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THE EXTRATERRITORIAL POWERS OF CITIES

By William Anderson

THE CONCEPT OF THE MUNICIPAL AREA

The problem with which this paper will deal is simply that of the powers which a municipal corporation may exercise beyond its ordinary territorial limits. Everyone is familiar with the fact that laws and charters lay down boundaries which define the areas in and over which particular cities may exercise their powers and carry out their functions. Almost everyone is aware, however, that these ordinary boundaries prove quite inadequate for many local purposes. A city is not a self-sufficing unit. In many cases it needs to go outside its area to find an adequate water supply and suitable locations for hospitals, correctional institutions, parks, sewage disposal works, and other amenities. Nuisances created just outside of city limits prove dangerous to the local health and safety. Bridges, ferries, and roads are often of little value to the city unless they actually extend into neighboring communities. City planning is but a step toward regional or metropolitan planning. And if these things are true in small places, they are many times more true of congested cities closely encircled by suburban communities which have received the overflow of the city's population. For the problems which arise in such urban agglomerations many solutions have been proposed and tried. The one to which we here pay attention has received little attention in discussions of local government, but has had a very wide application in practice.²

What powers may a city exercise beyond its boundaries? To answer this question we need first to know, what are the boundaries of the city? What is meant by the area of the city? At

¹The Oregon supreme court has used the term "extra-mural powers," with a slightly different connotation, and this term has been adopted by McQuillin, and by Tooke in his recent casebook on municipal corporations. See State ex rel. v. Port of Astoria, (1916) 79 Or. 1, 154 Pac. 399, 405; 7-McQuillin, Mun. Corps. 6616; Tooke, A Selection of Cases on the Law of Municipal Corporations 1309.

²In addition to scattered passages on the subject in Dillon, McQuillin, and the digests, see Woolston, Municipal Zones in 3 Nat. Mun. Rev. 465-73.
first blush the answer seems very simple. Everything inside of a single fixed and continuous line, usually described in the charter as the city's boundary, is and must be a part of the city, whereas everything outside must be absolutely excluded from its jurisdiction. Such a conception, which assumes the complete and perfect unity of the city's area, has in fact received some judicial sanction. It has been said that

"The legal as well as the popular idea of a town or city in this country, both by name and use, is that of oneness, community, locality, vicinity;" and that "as to territorial extent, the idea of a city is one of unity, not of plurality, of compactness or contiguity, not separation or segregation."

Hence it was held that a legislature has no power to make one city out of two non-contiguous tracts of land. Conversely it has been held that a statute authorizing the annexation of "contiguous" land cannot be construed to authorize a city to annex land of such shape that, as a result of the annexation, a separate tract, a sort of "no man's land" would be wholly enclosed by the city without being a part of it.

"If that could be done by annexation, a city might become a mere ring, hoop or belt around a large unincorporated area, which, of course, was never in contemplation when the statute was enacted."

Decisions such as we have here cited give an unnatural precision to the conception of the municipal area, and seem to assert that every city must be territorially just like every other. Historically there is little warrant for such a view. In the development of the English municipal corporation there were many cases of corporations which controlled several non-contiguous areas, as well as of corporations whose areas enclosed lands over which they had no control. Summarizing the findings of the commis-

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4 Village of Morgan Park v. City of Chicago, (1912) 255 Ill. 190, 99 N. E. 388, Ann. Cas. 1913D, 399, and note. But it is a little difficult to see how "No Man's Land" was any better off completely surrounded by two corporations than it would have been surrounded by one. And see City of Pueblo v. Stanton, (1909) 45 Colo. 523, 102 Pac. 512 where a tract was enclosed on three sides by the city's area, and on the fourth by a city-owned park, but it was held "that the mere purchase of property, for park purposes, does not extend the boundaries of the city, nor annex the property to the city." The theory seems to have been that whatever lands were enclosed by the city's boundary would be a part of the city.
EXTRATERRITORIAL POWERS OF CITIES

Cockburn said:

“In some cases, as at Grantham and Brecon, the corporate boundary is not continuous, but includes outlying parcels of ground. Several remarkable instances of this occur in the Cinque Ports: one of the most striking in Hastings, where the corporate authorities have authority, among other places, over two detached precincts distant from Hastings forty and fifty miles respectively. The town of Ramsgate is subject to the jurisdiction of the corporation of Sandwich, as is also the corporate town of Deal, which adjoins Sandwich.”

The Webbs, speaking also of the period before the Municipal Corporations Act of 1835, said that:

“Paradoxical as it may seem, the municipal corporation had, in the vast majority of cases, no one area over which it exercised authority. A municipal corporation, like the manor and unlike the parish and the county, was, in fact, not primarily a territorial expression. It was a bundle of jurisdictions relating to persons, and only incidentally to the place in which those persons happened to be. . . . Thus we find municipal corporations wielding this or that power over the areas of one or more manors; other powers over the areas of one or more parishes. Their market, conservancy, and admiralty jurisdictions might extend for miles into adjacent counties; far up rivers and creeks, and along estuaries and seas; including wide stretches of upland and commons, scattered hamlets and fishing-ports.”

On the other hand, within the ordinary boundaries the corporate churches and monasteries with their extensive estates caused special difficulties by their claims of exemption from the local municipal authorities. In a vivid chapter Mrs. J. R. Green relates the legal, political, and sometimes physical struggles between the city of Exeter and the bishops of the local cathedral. These struggles had gone on intermittently for three centuries at the point where she drops the story, and were then still far from being ended. Within their own walls the members of the ecclesiastical community and the tenants of their estates legally lived a life apart. They refused to recognize the police authority of the city, they gave sanctuary and benefit of clergy to those who broke the city’s peace, they held their own court, they spurned every suggestion that they help to pay the city’s ferm and other obli-

