 389, 194 N. W. 765.
12Minn. Laws 1925, ch. 43.
13Jensen v. Independent School Dist. 17, (1925) 163 Minn. 412, 204 N. W. 49. See also State ex rel. Town of Sargent v. County of Mower, (Minn. 1932) 241 N. W. 60.
15Minn. Laws 1923, ch. 431.
and that there was no good reason suggested for limiting the application of the act to school districts which happened to lie wholly or partly within a county with this amount of population. This decision is undoubtedly sound, and makes one wonder somewhat why these same principles are not applied to other classifications which seem just as arbitrary and fanciful.\textsuperscript{16}

*Assessed Valuation.*—Assessed valuation is an element which, with others, is often used in designating a group to which certain legislation shall apply. Only one case concerning a statute whose sole basis of classification was assessed valuation has been decided in the period being covered, and in this case the law was not upheld. The state legislature in 1923 passed an act providing that “the county board of any county now or hereafter having property of an assessed valuation of not less than $125,000,000, and not more than $250,000,000” could acquire and equip land for use as a park and bathing beach.\textsuperscript{17} The court here asserted the positive rule that the counties which are put in a particular class should require different legislation from those counties which are omitted.\textsuperscript{18} The amount of assessed valuation is not a criterion of ability of the county to pay for the project because it makes no reference to bonded indebtedness. On the other hand, if the amount of assessed valuation is a good criterion, why are the two counties which would have a greater ability excluded? This feature distinguishes the statute from that involved in the *Traverse and Cloudy Case,*\textsuperscript{18*} for in that statute there was no top limit, but only a minimum. The reason for the absence of a top limit in the case of the latter statute was, of course, because the statute was passed for the benefit of the county having the greatest amount of assessed valuation, so all that had to be done was to make the minimum high enough to exclude all other counties. But Ramsey County, to which the former statute applied, was not so fortunate; so the maximum limit was affixed, and the statute was declared void.

We have thus seen that where each of the three elements of area, population, and assessed valuation has been the main or only element involved in the classification, and has been restricted within narrow limits, the courts have frowned on it and have

\textsuperscript{16}See also Independent School Dist. 36 v. Independent School Dist. 68, (1925) 165 Minn. 384, 206 N. W. 719.

\textsuperscript{17}Minn. Laws 1923, ch. 258.

\textsuperscript{18}Driscoll v. Board of County Commrs., (1925) 161 Minn. 494, 201 N. W. 945.

\textsuperscript{18*}Supra, note 2.
declared the statute involved to be unconstitutional. It would then seem to follow that if two or all three of these factors were united that the statute would be that much more objectionable. But the legislature has produced laws with exactly this type of classification, with narrow top and bottom limits to the area, population, and assessed valuation, which obviously can apply to only one county, or school district, or whatever unit is involved. The practice is certainly not on the decrease, for the laws of the last legislative session show the usual large number. An example selected at random will suffice for purposes of illustration. Chapter 27 of the Laws of 1931 is entitled:

"An Act to fix the salary and mileage of the county commissioners in counties in this state now or hereafter containing thirty-six (36) full or fractional congressional or thirty (30) organized townships, with an area of not less than six hundred sixty-five thousand (665,000) acres, nor more than six hundred seventy thousand (670,000) acres, and having an assessed valuation of not less than fourteen nor more than twenty million dollars, inclusive of monies and credits, and a population of not less than twenty-two thousand (22,000) nor more than thirty thousand (30,000)."

It would be difficult to estimate the number of such laws passed during the last five sessions of the legislature, but it must be fairly large, and yet not one of them has come up before the supreme court. They are mostly laws involving subjects such as the salaries of certain local officers, and possibly no one has been interested enough to devote the time and effort to oppose them in the courts. But it would seem that most of them must fall if a decision were had, and a decision on one of them would certainly clarify the situation as well as place a possible check on the continuance of such a great amount of this type of legislation.

