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"OPINION"

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June 17, 2003

Representative Maria Nakian
Chair, Legislative and Rules Committee
Stamford Board of Representatives

Re: Your May 22, 2003 Request for a Legal Opinion about the Publication of Proposed Ordinances

Dear Representative Nakian:

According to your May 22 e-mail to the Director of Legal Affairs, the Legislation and Rules Committee has a question, which I have paraphrased herein, about whether Section C2-10-12 of the Stamford Charter requires the publication of the entire text of a proposed ordinance in light of Section 7-157(b) of the Connecticut General Statutes. In response to your question, I am writing to inform you that I have reviewed the relevant rules of law and have prepared the following legal opinion for your review and consideration. As the Committee's question raises two distinct and independent issues, I will address each one separately for the sake of clarity.

Issue I

Whether Section C2-10-12 of the Stamford Charter requires the publication of the entire text of a proposed ordinance.

Answer I

The answer to the question presented above is yes. Section C2-10-12 of the Stamford Charter specifically provides, in pertinent part as abbreviated herein, that "[no ordinance shall be passed unless it shall have been published]". It is clear from the expressed language used in said section that the publication of an ordinance is required prior to passage. Therefore, I can neither infer nor imply that anything other than the publication of the entire text was intended. As a result, the language of such section cannot be qualified by the insertion of additional words or be re-construed or re-interpreted by the

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qualified by the insertion of additional words or be re-construed or re-interpreted by the extrapolation of an implicit meaning. It is inconsequential that such section does not expressly use words such as "proposed ordinance" or "entire text." It conveys exactly what was intended and says exactly what it says. By using such wording, the local legislative body apparently manifested its intent to cause the publication of an ordinance. Katz v. Higson, 155 A. 507, 113 Conn. 776 (1931)(To inform the public of laws which govern them, the legislature deemed it best to require that each ordinance should be published; citing Higley v. Bunce, 10 Conn. 436).[1]

Issue II

Whether the City of Stamford can publish a notice of a proposed ordinance in accordance with Section 7-157(b) of the Connecticut General Statutes in light of Section C2-10-12 of the Stamford Charter.

Answer II

The answer to the question above is yes. The City of Stamford can publish a notice of a proposed ordinance in accordance with Section 7-157(b) of the Connecticut General Statutes in light of Section C2-10-12 of the Stamford Charter. Section 7-157(b) of the Connecticut General Statutes provides, in pertinent part, that "[whenever any city is required to publish any proposed ordinance or ordinance in accordance with subsection (a) of this section, which subsection requires the publication of ordinances, the legislative body of such city may provide that a summary of such proposed ordinance or ordinance shall be published in lieu of such proposed ordinance or ordinance except in cases involving a proposed ordinance or ordinance which makes or requires an appropriation]."

Therefore, by virtue of the power conferred by such section of said statute, the Stamford Board of Representatives may publish a notice of a proposed ordinance or ordinance instead of the entire text of a proposed ordinance or ordinance *except for instances in which a proposed ordinance or ordinance makes or requires an appropriation*. This is the case even in light of Section C2-10-12 of the Stamford Charter which serves, on a fundamental level, to legislate that the process by which the Stamford Board of Representatives passes laws. Section 7-157(b) of the Connecticut General Statutes simply affords municipalities with the opportunity to utilize an alternative mode of

[1] Although the state Supreme Court recently rejected the long-standing principle of statutory construction known as the "plain meaning rule," as first articulated in the case of State v. Courchesne, 262 Conn. 537, 562, 816 A.2d 562 (2003), and has adopted a different approach to statutory interpretation, this new shift in how it interprets legislative enactments will not be addressed in the context of this legal opinion. Given that Section 7-157(b) of the Connecticut General Statutes gives a municipality that is required to publish its proposed or enacted legislation to opt for publishing its legislation in accordance with its charter or in the manner set forth in such section, statutory construction is thus irrelevant to the matter at hand.

publishing proposed ordinances and ordinances if a charter provision requires publication as in the case of the Stamford Charter. Consequently, the Stamford Board of Representatives can choose to either publish a proposed ordinance in its entirety or opt to publish in the manner provided for in Section 7-157(b) of the Connecticut General Statutes.

Because Section 7-157(b) of the Connecticut General Statutes uses the terms "*may provide*" in relation to the grant of authority to publish a notice, the Stamford Board of Representatives has to take action to inform the public of its decision to utilize an alternative mode of publication of proposed ordinances and ordinances. 2A, McQuillin, Municipal Corporations (3d Ed.) Section 10.30 ("Self-enforcing charter or statutory provisions require no municipal legislation, but where merely a grant of power is made, to make such power effective appropriate legislation is essential").

Furthermore, in light of the fact that such statute does not prescribe the manner in which such power should be exercised, the Stamford Board of Representatives has the option of passing an ordinance or resolution, if it so ordains or resolves, in order to utilize the alternative mode of publishing proposed ordinances and ordinances provided by the statute. 2A, McQuillin, Municipal Corporations (3d Ed.), Section 10.30 ("Self-enforcing charter or statutory provisions require no municipal legislation, but where merely a grant of power is made, to make such power effective appropriate legislation is essential").

However, I would advise the Legislation and Rules Committee to strongly consider the passage of a resolution instead of enacting an ordinance to this effect because the Board would have greater flexibility in making an ad hoc determination as to whether it would be in the best interests of the City to publish the full text or a notice of a proposed or an enacted ordinance.

I trust that this opinion adequately answers your question. Should you have additional questions, please let us know.

Very truly yours,

Thomas M. Cassone
Director of Legal Affairs

By: _____
Sybil V. Richards
Deputy Corporation Counsel

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford.

Elaine WISEMAN, Administrator of the Estate of Bryant Wiseman,
v.
John J. ARMSTRONG, et al.

No. CV020821661S.

March 21, 2003.

Koskoff, Koskoff & Bieder PC, Bridgeport, for Elaine Wiseman.

AAG Ann Lynch, Hartford, for John Armstrong.

RITTENBAND, J.T.R.

FACTS

***1** On November 17, 1998, twenty-eight-year-old Bryant Wiseman, the plaintiff's decedent (hereinafter also "Bryant") died while incarcerated at the Garner Correctional Institution of the State of Connecticut. Bryant was mentally ill, and at the time of his death he had been diagnosed as suffering from paranoid schizophrenia. It is alleged by the plaintiff, *inter alia,* that the Department of Correction's doctors, nurses and other medical workers failed to provide adequate and proper medical care, supervision and medication to him, allowed his mental illness to go untreated and inadequately treated, and they permitted him to become paranoid and aggressive under circumstances that they knew would lead to violent confrontations with other inmates and correctional staff. He was violently subdued and restrained by correctional officers which, it is alleged, led to Bryant's death. Also included as defendants are John J. Armstrong, the Commissioner of Correction at the time and Jack Tokarz, Deputy Commissioner of Correction. Defendants moved to dismiss the Fourth, Fifth, Ninth, Tenth and Eleventh Counts of plaintiff's complaint.

By Memorandum of Decision dated February 25, 2003, this Court dismissed Count Four but denied the Motion to Dismiss the Fifth, Ninth, Tenth and Eleventh Counts.

Defendants then made a Motion for Reconsideration and/or Articulation dated March 11, 2003 for the Court to reconsider its decision denying the Defendants' Motion to Dismiss Counts Nine, Ten and Eleven which involve the Patients' Bill of Rights. Plaintiff responded with a memorandum. Defendants then responded with a reply memorandum, and plaintiff responded with her reply memorandum. The gravamen of defendants' motion is that subsequent to the Court's decision, the Connecticut Supreme Court issued its decision on March 11, 2003 in the case of *State v. Courchesne,* 262 Conn. 537 (March 2003). Defendants claim that under *Courchesne,* the Supreme Court did away with the **plain meaning rule** of **statutory construction** and expanded it to include other considerations hereinafter mentioned.