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51 Cockburn, The Corporations of England and Wales, etc., p. xxv.
52 S. and B. Webb, English Local Government; The Manor and the Borough, Part One, p. 289. See also Cockburn, loc. cit.; and for more recent times Gomme, Lectures on the Principles of Local Government, 40.
53 Town Life in the Fifteenth Century I, chap. XI.
gations, they resolutely refused to take part in watch and ward, they smuggled in liquors and food to avoid the mayor's assize of wine, ale, and bread, they ignored all demands that they help to maintain the town wall, and they made other claims of immunities and privileges which need not be noted here.⁸

What we have here given is an early example of municipal exterritoriality.⁹ In our own land and time we have uncounted examples of areas, great and small, within city limits, over which the city corporation has little or no power either to regulate and police, or to tax, or to take by eminent domain, or to interfere with in any other way. There are, in the first place, tracts owned by and fully ceded to the national government, and used among other things for government buildings, navy yards, barracks, forts, and cemeteries. Over these tracts the state itself has no power, and hence the city, which is the state's agent, can have none. The city will probably supply water and utilities to such government-owned areas, but it could hardly regulate the erection or the use of buildings or the conduct of individuals therein. The state itself may have within the city parcels of land used for state universities and colleges, capitol and office buildings, parks and reservations, to mention but a few uses, over which it is likely to retain complete and direct control.¹⁰ Then, too, the state usually has other public agencies in the local area besides the city government proper. There will be a county, with its buildings and lands, perhaps an independent corporation for school purposes, and possibly a port or harbor authority, a sanitary district, as in Chicago, or a metropolitan district, as in the Boston area. All of these separate corporations will receive their own powers directly from the state, and whatever lands or buildings

⁸Cockburn, loc. cit., reports that "Frequently there are precincts locally situated within the limits of the corporate authority, but exempted from its jurisdiction. Such are found at York, Lincoln, Norwich, Winchester, and Chichester. These have usually originated in ecclesiastical privileges, or have been the site of the castle of the lord of the borough. In the city of Canterbury there are not less than fifteen such precincts, though some are in dispute between the counties of Kent and Canterbury." And see Gomme, op. cit., p. 41, who cites even the Inns of Court of London as being partly exempted from the local municipal jurisdiction.

⁹"Exterritoriality" is in a sense the obverse of "extraterritoriality." That which is within the area but without the jurisdiction of a state is "exterritorial" as to it, but that which is outside its customary area but nevertheless within its jurisdiction is, as to it, "extraterritorial." See W. W. Willoughby, The Fundamental Concepts of Public Law, 394, 339-40.

¹⁰Kentucky Institute v. Louisville, (1906) 123 Ky. 767, 8 L. R. A. (N.S.) 553, 97 S. W. 402.
they hold within the city's area may be partly or wholly immune from the city's legal control. But we may go even farther than this, and call attention to the fact that one city may own or hold for public purposes lands lying within the boundaries of another incorporated place. The reservoir and filtration plant of the city of Minneapolis, to give but one example, lie in an adjoining county within the incorporated city of Columbia Heights. Such lands and improvements if used for public purposes will be exempt from local taxation, and may even be exempted from the local police power.

These numerous tracts to which we have been calling attention are nothing less than enclaves within the city's boundaries which enjoy partial or complete immunity from municipal control. In some cases they seriously diminish the area over which the city has jurisdiction. If we now look at what remains we shall see, also, that there is much reason behind the Webbs' suggestion that a municipal corporation is a "bundle of jurisdictions," for even as to this remaining area the city's powers are not uniform. Its taxing power may extend fully to some types of privately owned real estate, but it is likely that the state laws and constitution exempt, wholly or in part, all schools, churches, parsonages, cemeteries, asylums, and other institutions devoted to quasi-public uses. The taxing power in other words, spreads very unevenly over the city, and there are long lists of "tax-exempt" lands.

The police power, too, in the nature of the case, does not apply

11 But there cannot as a rule be two municipal corporations for identical purposes within the same area. Hence, if the city has been given the local police power, the county, the school district, and other local corporations, will logically be subject to municipal regulations as to the construction of buildings, etc., County of Cook v. City of Chicago, (1924) 311 Ill. 234, 142 N. E. 512, 31 A. L. R. 442.

12 See especially Town of North Haven v. Borough of Wallingford, (1920) 95 Conn. 544, 111 Atl. 904, Town of West Hartford v. Board of Water Commissioners of City of Hartford, (1877) 44 Conn. 363, City of Somerville v. City of Waltham, (1898) 170 Mass. 160, 48 N. E. 1092; City of Rochester v. Town of Rush, (1880) 80 N. Y. 302; People ex rel. Mayor, etc., of New York v. Board of Assessors of City of Brooklyn, (1888) 111 N. Y. 505; 19 N. E. 90. As to police power, see Dunham v. City of New Britain, (1887) 55 Conn. 378, 11 Atl. 354.

13 And in Iowa it is held in substance that agricultural lands within the city which receive no benefits from the municipal services may not be subjected to city taxes. Morford v. Unger, (1859) 8 Iowa 82; Durrant v. Kauffman, (1872) 34 Iowa 194. The same rule has been applied in the past in Kentucky and in Nebraska; but there is nothing in the fourteenth amendment of the United States Constitution to forbid city taxes on agricultural land within cities. Kelly v. Pittsburgh, (1881) 104 U. S. 78, 26 L. Ed. 659. The Iowa doctrine seems to go back to some sweeping dicta in Cheany v. Hooser, (1848) 9 B. Munroe (Ky.) 330.
fully and equally to all privately-owned land in the city. Railroads, for example, may be under some state control and not subject to every local regulation. City charters and state laws in some cases create special districts within the city for special purposes,—districts, in former days, within which no saloons might be licensed, zones about schools wherein certain businesses are prohibited, and so on. The city's power of eminent domain, likewise, does not extend fully to all lands within the city limits, for it is obvious that lands already held for public purposes by national, state, county, and other units of government will not be subject to the municipal power except in rare cases.