Time Factor.—By the time factor is meant the setting of a time limit beyond which no cities or other units of government involved can come into the class which has been formed. The rule in Minnesota is that a classification involving such a limit is arbitrary and invalid, although some exceptions seem to have been made. The rule is well stated in the case of Roe v. City of Duluth19 where the court says that:

"It is not valid general legislation . . . to thus close the door against future cities whose growth might bring them into the class, except in cases where the purpose is curative or the relief temporary."

19(1922) 153 Minn. 68, 189 N. W. 429.
This rule has been steadily adhered to in the last few years.\textsuperscript{20} Perhaps the most extreme example of a law declared void because of this principle is discussed in the case of \textit{Szroka v. N. W. Bell Telephone Co.}\textsuperscript{21} The Minneapolis charter contained a requirement that a notice of injury be given the city within thirty days after its occurrence as a condition to maintaining a suit for negligence. An injury occurred on August 23, 1924, and notice was not given until January 23, 1925, although the city officials had actual knowledge of the injury within thirty days after its occurrence. The injured person evidently had friends in the legislature, for the 1925 session passed a law which provided:

"That all notices of claims . . . filed against cities of the first class or the board of water commissioners thereof during the month of January or February, 1925, for damages claimed to have been suffered within five months prior to the time of serving said notice and subsequent to the thirty day period . . . if otherwise regular, shall be and hereby are declared valid . . . provided such notices were in fact filed with the proper body during such month of January or February, 1925, and provided further that said city or said board of water commissioners shall have had actual knowledge of said claim or injury . . . within thirty days after the happening of the same."\textsuperscript{22}

Although it was urged on the court that this was a curative law, the court was unable to agree, stating that in other cases when it had upheld the constitutionality of a law limited as to time as being curative, the law had merely cured a defect in the proceeding, the rights of the parties not being affected, but that the statute under consideration cured no defects but created a substantive right. This case makes the distinction which the court failed to make in the older case of \textit{State ex rel. Board of Education of the City of Minneapolis v. Brown}.\textsuperscript{23} A law which actually creates the rights of the parties is not curative, and therefore cannot contain a time limitation.

\textit{Remedial Laws}.—The general rule in Minnesota is that when the purpose of a statute is remedial and to meet a temporary situation, a valid classification can be based on existing or past circumstances and limited to members of the class existing at the

\textsuperscript{21}(1927) 171 Minn. 57, 213 N. W. 557.
\textsuperscript{22}Minn. Laws 1925, ch. 376.
\textsuperscript{23}(1906) 97 Minn. 402, 106 N. W. 477.
time of the enactment of the law. Under this rule the court upheld a law passed to allow certain counties to fund their road and bridge debts in a prescribed manner. The counties to which the law applied were those having an area of more than 2,500 square miles and assessed valuation of less than $30,000,000, having an outstanding indebtedness incurred prior to 1927 in its road and bridge fund greater than the cash in such fund on January 1, 1927 plus the taxes payable to this fund during 1927. The court held that the statute was remedial. The legislature had seen the plight into which certain counties had put themselves, and while wishing to relieve the situation in these counties it did not wish to encourage other counties to get themselves into a similar situation. The court held that even in the case of remedial statutes the classification must be germane to the subject, and decided that this one was. On the amount of the assessed valuation depended the amount which could be raised by a tax in order to pay off this indebtedness without a special system, and on the other hand if the area of the county is small in relation to the amount of the assessed valuation, the county could probably work out its problems as other counties do. As a matter of fact, the only county to which this law applied was Itasca County.

Uniformity of Operation.—Section 34 of article IV of the state constitution provides that: “The legislature shall provide general laws for the transaction of any business that may be prohibited by section 1 [sec. 33] of this amendment, and all such laws shall be uniform in their operation throughout the state.” The most interesting point which has arisen under this section concerns the power of the legislature to pass laws whose applicability to certain units or areas is dependent on the adoption of the law by the people or governing body of that unit or area. The doctrine which seemed to have been adopted in Minnesota was that the operation of a law in a certain place could be made dependent on the acceptance of it by that place, but that if the law made provisions concerning a charter question its adoption must be by the voters of the unit involved, and not by the local officials.

