Marquette Law Review

Volume 16
Issue 1 *November 1931*

Article 6

1931

Constitutional Law - Municipal Corporations - Uniform Laws

Charles A. Riedl

CASE NOTES

CONSTITUTIONAL LAW — MUNICIPAL CORPORATIONS — UNIFORM LAWS. In *Breckenridge, et al.* v. *City of Watertown,* 237 N.W. 139, the plaintiffs were owners of agricultural lands lying within the City of Watertown and they sought to have their land detached from the City of Watertown and annexed to the Town of Watertown as provided for in Stat. 62.075. Upon the verdict being for the plaintiffs the City of Watertown appealed.

The language of the statute in question, namely, "When land *used* for agricultural purposes of an area of 200 acres or more * * * *shall have been within the corporate limits of such city* (of the fourth class) *for twenty years or more* * * * ," shows on its face that it is special legislation. The statute arbitrarily selects a class and gives certain members of that class a right which is denied to all other members of that class. The state Supreme Court rightly declared this legislation to be unconstitutional in that Article 1, Section 1 and 22 of the Wisconsin Constitution condemn laws which grant privileges to a favored class.

With due deference to the Supreme Court, the reviewer desires to raise a point which the Supreme Court did not mention, namely, that this legislation is unconstitutional because it is contrary to Article 4, Section 31, Subsection 9 of the Wisconsin Constitution, which prohibits the legislature "from enacting any special or private laws * * * for incorporating any city, town, or village or *amending the charter thereof.*" It is evident that Stat. 62.075 is an attempted amendment of the charters of the cities of the fourth class. The language of the statute is consistently in the past tense, and "where the language used is plain the court can not read words into it which are not found therein either expressly or by fair implication even to save its constitutionality, because this would be legislation and not construction." *Mellen Lumber Co.* v. *Industrial Commission,* 154 Wis. 114: *Rogers-Ruger Co.* v. *Murray,* 115 Wis. 267.

One then is justified in saying that the legislature enacted a statute for a closed class. By the very wording of the statute there is not sufficient elasticity to have it apply to cities of the fourth class which might come into existence in the future. "That is not classification which merely designates *one* county in the commonwealth and makes no provision by which *any other* county may, by reason of its increase of population in the future, come within the class." *Commonwealth* v. *Patton,* 88 Pa. St. 258. On August 3, 1929 when this statute was published and took effect one could ascertain with certainty what cities were in the fourth class. "The effect of the act would have been precisely the same if the city had been designated by name instead of the

circumlocution employed." *State, ex rel.* v. *Mitchell,* 31 Ohio St. 592.

The Wisconsin Constitution, in common with many other states, in Article 4, Section 32, declares that general laws must be enacted, and that they shall be uniform in their operation throughout the state. "A statute would not be constitutional * * * which should select particular individuals for a class or locality and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same class or locality are exempt. * * * Every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free government." *Cooley Constitutional Limitations,* 391.

In *Johnson* v. *City of Milwaukee,* 88 Wis. 383, at 390-2 the court lists certain well established rules by which the propriety of the classification may be tested. *"One rule* is: All classification must be based upon substantial distinctions which make one class really different from another * * * . *Another rule* is: The classification adopted must be germane to the purpose of the law * * * . *Another rule* is: The classification must not be based upon existing circumstances only * * * . *Another rule* is: To whatever class a law may apply, it must apply to each member thereof * * * ." *Adams* v. *Beloit,* 105 Wis. 363: *State, ex rel. Risch* v. *Trustees,* 121 Wis. 44; *State, ex rel. Morgan* v. *Dornbrook,* 188 Wis. 426. In applying these rules to the instant case, one cannot help but come to the conclusion that the statute in question was special legislation. The constitutional provisions (Art. 4, Sec. 31, 32) are certainly free from ambiguity. The language is plain, simple, direct and commanding. It expressly prohibits the legislature from enacting any special laws for the amendment of charters of cities. Since the legislature attempted to do this very thing in Section 62.075, the statute is of necessity unconstitutional.

CHARLES A. RIEDL.

CRIMINAL LAW—JURISDICTION—INDIANS. *State* v. *Rufus,* (Wis.) 237 N.W. 67. Fifty years ago, in a prosecution by the state of an Indian for adultery committed on an Indian reservation, the Wisconsin Supreme Court decided that the state courts had jurisdiction of violations by Indians of state criminal statutes. State v. Doxtater, 47 Wis. 278. In this case the court recognized only two possible limitations which might be imposed on such jurisdiction: existing treaties with the Indians, and acts admitting the state into the union. It was held,