What we have here given are various illustrations of the fact that within many cities will be found tracts of land which are either wholly exempt from municipal jurisdiction and control, or are immune in whole or in part from the exercise of one or more of the municipal powers. It is not impertinent to observe, also, that in the exercise of its several powers a city has generally the power to make one rule for one part of the city and another rule for a different part. Abattoirs, factories, billboards, garages, and other institutions may be permitted in one section of the city and forbidden in another. The height and bulk of buildings may be similarly regulated, while the erection or reconstruction of highly inflammable buildings may usually be forbidden in so-called "fire zones," the boundaries of which are usually determined by the council. In fact, in some cases it would be quite unreasonable, and in certain instances unlawful, for the council to make rigidly uniform regulations covering the entire municipal area. A regulation desirable and useful in one place would be undesirable and possibly harmful in another. In the realm of taxation while, as a rule, the council may not establish special exemptions, or tax property in one district more heavily than property in another, it may usually create special assessment districts for particular purposes. Thus if one studies any city area as a concrete illustration he will find a great many internal divisions thereof. The actual city area is not, therefore, a uniform, unbroken thing, like a plain and seamless piece of cloth, but rather an intricate patchwork with some noticeable rents and holes.

It would be futile to attempt to name all the cases which sustain the power of municipalities under certain conditions to make intra-territorial subdivisions. A comprehensive study of "zoning" in cities, in its broadest sense, would take us very far back into history.
We have tried in the few preceding paragraphs to show the fallacies in the view that, within its ordinary boundaries, a city government must have control, and uniform control, over every square foot of territory. We come then, again, to the boundary itself. What is the boundary of a city? In some cases in earlier days the city's wall, or well known marks, defined the limits of the city's jurisdiction, but in many places it was customary for the mayor and other officials to make annual perambulation of the supposed area of the town. Many points remained vague or in dispute, however, and when the English municipal corporations commission made its survey less than a century ago it found many cases of doubtful or disputed boundaries. American legislatures and cities have in most cases taken a leaf from British experience and have written into the charters definite metes and bounds.  

The limits thus written down must be understood, however, to be not the only but merely the usual limits of a city's jurisdictions, the line beyond which their powers may not ordinarily be exercised. A municipal boundary is, in fact, not a limit of ownership but of jurisdiction, and if we remember to think of the corporation as a "bundle of jurisdictions" we shall see that a city may actually have several boundaries for different purposes. The very charters which set down so definitely the ordinary boundaries, frequently establish other boundaries for special purposes. For some purposes, as we have seen, a city's powers or jurisdiction may not extend fully to its ordinary limits; for other purposes, as we shall see, its powers may extend beyond these limits for a definite or indefinite distance. Thus the city's boundaries, though defined, are variable according to the need or purpose.

In discussing, as we are, an exception to the usual rule of law, we do not wish to minimize the importance of the rule itself. One of the outstanding characteristics of a municipal corporation is the possession by it, as an agent of the state, of a number of jurisdictions over a place. This place is, for most purposes, defined by the ordinary boundaries. It is, ordinarily, within this  

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15The angularity of many cities in the states west of the Alleghanies is due to the use of section and quarter section lines as municipal boundaries. In the south there appear to be cases of circular cities, where the charter merely specifies the center of the circle and the radius to be used in describing the boundary. White v. Mayor and Council of Forsyth, (1912) 138 Ga. 753, 76 S. E. 58: Constitution v. Chestnut Hill Cemetery Association, (1911) 136 Ga. 778, 71 S. E. 1037 In Town of Luverne v. Shaws, (1893) 101 Ala. 359, 13 So. 409, the boundaries seem to establish a perfectly square city, but the interpretation is doubtful.

16See for example the Iowa taxation cases cited in note 13, above.
place only that a city's regulations are binding on strangers as well as on inhabitants. It is for this territory that the corporation is primarily responsible, to preserve and improve it for the present and all future generations. Whatever a city may do outside of this ordinary area is exceptional. With this word of caution we may pass on to some typical instances.

There are four powers essential to cities which we shall find it important to consider briefly here. These powers are essentially means for the accomplishment of municipal purposes. They may be designated as (1) the police power, (2) the power of taxation, (3) the power of eminent domain, and (4) the power to do business as a corporation and to acquire and use property for municipal purposes by methods other than direct taxation or eminent domain. Although the latter power appears to be used extraterritorially more frequently than any of the other three, it is from the legal point of view the simplest and will be first considered.

The Exercise of Business Powers Extraterritorially

Within the restricted limits of their ordinary boundaries, cities are frequently unable to find certain materials and substances which are essential to the provision of the ordinary municipal services. Of these perhaps the first in importance is an adequate and satisfactory water supply. Every student is no doubt familiar with the tales of the Roman aqueducts and of the more recent ventures of Glasgow, New York, Los Angeles, San Francisco, and other cities into remote regions to find water supplies for their inhabitants. Perhaps no important American city has gone outside of its boundaries to acquire a supply without having at least some legislative authority to supply the inhabitants with water. Whether the power to transcend boundaries for this purpose must be express or may be implied has not been frequently decided. In a Georgia case where the power to establish a system of waterworks was expressed, it was held that the power to go outside the city limits for a supply would be implied. 17 A similar decision was reached in a Tennessee case with reference to land for a reservoir. 18 It is difficult to see how, in many cases,
the courts could reach any other conclusion without practically emptying the express power of all content. The selection of the source of supply is but the choice of means, and in numerous cases the city has practically very little choice.

Where a city has legally acquired an outside source, it is, of course, subject to liability for negligence just as fully as if the whole water system were within the city's limits. In the nature of the case it must, also, compensate riparian owners. But suppose a city has acquired water rights in some river, lake, or watershed, may it also exercise police jurisdiction therein to prevent pollution or the destruction of dams, mains, and other works? The statutes and charters in a number of cases seem to confer this power of police, but the decisions of the high state courts have little to say upon the subject. In several cases the state law directly prohibited pollution of streams used for water supply, while in a leading Connecticut case the legislature had expressly authorized the city of New Britain to make ordinances "for the better protection and preservation of the waters of Shuttle Meadow Lake, so called, in the town of Southington, and of all the waterworks of said city situate in said town," and to prescribe penalties for violations thereof. In the latter case no question seems to have been raised as to the power of the legislature to confer such extraterritorial police power.