FINDINGS

The Court, after reviewing the *Courchesne* decision and the memoranda of the parties and the cases they have cited finds the following:

1. The only reference this Court could find in the Connecticut Practice Book in regard to the defendants' motion is CPB § 11-12 "Motion to Reargue." Under Section (c) it is provided that "The motion to reargue shall be considered by the judge who rendered the decision or order. Such judge shall decide, *without a hearing,* whether the motion to reargue should be granted." (Emphasis added.) Accordingly, this Court is prepared to render its decision without a hearing.

2. As for the Motion to Dismiss, this Court made its decision as of February 25, 2003. The *Courchesne* case was decided on March 11, 2003. The decision was to change a **rule** of **statutory construction**, and, therefore, is to apply to future cases. There was no indication that the decision is retroactive. It also refers to applying to pending cases, but as to the Motion to Dismiss, that was no longer pending in that a decision had been rendered.

Therefore, since the **rule** is effective as of March 11, 2003, and this Court decided the Motion to Dismiss on February 25, 2003, *Courchesne* is not applicable to this Motion to Dismiss.

***2** 3. However, assuming arguendo, that *Courchesne,* and the **rule** stated therein, is applicable to this case, the Court has analyzed the **ruling** in *Courchesne* as it applies to the case at bar.

4. The Court in *Courchesne* abandoned the **plain meaning rule**, on which this Court based its decision to deny the Motion to Dismiss as to the counts regarding the Patients' Bill of Rights (CGS § 17a-540 et seq.), and adopted what has been known as the Bender **Rule**, namely that "... the words of the statute, its legislative history and the circumstances surrounding its enactment, the legislative policy it was designed to implement, and its relationship to existing legislation and to common-law principles governing the same general subject matter ..." should be considered beyond the language itself. However, the Court, also at page 563, stated: "We emphasize, moreover, that the language of the statute is the most important factor to be considered ..." This Court decided that the word "facility" in the statute is, on its face, broad enough to include the facilities of the Department of Correction. It should be noted that the Supreme Court has defined " 'facility' expansively to mean ' *any* inpatient or outpatient hospital, clinic ...' " (Emphasis added) ... "Because the meaning is dependent upon the context and subject matter of the statute, it is apparent here that 'any' means 'all' or 'every.' " *Mahoney v. Lensink,* 213 Conn. 548, 557-58 n. 13 (1990). "Because the Patients' Bill of Rights is remedial in nature, its provisions should be liberally construed in favor of the class sought to be benefited." *Mahoney v. Lensink,* 556. This Court still considers the language of the statute to clearly mean that any "facility" includes the Department of Correction, and that language of the statute is the most important factor to be considered. *Courchesne, supra.*

5. In *Courchesne,* the court stated: "... the more strongly the bare text of the language suggests a particular **meaning**, the more persuasive the extra textual sources will have to be in order for us to conclude that the legislature intended a different **meaning**." Therefore, the burden is upon the defendants to show that the legislative history clearly overcomes the **plain** language of the statute. The Court has reviewed the legislative history submitted by the defendants including the 1982 Fiscal Impact Statement, the testimony of Samuel Goldstein, the appendix to the 2000 Governor's Blue Ribbon Commission Report, and concludes that the legislative history is not sufficiently persuasive to overcome the **plain** language of the statute. The Court finds that there is nothing in the legislative history that is strong enough or persuasive enough for this Court to conclude that the Legislature had any **meaning** other than the **plain** language of the statute which this court has found to be expansive enough to include in the definition of facility the Department of Correction.

***3** 6. This Court does find persuasive the decision by the United States District Court for Connecticut that John Armstrong and other Department of Correction employees can be sued for violation of the Patients' Bill of Rights. *Halloran, Administrator of the Estate of Timothy Perry v. Armstrong,* No. 3: 01 CV 582(AVC) (Covello, J.). That court stated, on March 29, 2002, that "Therefore, the complaint states a cause of action under the Patients' Bill of Rights against the defendants in their individual capacities.

CONCLUSION

This Court has articulated its reasons for its decision in light of the holdings in *State v. Courchesne, supra.* Further, for the foregoing reasons, the Defendants' Motion for Reconsideration (Reargument) is denied.

2003 WL 1908393 (Conn.Super.)

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Westlaw Attached Printing Summary Report
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RICHARDS, SYBIL 3309834 Thursday, June 05, 2003 23:50:40 Central

Request Created Date/Time:	Thursday, June 05, 2003 23:50:00 Central
Client Identifier:	SYBIL V. RICHARDS
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Citation Text:	2003 WL 21186159
Query Text:	PLAIN MEANING RULE AND STATUTORY CONSTRUCTION
Lines:	828
Documents:	1
Images:	0

2003 WL 21186159
77 Conn.App. 104, --- A.2d ----
(Publication page references are not available for this document.)

H

Appellate Court of Connecticut.

Mohinder P. CHADHA
v.
CHARLOTTE HUNGERFORD HOSPITAL et al.

No. 22395.

Argued Sept. 26, 2002.
Decided May 27, 2003.

Psychiatrist whose license to practice had been suspended by Connecticut medical examining board sued four other physicians for alleged malicious submission of false reports to National Practitioner Data Bank. The Superior Court, Judicial District of Litchfield, Cremins, J., denied physicians' motion for summary judgment that was predicated on a claim of absolute immunity. Physicians appealed. The Appellate Court, Lavery, C.J., held that: (1) in cases where the common-law grant of absolute immunity for statements in connection with quasi-judicial proceedings would overlap with statutes granting qualified immunity for statements provided to department of public health in an investigation or disciplinary action and statements provided to a professional licensing board or medical review committee concerning qualifications, fitness, or character of a health care provider, the statutes abrogate the common law; and (2) determination that physicians were not entitled to summary judgment on basis of qualified immunity was not an appealable final judgment.

Judgment affirmed.

Landau, J., filed an opinion concurring in part and dissenting in part.

West Headnotes

[1] Appeal and Error ⚿78(1)
30k78(1) Most Cited Cases

Denial of a motion for summary judgment is not, ordinarily, an appealable final judgment.

[2] Appeal and Error ⚿80(6)
30k80(6) Most Cited Cases

Where an interlocutory order or action so concludes the rights of the parties that further proceedings cannot affect them, the interlocutory order may constitute a final judgment for appeal purposes.

[3] Appeal and Error ⚿78(1)
30k78(1) Most Cited Cases

Denial of physicians' motion for summary judgment on claim by psychiatrist that they had defamed him by maliciously submitting false reports to National Practitioner Data Bank was an immediately appealable final judgment because physicians' motion was based in part on a colorable claim of absolute immunity for statements made in connection with a quasi-judicial proceeding.

[4] Appeal and Error ⚿842(1)
30k842(1) Most Cited Cases

Statutory construction presents a question of law, and review by appellate court is therefore plenary.

[5] Statutes ⚿181(1)
361k181(1) Most Cited Cases

[5] Statutes ⚿191
361k191 Most Cited Cases

Process of **statutory** interpretation involves a reasoned search for the intention of the legislature; in other words, court seeks to determine, in a reasoned manner, the **meaning** of the **statutory** language as applied to the facts of the case, including the question of whether the language actually does apply.

[6] Statutes ⚿188
361k188 Most Cited Cases

In seeking to determine **meaning** of **statutory** language, court looks to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.

[7] Statutes ⚿188
361k188 Most Cited Cases

[7] Statutes ⚿190

361k190 Most Cited Cases

Process of **statutory** interpretation requires a court to consider all relevant sources of the **meaning** of the language at issue, without having to cross any threshold or thresholds of ambiguity, and thus Connecticut courts do not follow **"plain meaning" rule**.

[8] Statutes ⚿188
361k188 Most Cited Cases

In interpreting statute, court begins with a searching examination of the language of the statute because that is the most important factor to be considered.

