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Article 11

Municipal Corporation - Police Power - Zoning

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breached his agreement in the policy to assist in the defense of actions arising out of his acts, the Supreme Court declared that there had been no breach, because the insurance company had never requested Holmes to assist it.

After the accident he simply gave notice to the insurance company and disappeared without being requested to give aid, and so, Bachhuber v. Boosalis, 200 Wis. 274, 229 N.W. 117, which held that a provision for cooperation in defense in a liability policy is a condition precedent to the maintenance of an action on the policy, did not apply.

CHARLES ROWAN.

MUNICIPAL CORPORATION—POLICE POWER—ZONING. The City of La Crosse vs. Elbertson, a Wisconsin case reported in 277 N.W. 99, although not deciding any particularly new law, is interesting because it pertains to the right of a municipal corporation under its police powers to regulate zoning within its boundaries. The case is not radical; it makes no fresh departures; it evolves no new principles; it merely applies fundamental rules of municipal and constitutional law. Nevertheless, the case is attractive because it adds to the already somewhat fecund law of city zoning which in this day of increasing aestheticism commands immediate and ardent interest.

In this case the defendant appealed from a conviction before a police justice court in La Crosse of violating the Consolidated Zoning Ordinance Number 846 by operating a funeral parlor and undertaking business within a district set aside by the ordinance for residential purposes. The grounds of the appeal were four-fold; namely, (a) that the provisions of the ordinance were unreasonable and oppressive as to the defendant and his rights, (b) that the ordinance was void because it was an amendment to an invalid ordinance, (c) that it provided no penalty, and (d) that it reserved for the council of the city arbitrary power.

The court disposed of these arguments in the following manner:

To the first argument it replied, "Under the rules long since established, recognized, and set forth in the cases just cited, when municipal legislative action proceeds from authority expressly granted and such action is based on apparent reason, the decision of the legislative body is controlling." The court then proceeded to find that the legislative body was warranted in zoning as it did in view of the general character of the surroundings, stating that if different conclusions as to just where the line of the district should be, may be drawn from the evidence submitted, the conclusion adopted by the legislative body cannot be interfered with as long as that body acted within reason. (State

ex rel. Carter vs. Harper, 182 Wis. 148, 196 N.W. 451, 33 A.L.R. 269; Maercker vs. Milwaukee, 151 Wis. 324, 139 N.W. 199, L.R.A. 1915 F, 1196 annotated cases 1914 B, 199.)

To the second argument the court said that the amendment was valid although to a void ordinance because it was an amendment by name only, being in substance and manner of adoption an enactment, and therefore of an independent character. Here the court quoted from the appellant's own concession, "that an ostensible amendment of a void ordinance may in fact be an entirely new ordinance operating entirely prospectively and entirely free from dependence on a former void ordinance and therefore valid as a new ordinance."

To the third argument the court answered that the penalty of the original invalid ordinance was carried over into the amendment by its very terms and that the legislative intent by the subsequent amendment was to cure the invalid act. Hence the ordinance had a penalty.

And finally to the fourth contention the court remarked, "The reservation in the ordinance to the effect that the common council might upon petition, after public notice and hearing, and after report by its committee, make changes in the district, does not affect the appellant. The record is barren of any evidence that the common council ever granted a permit to any person, firm, or corporation for any use not in conformity with the ordinance. The appellant's rights are not affected by that provision, and his objection in this particular is not well founded. Gorieb vs. Fox. 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228, 53 A.I.R. 1210."

The law of this case is in accord with the generally accepted views (See R.C.L. and Corpus Juris under Zoning and Constitutional Law—Police Powers) that a municipality has the right to regulate zoning if it acts within reason for the public good without seeking to determine in what manner any premises in the restricted district shall be used, and further that an amendment to a void ordinance is valid if the amendment is to cure the defect of the prior invalid ordinance, and is so complete and sufficient unto itself as to be virtually independent of the invalid ordinance.

By increasing an already long line of authorities, the decision tends to settle more thoroughly the rights of a municipality with respect to zoning.

CLYDE SHEETS.

PERSONAL PROPERTY—SALES—FRAUDULENT CONVEYANCES. International Shoe Co. v. Hughes, et al. 237 N.W. 77 (Wis.). Justice Wickhem, in this case resolves the matters of law involved into two