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The Extraterritorial Powers of Cities

William Anderson

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Up to this point we have dealt primarily with powers of a corporate or business character. We have left for discussion three powers of a distinctly governmental nature, which are in a number of cases exercised by cities beyond their boundaries. These powers—eminent domain, taxation, and police power—are not ends in themselves but rather the means by which the purposes of city government may be accomplished. Lurking in the background at all times, therefore, is the question of public purpose or public use, a question which may be especially puzzling when a city goes outside of its ordinary territorial limits to exercise its supposed authority. There is always, too, the question of the power of one place to encroach upon the local self-governing powers of a neighboring community.

**EMINENT DOMAIN**

The eminent domain cases give us least trouble of all. If it be once conceded that water supplies, parks, and similar facilities are for public purposes, and even for municipal purposes although located outside of city limits, then there can be little legal objection to the use of condemnation proceedings in the furtherance of the public purpose. Private interests are, after all, fully protected in matters of procedure and by the guaranty of adequate compensation, and the public interest completely outweighs all other considerations. The water supply requirements of the national metropolis are so great and urgent that few would contend that the power of eminent domain should not be used to accomplish the desired result. The magnitude of the undertaking is impressed upon us, however, when we read that, by purchase or condemnation, eleven towns have been taken over and their lands incorporated into the water impounding area.74

The right of the legislature to authorize cities to condemn lands outside their boundaries for municipal purposes has apparently not been seriously questioned.75 As a rule, however, the courts

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*Professor of Political Science, University of Minnesota.


75Of course the usual question as to "public purpose" has arisen, and sometimes the question of "city purpose." Typical cases in which the
have not had to answer the question whether the power of condemnation could be implied, for legislatures have in most cases been careful to express the power. An Illinois decision is authority for the ruling that where a city had statutory authority "to build, or acquire by purchase, lease or gift, and to maintain ferries and bridges, and the approaches thereto" at any point within five miles of the city, and to construct roads leading thereto, the power to condemn lands for these purposes would be implied. To reach this conclusion the court had to hold that the act clearly indicated a purpose to have such ferries established, that "a thing within the intention of the statute is as much within the statute as if it were within the letter," and that, therefore, the doctrine of expressio unius would not apply. To the writer this reasoning appears to be somewhat strained, but it is hard to see how such taxation could not be equal or uniform. In Iowa, as we a liberal attitude toward municipalities in such matters.

TAXATION

The taxation cases present more difficulties, and can be dealt with adequately only after they have been properly classified. In the first group fall the taxes levied upon railroads, express companies; and other interstate carriers. Such taxes are usually levied locally, in the form of license or occupational taxes, upon the right to do business or to maintain terminals or offices in the city. In their effects, however, such taxes may operate extra-territorially by placing a burden upon carriers engaged in commerce throughout the state or even throughout a number of states. This is not the place to analyze the cases involving state and municipal taxes upon interstate commerce. Suffice it to say that, where cities have been given clear legislative authority to levy the taxes in question, and where it has been attempted to avoid placing a direct or serious burden upon interstate commerce, local taxes upon railroads, express companies, telephone companies, and similar businesses have usually been upheld.  

Cities concerned had the power of eminent domain beyond their boundaries are: Cummins v. City of Seymour, (1881) 79 Ind. 491, 41 Am. Rep. 618 (drainage ditch); Matter of Mayor, etc., of New York, (1885) 99 N. Y. 569, 2 N. E. 642 (park); Matter of Department of Public Parks, (1889) 53 Hun (N.Y.) 280, 6 N. Y. S. 750 (park); Walker v. Cincinnati, (1871) 21 Ohio St. 14 (railroad); State ex rel. v. Port of Astoria, (1916) 79 Or. 1, 154 Pac. 399 (port purposes).

Helm v. City of Grayville, (1906) 224 Ill. 274, 79 N. E. 689.

City of Sacramento v. California Stage Co., (1859) 12 Cal. 134; City of Los Angeles v. Southern Pacific Railroad Co., (1882) 61 Cal. 59;
Closely allied to these cases are those in which municipalities have attempted to tax vehicular traffic passing through, or into and out of the city from adjacent communities. The statutes, charters, and ordinances involved do not always clearly indicate whether the main purpose is to obtain a municipal revenue through licensing, or whether the license is a mere incident to police regulation. The distinction need not detain us long, however, for the reason that most of the decisions have turned upon points of construction of statutes, charters, and ordinances rather than upon constitutional questions. In an early Massachusetts case the city of Boston, acting under express power to provide for the due regulation in the city of omnibuses used wholly or in part in the city, by prescribing routes or places of standing or in any other manner whatsoever, prohibited the running of such omnibuses from Roxbury into Boston except after the purchase of a license. This was held to be a tax and without authority. It was thought that express legislation would be needed to authorize such a tax, and the evils of control by one city of intermunicipal or statewide traffic were dwelt upon.