[9] Statutes ⚿188
361k188 Most Cited Cases

In examining language of statute, court attempts to determine its range of plausible **meanings** and, if possible, narrow that range to those that appear most plausible.

[10] Statutes ⚿184
361k184 Most Cited Cases

[10] Statutes ⚿208
361k208 Most Cited Cases

Purpose or purposes of the legislation, and the context of the language, broadly understood, are directly relevant to the **meaning** of the language of the statute.

[11] Statutes ⚿188
361k188 Most Cited Cases

[11] Statutes ⚿214
361k214 Most Cited Cases

Despite abrogation of **"plain meaning" rule**, a court is not barred, in a given case, from following what may be regarded as the **plain meaning** of **statutory** language, namely, the **meaning** that, when the language is considered without reference to any extratextual sources of its **meaning**, appears to be "the" **meaning** and appears to preclude any other likely **meaning**; in such a case, the more strongly the bare text supports such a **meaning**, the more persuasive the extratextual sources of **meaning** will have to be in order to yield a different **meaning**

[12] Statutes ⚿239
361k239 Most Cited Cases

[12] Statutes ⚿240
361k240 Most Cited Cases

When a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict **construction** and is not to be extended, modified, repealed, or enlarged in its scope by the mechanics of **statutory construction**.

[13] Statutes ⚿239
361k239 Most Cited Cases

In determining whether or not a statute abrogates or modifies a common law **rule** the **construction** must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope.

[14] Health ⚿195
198Hk195 Most Cited Cases

[14] Health ⚿274
198Hk274 Most Cited Cases

In cases where common-law grant of absolute immunity for statements made in connection with quasi-judicial proceedings would overlap with statutes granting qualified immunity for statements provided to department of public health in connection with an investigation or disciplinary action and to statements provided to a professional licensing board or medical review committee concerning qualifications, fitness, or character of a health care provider, the statutes abrogate the common law. C.G.S.A. §§ 19a-17b(b), 19a-20.

[15] Statutes ⚿212.4
361k212.4 Most Cited Cases

[15] Statutes ⚿212.6
361k212.6 Most Cited Cases

Court presumes that the legislature had a purpose for each sentence, clause, or phrase in a legislative enactment, and that it did not intend to enact meaningless provisions.

Sec. C2-10-8. Rules of Order.

The Board of Representatives shall be empowered to adopt and amend Rules of Order.
(S.A. No. 322, 1953)

Sec. C2-10-9. Public Meetings.

Meetings of the Board of Representatives shall be open to the public, but the Board shall have power to restrict public discussion on questions before it.

Sec. C2-10-10. President.

The Board of Representatives, at its Organization Meeting, shall elect from among its members its President to hold office for the term for which the Board was elected. The President shall preside at all meetings of the Board. In the event of the President's absence, the members present may by majority vote elect a Chairperson of the meeting. The President or other Chairperson of the meeting shall have the same right to vote as any member of the Board.
(Referendum 11-3-1987)

Sec. C2-10-11. Removal of President.

The President of the Board may be removed from the presidency by a vote of the majority of the entire Board at a Special Meeting duly called for the purpose.

Sec. C2-10-12. Passage of Ordinances and Resolutions.[5]

Ordinances and Resolutions shall be introduced into the Board of Representatives only in written or printed form. All ordinances, except ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances, shall be clearly expressed in the title. Resolutions making appropriations shall be confined to the subject of the appropriations. No ordinance shall be passed at any meeting unless it shall have been introduced at a meeting at least five days prior thereto, and published in an official newspaper at least three days prior to such meeting, but these requirements may be dispensed with in case of emergency by a vote of two-thirds (2/3) of the entire membership of the Board of Representatives. All final reading of such ordinance shall be in full, unless a written or printed copy thereof shall have been furnished to each member of the Board at least eight (8) hours prior to meeting. At the desire of one-fifth (1/5) of the members present, the Yeas and Nays shall be taken upon the passage of any ordinance or resolution and entered upon the journal of the proceedings of the Board of Representatives. The enacting clause shall be: "BE IT ORDAINED BY THE CITY OF STAMFORD THAT . . . "
(S.A. No. 322, 1953; Referendum 11-3-1987; Referendum 11-7-1995)

[5]**Note**—The section title was changed by referendum vote 11-7-1995.

Sec. C2-10-13. Action by Mayor; Passage Over Mayor's Veto.

Every ordinance adopted by the Board of Representatives shall, promptly after its passage, be separately printed or typewritten, signed by the President, and attested by the Clerk who shall present it to the Mayor. If the Mayor approves of such ordinance, it shall be returned to the Clerk with written approval endorsed thereon and such ordinance shall thereupon become effective ten (10) days after signature, unless a different effective date is specified in the ordinance. If the Mayor disapproves the ordinance, the Mayor shall endorse the disapproval thereon and return it to the Clerk, and the Clerk shall promptly deliver the same with the Mayor's reasons for disapproval to the President of the Board, who shall in turn submit the same to the Board at its next regular meeting. The Board may, at the meeting or at any meeting held within forty (40) days thereafter, by two-thirds (2/3) vote of the entire membership, pass the ordinance over the Mayor's veto, and the ordinance shall thereupon become effective without further action by the Mayor.
(Referendum 11-8-1977; Referendum 11-3-1987)

Sec. C2-10-14. Ordinance Without Approval or Objections.

If any ordinance shall not be returned by the Mayor to the Clerk within ten (10) days after it shall have been presented to the Mayor, the same shall be considered adopted without the Mayor's

signature and shall become effective twenty (20) days after its passage by the Board of Representatives, unless a different effective date is specified in the ordinance. At any time prior to the return of an ordinance by the Mayor, the Board may recall the same and reconsider its action thereon.
(Referendum 11-3-1987)

Sec. C2-10-15. Amendment of Ordinances and Resolutions.

No ordinance or resolution or part thereof shall be amended unless the new ordinance or resolution, or part thereof contains the entire ordinance or resolution, or part thereof as amended.
(Referendum 11-3-1987)

Sec. C2-10-16. Publication of Ordinance.

Upon final passage of each ordinance, the Clerk of the Board of Representatives shall promptly publish notice thereof in an official newspaper. The notice shall contain a copy of the ordinance or shall state the general subject matter of the ordinance and that printed copies are available for public inspection or distribution in the Office of the Town and City Clerk.
(Referendum 11-8-1977; Referendum 11-3-1987)

Sec. C2-10-17. (Reserved)

Sec. C2-10-18. (Reserved)[6]

Sec. C2-10-19. (Reserved)[7]

PART 3.
EXECUTIVE

DIVISION 1.
THE MAYOR'S POWERS

Sec. C3-10-1. The Mayor's Authority.

The executive and administrative powers of the City are vested in the Mayor, except as otherwise provided in this Charter or by law.
(Referendum 11-7-1995)

[6]**Editor's note**—Former Sec. C2-10-18 (previously Sec. C-204.2), Power to Investigate Administration, was repealed by referendum vote 11-3-1987.

[7]**Editor's note**—Former Sec. C2-10-19, Funds for Investigation, was moved to Sec. C2-10-3 by referendum vote 11-7-1995.

Sec. C3-10-2. Administrative Appointments.

The Mayor has authority to appoint any Special Assistants that the Mayor may deem necessary for the administration of official duties, provided the necessary appropriation has been granted therefor. All such Assistants shall serve at the pleasure of the Mayor.
(Referendum 11-3-1987)

Sec. C3-10-3. (Reserved)[8]

Sec. C3-10-4. Temporary Absence or Disability of the Mayor.

In the event of absence from the City or temporary disability of the Mayor, the President of the Board of Representatives, or in the President's absence or disability, such member as the Board of Representatives shall designate, shall exercise the power of the Mayor, except that until such absence or disability of the Mayor has continued for thirty (30) days, the Acting Mayor shall not have power to appoint or remove officers or employees. The compensation for the Acting Mayor shall be determined by the Board of Representatives but shall in no case exceed in proportion the salary of the Mayor.
(S.A. No. 322, 1953; Referendum 11-3-1987; Referendum 11-7-1995)

Sec. C3-10-5. Board Meeting.