19"The familiar maxim that the grant of powers takes with it all the necessary incidents to make that grant effectual, applies to municipal corporations with respect to the powers and authority exercised by them." I McQuillin, Mun. Corps., p. 794.

20City Council of Augusta v. Mackey, (1901) 113 Ga. 64, 38 S. E. 339; Mayor, etc., of City of New York v. Bailey, (1845) 2 Demo (N.Y.) 433, aff'g 3 Hill 531.


22There is a dictum in Chambers v. City of St. Louis, (1860) 29 Mo. 543, 575, that by the statutes authorizing the city "to hold lands beyond her limits for objects intimately connected with the purposes of the corporation and highly necessary for her prosperity and welfare, it was intended that, over such places, she should exercise such police powers as would be required in order to make them answer the purposes for which they were designed." It is doubtful whether this is the prevailing opinion. A purchase of lands by the city is not an annexation of those lands to the city. City of Pueblo v. Stanton, (1909) 45 Colo. 523, 102 Pac. 512. See also Lester v. Mayor, etc., of City of Jackson, (1892) 69 Miss. 887, 11 So. 114, cited in note 66 below.

23Dunham v. City of New Britain, (1887) 55 Conn. 378, 11 Atl. 354. See also Martin v. Gleason, (1885) 139 Mass. 183, 29 N. E. 664; People v. Borda, (1895) 105 Cal. 636, 38 Pac. 1110. On the exemption of extraterritorial water supplies, etc., from taxation, see cases cited in note 12, above.
Another important question arising in the water supply cases is whether or not a power to supply water, and to acquire an outside source, carries with it the power or the duty to sell water to persons beyond city limits. It is scarcely to be doubted that a legislature may expressly authorize a city to sell surplus water outside of its city limits, but such power will not usually be implied, especially where the exercise of the power would involve extending the mains outside of the city limits. The reason for the latter rule seems to be that each municipality is created primarily to serve its own inhabitants and that its powers "must be held to be limited in their exercise to the territory embraced in the municipal boundaries and for the benefit of the inhabitants of the municipality." To serve outsiders is not to benefit the inhabitants as such, perhaps, there is a surplus supply which may thus be disposed of at a profit to the city. An exception to this rule may exist, therefore, where the city has a surplus of water, and where it can sell such surplus for the benefit of its inhabitants without extending its mains into neighboring municipalities.

Aside from water supply, there are many things a city needs in everyday administration which cannot in all cases be supplied locally. A city requires rock and gravel for the construction and maintenance of streets and public buildings. May it then acquire stone quarries outside of city limits to produce these essential materials? In two Virginia cases it has been held that the power to own and operate quarries extraterritorially cannot be implied.

The court in the first case found many activities beyond city limits.

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24 Mayor, etc., of Gainesville v. Dunlop, (1917) 147 Ga. 344, 94 S. E. 247; Dyer v. City of Newport, (1906) 29 Ky. L. R. 656, 94 S. W. 25; Simson v. Parker (1907) 190 N. Y. 19, 82 N. E. 732; Childs v. City of Columbia, (1911) 87 S. C. 566, 70 S. E. 296, 34 L. R. A. (N.S.) 542; Farwell v. City of Seattle, (1906) 43 Wash. 141, 86 Pac. 217, 10 Ann. Cas. 130. In fact the city of Boston, with power to convey and supply water "throughout the city" was held in one case to be without power to convey water to Long Island, which was a part of the city but lay three miles from the mainland. Quincy v. Boston, (1889) 148 Mass. 389.


26 But where, as in California, the constitution requires a city taking over a franchise to fulfill all the terms thereof, and these require service to a neighboring municipality, the city is obligated to serve others in order to serve its own inhabitants. City of South Pasadena v. Pasadena Land and Water Co., (1908) 152 Cal. 579, 93 Pac. 490.


expressly authorized in the charter, but not this, and hence held
this one to be excluded by implication. The general power to
"purchase, hold, sell, and convey all real and personal property
necessary for its uses and purposes" the court held to be limited
to the city's own area save in cases where "lands are indispensably
necessary to enable it to protect the health and well-being of its
people." In the second case counsel argued that the quarry was
incidental and necessary to the maintenance of streets, but the
court answered that "if that proposition could be maintained, a
municipality might engage in limitless undertakings not author-
ized by its charter in express words, or necessarily or fairly im-
plied in or incidental to the powers expressly granted, the result of
which would be to expose the resources of the municipality to
constant danger of exhaustion."

Following the first Virginia decision a similar case arose in
Wisconsin, where the court considered the Virginia decision and
expressly rejected it. In this case the city had express power to
improve streets and express power also to "purchase and hold
real estate sufficient for the public use, convenience or necessities."
Conceding that a city may not extend its governmental powers
beyond its limits, the court held this to be a different matter, "the
mere exercise of a business function." In such affairs municipal
corporations should be "governed by very much the same rules
as private corporations," and "the mere act of going beyond the
boundary does not necessarily involve excess of power." There
must, said the court, "be a wide range within which municipal
officers, acting in good faith, may go," but it suggested that if, in
this case, they had gone so far afield to obtain a quarry that the
element of convenience would no longer be apparent, that then
"there would undoubtedly be such an abuse of authority as to
render the act void." In a similar case in Massachusetts the court
was also able to imply the power of a city to purchase land outside
its limits for a gravel pit.