A few years later a Pennsylvania borough, under legislative authority to require all vehicles "using the paved streets of the borough, to be registered, and a moderate license to be paid for them," ordained an annual license fee of $2.00 for each dray. By express provision all "vehicles passing through the borough on their way to Pittsburgh or elsewhere, on their ordinary business," were required to pay, but travelers, and farmers hauling their own produce to market were specifically excepted. One who owned an alkali works in an adjacent township refused to pay the license and was sued in action of debt for the license and the fine. In a vigorous, well reasoned decision the court held that the act did not entitle the borough "to tax any vehicle except those of their own citizens carrying on some branch of business or occupation within the town by means of them." The ordinance, on its face,

Western Union Telegraph Co. v. City of Fremont, (1894) 39 Neb. 692, 38 N. W. 415; City of York v. Chicago, Burlington and Quincy Railroad Co., (1898) 56 Neb. 572, 76 N. W. 1065; Nebraska Telephone Co. v. City of Lincoln, (1908) 82 Neb. 59, 117 N. W. 284, 28 L. R. A. (N.S.) 221; Postal Telegraph Cable Co. v. Charleston, (1894) 153 U. S. 692, 14 Sup. Ct. 1094, 38 L. Ed. 871. In the case of City of Cairo v. Adams Express Co., (1894) 54 Ill. App. 87, the city was clearly without legislative authority to levy the tax involved, and the question involved in Wilkey v. City of Pekin, (1857) 19 Ill. 160, was that of the situs for tax purposes of a vessel engaged in interstate commerce.


included "every man who drives his cart into the town to get a wheel mended, and every farmer who goes there to get a bar of iron, a box of glass, or a keg of sugar. And more especially and plainly it includes all who do not stop in the town, but pass through it to other places; and if the word 'bringing' be taken strictly, it includes even farmers carrying their produce to another market."

These two decisions of seventy-five years ago have set the standard for later ones. With only a few exceptions the courts have given a strict construction to statutes and charter provisions authorizing local vehicle licenses. They have thus prevented municipalities from putting burdens on regularly established intermunicipal carriers, on the one hand, and on the other hand they have denied that licensing ordinances can be applied to the casual use of streets by farmers, travelers, and those who make only infrequent or occasional use thereof. The business to be licensed should be strictly or primarily within the city. It should be a regular business, and not a mere "sporadic act" or an incident of some other business.

But where a mine operator used sixteen four-horse teams hauling coal, which "must have passed and repassed almost constantly" through the town to a shipping point beyond, a vehicle tax of $10.00 per year for a four-horse team was held not unreasonable. And such was also the decision where a rolling mill operator outside the city used drays within the city for daily free delivery of his iron products. In Minnesota, also, a city which was an important terminal for an inter-city motor bus line was held to have power under its home rule charter to require a license and a bond of each bus in operation; but this decision stands upon unusual grounds, and cannot be harmonized fully with others.

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81Gartside v. City of East St. Louis, (1867) 43 Ill. 47.


It should perhaps be repeated, in summary, that none of these cases decide directly that the legislature is without power to authorize municipalities to tax the traffic that goes through them.\textsuperscript{84} In most instances they decide that no such power has been given, or at the most they hold that the ordinance as drawn is unreasonable. In one instance, however, the Missouri court referred to \textit{Wells v. Weston} and asserted that "although there may not be any express limitation on legislative power in our state constitution, in many instances the very nature of our state governments and the purposes for which they were created, must form a barrier to legislation which deprives one portion of the community of its property for the benefit of others."\textsuperscript{85}

In a second group of cases, arising principally in the southern states, local occupational taxes are involved and the questions raised affect mainly the situs for tax purposes of small local businesses. An occupational tax, it is clear, depends not upon the residence of the persons engaged in business, but upon the place where the business is actually carried on. Thus a warehouseman living in a city but having his warehouse and his entire business outside and thirty miles away cannot be taxed on this business in the city;\textsuperscript{86} but a banker and a lawyer who reside outside the city but carry on their businesses or professions within it are taxable;\textsuperscript{87} and a butcher whose place of business and slaughter house was one mile outside the city, but who made daily trips in to the city to sell his meats to regular customers was carrying on his business within the city to an extent sufficient to bring him under the city's taxing power.\textsuperscript{88} A license tax on wagons used in the city was also held to apply to one who had a market stall in the city and who came in daily with a load of meat, although his residence and slaughter house were outside;\textsuperscript{89} and in another case