The Mayor has the right to appear before any Board and address it at any meeting and has the power to call a Special Meeting of any appointive Board, provided the reasons for calling the Special Meeting are enumerated.
(S.A. No. 322, 1953; Referendum 11-3-1987)

Sec. C3-10-6. Message to Board of Representatives.

The Mayor shall appear before the Board of Representatives at its regular meeting in the first month of each fiscal year and give both an oral and a written report on the state and condition of the City as to its government, finances, expenditures and improvements, with any recommenda-

[8]**Editor's note**—Former Sec. C3-10-3, Vacancy in the Office of Mayor, was repealed by referendum vote 11-7-1995.

Cross References

Clerk's office, when open for entry of judgments, see C.G.S.A. § 51–59.

Library References

Connecticut Practice

Fuller, 9 Connecticut Practice §§ 42.1, 42.3.

§ 7–152d. Civil penalty for illegal disposal of solid waste at municipal landfill

Notwithstanding the provisions of section 51–164p, any municipality may by ordinance establish a civil penalty for the illegal disposal of solid waste at a landfill operated by the municipality, provided the amount of such civil penalty shall be not more than one thousand dollars for the first violation, not more than two thousand dollars for the second violation and not more than three thousand dollars for any subsequent violation. Any person who is assessed a civil penalty pursuant to this section may appeal therefrom to the Superior Court in the manner provided in subsection (g) of section 7–152b.

(1990, P.A. 90–216.)

§§ 7–153 to 7–156. Repealed. (1982, P.A. 82–327, § 12.)

Historical and Statutory Notes

The repealed C.G.S.A. § 7–153 related to regulation of sewerage facilities.

For subject matter of the repealed C.G.S.A. § 7–153, see C.G.S.A. §§ 7–148 and 22a–220.

The repealed C.G.S.A. § 7–154 authorized towns to make ordinances concerning matters not covered by statute and fix penalties.

For subject matter of the repealed C.G.S.A. § 7–154, see C.G.S.A. § 7–148.

The repealed C.G.S.A. § 7–155, which related to loitering of children, was derived from:

1902 Rev., § 1918.
1918 Rev., § 424.
1930 Rev., § 459.
1949 Rev., § 636.

The repealed C.G.S.A. § 7–156 related to public markets.

For subject matter of the repealed C.G.S.A. § 7–156, see C.G.S.A. § 7–148.

§ 7–157. Publication. Referendum. Publication of summary

(a) Ordinances may be enacted by the legislative body of any town, city, borough or fire district. Any such ordinance so enacted, except when enacted at a town or district meeting, shall become effective thirty days after publication thereof in some newspaper having a circulation in the municipality in which it was enacted, provided, upon a petition of not less than fifteen per cent of the electors of such municipality filed with the town or borough clerk, as the case may be, within thirty days after the publication of such ordinance, asking that the same be submitted to the voters of such municipality at its next regular or special meeting, it shall be so submitted and in such event shall not become effective unless a majority of the voters voting at such meeting vote in favor thereof. Any ordinance enacted at a town or district meeting shall become effective fifteen days after publication thereof in some newspaper having a circulation in such town or in such district, as the case may be. Cities and

other municipalities whose c
enact ordinances may enact

(b) Whenever any town, c
any proposed ordinance or c
section, the legislative body
provide that a summary of
published in lieu of such pr
any case in which such a su
borough or fire district sha
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(c) No ordinance enacted
a municipality to comply wi
pality shall be held harmless
arise from such failure. If
because of the failure of th
penalties may be imposed a
ordinance enacted prior to
section were not complied w
such enactment.

(1949 Rev., § 620; 1953 Supp.
P.A. 86–233; 1992, P.A. 92–22;

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Derivation:

1913, P.A. ch. 154.
1915, P.A. ch. 319.
1917, P.A. ch. 405.

Change of date of municipal electio
Elector, defined, see C.G.S.A. § 9–1
Ordinance, defined, see C.G.S.A. §
Petitions for vote, see C.G.S.A. § 7–
Public records, see C.G.S.A. § 1–21
Publication of legal notices in news
Regular meetings to be held pursu
Special town meetings, ordinance c

American Digest System

Municipal Corporations ⇨108

-59.

solid waste at municipal

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27, § 12.)

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C.G.S.A. § 7–155, which related
hildren, was derived from:
§ 1918.
§ 424.
§ 459.
§ 636.
C.G.S.A. § 7–156 related to pub-

matter of the repealed C.G.S.A.
G.S.A. § 7–148.

of summary

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(b) Whenever any town, city, borough or fire district is required to publish any proposed ordinance or ordinance in accordance with subsection (a) of this section, the legislative body of such town, city, borough or fire district may provide that a summary of such proposed ordinance or ordinance shall be published in lieu of such proposed ordinance or ordinance, provided that, in any case in which such a summary is published, the clerk of such town, city, borough or fire district shall make a copy of such proposed ordinance or ordinance available for public inspection and shall, upon request, mail a copy of such or proposed ordinance or ordinance to any person requesting a copy at no charge to such person. Any summary so published shall bear a disclaimer as follows: "This document is prepared for the benefit of the public, solely for purposes of information, summarization and explanation. This document does not represent the intent of the legislative body of (here insert the name of the town, city, borough or fire district) for any purpose." The provisions of this subsection shall not apply to any proposed ordinance or ordinance which makes or requires an appropriation.

(c) No ordinance enacted prior to June 1, 1992, shall be invalid for failure of a municipality to comply with the provisions of this section and each municipality shall be held harmless from any liability or causes of action which might arise from such failure. If a person affected by an ordinance shows prejudice because of the failure of the municipality to comply with such provision, no penalties may be imposed against such person pursuant to the ordinance. Any ordinance enacted prior to June 1, 1992, for which the provisions of this section were not complied with shall be deemed to be effective thirty days after such enactment.

(1949 Rev., § 620; 1953 Supp. § 198c; 1955 Supp. § 249d; 1957, P.A. 13, § 8; 1986, P.A. 86–233; 1992, P.A. 92–22; 1995, P.A. 95–353, § 6, eff. July 13, 1995.)

Historical and Statutory Notes

Derivation:

1913, P.A. ch. 154.
1915, P.A. ch. 319.
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1918 Rev., § 389.
1923, P.A. ch. 284, § 2.
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Cross References

Change of date of municipal election, see C.G.S.A. § 9–164c.
Elector, defined, see C.G.S.A. § 9–1.
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Publication of legal notices in newspapers, see C.G.S.A. § 1–2.
Regular meetings to be held pursuant to regulation, ordinance or resolution, see C.G.S.A. § 1–230.
Special town meetings, ordinance concerning convening, see C.G.S.A. § 7–2.

Library References

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Municipal Corporations ⇐108.

licenses as unconstitutional delegation of legislative power).

New York. Schieffelin v. Hylan, 236 NY 254, 140 NE 689.

North Carolina. Redevelopment Commission of Greensboro v. Security Nat. Bank of Greensboro, 252 NC 595, 114 SE2d 688 (power to find facts or to determine existence or nonexistence of factual situation or condition on which operation of law made as properly delegable).

Wyoming. Coulter v. City of Rawlins, 662 P2d 888 (Wyo); City of Buffalo v. Joslyn, Wyoming, 527 P2d 1106 (Wyo).

See § 3.02.

[2] **Florida.** City of Boca Raton v. State, 595 So 2d 25 (Fla 1992).

Nebraska. Bosselman, Inc. v. State, 230 Neb 471, 432 NW2d 226 (1988) (statute granting local bodies option to make binding recommendations concerning approval or denial of alcoholic beverage licenses as unconstitutional delegation of legislative power).

See §§ 4.13, 10.09.