The water supply and quarry cases involve the question of the
power of a city to acquire rights in land outside of city limits in

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31 Schneider v. City of Menasha, (1903) 118 Wis. 298, 95 N. W. 94, 99 A. S. R. 996.
order to supply some substance useful and necessary for local purposes within the city. A fairly harmonious group of drainage and sewerage cases discuss the power of cities to acquire rights in extraterritorial lands for the purpose of disposing of noxious waste products of the city. In a leading Michigan case, the city had the express duty of providing sewers and drains, and had also the duty to keep clean a stream which ran through its territory. Under these conditions, since it was difficult to find any proper sewage outlet within the city limits, the authorities contracted with an outside land owner to enlarge and improve a county drainage ditch upon his premises, in return for which he was to permit the discharge of the city's sewage through his land into the ditch. When the city attempted to enforce the contract, the other party denied the city's power to enter into it on the grounds that the city had no express authority to construct such an outlet beyond its boundaries, or to make the contract described, or to exercise any jurisdiction over the outlet when completed. Nevertheless, in view of its legal duties and its special circumstances, the city was held by the court to have the power to make the contract in question. This was considered by the judges as but a choice of means, and practically the only means, of accomplishing the legally required end. In like manner the Idaho supreme court has held the city of Boise empowered by implication to construct a drainage ditch to a point outside of the city to carry off overflow waters. Said the court "A grant of powers carries with it authority to do those things necessary to the exercise of the power granted."

In other cases the power to construct sewers and drains extraterritorially has been expressed in statutes. In no case found by the writer has such an act been held invalid, but unfortunately the precise grounds of attack upon such statutes have not always been made clear. Several interesting but less important Ohio

In Loyd v. Mayor and Council of Columbus, (1892) 90 Ga. 20, 15 S. E. 818, the court held the construction of a ditch outside the city ultra vires in the absence of empowering legislation, but this decision has been so limited in effect by subsequent decisions as to be practically overruled.

35Cummins v. City of Seymour, (1881) 79 Ind. 491, 41 Am. Rep. 618,
cases have held that where a village lies within a township, the
town authorities may construct drainage ditches beneficial to the
village and even partly within the village and to assess lands within
the village as well as others for the costs. The principle in
these cases is, of course, that the village may continue to be, for
some purposes, a part of the township.

To transfer the sewage nuisance from within to without the
city is not finally to dispose of it, but really to transport it beyond
boundaries. The nuisance thus created beyond the city may be a
serious one, creating insanitary conditions and perhaps causing a
deterioration of property values. Where such is the case, and
where the city officials are not acting ultra vires, injured persons
have an undoubted cause of action against the city. The city
may not with impunity pollute or alter a natural stream and thus
decrease its value to riparian owners or otherwise invade their
property rights, and in a New York case a town building a sewer
through the streets of a neighboring town has been held liable to
compensate abutting owners for the taking of an additional easement.

HIGHWAYS, BRIDGES, FERRIES, AND RAILROADS

A system of city streets which began and ended within the
city and connected with no outside places is almost un-
thinkable. Highways are valuable to the extent that they open
ways for communication to other and far places. In numerous
cases, however, the geographical situation is such that a city, if it
had no power to provide roads, bridges, ferries, and other facilities
of travel beyond its boundaries, would find itself seriously
handicapped, for the county and the state are in many cases un-

407; Butler v. Town of Montclair, (1902) 67 N. J. L. 426, 51 Atl. 494;

See also Rumsey v. Town of Sauk Centre, (1894) 59 Minn. 316, 61 N. W. 330.

Loyd v. Mayor and Council of Columbus, (1892) 90 Ga. 20, 15
S. E. 818; Langley v. City Council of Augusta, (1903) 118 Ga. 590, 45
S. E. 486, 98 A. S. R. 133; Wilson v. Boise City, (1899) 6 Ida. 391, 55
Pac. 887; Cummins v. City of Seymour, (1881) 79 Ind. 491, 41 Am.
Rep. 618; Molden v. Town of Batavia (Ia. 1924) 200 N. W. 183.

S. 99; City of Mansfield v. Balliett, (1901) 65 Ohio St. 451, 63 N. E. 86;
Good v. Altoona City, (1894) 162 Pa. 493, 29 Atl. 741. See also Tobey,
Public Health Law, 128-9, and cases cited; and Gould v. City of Rochester
(1887) 105 N. Y. 46, 12 N. E. 275.

able to build, or not interested in providing, the ways which will bring travel and business to the city. Hence it is that we find many statutes which empower cities in one way or another to provide roads and other means of communication beyond their limits.

Perhaps the first question for us is whether the provision of roads and bridges extraterritorially is a constitutional purpose for the levy and collection of taxes. This question is brought out more clearly in the railroad cases, and it will for that reason be pertinent to discuss them here. Is the building of an extensive railroad system running many miles, perhaps hundreds of miles into the country, a local public purpose, a purpose for which local property owners may be taxed? The best American example of a city owned railway is that of the Cincinnati Southern Railway running from Cincinnati through Kentucky to Chattanooga, Tennessee, and owned by Cincinnati. When this road was projected as a municipal enterprise it was opposed in the courts upon various constitutional grounds, of which the most important was the alleged abuse of the taxing power. Upon this point the court was fairly clear and emphatic.41

"By the act under consideration, no railroads are authorized to be constructed, except such as have one of their termini in the city which constructs them. And that (a) city has no peculiar interest in such channels of commerce as lead directly into it, is a proposition which, to say the least, is very far from being clearly true. And as the public or corporate interest in an improvement, rather than its particular location, determines the question as to the right of taxation for its construction, the fact that the road contemplated in the present case will be mainly outside of this state, can make no difference. The right of eminent domain cannot be exercised, nor the road constructed in or through other states without their permission and authority; and the act in question contemplates nothing of the kind."42

In a more recent Oregon case the court reached substantially the same conclusion,43 but indeed the law upon this point had been laid down even before the Cincinnati decision in the cases involving municipal subscriptions to the building of railroads.44 Prior to the Civil War there had been decisions in Pennsylvania and

43Olcott v. Supervisors (1872) 16 Wall. (U.S.) 678, 21 L. Ed. 382, and many other cases. The few contrary decisions are apparently not based upon the theory that municipal tax revenues must be spent exclusively upon improvements internal to the city.
in Tennessee sustaining the power of cities to subscribe to railroads.\textsuperscript{44} In the leading case of \textit{Sharpless v. Mayor of Philadelphia} is was held by a majority of the judges that "a railroad is a public highway for a public benefit," and that "it is a grave error to suppose that the duty of a state stops with the establishment of those institutions which are necessary to the existence of government."\textsuperscript{45}