\begin{quote}
\textsuperscript{84}There are limits, of course, upon the power to burden interstate commerce, but we avoid that question.
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\textsuperscript{86}\textit{Bates v. Mayor, etc., of Mobile}, (1871) 46 Ala. 159.
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\textsuperscript{87}\textit{Moore v. Mayor, etc., of Fayetteville}, (1879) 80 N. C. 154, 30 Am. Rep. 75; \textit{Frommer v. City of Richmond}, (1879) 31 Gratt. (Va.) 64, 31 Am. Rep. 746; \textit{City of Petersburgh v. Cocke}, (1897) 94 Va. 244, 26 S. E. 576. See also \textit{Worth v. Commissioners of Fayetteville}, (1864) 60 N. C. 617, and \textit{American Manufacturing Co. v. City of St. Louis}, (1917) 270 Mo. 40, 192 S. W 402.
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\textsuperscript{88}\textit{Davis and Co. v. Mayor, etc., of Macon}, (1879) 64 Ga. 128.
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\textsuperscript{89}\textit{Frommer v. City of Richmond}, (1879) 31 Gratt. (Va.) 646, 31 Am. Rep. 746.
\end{quote}
such a tax applied to a non-resident dairyman who sold milk daily in the city.  

The taxation cases discussed up to this point have been mainly cases of taxes which could be collected within the city, but of which the effects would be felt to a considerable extent outside the city and by non-residents. We come now to the few cases in which cities have attempted actually to levy taxes outside of their boundaries. The courts are unanimous in holding that the power of a municipality to levy taxes beyond its boundaries cannot be implied. For purposes of taxation a municipal boundary is, therefore, a real limitation. The question still remains, however, whether the legislature may not constitutionally authorize a city to levy certain taxes beyond the ordinary city limits—whether, in other words, such an express legislative act could not be considered an extension of the municipal area for taxation purposes. In attempting to answer this question, we may distinguish between three types of taxes first, ordinary property taxes, second, special assessments; and third, licenses taxes upon business in which some element of the police power is involved.

The preponderance of judicial opinion is undoubtedly against the power of the city to tax real estate beyond its boundaries. This point has been directly decided in Missouri and has been asserted in many jurisdictions. The leading Missouri case involved a charter provision which attempted to authorize the city

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90Mason v. Mayor, etc., of Cumberland, (1901) 92 Md. 451, 48 Atl. 136. In Christie v. Malden, (1884) 23 W Va. 667, the court avoided a decision on the power of a town to tax a ferry which operated from the opposite shore to the town and back.


92Wells v. City of Weston, (1856) 22 Mo. 384.

93See the decisions from Colorado, Dakota, and New Jersey, cited in note 91, above and also Malone v. Williams, (1907) 118 Tenn. 390, 419-20, 103 S. W. 798, 121 A. S. R. 1002, but leases, it has been held, may be taxed were found, Johnson v. Harrison Naval Stores Co. (1914) 108 Miss. 627, 67 So. 147; and franchises in the principal place of business of the company holding them, Board of Councilmen of City of Frankfort v. Stone, (1900) 108 Ky. 400, 56 S. W. 679.
of Weston to tax property within the city up to one per cent of its value, and property in a half mile zone outside up to one-half of one per cent. The extraterritorial tax was held unconstitutional as not a true tax but an arbitrary taking of property. The court held that a constitutional prohibition against the "arbitrary taking of private property for private use without any compensation" would be implied, and evidently considered that the extraterritorial tax was not for a public purpose since those who paid it received no benefit from it. "If the legislature possess the power, now claimed, over private property," said the court, "they ought to exercise it themselves, and not delegate it to those whose interest it is to abuse it."

A Virginia statute at a later date authorized a town to levy a tax to guarantee a six per cent return on $500,000 of stock of a railroad company, and for this purpose only to levy a tax not only within the city but also in a zone one-half mile wide around it. In the litigation over the collection of this tax extraterritorially it was argued that under the state constitution no persons could be "taxed or deprived of their property for public uses, without their own consent or that of their representatives." The court, holding the tax constitutional, pointed out that it was authorized and levied by the authority not of the city but of the state legislature. "The tax being thus imposed by the power and authority of the legislature alone, it follows that it might as well be delegated to local authorities who do not represent the people" as to any authorities who might have been elected by them. This reasoning receives some support in other decisions, but it must be admitted that in a number of cases the courts have held taxes invalid because they violated a supposed constitutional rule against "taxation without representation." Other considerations which have had weight with the courts are that persons outside of the city levying the tax receive no benefits therefrom, although this would seem to be a question primarily for the legislature, and that such taxation could not be equal or uniform. In Iowa, as we