24See Anderson, Special Legislation in Minnesota, (1923) 7 Minnesota Law Review 187, and cases there cited.
Recently, however, the court has refused to make the distinction between laws granting charter powers and those granting only ordinance powers. This, in effect, practically overrules this part of the former doctrine, although the court specifically denies any intention of overruling its previous decisions. But as to the uniformity doctrine, the rule has not been so clearly formulated.

In the case of State ex rel. Childs v. Copeland, one of the reasons for declaring the law in question unconstitutional was that if one of the two cities in the class involved should adopt the statute and the other one should not, there would then not be uniformity. The test indicated here is the test as to the final results, the establishment of uniform institutions, and not the actual working of the law.

This same point was involved in construing a statute providing for aid and assistance for volunteer firemen and their dependents. Such aid had formerly been received under the provisions of the Workmen’s Compensation Act, but the statute in question provided that volunteer firemen should no longer be subject to this Act. Section 4 provides:

“Within sixty days after the passage of this act each volunteer fire department in this state desiring that its members and their dependents shall share in the benefits of this act, shall obtain, execute and file with the commissioner of insurance the questionnaire above referred to.”

The supreme court declared this law unconstitutional on two grounds. The first was that of uniformity, that a law affecting municipal fire departments “must reduce all fire departments touched to uniformity in respect to the particular with which the legislation deals.” The uniform operation cannot rest on a future contingency such as the possible acceptance by every eligible fire department. The second point, and one which would have invalidated the statute even in absence of the first objection, was, of course, that a time limit was placed on the period when acceptance of the statute might be made.

The other two cases of this nature decided in the period under discussion upheld the uniformity of the operation of the statute, even though its application was dependent on its acceptance in the areas involved. The first concerned a statute authorizing boards of county commissioners, upon petition of a majority of

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28 (1896) 66 Minn. 315, 69 N. W. 27.
29 Minn. Laws 1923, ch. 179.
30 Stevens v. Village of Nashwauk, (1924) 161 Minn. 20, 200 N. W. 927.
persons owning cattle in the county, to appropriate money for the purpose of applying the tuberculin test to all cattle within the county.\textsuperscript{1} The court did not go into any great detail concerning the subject of uniformity, but simply decided that it was general both in form and operation, and held that the fact that it was permissive and not mandatory does not violate the constitution.

The other case mentioned above dealt with a law granting to all cities except those of the first class, and to all villages having a population of 2,000 inhabitants or more, the power to create a firemen's civil service commission.\textsuperscript{2} Any city or village in this group could come under the act by an express acceptance of it by a majority vote of the local council, with the approval of the mayor or president of the local council. After setting out these provisions the statute adds, “and this act shall not apply to any such city or village until the adoption as aforesaid of such resolution.”\textsuperscript{3} It will be noticed that this statute has an additional element, for it specifically provides that no city or village comes under its provisions unless it accepts.

It might be of interest to digress at this point and to notice how the analysis which the court gives of the effect of sections 33 and 34 bears out Professor Anderson's contention that the "sweeping clause" is entirely dead.\textsuperscript{4} The court points out that by these sections the legislature is restrained in three ways:

"It can pass no special law where a general law can be made applicable; it can pass no local or special law regulating the affairs of cities or villages in any event; all general laws passed must be uniform in their operation throughout the state."

Under these restrictions, says the court, two questions are presented: first, whether the law under consideration is a local or special law; and second, if it is a general law, whether it has a uniform operation throughout the state. Nothing is said as to the question of whether a general law could or could not be passed. Apparently, if it is decided that the law is special, that invalidates it without regard to the possibility of passing a general law on the same subject.

