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have failed to record it. The purpose of such statutes can be perfectly accomplished without giving them a collateral result which protects fraud feasers from liability.”

WILLIAM EVANS.

Municipal Corporations—Liability for Extras Furnished Without Compliance with Statutory Mode of Contracting.—In *Probst v. City of Menasha*, 45 Wis. 90, 13 N.W. (2d) 504 (1944) the defendant city made contract with plaintiff contractor for the construction and repair of sidewalk, which contract obligated the contractor to furnish sufficient filling to bring subgrade to proper level. The contract was entered into in compliance with Sec. 62.15¹ laying down the mode of entering into municipal contracts for public works. However, at the direction of the city engineer the contractor furnished extra filling of sand, and a committee of the common council which worked with the city engineer knew of the directions. It was held that the city could make itself liable on contract only in compliance with statutory provisions; that neither the city engineer nor the street committee had authority to modify the terms of the contract between the contractor and the city, and that the city did not become liable for the extra filling on principle of unjust enrichment.

In *L. G. Arnold Inc. v. City of Hudson*,² the plaintiff sought to recover for additional work under an amended contract without additional compensation being included. In denying recovery the court said,

We have found no decision of this court in which it has been held that a city may incur municipal liability by estoppel where the applicable mandatory statutes have not been complied with. The whole tenor of our decisions has been to require municipal corporations implicitly to obey the law in regard to letting of contracts or to incurring municipal liability and to deny to claimants against municipalities recoveries unless the law relating to the making of municipal contracts has been fully complied with.

Bechtold and another v. City of Wauwatosa and others,³ a taxpayers action to enjoin the city from paying on a contract entered into with the Federal Paving Corporation held that a municipality has no power to make contracts for public improvements unless it proceeds in the manner prescribed by law and that a contract entered into without com-

¹ WIS. STAT. (1915), Sec. 62.15(1). All public work the estimated cost of which shall exceed \$500 shall be let by contract to the lowest responsible bidder; all other public work shall be let as the council may direct. The council may also by a vote of 2/3 of all the members elect provide by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids.

² *L. G. Arnold Inc. v. City of Hudson*, 215 Wis. 5, 254 N.W. 108 (1934).

³ *Bechtold, and another v. City of Wauwatosa, and others*, 228 Wis. 544, 227 N.W. 657 (1938).

plying with its charter provisions is void in its inception and cannot be validated by performance.

In *Federal Paving Corp. v. City of Wauwatosa*,⁴ the plaintiff sought the reasonable value for the work done under the void contract. The court held, denying recovery, that the city may not by waiver, ratification, or acts ordinarily amounting to estoppel give vitality to the void contract or become bound upon principles of restitution. The conclusion is inevitable that an action based on principles of quasi-contracts or restitution will not lie.

Some jurisdictions hold a municipality liable upon implied contract for the reasonable value of benefits which have been received by the municipality under a contract illegal because the contract was not made in conformity with the Constitution or the statutes of the state, or the charter provisions of the city. Such jurisdictions maintain that while such contracts are void and no recovery is permitted thereon, common honesty and fair dealing require that a municipality should not be permitted to receive benefits of money, property, or services without paying just compensation therefor.⁵

It is to be noted that recovery on implied contracts is not allowed because of mere benefit to the municipality, recovery being limited to cases where there would have been a recovery upon an express contract.⁶ Other jurisdictions allow recovery upon ratification if the municipal corporation could have made the contract in the first instance.⁷ Such ratification may be by silence, by accepting the benefits or by express ratification by the proper authorities having the power to make the express contract in the first instance. Some jurisdictions allow a recovery upon the doctrine of estoppel as such doctrine would be applied to an individual, had the corporation been an individual.⁸ Recovery upon the theory of quantum meruit is also allowed.⁹

Recovery in all these instances is allowed providing the contract is not void, illegal, ultra vires, or malum prohibitum. These jurisdictions hold that mere irregularities in letting the contract do not make the contract void.

⁴ *Federal Paving Corp. v. City of Wauwatosa*, 231 Wis. 655, 286 N.W. 546 (1939).

⁵ *Sluder v. City of San Antonio, Tex. Comm. App.*, 2 S.W. (2d) 841 (1928); *City of Houston v. Finn*, 139 Tex. 111, 161 S.W. (2d) 776 (1942).

⁶ *Logansport v. Cykerman*, 116 Ind. 15, 17 N.E. 587 (1888); *Kramrath v. Albany*, 127 N.Y. 575, 28 N.E. 400 (1891); *Wilson v. City of Mitchell*, 17 S.D. 515, 97 N.W. 741 (1903).

⁷ *Stainer v. Polk County*, 40 Ore. 124, 66 Pac. 707 (1901); *Denver v. Webber*, 15 Colo. App. 511, 63 Pac. 804 (1900); *Lucier v. Manchester*, 80 N.H. 361, 117 Atl. 286 (1922).

⁸ *City of Mt. Vernon v. State*, 71 Ohio 428, 73 N.E. 515 (1915).

⁹ *Schiari v. Mayor and City Council of Baltimore*, 40 F. Supp. 184 (D.D.Md. 1941); *Western Chemical Co. v. Lancaster County*, 130 Neb. 550, 164 N.W. 699 (1936).

Wisconsin takes the position that if the irregularity of the method of entering into a contract is such as to deprive the municipality of the protection of a safeguard against the extravagance or corruption of its officers, and failure to comply with the statutory mode of entering into the contract, makes the contract void, and recovery either on the contract or on principle of unjust enrichment must be denied.¹⁰

ERWIN KAROW.

¹⁰ Federal Paving Corp. v. City of Wauwatosa, *supra*.