[3] **United States.** Hunter v. Pittsburgh, 207 US 161,, 52 L Ed 151, 28 S Ct 40.

Florida. City of Boca Raton v. State, 595 So 2d 25 (Fla 1992).

[4] **Connecticut.** Bottone v. Town of Westport, 209 Conn 652, 553 A2d 576 (1989).

[5] **Connecticut.** Bottone v. Town of Westport, 209 Conn 652, 553 A2d 576 (1989).

§ 10.09. Scope of powers.

A municipal corporation is a creature of the law established for special purposes and its corporate acts must be authorized by its charter, or by other laws.[1] Excluding the question as to the existence of so-called inherent powers of a municipal corporation,[2] the powers of a municipal corporation include (1) powers expressly conferred by the constitution, statutes or charter;[3] (2) powers necessarily or fairly implied in, or incident to, the powers expressly granted;[4] and (3) powers essential to the declared objects and purposes of the municipality,[5] the latter often being classified as among the implied powers. This enumeration of powers, commonly referred to as "Dillon's Rule,"[6] is exclusive and no other powers exist.[7]

So far as the general rule as to existence of powers of a municipal corporation is concerned, it is immaterial whether a particular power is (1) legislative, public or governmental or (2) proprietary or quasi-private.[8] The general doctrines as to the scope, extent, and limitations of municipal powers to apply to all departments of the municipal government,[9] and the doctrines are not subject to change by mere definitions.[10] And a municipal corporation cannot do through an agent or authority what it

cannot do directly.[11] A statu
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cannot do directly.[11] A statute specifically providing that cities with a commission form of government shall have all powers possessed by cities with council form of government has been construed as clearly implying that there should be no distinction or discrimination as to powers based on the form of government and that powers of all cities should be equal and coextensive.[12] Usually a city or other municipal corporation has not all the powers of a private corporation.[13]

These powers are all subject to limitations imposed by the Constitution of the United States and the treaties and laws made pursuant to it, and by the constitution of the state, and any limitations imposed by the legislature of the state within its powers.[14] Accordingly, the federal government and its agencies and instrumentalities are immune from municipal control of their governmental function under the federal constitution.[15] Also, no power, express or implied, that conflicts with general principles of the common law in force in the state may be exercised.[16] However, consistency with general laws of the state is subject to some exceptions in municipal corporations adopting a home rule charter.[17] Municipalities can in no case enjoy greater powers than the legislature itself possesses, unless conferred by the constitution,[18] and a municipal corporation can exercise the powers expressly conferred on it only in the manner prescribed by the statute.[19]

As a corollary of this conception that local governments are creatures of state government,[20] constitutional limitations that insulate the states from federal control also operate to extend similar insulation to local governments.[21] It was once clear that the federal government had exclusive and plenary powers regarding matters that the federal constitution expressly or impliedly entrusted to its control.[22] However, the plenary character of federal powers vis-a-vis state and local governments was subsequently compromised with the result that the boundary between state and local power has been blurred.[23] Then the United States Supreme Court held that state sovereign interests are more properly protected by procedural safeguards inherent in the federal system's structure than by judicially enforced limitations on federal power under the Tenth Amendment. Accordingly, the basic principle of limitation on the federal commerce power was deemed to be "the built-in restraint that our system provides through state participation in federal governmental action."[24]

699 A.2d 168
(Cite as: 46 Conn.App. 305, 699 A.2d 168)

H

Appellate Court of Connecticut.

John PILLAR et al.
v.
TOWN OF GROTON et al.

No. 16604.

Argued June 9, 1997.
Decided July 11, 1997. [FN*]

FN* July 11, 1997, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Certification Denied Sept. 18, 1997.

Citizens of town sought to enjoin implementation of town ordinances, alleging that town council had lacked quorum when it set public hearings on the ordinances before they were adopted because one council member had ceased being town resident, and thus that ordinances were ultra vires. The Superior Court, Judicial District of New London, Booth, J., granted judgment to defendants, and citizens appealed. The Appellate Court, Frederick A. Freedman, J., held that since town charter did not specifically require vote of council to set public hearing, ordinances were not ultra vires.

Affirmed.

West Headnotes

[1] Municipal Corporations ⚿57
268k57 Most Cited Cases

[1] Municipal Corporations ⚿167
268k167 Most Cited Cases

[1] Municipal Corporations ⚿226
268k226 Most Cited Cases

[1] Municipal Corporations ⚿230
268k230 Most Cited Cases

Charter or statute by which municipality is created is its organic act, and neither corporation nor its officers can do any act, make any contract, or incur any liability not authorized thereby, or by legislative act applicable thereto, with all acts beyond scope of powers granted being void.

[2] Towns ⚿15
381k15 Most Cited Cases

Where town charter prescribes particular procedure by which specific act is to be done or power is to be performed, that procedure must be followed for act to be lawful.

[3] Towns ⚿15
381k15 Most Cited Cases

Town ordinances were legally adopted and not ultra vires, even though town council lacked quorum when it set public hearings on the ordinances before they were adopted because one council member had ceased being town resident, where town charter did not specifically require vote of council to set public hearing. C.G.S.A. § 7-157; Groton, Conn., Town Charter §§ 4.4, 4.6.

****169** Eugene C. Cushman, New London, for appellants (plaintiffs).

Kimberly A. Colfer, with whom, on the brief, was Andrew Brand, New London, for appellees (defendants).

Before DUPONT, C.J., and SPEAR and FREDERICK A. FREEDMAN, JJ.

FREDERICK A. FREEDMAN, Judge.

The plaintiffs [FN1] appeal from the judgment of the trial court denying their request for an injunction against the defendants. [FN2] The plaintiffs ***306** claimed that any ordinances, resolutions or votes at a special meeting held by the Groton town council on June 25, 1996, were illegal because one of the members of the Groton town council was not a resident of the town of Groton at the time of the meeting. The plaintiffs claimed that, if carried out, those ordinances, resolutions or votes would cause large sums of money to be expended by the town of Groton. We disagree with the plaintiffs and affirm the judgment of the trial

court.

FN1. The plaintiffs, John W. Pillar, Clyde W. Burrell, Jr., and Dennis Gagnon, are citizens, residents, taxpayers and voters of the town of Groton.

FN2. The defendants are the town of Groton, the Groton town council, Groton town council members Dolores E. Hauber, Rose Marie Althuis, Lori N. Bartinik, Jane S. Dauphinais, Catherine Kolnaski, Frank O'Beirne, Jr., Harry Watson, and Chaz Zezulka III, Groton town manager Robert P. LeBlanc, and Groton town clerk Barbara Tarbox.

The trial court found the following facts. On June 25, 1996, the Groton town council held a special meeting. Present at that meeting were council members Dolores E. Hauber, Lori N. Bartinik, Jane S. Dauphinais, Frank O'Beirne, Jr., Bernard W. Steadman and Harry Watson. At that meeting, the council set a date for a public hearing for an ordinance appropriating $450,000 for additions and improvements to the Shennecossett golf course (golf course bond ordinance) and referred those proposed improvements to the planning commission in accordance with the town charter and state statutes. Also at the same meeting, the council set a public hearing for an ordinance appropriating $10,388,000 for additions and improvements to the water pollution control authority (sewer bond ordinance) and referred those proposed improvements to the planning commission in accordance with the town charter and state statutes.

Steadman, who participated in the special meeting on June 25, 1996, was not a resident of Groton on that date. The trial court found that "[n]o member of the Town Council was clearly aware of the fact that Bernard W. Steadman was not a resident of Groton on June 25, 1996, nor did the members of the Town Council have sufficient time to conduct a thorough investigation in response to the information obtained by them after reading The Day article published on June 23, 1996," two days before the special meeting. That article referred to ***307** Steadman's residency. [FN3] The trial court also found that no other town official had clear information indicating that Steadman was not a resident of the town of Groton on June 25, 1996, and that Steadman had resigned as a councilor effective July 1, 1996.