But there was no need to discuss these rules at great length, for the court says that it is conceded that the act regulates the

\textsuperscript{1}Schulte v. Fitch, (1925) 162 Minn. 184, 202 N. W. 719.
\textsuperscript{2}State ex rel. Benson v. Peterson. (1930) 180 Minn. 366, 230 N. W. 830.
\textsuperscript{3}Minn. Laws 1929, ch. 57.
\textsuperscript{4}Anderson, Special Legislation in Minnesota, (1923) 7 MINNESOTA LAW REVIEW 133, 144.
affairs of cities, and therefore the question to be decided is whether or not the statute is uniform in operation. Its decision is that the operation is uniform, for equal power and authority has been granted to every municipality in the class. It is true that the action of the council is a prerequisite to the exercise of that power, but this is only a matter of procedure. The authority granted is permissive, but the constitution does not require such laws to be mandatory. The clause quoted above to the effect that the act should not apply unless adopted was held to be mere surplusage, inasmuch as it added or detracted nothing. This case seems definitely to repudiate the doctrine that the measure of uniformity is the final results actually achieved, but indicates that it is instead the power given to achieve the establishment of uniform institutions, regardless of the fact whether that power is or is not exercised. It is thus a very important land-mark in the law of special legislation in Minnesota.\textsuperscript{35}

Miscellaneus.—The question which most often arises in cases dealing with special legislation is as to whether or not the classification has been sufficiently broad, or whether it has excluded units or individuals so closely related to those which were included that they, too, should have been included. It is somewhat difficult to formulate a precise and positive rule, but at least the court has always held that a classification is not bad ipso facto because it includes only one unit. However, the fact that more than one is included will not alone be sufficient to save it. But aside from this, the attitude of the court seems to have shifted back and forth, sometimes holding, as in the Cloudy and Traverse Case,\textsuperscript{36} that the fact “that pupils in poor districts in other counties, situate like those benefited in St. Louis, will not be benefited, does not establish an improper classification,” and at other times holding that a law will not be void as special legislation for non-inclusion “unless other counties, similarly situated and having like need for similar legislation, are arbitrarily excluded by provisions which have no legitimate relation to the subject matter of the legislation.”\textsuperscript{a} The last clause quoted is the basis on which many cases are decided one way or the other.\textsuperscript{37}

\textsuperscript{35}See also Naeseth v. Village of Hibbing, (Minn. 1932) \ldots N. W. \ldots

\textsuperscript{36}(1924) 159 Minn. 200, 198 N. W. 457.

\textsuperscript{37}State v. Delaware Iron Co., (1924) 160 Minn. 382, 200 N. W. 475.

Summary.—In summarizing the recent developments in the law of special legislation in Minnesota, it should be stated that the Minnesota supreme court has adopted a more liberal doctrine than the one which it had earlier enunciated in regard to classification. Unless it is very apparent that there is no reasonable basis for the classification which has been used in a statute, that statute will not be declared unconstitutional as being special legislation. Also, the rule has been established that a statute does not lack uniformity simply because it is made to apply only in those local governmental units which adopt it and that it makes no difference whether this adoption is by the voters or by the governing body. The rules concerning the time factor and remedial legislation have remained unchanged. Finally, there have been passed at each session of the legislature a large number of bills using population, area, and assessed valuation as the bases of classification, and having a narrow range between the maximum and minimum amounts specified for each factor. So specific are they that it is not difficult to discover to which county each one applies, and also that each applies to only one. They are very apparent efforts to pass special legislation under the guise of general laws, but as yet none of them has been questioned in a court of law. It is highly desirable that such a questioning be undertaken in order that the validity or invalidity of statutes of this nature shall be definitely established.

II. Municipal Home Rule

Closely related to the subject of special legislation is that of municipal home rule. The reason for this close relationship is that municipal home rule has taken the place of special legislation in the framing and changing of city charters. This governmental device was made necessary in the state of Minnesota by the adoption of the constitutional amendment prohibiting the passage of special legislation. In general, there have not been many changes during the past nine years in the body of law which has grown up around the home rule amendment, but there have been a few cases which should be noted.