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94 See also Cheaney v. Hooser, (1848) 9 B. Munroe (48 Ky.) 330.
95 Langhorne and Scott v. Robinson, (1871) 20 Gratt. (Va.) 661.
96 See, for example, State ex rel. Bulkeley v. Williams, (1896) 68 Conn. 313, 35 Atl. 24, 421, 48 L. R. A. 465.
97 Hundley and Rees v. Commissioners of Lincoln Park, (1873) 67 Ill. 559; State ex rel. Howe v. Mayor, etc., of Des Moines, (1897) 103 Iowa 76, 72 N. W. 639, 39 L. R. A. 285; 64 A. S. R. 157, Campbell County v. City of Newport, (1917) 174 Ky. 712, 193 S. W. 1, L. R. A. 1917D 791; State ex rel. Chouteau v. Leffingwell, (1873) 54 Mo. 458.
have pointed out elsewhere, the doctrine of benefits has been carried so far as to prohibit cities from taxing agricultural lands within their recognized boundaries, since such lands would receive no appreciable benefits from municipal expenditure.98

The special assessment cases follow closely the cases relative to general property taxes. If an improvement is really local in its nature, special assessments therefor may be levied upon benefited property within the city even though the improvement, such as a drain or sewer outlet, may extend partly outside the city.99 On the other hand the courts will not imply a power in the city to levy special assessments outside its limits, and there are dicta practically to the effect that the legislature cannot authorize such extraterritorial assessments.100 In the case last cited the court said:

There is no principle that I am aware of, which sanctions the doctrine that it is within the taxing power of the legislature to compel one town, city or locality to contribute to the payment of the debts of another. The government has no such authority, and this case is entirely without a precedent. If such assessments were authorized they might not be limited to adjoining towns, cities or villages, but applied to those located at great distances from each other. Such legislation would be unjust, mischievous and oppressive, and cannot be tolerated.”

This statement is a mere dictum, however, since the court decided the case upon other grounds. At the same time it clearly implied that the legislature itself might have provided for such extraterritorial assessments. At any rate, in Pennsylvania the statutes governing third class cities expressly authorize extraterritorial assessments to a distance of 150 feet beyond the city to pay for the improvement of boundary streets, and this act has been sustained in a case which raised some questions concerning its constitutionality.101 To the writer it would seem that such acts might well be upheld on the grounds, first, that it is the legislature which authorizes such assessments, and second, that due

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98See note 13 above, page 479.
process does not require that only the elected representatives of the taxpayers be empowered to spread the assessments.¹⁰²

The cases which involve municipal taxation of business outside of the city's boundaries are few, and they are hard to distinguish from the police power cases where a license is imposed not for revenue but for purposes of regulation. An Alaska case relative to a tax by the town of Fairbanks upon cattle and meat kept at a slaughterhouse outside the town seems to be one in which the real issue is that of the situs of the cattle and meat for tax purposes.¹⁰³ Some of the meat being brought into the town and sold there from time to time, a settlement was made with the court's approval whereby taxes were paid upon this part of the meat but not upon the rest. In a West Virginia case a license ordinance covering saloons within one mile of the city was treated as a revenue measure, and the license was held invalid since it was for general revenue purposes of the city instead of being for the more restricted purposes stated in the enabling act.¹⁰⁴ These two decisions give us no clear line of judicial reasoning, but there is little reason why the courts should view extraterritorial business taxes and extraterritorial property taxes as in any way materially different. Licensing for police purposes will be dealt with in the following pages.

THE POLICE POWER BEYOND CITY LIMITS

The power to regulate the conduct of persons and their various uses of land, buildings, and movable things is the essence of the police power. It is among the two or three most important powers conferred upon true municipalities, and it stamps the place which possesses it as a distinct government, though it may be a subordinate one. The purposes of the local police power, nowhere fully defined, comprise the protection and promotion of the health, morals, and safety of the people, and also their comfort and convenience.

There is common agreement that, as a rule, the police power of a city extends only to the corporate limits of the place. In fact, the principal purpose of setting municipal boundaries is to set a territorial limit to the city's governmental powers. Municipal reg-

¹⁰²Daley v. City of St. Paul, (1862) 7 Minn. 390 (Gil. 311).
¹⁰³Town of Fairbanks v. Independent Meat Market, (1910) 4 Alaska 147
¹⁰⁴Kaufle v. Delaney, (1885) 25 W Va. 410. See also the cases cited in notes 125 and 128, below.
ulations are, therefore, felt primarily by the local inhabitants. Both indirectly and directly, however, a great many city ordinances have an appreciable extraterritorial effect.