FN3. The trial court found that most of the members of the Groton town council had read an article that appeared in the New London Day on June 23, 1996, which contained the following paragraph: "Steadman is divorced with two grown children. He has been living with friends in Stonington since January 1st, when he sold his house on Dogwood Lane in Mystic."

The plaintiffs brought the present action, seeking temporary and permanent injunctions prohibiting the defendants from implementing the golf course and the sewer bond ****170** ordinances. [FN4] The plaintiffs alleged that although Steadman ceased to be a resident, he continued to sit on the town council, to participate in its deliberations and to vote on items that came before the council. The plaintiffs further alleged that pursuant to the Groton town charter, six council members are necessary for a quorum, and that between January 1 and July 1, 1996, town council meetings were held and business conducted therein at which there would not have been a quorum but for the presence of Steadman. Finally, the plaintiffs alleged that the ordinances, resolutions or votes adopted at the June 25, 1996 special meeting were illegal and, if carried out, would cause large sums of money to be expended by the Town of Groton.

FN4. Specifically, the plaintiffs claimed, inter alia: "1. A temporary and permanent injunction prohibiting and restraining the defendants from implementing or issuing bonds and notes in the sum of $450,000.00 for Shennecossett Golf Course improvements.
"2. A temporary and permanent injunction prohibiting and restraining the defendants from implementing an ordinance appropriating $10,388,000.00 for additions and improvements to the Water Pollution Control Facility and a sewer system evaluation study and authorizing the issue

of bonds and notes in the same amount to defray said appropriations.
"3. A temporary and permanent injunction prohibiting and restraining the defendant Town Clerk from authenticating any action of the Town Council unless said action by the Town Council was enacted at a meeting duly held in accordance with the provisions of the Town Charter."

***308** The trial court, following a hearing, denied the plaintiffs' request for injunctive relief, stating in part that "[w]hile it would have been preferable that Mr. Steadman not participate at the June 25, 1996 meeting, no action clearly mandated by the charter was taken at that meeting, and those actions which were clearly mandated by the charter were taken at a later time without the participation of Mr. Steadman. Consequently, the court finds that the **ordinances** in question are not invalid, legally ineffective or ultra vires." The plaintiffs appeal that decision.

[1][2] We begin by noting that "[t]he charter or statute by which the **municipality** is created is its organic act. *Neither the corporation nor its officers can do any act, make any contract, or incur any liability not authorized thereby, or by the legislative act applicable thereto. All acts beyond the scope of the powers granted are void.* Thus, in the exercise of its powers, a municipal corporation is said to be confined to the circumference of those granted and may not travel beyond the scope of its charter or in excess of the granted authority...." (Emphasis in original; internal quotation marks omitted.) *Highgate Condominium Assn. v. Watertown Fire District,* 210 Conn. 6, 16-17, 553 A.2d 1126 (1989). "[W]here the town charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful." *Miller v. Eighth Utilities District,* 179 Conn. 589, 594, 427 A.2d 425 (1980).

[3] According to the plaintiffs, the golf course bond and the sewer bond ordinances are invalid because there was no quorum at the June 25, 1996 special meeting. The plaintiffs rely on § 4.4 of the Groton town charter, [FN5] ***309** which provides in part that "[s]ix (6) members [of the council] shall constitute a quorum, but no ordinance, resolution, or vote, except a vote to adjourn or to fix the time and place of the next meetings, shall be adopted by less than five (5) affirmative votes." Section 2.7.1 of the Groton town ****171** charter provides in part that "[a]ny person ceasing to be a resident or elector of said town shall thereupon cease to hold elective office in the town." Because Steadman was not a resident of the town of Groton on June 25, 1996, the plaintiffs argue that there was no quorum for the June 25, 1996 special meeting and, therefore, the Groton town council had no authority to take the action that it did at that meeting.

FN5. Section 4.4, entitled "Meetings; quorum; ordinances and resolutions to be confined to one subject; records," provides as follows: "At the first meeting of the council following the general town election the council shall fix the time and place of its regular meetings and shall provide a method for the calling of special meetings. It shall determine its own rules of procedure, which rules shall provide for petitions for citizens. All meetings of the council for the transaction of business shall be open to the public. Six (6) members shall constitute a quorum, but no ordinance, resolution, or vote, except a vote to adjourn or to fix the time and place of the next meetings, shall be adopted by less than five (5) affirmative votes. All ordinances and resolutions shall be confined to one subject which shall be clearly stated in the title; provided, however, that nothing herein shall prevent the enactment of an ordinance of codification. The council shall keep for public inspection a journal which shall be the official record of its meetings. The record so kept shall be authenticated for each meeting by the signature of the chairman or the clerk, or both."

The defendants argue, however, that they have complied with all of the steps necessary to pass a valid **ordinance** that are contained in **General** Statutes § 7-157 [FN6] and ***310** § 4.6 of the Groton town charter. [FN7] Specifically, the defendants argue that § 4.6 of the Groton town charter, which provides for public hearings and **publication** of **ordinances**, does not specifically require votes to set the date of a public hearing, to

publish an **ordinance**, or for referral of matters to the planning commission. Since that is the only section of the town charter that ***311** deals with the steps necessary to pass a valid **ordinance**, the defendants claim that a presumption arises that § 4.6 contains *all* of the necessary steps to pass a valid **ordinance**. According to the defendants, whether there was a quorum for the June 25, 1996 special meeting is irrelevant to the validity of the **ordinances** because the actions taken at that meeting were unnecessary for the passage of the **ordinances**. We agree with the defendants.

FN6. **General** Statutes § 7-157, entitled **"Publication**. Referendum. **Publication** of Summary," provides in relevant part: "(a) **Ordinances** may be enacted by the legislative body of any town, city, borough or fire district. Any such **ordinance** so enacted, except when enacted at a town or district meeting, shall become effective thirty days after **publication** thereof in some newspaper having a circulation in the **municipality** in which it was enacted, provided, upon a petition of not less than fifteen per cent of the electors of such **municipality** filed with the town or borough clerk, as the case may be, within thirty days after the **publication** of such **ordinance**, asking that the same be submitted to the voters of such **municipality** at its next regular or special meeting, it shall be so submitted and in such event shall not become effective unless a majority of the voters voting at such meeting vote in favor thereof. Any **ordinance** enacted at a town or district meeting shall become effective fifteen days after **publication** thereof in some newspaper having a circulation in such town or in such district, as the case may be. Cities and other **municipalities** whose charters provide for the manner in which they may enact **ordinances** may enact **ordinances** in such manner...."

FN7. Section 4.6 of the Groton town charter, entitled "Public hearing and **publication** of **ordinances**," provides in relevant part: "4.6.1 ***General.*** At least one public hearing, **notice** of which shall be given at least five (5) days in advance by **publication** of the proposed **ordinance** in a daily newspaper having circulation within said town, shall be held by the town council before any **ordinance** shall be passed, except an **ordinance** relating to appointments or designations of officers or to the town council or its procedures. Every **ordinance**, after passage, shall be given a serial number and be recorded by the town clerk in a book to be kept for that purpose, which shall be properly indexed. **Notice** of the passage of an **ordinance** shall be **published** once in a daily newspaper having circulation in the town. Said **notice** shall include the title, serial number and complete text of the **ordinance** , except that if so directed by the town council a **description** of the **ordinance** prepared by the town attorney may be substituted for the complete text. Every **ordinance**, unless it shall specify a later date, shall become effective on the forty-fourth day after **publication** of the aforesaid **notice** of passage except any **ordinance** which requires for passage affirmative action by the town council and the representative town meeting shall become effective on **publication** of the aforesaid **notice**. A referendum **ordinance** passed by the town council and the representative town meeting shall become effective upon approval by a majority of the qualified voters of the town voting at a referendum election. Upon a petition of not less than five (5) percent of the electors of the Town of Groton, filed with the town clerk within forty- four (44) days after **publication** of any **ordinance**, asking that the same be submitted to the electors of said Town of Groton at its next regular election or at a special election, it shall be so submitted. Such **ordinance** shall remain effective unless a majority of the electors voting on such **ordinance** equal to at least fifteen (15) percent of the electors listed on the last registry list vote against such **ordinance**. This section shall not apply to any **ordinance** for which a referendum right exists under any other provision of the Groton Town Charter. The town council shall require the town clerk to mail to each member of the

> representative town meeting a copy of each **ordinance** as proposed or adopted by the town council within five (5) business days after filing with the town clerk's office."