"But it is insisted that the right of a city or county to aid in the construction of public works, must be confined to those works which are within the locality whose people are to be taxed for them. The Water Gap Company stops its road north of Vine street, outside of the city limits, and the Hempfield road has its eastern terminus at Greensburg, three hundred and forty-six miles west of Philadelphia. I have already said that it is the interest of the city which determines the right to tax her people. That interest does not necessarily depend on the mere location of the road. Therefore the location cannot be an infallible criterion. If the city cannot have an interest in a road which stops in the Northern Liberties; then Dock Ward can have no interest in one which terminates in Upper Delaware Ward, and all the subdivisions of the city, which it does not actually enter, may be exempted on the same score. A railroad may run through a county without doing its inhabitants the least service. May such a county assist to make it, while a city which it supplies with bread and whose trade is doubled by it must not do so, merely because it ends outside of an imaginary line that limits the corporate jurisdiction? It seems very plain that a city may have exactly the same interest in a road which terminates outside of her borders, as if the depot were within them, and a great deal more than if it passed quite through. If she has an interest in any part, she has probably an equal interest in every part. Railroads are generally made to connect important trading points with each other. The want of a link at one place breaks the desired connection as much as at another. Philadelphia has now a road to Greensburg. The Hempfield Company proposes to carry it on to Wheeling. I do not see that the city is not as much interested in the Hempfield road as she would be in making an independent road, starting at the corner of Schuylkill Fifth and Market Streets, and running by way of Greensburg the whole distance to Wheeling."

\textsuperscript{44}\textit{Sharpless v. Mayor of Philadelphia, (1853) 21 Pa. St. 147, Nichol v. Mayor and Aldermen of Nashville, (1848) 9 Humph. (Tenn.) 257, Louisville and Nashville Railroad Co. v. County Court, (1854) 1 Sneed (Tenn.) 636; McCullie v. Mayor and Aldermen of Chattanooga, (1859) 3 Head (Tenn.) 318.}

\textsuperscript{45}\textit{Sharpless v. Mayor of Philadelphia, (1853) 21 Pa. St. 147, 169.}
Philadelphia has in either of these improvements. That has been settled by her own officers, and by the legislature.\textsuperscript{46}

No conclusion can be drawn from this and the Tennessee cases cited other than that it is a public purpose, and in Tennessee a "corporation purpose," to help to build railroads out from and into the city to promote the commercial prosperity of the place. The roads do not need even to come directly into the city to be of public interest to it, if they come to its doors or connect with roads which do.

In the railroad cases the points discussed were essentially constitutional, and bore primarily upon the taxing power. Several highway and bridge cases have raised the same question. In a Missouri case where the legislature had authorized a city to levy a tax "to be appropriated to the subscription and payment for the improvement of roads leading into the city, and promoting the trade and commerce thereof," and the tax was opposed as lacking due process, the court said that "to settle the case finally, we add that the Legislature had power to authorize the City of Lagrange to spend money upon the improvement of roads outside of the limits of the city\textsuperscript{47}. In a North Dakota bridge case, where the decision was really rested upon other grounds, while the court seemed to have some doubts whether an expenditure merely for promoting the commercial prosperity of the city was for a public purpose, it refused to assent to the contention "that there can be no expenditure for a corporate purpose, the object of which is located outside of its boundaries.\textsuperscript{48}

The well considered Brooklyn Bridge case dealt with that section of the New York constitution which forbids a city to incur debt "except for city purposes."\textsuperscript{49} Since New York and Brooklyn were then separate municipalities, it was contended that New York could not legally borrow money to expend upon a bridge partly outside of its boundaries. The court, after asserting broadly that certain expenditures would not be for a city purpose, went on to assert that an outside source of water supply would be, as would also a park for the health and comfort of the inhabitants, if convenient to the city.

"Such improvements are for the common and general benefit of all the citizens, and have always been regarded as within the

\textsuperscript{47}Hagood v. Hutton, (1862) 33 Mo. 244.
\textsuperscript{48}Manning v. Devils Lake, (1904) 13 N. D. 47, 99 N. W 51, 65 L. R. A. 187
\textsuperscript{49}N. Y. const. art. 8, sec. 11, now sec. 10.
EXTRATERRITORIAL POWERS OF CITIES

scope of municipal government; and so the highways or streets leading into a city or village may be improved, provided the improvements be confined within such limits that they may be regarded as for the common benefit and enjoyment of all the citizens. It cannot therefore well be held, as claimed by the learned counsel for the appellants, that what is meant by a city purpose is some work or expenditure within the city limits."

These adjudications may be accepted as fairly decisive of the constitutionality of municipal expenditures for or in aid of the construction and improvement of railroads, roads and bridges beyond city limits. They do not, however, tell us whether the power to make such expenditures may be implied, nor do they throw any light upon the question of what if any powers of control a city gets over outside roads and bridges aided. In an early New York case the question was whether a village might receive by deed certain lands beyond village limits to be used for streets. Finding no express authority for this act in either the charter or statutes the court held that, while "the legislature might have conferred upon this corporation powers extending beyond its limits, it is regarded as obvious that, in the absence of express language looking to such an extension of its powers, they are all to be taken as commensurate only with its territorial limits and jurisdictions." A concurring judge showed that power to lay out and regulate highways was conferred upon the towns in which lay the lands and streets in question, and that this power must be considered to be exclusive if serious jurisdictional conflicts were to be avoided. A like point was made in the North Dakota bridge case already mentioned, but the main point in that case seems to have been that, even if the city had built the bridge in question, it might have been totally useless since the proper county and town authorities had not yet established the road. To prevent such conflicts of authority the statutes in Minnesota, Pennsylvania, and other states merely authorize cities to appropriate and spend money to aid in the improvement of roads outside their limits, and give no power of control. We may fairly conclude, therefore, that the power to engage in definitely extraterritorial road activities should be

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50 People ex. rel. Murphy v. Kelly, (1879) 76 N. Y. 475, 487-8. See also Haeussler v. City of St. Louis, (1907) 205 Mo. 656, 103 S. W 1034.
51 Riley v. Rochester, (1853) 9 N. Y. 64.
clearly expressed, and that the courts will construe these grants of power strictly. Where the improvement is a bridge, however, and must be built as a complete unit to be of any value at all, a different view might conceivably be taken. Thus in a Kentucky county case, where the statute provided a special method by which inter-county bridges might be built by joint action, the federal supreme court held nevertheless that such method was not exclusive and that a single county might under its ordinary power to construct bridges build a bridge over a boundary stream into the adjoining county.