Even when a police ordinance is enforced only within city limits its effects upon those living outside may be very important. Each day hundreds of people from outside come into small cities for trading and other purposes, and in the case of large cities the count of such daily transients runs high into the ten thousands. This is what rural members of the Massachusetts constitutional convention of 1820-21 had in mind when they expressed fear of chartered cities lest they pass ordinances to "ensnare and entrap" the people from the neighboring towns who repaired to them for business. and it was undoubtedly to allay such fears that the convention wrote into the constitutional amendments a provision that the by-laws of municipal governments should "be subject at all times, to be annulled by the general court." 105

It was then already the accepted rule that the by-laws of cities "should bind strangers," 106 and it is, in fact, hard to see how a municipal corporation could really provide local government over a place unless this were the law. Nevertheless the question of the binding effect of local ordinances upon non-residents has frequently been raised, and it has been necessary for the courts to say over and over again that those coming into a city are bound to take notice of the regulations there existing, since "a bye-law or ordinance, which a corporation is authorized to make, it as binding on its members and all others, as any statute or law of the Commonwealth." 107

105 Amendments, art. II.
106 Cuddon v. Eastwick, (1704) 1 Salkeld 193. The rule in Comyns' Digest, 3rd ed., 1792, pp. 160-61, that "a corporation, without authority of parliament, or an express prescription (sic), cannot make a by-law which shall bind a stranger" is supported by the citation of the cases of Oxford university, the corporation of Trinity house, etc., which would not today be considered municipal corporations, but which attempted to make by-laws applicable outside their own precincts. Some years before 1792, Lord Mansfield had held a by-law of Exeter binding upon a stranger within the city on the ground "that he is an inhabitant pro hac vice, and consequently is bound by the same regulations as the other members of the corporation are." Pierce v. Bartrum, (1775) Cowper 269, 270.
The same rule applies, of course, to the chattels and other property of non-residents brought or allowed to come into the municipality. The most numerous American cases under this head have involved municipal ordinances affecting farmers from the neighboring countryside. That a municipal ordinance which provides for the impounding of estrays, and for the sale or destruction thereof after published notice, will bind a neighboring farmer has been settled. Such regulations would be of little avail, if restricted in their operation to the stock of the inhabitants." But where, under such an ordinance, the estray has been impounded and sold, it has been held that the ordinance against estrays cannot be the basis of a civil action for damages caused by the estrays while unlawfully at large in the city, for this might result in giving an almost unlimited extraterritorial effect to such an ordinance.

Besides the estray ordinances, there are many for the regulation of local business which affect the farmers in the adjacent areas. Thus it has been held that local ordinances for the licensing and regulation of vehicles used in the city, of the scavenging business, and of the sale of meat, milk, and other products within the city, will apply in full vigor to non-residents. At the same time it is noticeable that the courts, while admitting the principle, have sometimes softened its effect in practice. Thus, although a New York court in an early decision held a farmer guilty of violating a local market ordinance though his offense was only the exchange of a leg of lamb for a pound of tea; and a Minnesota decision in our own century held guilty of peddling without a license a farmer who merely peddled a surplus of melons which he was unable to dispose of at the central market; a Georgia decision of 1889 held that a farmer who gathered up wood cleared from his land and hauled the surplus into the city for sale was not engaged in running a wagon and conducting a business within

109 Jones v. Hines, (1908) 157 Ala. 624, 47 So. 739, 22 L. R. A. (N.S.) 1098. The city has, of course, no implied power to enact laws relative to civil remedies in general, whether made applicable to non-residents or not.
111 Village of Buffalo v. Webster, (1833) 10 Wend. (N.Y.) 100.
112 State v. Jensen, (1904) 93 Minn. 88, 100 N. W. 644.
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the city. On the other hand, a truck gardener who kept a stand in the city to which he daily brought his produce for sale was subject along with others to pay a vehicle tax for the maintenance of streets. Discriminations favorable to non-residents in such cases, sometimes found, are not disapproved by the courts, but those which discriminate against them are looked on with disfavor as discriminatory or class legislation, lacking in equal protection.

A group of milk ordinance cases furnish us with a striking example of how a by-law which is enforced only within city limits really operates extraterritorially as a regulation of the dairyman's business. His market is in the city, and if the city ordinance says to him that he may not sell his milk there unless his cattle and his barns have been inspected and approved by a city health officer, he has little choice but to consent. In several cases where ordinances of this type have been attacked on the ground that they operate outside the city limits, the courts have sustained them on the ground that the only subject on which they operate "is the sale of milk within the city." No fee for inspection of cattle and barns may be charged contrary to statute, but where the ordinance made a charge of only $1.00 for inspection, it was held not to violate a statute which forbade charging a "license to vend or sell."
We come next to a group of cases in which cities have attempted to regulate what we may call, for want of a better term, intermunicipal highway traffic. Here again we have a case where the regulation itself may impinge upon the subject only within the city limits, but where the regulation has a direct effect on businesses which may extend far beyond the city. In the case of Commonwealth v. Stodder, already discussed, the city of Boston had power to regulate omnibuses used wholly or in part within the city, either by prescribing routes or stopping places or in any other manner whatsoever. Under this power the city endeavored to license and to regulate an inter-city omnibus line. The decision went against it largely because of the license imposed, but the court thought that even if the license had been so reduced that it would have ceased to be a tax, it would still have been "an unnecessary restraint upon the business of those carrying passengers for hire, and not binding upon inhabitants of other towns." The requirements of the ordinance as to routes to be followed were fully sustained, however, as proper police regulations and fully authorized by the statute.