Relation of City Charter to State Laws.—Article IV, section 36 of the Minnesota constitution, the home rule amendment, provides that a home rule charter “shall always be in harmony with and subject to the constitution and laws of the state of Minnesota.” An example of the modification of this rule in actual
practice is found in the case of *In re Improvement of Third Street, St. Paul.* The St. Paul charter had provided a method and procedure for the condemnation of land for public purposes. The 1927 legislature passed an act authorizing cities of the first class to acquire property and easements for public streets. It provided that such cities “in addition to all other powers possessed by the city” are authorized to obtain lands for highway purposes “notwithstanding the fact that the property so needed or required has been acquired by the owner under the power of eminent domain or is already devoted to a public use.” The procedure was to be in accordance with that set forth in the Revised Laws of 1905. Section 3 of the 1927 act provided that it should apply to cities of the first class operating under home rule charters. The question arose as to whether the statute had repealed the charter provision, and the court held that it had not. In the first place, the charter provisions are general in nature, covering the whole subject of condemnation and easements for all purposes, while the statute applies only to highways and streets. This would not constitute a repeal, for an earlier general statute will not be repealed by a later narrower one, unless the later one specifically so provides. Also, the statute had provided that the power was to be in addition to all other powers of the city, and this does not mean in place of them. It can be seen that the latter point might distinguish this case from one where such a provision was not made, but it is nevertheless an example of the modification of the constitutional provision quoted above.

The power of the city to adopt a state law into its home rule charter and the effect of such adoption is another problem which has arisen recently. A controversy on this subject arose in 1923 in relation to some of the provisions of the Minneapolis charter, which had been adopted in 1920. As is well known, after several unsuccessful attempts at adopting a home rule charter, Minneapolis finally gathered together all the special laws pertaining to it and adopted this collection as its home rule charter. A law of 1879 had created a board of tax levy for Hennepin County and authorized it to determine the maximum rate of taxation for the

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39 (1929) 177 Minn. 146, 225 N. W. 86.
40 Minn. Laws 1927, ch. 114.
41 See also *In re Assessment for Paving Minnehaha Street,* (1927) 170 Minn. 403, 212 N. W. 811; *State ex rel. Strupp v. Anderson,* (1925) 165 Minn. 150, 206 N. W. 51; *Guaranteed Concrete Co. Inc. v. Garrick Bros. Inc.,* (1932) 241 N. W. 588.
42 Minn. Sp. Laws 1879, ch. 338.
county board, city council, and the park, education, and library boards. This law had never been expressly amended or repealed.

Chapter 252 of the laws of 1919 which was incorporated into the charter as chapter 15 provides for a board of estimate and taxation to which all estimates are to be submitted, and which can then determine the maximum amount of money to be raised by taxation. The question before the court was whether the law of 1919 controlled, and the court decided this in the affirmative.\(^4\)

The intention was evident to change the system adopted in 1879. As to the contention that this was a modification of a special law, and thus contrary to constitutional restriction, the court held that there was no restriction against a partial repeal of an act, for the word "modify" means "extend" or "enlarge." And finally, a city is allowed to omit or retain provisions of special laws in its charter,\(^4\) and here it had omitted all the law of 1879.