**FERRIES AND WHARVES**

A ferry is in one sense a part of the highway, and might even be denominated a moving bridge. The rules as to extraterritorial ferries are, therefore, not unlike those governing highways and bridges. That cities may be empowered to aid in the maintenance of extraterritorial ferries is, consequently, well established by long practice and several direct decisions. It has been held, however, that a power to make ordinances to “promote the prosperity” of the town does not carry with it the power to establish a free ferry at a distance of over one-half mile from the corporate limits. “To engage in such enterprises, express grants are required.” On the other hand, the city of St. Louis, without express charter power, has been held empowered simply as a corporation to acquire lands outside of the city for wharf purposes.

**EXTRA-STATE POWERS**

It is particularly in connection with the railroad, highway, bridge, and ferry cases that questions sometimes arise as to a city's power to go beyond the boundaries of the state to provide some public facility or to promote some improvement or service.

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54 Washer v. Bullitt County, (1884) 110 U. S. 558, 28 L. Ed. 249, 4 Sup. Ct. 249; and see also Dively v. City of Cedar Falls, (1869) 27 Iowa 227.


56 Town of Jacksonport v. Watson (1878) 33 Ark. 704.

57 Hafner v. City of St. Louis, (1901) 161 Mo. 34, 61 S. W. 632.
In a Connecticut case it was held not to be a proper town charge to contribute to the construction of a bridge over the Byram river into the state of New York. The same decision was reached in a West Virginia case where a town had agreed to contribute to an interstate bridge which was built jointly by Allegheny County, Maryland, and Mineral County, West Virginia, over the Potomac river.

A Wisconsin case possesses even more points of interest. The legislature authorized the city of La Crosse to build a bridge over the Mississippi river, together with necessary approaches on both sides, and the Minnesota legislature at the same time authorized the work to be done, including the construction of a road in Houston County, Minnesota, to a point of connection with a lawful Minnesota highway. The Minnesota act went further, providing that the city of La Crosse should be liable in tort for injuries arising out of improper maintenance of the road. In due course a person injured brought suit in the Wisconsin courts against the city of La Crosse for an injury sustained upon the road on the Minnesota side, and cited the Minnesota statute as creating the liability. The Wisconsin supreme court was willing to concede the power of the legislature to authorize the city to bridge the Mississippi, but averred that the Wisconsin law referred to "did not and could not grant the right to the city to build and maintain a highway two and one-half miles long, on the bottom lands of the river in the state of Minnesota." As to the act of the Minnesota legislature, the court was unable to see how it altered the situation, for to permit the city "to accept rights, and to assume duties, beyond the power of its creator to enforce or to regulate, would be an innovation we are not prepared to sanction. From the very necessities of the situation, it [the city] would have no power to regulate or protect its erections in a foreign jurisdiction." Consequently the city's road activities in Minnesota were ultra vires, and the city was not liable since it was "without authority, under its charter or the law of this state, to accept privileges or assume duties and obligations to be performed outside of the limits and beyond the jurisdiction of this state."

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59County Court v. Town of Piedmont, (1913) 72 W Va. 296, 78 S. E. 63.
60Becker v. La Crosse, (1898) 99 Wis. 414, 75 N. W 84, 67 A. S. R. 874, 40 L. R. A. 829.
61Becker v. La Crosse (1898) 99 Wis. 414, 75 N. W 84, 67 A. S. R. 874, 40 L. R. A. 829. It is not irrelevant to point out in this connection
That a city may be authorized to bridge interstate rivers has been sustained also in a case involving the city of St. Louis, but the rule as to non-liability for the negligent maintenance of a bridge or highway in an adjoining state has also recently been reiterated.

Parks

In the case of water supplies, quarries, and various other facilities, cities sometimes go outside to acquire and to bring back into the city products useful to the people. A different case is that of parks, which cities in many cases establish outside of their limits in order to induce local residents to leave the city for fresh air and recreation. As a rule it appears that cities do not attempt to establish extraterritorial parks without clear legislative authority. In a famous New York case it was questioned whether the city could take lands by condemnation "in the adjacent district of Westchester county" even under express legislative authority. It was argued, inter alia, that an expenditure for parks outside of the city was not for a "city purpose," as provided in the state constitution, even though parks within city limits would be for a city purpose.

"If a city may go three miles from its nearest boundary, and with the connecting ribbon of a 'parkway,' take Pelham bay and Hunter's island, why, it is asked, may it not take the Falls of Niagara, or a mountain of the Adirondacks, or land in Dutchess county, and building a road thither, claim it to be a 'city purpose'? The question is a fair one and demands an answer."

The answer, given at length by the court, traversed the legislation authorizing the city to go forty miles outside to spend mil-

that Wisconsin and Minnesota have concurrent jurisdiction over all those portions of the Mississippi, St. Croix, and other rivers which form the boundary between them. 11 Stat. at L. 166-67 Municipalities lying opposite each other along these streams exercise concurrent and overlapping jurisdiction over the entire breadth of the stream.

62Haeussler v. City of St. Louis, (1907) 205 Mo. 656, 103 S. W. 1034. The present charter of the city provides that the city shall have power "to condemn private property, real or personal, or any easement or use therein for public use within or without the city or state." Section I, subdiv. (9). At first glance it would appear absurd for St. Louis to attempt to empower itself under a freeholders' (home rule) charter to condemn land in another state, yet it is entirely conceivable that for bridge building purposes the city might, with the consent of the national government or of the state of Illinois, condemn land in Illinois for the eastern approaches and piers of the bridge. See also Walker v. Cincinnati, (1871) 21 Ohio St. 14.