Similar conclusions have been reached in other cases. The Borough of Gettysburgh, Pennsylvania, was held to be without the power to regulate the rates of liverymen for taking passengers beyond the borough limits to visit the national cemetery and battlefield, an Ohio city which had authority "to regulate the speed of interurban traction and street railway cars within the corporation" was held to have acted unreasonably in ordaining that interurban cars should stop at any street intersection in the city on signal, and a California city was denied the power to stipulate in a street railway franchise as to the rate of fare to be charged to the neighboring city of Los Angeles and return.

An Arkansas ferry decision reaches a different conclusion. The city, which had the power to regulate ferries within its limits, enforced its ordinance for the licensing and regulation of ferries upon one whose ferry operated from a landing in the city across a navigable river which lay outside of the city to a point on the

118(1848) 2 Cush. (Mass.) 562. See note 78 above.
120Townsend v. City of Circleville, (1908) 78 Ohio St. 122, 84 N. E. 792.
122Arkadelphia Lumber Co. v. Arkadelphia, (1892) 56 Ark. 350, 19 S. W 1053.
other side. The ferry owner claimed exemption, but his claim was rejected by the court for the reason that the legislature had clearly intended to give the city the power to regulate ferries, and that under the circumstances "the right to regulate would be of no service to the city unless it also has the right to regulate ferries operated from the opposite bank." This case did not involve the regulation of rates, but on that point the law has hit upon a compromise apparently peculiar to the law of ferries, namely that where a ferry operates between cities, each will have power to regulate the ferriage for passengers from its own area to the opposite shore. It is obvious in the case of ferries between cities that a rate operating wholly and exclusively within the city would be an absurdity. Ferry passengers cannot get off in midstream to finish the journey on foot, and the collection of two fares would be an awkward thing as a rule.

The decisions relating to the police power of cities over intermunicipal carriers should be read in connection with the taxation cases on the same subject, since the line between them is sometimes hard to draw. Of course, no one now seriously questions, and we have not essayed to discuss, the rule that municipal corporations may make reasonable regulations as to the speed and safety of trains operated on railroads within city limits. It is when the regulation takes the form of licensing, and thus tends to move off in the direction of taxation, that the courts begin to eye the regulations most critically.

Up to this point we have mentioned only those police power cases in which the municipal regulation, though enforced solely within the city, had an extraterritorial effect. A distinct group of decisions consists of those in which the local ordinance power has been extended, by statute or charter, for one or more purposes, to a distance of one-half, one, two, or even more miles beyond the ordinary city limits. In such cases we may look upon the extension of power as either an extension of municipal boundaries for one or more purposes, or as a legislative act giving a limited extraterritorial effect to a municipal regulation, or as a direct conferment of extraterritorial power upon the city.

There are a number of cases in which charters and laws have extended the municipal police power to license, regulate, or pro-

123City of Bellaire ex rel. Sedgwick v. Bellaire, etc., Ferry Co., (1922) 105 Ohio St. 247, 136 N. E. 899, and cases cited.

124See cases cited above in notes 78 to 85, inclusive.
hibit the liquor traffic beyond city limits for a distance of from one-half mile to as much as five miles. In regulating and prohibiting this traffic under local option laws, cities could hardly have made their regulations effective if dram-shops could be set up with impunity a few feet beyond the city's limits. To remedy this situation a number of states provided that no saloon could be operated within a zone of fixed width around a city without the license or consent of the municipality. In whatever form they appeared, such provisions amounted in effect to an extension of city's boundaries for this purpose. They were attacked, as a matter of course, in a number of jurisdictions, sometimes on the ground that they denied equal protection of the laws, sometimes for the more uncertain reason that they gave officials elected by one electorate the power to enact ordinances binding outsiders who had no right to vote for these officials. Despite such attacks, however, the courts were almost unanimous in sustaining such acts, although in some cases they construed them with a great deal of strictness. The legislature, said one court, had power "to determine over what territory the jurisdiction of a municipal corporation shall extend." It has in some cases been stated or inferred that if the legislature has the power to extend a city's boundaries for all purposes, it may do so for one or a few purposes. Legally this view is probably correct, but it overlooks the political fact that, when a city's boundaries are extended for general purposes, the qualified voters in the annexed territory become voters of the enlarged municipality, whereas they have no such right when a city exercises one or more powers over them extraterritorially.