Section 4.6 of the Groton town charter outlines the steps necessary for the passage of a valid **ordinance** , specifying the **publication** and public hearing requirements. The trial court was presented with evidence that the town of Groton complied with all of these ****172** steps and, on the basis of that evidence, concluded that "the required public hearings have been duly **noticed** and held, the matters have been referred and approved by the planning commission, the **ordinances** have been adopted by legal votes of the town council and the representative town meeting, and the final decision on the matter will be made by the public at the ballot box on November 5." [FN8]

> FN8. The trial court rendered its decision on October 31, 1996, denying the injunction. The referendum passed at the November 5, 1996 election.

Specifically, § 4.6 provides in relevant part that "[a]t least one public hearing, **notice** of which shall be given at least five (5) days in advance by **publication** of the proposed **ordinance** in a daily newspaper having circulation within said town, shall be held by the town council before any **ordinance** shall be passed...." The trial court was presented with the following evidence. On July 3, 1996, in accordance with § 4.6, **notices** of the proposed **ordinances** were **published** in the New London Day. On July 16, 1996, public hearings were held on the proposed **ordinances**. According to the minutes of the July 16, 1996 meeting, after the public ***312** hearings were closed, the town council discussed the proposed **ordinances**. Both of the proposed **ordinances** passed unanimously by a vote of six to zero and were referred to the representative town meeting. On August 14, 1996, the regular representative town meeting took place. According to the minutes of that meeting, with regard to the golf course bond **ordinance**, the motion to approve the resolution was passed unanimously. With regard to the sewer bond **ordinance**, the motion to approve the resolution was passed with a vote of twenty-two in favor and eight opposed.

Section 4.6 further provides in relevant part that "[n]otice of the passage of an **ordinance** shall be **published** once in a daily newspaper having circulation in the town." The trial court was presented with the following evidence. On August 21, 1996, **notice** of passage of both **ordinances** was **published** in the New London Day. The sewer bond **ordinance**, however, was further required to be approved by referendum pursuant to § 8.12 of the Groton town charter. [FN9] As previously noted, the referendum was held on November 5, 1996, and passed.

> FN9. Section 8.12 of the Groton town charter, entitled "Borrowing," provides: "The town shall have the power to incur indebtedness by issuing its bonds or notes as provided by the general statutes subject to the limitations thereof and the provisions of this section. The issuance of bonds and notes shall be authorized by ordinance and if any such bond or issuance of notes, except notes in anticipation of taxes to be paid or other revenue to be received within the fiscal year in which issued, shall exceed when authorized the sum of seven hundred fifty thousand dollars ($750,000.00) or which shall, when added to all other bond issues or issuance of notes previously authorized in the same fiscal year bring the total of such bond issues or issuance of notes authorized for that fiscal year to a sum in excess of seven hundred fifty thousand dollars ($750,000.00), said bond issue or issuance of notes shall be approved by referendum vote on voting machines at any regular town, state or special election or at a referendum called for that purpose."

On the basis of those facts, we agree with the conclusion of the trial court that the ordinances in question ***313** "are not invalid, legally ineffective or ultra vires." As the defendants correctly argue, and as the trial court properly noted, § 4.6 of the Groton town charter does not specifically provide for votes to set the date of a public hearing, to publish an ordinance, or for referral of matters to the planning commission. Because all of the procedures

specified by § 4.6 were followed, we conclude that the ordinance was legally adopted. See *State v. Gordon,* 143 Conn. 698, 702, 125 A.2d 477 (1956).

The judgment is affirmed.

In this opinion the other judges concurred.

699 A.2d 168, 46 Conn.App. 305

END OF DOCUMENT

C

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 7. MUNICIPALITIES
CHAPTER 98. MUNICIPAL POWERS

Current through Gen. St., Rev. to 1-1-03,
including the January 6, 2003 Special Session

§ 7-157. **Publication**. Referendum. **Publication** of summary

(a) **Ordinances** may be enacted by the legislative body of any town, city, borough or fire district. Any such **ordinance** so enacted, except when enacted at a town or district meeting, shall become effective thirty days after **publication** thereof in some newspaper having a circulation in the **municipality** in which it was enacted, provided, upon a petition of not less than fifteen per cent of the electors of such **municipality** filed with the town or borough clerk, as the case may be, within thirty days after the **publication** of such **ordinance**, asking that the same be submitted to the voters of such **municipality** at its next regular or special meeting, it shall be so submitted and in such event shall not become effective unless a majority of the voters voting at such meeting vote in favor thereof. Any **ordinance** enacted at a town or district meeting shall become effective fifteen days after **publication** thereof in some newspaper having a circulation in such town or in such district, as the case may be. Cities and other **municipalities** whose **charters** provide for the manner in which they may enact **ordinances** may enact **ordinances** in such manner.

(b) Whenever any town, city, borough or fire district is **required** to **publish** any **proposed ordinance** or **ordinance** in accordance with subsection (a) of this section, the legislative body of such town, city, borough or fire district may provide that a summary of such **proposed ordinance** or **ordinance** shall be **published** in lieu of such **proposed ordinance** or **ordinance**, provided that, in any case in which such a summary is **published**, the clerk of such town, city, borough or fire district shall make a copy of such **proposed ordinance** or **ordinance** available for public inspection and shall, upon request, mail a copy of such or **proposed ordinance** or **ordinance** to any person requesting a copy at no charge to such person. Any summary so **published** shall bear a disclaimer as follows: "This document is prepared for the benefit of the public, solely for purposes of information, summarization and explanation. This document does not represent the intent of the legislative body of (here insert the name of the town, city, borough or fire district) for any purpose." The provisions of this subsection shall not apply to any proposed ordinance or ordinance which makes or requires an appropriation.

(c) No **ordinance** enacted prior to June 1, 1992, shall be invalid for failure of a **municipality** to comply with the provisions of this section and each **municipality** shall be held harmless from any liability or causes of action which might arise from such failure. If a person affected by an **ordinance** shows prejudice because of the failure of the **municipality** to comply with such provision, no penalties may be imposed against such person pursuant to the **ordinance**. Any **ordinance** enacted prior to June 1, 1992, for which the provisions of this section were not complied with shall be deemed to be effective thirty days after such enactment.

CREDIT(S)

1999 Main Volume

(1949 Rev., § 620; 1953 Supp. § 198c; 1955 Supp. § 249d; 1957, P.A. 13, § 8; 1986, P.A. 86-233; 1992, P.A. 92-22; 1995, P.A. 95-353, § 6, eff. July 13, 1995.)

<General Materials (GM) - References, Annotations, or Tables>

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Municipal Corporations ⚿108.
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Encyclopedias
C.J.S. Municipal Corporations § 449.
C.J.S. Towns §§ 34, 35.

NOTES OF DECISIONS

1. Enactment of ordinances

The fundamental rule relating to municipal legislation is that an ordinance must be enacted in manner provided by law, and when mode in which enacting power is to be exercised is prescribed, that mode must be followed. Jack v. Torrant (1950) 71 A.2d 705, 136 Conn. 414.