A conflict between two different provisions of a city charter can sometimes be settled by showing that one of the charter provisions if interpreted to be in conflict with the other would also be in conflict with the state law. Such a situation occurred in Minneapolis when the building inspector refused to grant a permit to erect a public school on the ground that the plans had not been approved by the city planning commission. A Minneapolis school board had been created as a distinct corporate entity by chapter 157 of the special laws of 1878 and had been given the power to erect and maintain school houses. Chapter XVIII of the Minneapolis home rule charter provides for a board of education clothed with the same powers as those given under the special law. Chapter XIII creates the city planning department and provides that its approval must be given for the location and design of all "public improvements," such term to include paintings, statues, fountain arches, gateways, and other similar things. School buildings were not specifically mentioned. The court held that the commission's consent did not have to be obtained. The constitution states that the legislature shall provide for a thorough and efficient public school system.\(^5\) The legislature accordingly created the office of commissioner of education and gave him certain powers, one of which was to prescribe plans and specifications for all schools, and he has done so. If the charter had specifically provided that the planning commission should have a

\(^{43}\)State ex rel. Mpls. v. Erickson, (1923) 157 Minn. 200, 195 N. W. 919.
\(^{44}\)Mason's 1927 Minn. Stat., sec. 1271.
\(^{45}\)Minn. const., art. VIII, sec. 3.
veto on such power, that provision would be invalid. Therefore, said the court, the charter provisions should be interpreted so that they are constitutional, and that means that the school board does not have to submit its plans to the city planning commission. 46

Somewhat analogous to the relation of home rule charters to state laws is the relation of municipal officials under home rule charters to state officers. The Governor is by statute empowered to remove certain named state and county officers and "any collector, receiver, or custodian of public moneys" for malfeasance or nonfeasance in the performance of his official duties. 47 The language of the statute would seem broad enough to include certain municipal officers. This would give the governor a strong power over the municipalities; so when he actually attempted to exercise it, the matter was taken to the courts. The attempt which he made was to suspend the mayor of Eveleth during the pendency of proceedings for his removal. The court decided that this was beyond his power. 48 The first point brought forward was that the law under discussion comes from an old territorial law, and the latter applied originally only to financial officers appointed by the governor or legislature, the present words not having been introduced until 1881. Furthermore, most of the city or village charters give the power of removal to the council of the municipality. If the governor also had the power of removal, there would be the probability of conflict between the two, and a construction which would give rise to this possibility should be avoided. The statute did not specifically name the city officials, and those offices which were enumerated were county offices. And the court added this significant sentence:

"In adopting the charter of Eveleth, the people had all the legislative power possessed by the legislature of the state with respect to every matter of municipal concern, save as such power was expressly or impliedly withheld . . . and the charter had all the force and effect of the legislative enactment."

Procedure.—The procedure for amending home rule charters has been specifically set down by the constitution and by legislative enactment. 49 If the state legislature provides that a certain statute shall become effective only upon its adoption by the council

47Mason's 1927 Minn. Stat., sec. 6954.
48State ex rel. Hilton v. Essling, (1923) 157 Minn. 15, 195 N. W. 539, discussed in (1923) 8 MINNESOTA LAW REVIEW 70.
49Minn. const., art. IV, sec. 36; Mason's 1927 Minn. Stat., secs. 1268-1271, 1284-1286.
or voters of that city, and if such adoption amounts to an amend-
ment of the charter, what becomes of the provision that the charter
shall be amended in the way provided “and not otherwise?” In
the case of State ex rel. Benson v. Peterson, the facts of which
have been given above, the court decided that this limitation
applies only to action by the village or city and its officers and
electors and is not a limitation upon action by the legislature.
This is shown by the fact that the constitution next provides that
the “charter shall always be in harmony with and subject to the
constitution and laws of the state . . .” and also that “the legis-
lature may provide general laws.” It is interesting to note that
while the amending process provided by the constitution and
statutes requires the affirmative votes of three-fifths of those vot-
ing at the election, the legislature can make a permissive statute
effective upon the affirmative vote of a majority of the voters.