Analogous cases are to be found in the matters of the regulation or prohibition within a fixed distance of the city of slaughter-


127Emerich v. City of Indianapolis, (1888) 118 Ind. 279, 20 N. E. 795.
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houses, hog farms, and nuisances dangerous to the health and safety of the people in the city.\textsuperscript{128} This sort of "zoning" by the state legislature or under its authority is no doubt based upon the police power of the state, and is justified by the necessity of protecting the preponderant interests of large populations against nuisances and noxious or dangerous businesses in adjacent areas. Such things may be tolerable when at a distance from any considerable population, but become dangerous or deleterious when placed in close proximity to populous communities.\textsuperscript{129}

When carefully limited in scope, such express extensions of municipal police powers have generally been sustained. There are cases, however, in which the legislatures have made such sweeping enlargements of municipal authority over adjacent areas that the courts have hesitated to sustain them. A striking case is that of the commission government charter enacted for Memphis in 1907.\textsuperscript{130} Under this act the city commission, appointed by the governor, was to have broad powers over quarantine, health and cleanliness, nuisances and buildings, within ten miles of the city, and within a two mile zone about the city it was to have and to exercise "all governmental powers and police powers." The council could even have prohibited pig pens, cow

\textsuperscript{128}Boyd v. City Council of Montgomery, (1898) 117 Ala. 677, 23 So. 663 (slaughter-house); Chicago Packing and Provision Co. v. City of Chicago, (1878) 88 Ill. 221, 30 Am. Rep. 545 (slaughter-house); State v. Franklin, (1888) 40 Kan. 410, 19 Pac. 801 (no implied power to regulate stock yards beyond city limits); Robb v. City of Indianapolis, (1871) 38 Ind. 49 (disorderly houses, might be suppressed as nuisances); State v. Rice, (1912) 158 N. C. 635, 74 S. E. 582, 39 L. R. A. (N.S) 266 (hog farm within one mile); Green v. Mayor, etc., of Savannah, (1849) 6 Ga. 1 (rice farm within one mile of city), Van Hook v. City of Selma, (1881) 70 Ala. 351, 45 Am. Rep. 85 (regulating and licensing, as a police measure, the sale of goods, wares, etc., within police jurisdiction, but outside of city). See also Harrison v. Mayor, etc., of Baltimore, (1843) 1 Gill (Md.) 264 (general health regulations within three miles).

\textsuperscript{129}The storage of explosives and the maintenance of cemeteries, would seem to come within the rules as to saloons, slaughterhouses, and stock yards; but of course the power to regulate or prohibit outside city limits cannot be implied. Gutowski v. Mayor, etc., of Baltimore, (1916) 127 Md. 502, 96 Atl. 630 (handling of explosives); City of Duluth v. Orr, (1911) 115 Minn. 267, 132 N. W. 265 (that a home rule city empowered to make a charter "for its own government as a city" may not forbid storage of explosives within half mile zone outside of city, although previous legislative charter has given this power); Bogert v. City of Indianapolis, (1859) 13 Ind. 134 (regulate cemeteries); Begein v. City of Anderson, (1867) 28 Ind. 79 (regulate location of cemeteries); Ex parte Deane (1816) 2 Cranch C. C. 125, Fed Cas. No. 3,712 (regulation forbidding nightly meetings of slaves outside town); City of Topeka v. Cook, (1906) 72 Kan. 595, 84 Pac. 376 (nuisance in street).

\textsuperscript{130}Malone v. Williams, (1907) 118 Tenn. 390, 103 S. W. 798, 121 A. S. R. 1002.
stables, and dairies for a distance of ten miles about the city. Other details need not be given here, but the court found the act so objectionable to constitutional guarantees in various ways that it held it to be unconstitutional as a whole. Upon the subject of extraterritorial powers the court, after reviewing certain decisions, remarked:

"We have seen that, ex necessitate, a limited police power may be granted to municipalities over a small section of country surrounding their boundaries for their protection against nuisances, and to safeguard the health of the people residing in them; but even this is hard to justify on any principle other than that the municipality is in such matters the agent of the state itself for the protection of the people of the state. But that agency cannot be used as a basis for conferring power upon municipalities over territory outside of them any further than bare necessity requires."\(^{131}\)

The boundaries of the city set down in its charter may then be said to define the territorial limits of its agency as a governmental agent of the state. It is perhaps for this reason that the courts are united in refusing to imply any power on the part of cities to exercise police powers beyond their limits.\(^{132}\) It is obvious that such power could not be implied without getting the courts into serious difficulties in trying to define the extent of the powers inferred. Should they extend for one mile, or two miles, or over the entire county, or even farther? The safest course and the only proper one for the courts is to construe a city's police powers to be limited to its ordinary area unless the charter or laws clearly provide otherwise. Even the powers expressly granted to a city over adjacent areas are to be construed strictly so as to prevent cities from doing what the legislature has not authorized. Thus a power "to direct the location of markets or slaughterhouses" for two miles beyond the city is not a power to prohibit such establishments in this entire zone.\(^{133}\)