64Matter of Mayor, etc., of New York, (1885) 99 N. Y. 569, 2 N. E. 642. Judge Dillon was of counsel for the city.
lions in the acquisition of lands and water rights, for a water supply, and to build the Brooklyn bridge into Brooklyn, as well as other laws authorizing cities to annex lands for parks, and to establish cemeteries, hospitals, pesthouses, and ferries beyond city limits. The court concluded that the "test of a city purpose, which asks if the property bought and the money spent go outside of the corporate boundaries must be abandoned."

"The purpose must be primarily 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 a character as to show plainly the predominance of that purpose. And then the thing to be done must be within the ordinary range of municipal action. Acquiring and maintaining parks is within that range. Acquiring them so near to the city as to make them convenient and accessible and likely to be overtaken and surrounded by the city's growth, satisfies the first condition, while a park in the Adirondacks or at Niagara would not satisfy it at all."

Other cases of express legislative authority given to cities to establish extraterritorial parks can easily be found. Whether the power can be implied has not been frequently adjudicated, but in a Mississippi case it was held that a city had power to take land under a devise "for a public park" just outside of the city's limits, and that the park would be for a city purpose despite its outside location. It was the opinion of the judges, however, that the city could exercise over such land "only those rights and powers which spring from ownership."

MISCELLANEOUS EXTRATERRITORIAL PROPERTY

The establishment of crematories, cemeteries, workhouses, poor houses, quarantine stations, and hospitals outside of city limits is a common practice which can be justified in the interests of public health and safety.68

65 Mayor v. Park Commissioners (Thompson v. Moran), (1880) 44 Mich. 602, 7 N. W. 180; Booth v. City of Minneapolis, (Minn. 1925) 203 N. W. 625, involving a public golf links; Matter of Department of Public Parks, (1889) 53 Hun (N.Y.) 280; City of Cleveland v. Painter, (1908) 6 Ohio N. P. (N.S.) 129.

66 Lester v. Mayor, etc., of City of Jackson, (1892) 69 Miss. 887, 11 So. 114.

68 See also note 22, above. By chapter 127 of the Laws of Minnesota for 1917, the city of Stillwater was authorized to accept a gift of land in the adjoining state of Wisconsin "and to improve and govern the same." Obviously the Minnesota legislature could not confer any police powers over the land in question.

67a Trustees of Youngstown Township v. City of Youngstown, (1903)
Other cases of extraterritorial ownership of property arise frequently out of the division of cities and towns and the changes which are so frequently made in their boundaries. In such cases the courts have generally reached the conclusion that each of the municipalities concerned obtains or retains ownership or control of the public real property which falls within its new boundaries, but gains or keeps no control of public property falling outside. The reasons for this general rule are undoubtedly sound and need not be restated here. They are not, however, based upon any supposed constitutional inability of cities to own or control property outside of city limits. In an interesting New Jersey case the court held that a sewage system needs to be operated as a unit, and that a division of the corporate territory whereby some of the sewer laterals fell outside of the original corporation did not deprive it of control over them. In a Minnesota case a schoolhouse which fell outside of the original district upon a change of boundaries was held to remain the property of that district although it could no longer make use of it and could probably do nothing but sell it. These cases are referred to not as establishing a general rule of law, but as illustrations of court decisions which sanction ownership of property outside of city limits. If we refer to charters and statutes we find many other examples. Many cities are empowered by their charters to acquire lands within or without their corporate limits for all lawful corporate purposes. In some states this power now extends to the establishment of municipal forest reserves, but the most astounding acts of all are some which incorporate port authorities. An Oregon act of 1909, as amended in 1915, authorized ports to improve bays, rivers and harbors.


68 Of the many decisions to this effect we cite only Commissioners of Laramie County v. Commissioners of Albany County, (1875) 92 U. S. 307, 23 L. Ed. 552.

69 Bloomfield v. Glen Ridge. (1897) 55 N. J. Eq. 505, 37 At. 63. This decision reversed the findings of law in the earlier and more frequently cited decision of a single judge in 54 N. J. Eq. 276, 33 Atl. 925 (1896).

70 Winona v. School District No. 82, (1889) 40 Minn. 13, 41 N. W. 539, 3 L. R. A. 46, 12 A. S. R. 687

71 For example any "home rule" city in Minnesota may, in the charter which it frames and adopts for its own government, authorize itself "to acquire, by gift, devise, purchase, or condemnation any property within or without its boundaries, needed for the full discharge of any public function which it is permitted to exercise." G. S. 1913 sec. 1345, as amended by Laws 1921, chap. 343.

72 Pennsylvania, Third Class City Law, (1921) p. 531. Other examples of this power can be found.
within their limits and between their limits and the sea, to exercise the power of eminent domain for any of their purposes, "to exercise control of all bays, rivers, and harbors within their limits, and between their limits and the sea," to establish and maintain tugboat and pilotage services, to charter, own, maintain and operate ships of all kinds, to engage generally in the coastwise trade, to establish and operate water transport lines on any navigable waters of Oregon or waters tributary thereto, to acquire and operate railroad terminals, to carry freight and passengers, and to engage generally in the buying and selling of coal, fuel, and oil for steam and power boats, and so on. The Webbs in all their researches into English local government probably found no more striking example than this of the conferment of extraterritorial powers upon public local corporations.

(To be concluded.)

73See State ex rel. v. Port of Astoria, (1916) 79 Or. 1, 154 Pac. 399. We do not in the text discuss the power of cities to receive extraterritorial property in trust for charitable and other uses. This power appears to have been upheld even in cases where the property lay outside of the state. Girard v. City of New Orleans, (1847) 2 La. Ann. 897, Chambers v. City of St. Louis, (1860) 29 Mo. 543; Vidal v. Girard's Executors, (1844) 2 How. (U.S.) 128, 11 L. Ed. 205; Executors of McDonogh v. Murdoch, (1853) 15 How. (U.S.) 367, 14 L. Ed. 732.