In the procedure specified in the statute cited above both the
mayor and council have a part. It is not a significant part as it is
set out, but it could be made so if it were decided that the mayor
and council did not have to submit the amendment or call an
election if they did not favor the amendment, or if they thought
that it was poorly framed or illegal in character. This question
came before the court as a result of the actions of the mayor
and council of the home rule city of Mankato. In May, 1922 the
board of freeholders delivered to them a draft of some proposed
amendments. This was within six months of the November gen-
eral election, but the officers refused to publish these proposals
or to submit them to the people, or to call a special election. The
lower court quashed a writ of mandamus, stating that one of the
amendments was so worded as to be of uncertain meaning; that
another one failed to make provision for the nomination of the
officers for which it provided; and that another referred to the
charter provision dealing with the power of eminent domain in-
stead of to the provision relating to special assessments, though
the latter was evidently intended. The Minnesota supreme court,
however, decided that even though glaring defects had been pub-
licly pointed out to the attorney for the board, and the board had
refused to rewrite the amendments, the mayor or council did
not have the power to pass on the quality of the work which was
done. Even though the work may have been badly done, the
electors should be given the opportunity to approve or disapprove

\[50\text{(1930) 180 Minn. 366, 230 N. W. 830.}

\[51\text{State ex rel. Andrews v. Beach, (1923) 155 Minn. 33, 191 N. W. 1012.}\]
it. The voters have the same power as the legislature, except as it has been withheld, and neither the council nor the mayor has any supervisory or veto power. The statute is absolutely mandatory in its provisions.

The court in this case stated explicitly that it was making no decision as to the necessity for submitting an unconstitutional amendment. It did intimate that this might be on a different basis, but declined to give any opinion until a case should arise on the subject.

**General Powers of the City.**—**Taxation Without Representation.**—The subject of taxation without representation is one which we find discussed throughout the history of our country. In our present study it gives rise to the question of the power of a city to provide by its charter that the control over taxation should be exercised by a body which is not elected by popular vote. This problem was considered briefly by the court in construing the Minneapolis charter provision for a board of estimate and taxation, composed of five designated city officials, which board has the power to determine the maximum amount of money to be raised by taxation. The court held, without entering into a detailed discussion, that nothing in the constitution requires the election of a body having control of taxation by a vote of all the electors in the taxing district. 52

**Power to Change Common Law Rules by Ordinance.**—It is a settled doctrine that the legislature can change common law rules by statute. As municipal charters stand on the same plane as such legislation, it would seem that they, too, should be able to change such rules. 53 Can the same thing be accomplished by a municipal ordinance? This question was considered by the court in the case of Young v. Mall Investment Co. 54 The court held that the ordinance being considered was invalid, partly because it was unreasonable in that it was absolute in its terms without any qualification or exception, and partly because it was contrary to the common law rule concerning lateral support which is part of the law of the state. Thus, there was the intimation that municipal ordinances must not violate common law rules, or they will be inconsistent.

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52State ex rel. City of Minneapolis v. Erickson, Henn. County Auditor, (1923) 157 Minn. 200, 195 N. W. 919.
55For other cases involving minor points see Booth v. City of Minneapolis, (1925) 163 Minn. 223, 203 N. W. 625; In re Improvement of Third Street, St. Paul, (1929) 177 Minn. 146, 225 N. W. 86.
with the laws of the state, contrary to constitutional provision.54

Summary.—The developments which have been made in the law of municipal home rule have been more or less piecemeal during the past nine years in that several separate rules have been enunciated. As to procedure there have been two decisions of importance. One is that while a charter amendment adopted by the procedure set forth in the constitution and statutes requires for adoption a three-fifths vote of those voting at the election at which the amendment is considered, the state legislature can pass a general law and provide that it shall apply to those units adopting it by a majority vote of the council or of the voters, even if it effects a change in the charter of that unit. The second rule is that neither the mayor nor council have a supervisory or veto power over proposed amendments to a charter, but must submit them to the electorate. Whether this would apply to a proposal of an unconstitutional amendments has not been decided. In the field of general powers of municipal governments there have also been two decisions of importance. One is that there is no constitutional requirement that the body which controls taxation should be an elected body. The second is the suggestion that municipal ordinances must not violate common law rules. These decisions do not represent any decided trend, but they are doctrines which tend to define the scope of municipal home rule in this state.