But is there not a violation of constitutional rights when the elected officers of one community are given powers of government, however limited, over persons who dwell in other places and who do not voluntarily come into the place to submit to its rule? If the doctrine of an "inherent right of local self-govern-

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\(^{131}\)See Blair v. State, (1892) 90 Ga. 326, 17 S. E. 96, 35 A. S. R. 206, for another attempt to make a general extension of municipal police jurisdiction.

\(^{132}\)See cases cited in note 129, above.

\(^{133}\)Elkhart v. Lipschitz, (1905) 164 Ind. 671, 74 N. E. 528.
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"ment" had not been so generally rejected by the courts it might have given some support to this view. In an interesting Indiana case it was argued that extraterritorial police powers could not constitutionally be granted to a city on the ground that "all government is by the consent of the governed, and that as persons residing beyond the limits of the city have no voice in the selection of the officers of the city, or in making by-laws or ordinances, the common council possesses no jurisdiction over them, and cannot prescribe what shall constitute an offence against the authority of the city, for an act committed beyond and outside of the corporate limits." The court did not pass directly on this proposition, but its dissent may be implied from the fact that both then and at a later date the court sustained acts conferring extraterritorial police powers. If we bear in mind, also, that the city acts in governmental matters only as the agent of the state, and that it has no power to act governmentally either within or without its ordinary boundaries without state legislative authorization, we can properly argue that the act is, however indirectly, the act of the state legislature, in which all residents of the state have representation. If the consent of the governed is a prerequisite to a valid act of legislation, that consent has been given by the voters' representatives in the legislature.

We cannot close this discussion of the police power cases without referring to recent developments in the field of city planning. Under state laws and charter provisions a number of cities already have the power to control the layout of streets and the platting of lands adjacent to the city for distances up to three miles or more beyond the city limits.

CONCLUSION

No simple summary of the subject-matter of this article can be made in a few paragraphs. The main purpose has been to show by the actual citation of cases that there is a very extensive prac-

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124On this doctrine see H. L. McBain, The Doctrine of an Inherent Right of Local Self-Government, 16 Col. L. Rev. 190, 299.
125Robb v. City of Indianapolis, (1871) 38 Ind. 49.
126See Indiana cases cited in note 125, above.
tice, both past and present, to support the thesis that municipal areas are the centers rather than the limits of municipal activity. The number and the variety of things which cities can do and are doing outside of city limits are very impressive and the mass effect of the presentation would have been even more effective if space had been taken to cite the numerous statutes and charter provisions which confer extraterritorial powers. The general impression made, upon the writer's mind, at least, by the many illustrations of boundaries broken or overstepped by corporate purposes is that, after all, municipal boundaries are rather hazy, uncertain, and elastic things. The sharply drawn lines which we see on city maps are in some degree deceptive.

Two words may, however, be added in conclusion. First, as to corporate and business powers, it would seem that there is little reason why the courts should not be liberal toward the cities when interpreting common law and statutory principles concerning municipal business activities and property ownership outside city limits. In origin municipal and private corporations were practically one. The present distinctions between them have been a late development. Since private corporations are permitted to acquire property and carry on their businesses almost anywhere in the state which creates them, municipal corporations, as to their private or corporate affairs, may well be accorded substantially the same privileges for all proper municipal purposes. No serious wrong to anyone can result from a liberal attitude in such matters, at least none that cannot easily be righted by the legislature.

As to governmental powers, while the courts have in general been liberal, a few courts seem to have overlooked the important fact that municipal corporations exercise these powers only as agents of the state for and on behalf of the state. The municipality is, in other words, merely the creature and the instrument of the state for governmental purposes. The state itself is the chief reservoir of governmental powers; it has all powers of government not conferred upon the national government or denied to the state by the federal constitution. While the state legislature is further restricted by the state constitution, it is nevertheless the chief repository of the state's powers, and its acts should not lightly be set aside. If these principles be kept firmly in mind, it will be dif-

ficult indeed to find much justification for some of the judicial legis-
lation which asserts as constitutional principles, although they are not put into the constitution, that there can be in local gov-
ernment "no taxation without representation," no taxation of those who are not directly benefited, no denial of the supposed inherent right of local self-government, and so on. Specific and substantial constitutional guarantees should and must be enforced, but where such cannot be found, decisions relative to local matters such as municipal powers and boundaries, can well be entrusted to the legislature and its local agencies, the municipalities themselves.