2. Referendum

Statutes relating to change in city **charter** do not empower board of aldermen to call a referendum when the question arises by petition, and do not empower the town clerk or the signers of the petition to set the election day. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

Method of initiating by petition election on question of change in city **charter** is not dependent upon approval by the board of aldermen. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

3. Special elections

Where electors petitioned for submission of question relating to change of city **charter** and board of aldermen set date of special election for submission of such question, town clerk would be enjoined from calling such special election. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

4. Publication

Gen.St.1930, § 391 (now, this section) **requiring publication**, and upon petition granting opportunity for referendum vote, applies only to town's by- laws enumerated in Gen.St.1930, § 390 (see, now, § 7-148). Town of Madison v. Kimberly (1934) 169 A. 909, 118 Conn. 6.

Under Gen.St.1930, § 390 (see, now, § 7-148) giving towns authority to do certain acts by by-laws, reference to "construction of buildings" does not include by-laws governing zoning so that Gen.St.1930, § 391 (now this section) would **require** that zoning by-law be **published** and that opportunity be given for referendum vote. Town of Madison v. Kimberly (1934) 169 A. 909, 118 Conn. 6.

City **charter requiring publication** of **ordinances** should be interpreted according to purpose of informing public of laws which govern them. Katz v. Higson (1931) 155 A. 507, 113 Conn. 776.

Under St. Revision 1821, tit. "Towns," § 7, p. 458, providing that every town at a lawful meeting may adopt by-laws for restraining animals from going at large, and providing that such by-laws shall not be in force until published four weeks successively in a newspaper printed in such town or in the town nearest thereto in which a newspaper is printed, or in some other newspaper generally circulated in the town where such by-law is made, "as the town shall direct," a by-law of a town restraining animals from running at large is not valid unless published in a newspaper selected by the town, and a publication in a newspaper pursuant to the direction of the town clerk is insufficient. Higley v. Bunce (1835) 10 Conn. 436.

Where a statute of Connecticut provided that "every town shall have power to make by-laws for restraining horses, cattle, etc., provided that such by-laws shall not be in force till published" in one of three enumerated classes of newspapers, "as the town shall direct.", a by-law was void which was published (in the manner prescribed by the statute, and in one of the classes of newspapers therein mentioned) by order of the town clerk, without the direction of the town as to the newspaper. Higley v. Bunce (1835) 10 Conn. 436.

An adoption by a municipality, at a single meeting, of the state building code with amendments thereto, prepared by others than the State Housing Authority, did not come within the purview of 1947, P.A. No. 37, as to elimination of publication of the Code. 25 Op.Atty.Gen. 229 (March 19, 1948).

C. G. S. A. § 7-157

CT ST § 7-157

END OF DOCUMENT

Not Reported in A.2d
(Cite as: 1995 WL 410806 (Conn.Super.))

Superior Court of Connecticut, Judicial District of Hartford/New Britain at New Britain.

BRISTOL RESOURCE RECOVERY FACILITY OPERATING COMMITTEE and Ogden Martin Systems of Bristol, Inc.
v.
CITY OF BRISTOL.

No. CV 92 0453461.

June 30, 1995.

MEMORANDUM OF DECISION
MOTION TO STRIKE
[113]

PARKER

***1** This action involves a "trash-to-energy" plant located in Bristol, Connecticut. The plant has two furnaces for burning solid waste and one stack for releasing the furnace generated gases. Revised Complaint, ¶s 19-25. [109] [Paragraph references, e.g., ¶ 19, are to paragraphs of the Revised Complaint, dated March 16, 1993. {109}]

The plaintiff, Ogden Martin Systems of Bristol, Inc. [Ogden Martin], a Bristol taxpayer, owns and operates the plant. ¶s 2-3.

The idea for the plant was conceived in the early or mid-1980's. In 1985, eight municipalities agreed with Ogden Martin to have Ogden Martin build and operate a regional waste-to-energy resource recovery plant in Bristol, Connecticut. The plant would provide the municipalities with solid waste disposal services. Electric power would also be generated. ¶ 6-8.

The eight municipalities [FN1] created an operating committee to represent them in matters relating to the plant, etc. The project is called the "Bristol Resource Recovery Project." ¶ 7. Six more municipalities [FN2] have joined the project. There are now 14 municipalities participating. ¶ 1, 18. The plaintiff, Bristol Resource Recovery Facility Operating Committee [BRRFOC] is the operating committee created pursuant to the agreement of the participating municipalities. ¶s 1, 8. The agreement between and among the 14 municipalities authorizing the plaintiff, BRRFOC, is authorized by statute. See C.G.S. §§ 7-339a and 22a-221. ¶ 1, 8.

FN1. Berlin, Bristol, Burlington, New Britain, Plainville, Plymouth, Southington, and Washington. ¶ 6.

FN2. Branford, Hartland, Prospect, Seymour, Warren, and Wolcott, ¶s 9-17.

In May 1988, the plant began commercial operation. ¶ 24.

In 1991, an expansion of the plant was contemplated. Proposals for the expansion were submitted to Stamford, Waterbury, and the Housatonic Resource Recovery Authority to induce them to participate in the construction and operation of the expanded plant. ¶ 26-27.

Plaintiffs claim that a plant expansion will be beneficial to all the participating municipalities. The solid waste disposal costs of the participating municipalities will be reduced. Bristol will benefit twofold. Its solid waste disposal costs will be reduced. Bristol will receive additional revenue because it is paid an amount based on the tonnage of solid waste accepted at the plant. Ogden Martin will benefit from the economies of scale and will receive more revenue due to increased tonnage accepted and electricity generated. ¶ 28-30.

Bristol has a Home Rule Charter. Section 50 of that Charter provides for an initiative procedure. ¶ 32. It provides:

"Sec. 50. Initiative and Removal

"(a) Initiative. The electors of the Town and City of Bristol shall have the power to propose ordinances, resolutions and any other proper

questions to the City Council. Special meetings of the electors for the purpose of voting on the aforesaid may be called at any time by the mayor or by the City Council, and shall be called whenever electors to the number of 15 percent of the electors who were entitled to vote at the last general city election shall petition that such meeting be called. The signatures to such a petition need not all be appended to one paper, but each signer shall add to his signature a statement of his place of residence, giving the street and number, if any. One of the signers of the petition shall make oath before an officer competent to administer oaths that each signature appended to such paper is the genuine signature of the person whose name it purports to be. Within five days from the filing of such petition with the town clerk, said town clerk shall ascertain if such petition is signed by the regular number of qualified electors, and he shall attach to such petition a certificate showing the result of such examination. If, by said clerk's certificate, the petition is found to be insufficient, it may be amended within ten days from the date of such certificate. The clerk shall make like examination of the amended petition, and, if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same effect. If the petition shall be found to be sufficient, the clerk shall, without delay, submit the same to the City Council. The petition for each elector's meeting shall state specifically the ordinance, resolution and any other proper question it is desired to have submitted to vote at such meeting. Upon receipt of such petition, the City Council shall either (a) pass such matter without alteration, within 20 days after attachment of the clerk's certificate to the accompanying petition, in which case the petition shall become of no effect, or (b) if the petition shall not have been withdrawn in a written statement signed by a majority of the signers of the original petition, call a special meeting of the electors within 30 days unless a general municipal election is to be held within 90 days thereafter; and at such special or general meeting, the matter shall be submitted to a vote of the electors of said city. All votes at the meeting of the electors shall be taken by the check list at the polling places in the several voting districts. The registrars of voters shall have the power to appoint such election officers as are necessary. The question of the passage of any such matter shall be designated on the voting machine, or on the ballot, if required, in the following words 'for the ordinance, resolution or question' as the case may be, (stating the nature of the proposed matter) and 'against the ordinance, resolution or question' as the case may be. At the close of the election, the votes registered or ballots cast shall be counted immediately and the result in each voting district shall be declared by the moderator. The moderator for the first voting district shall declare the general result on this and all other elections and he shall certify the results to the town clerk forthwith. The registrars shall, if requested, appoint one challenger from each side of the matter to be voted upon. If a majority of the qualified electors voting upon any proposed matter shall vote in favor thereof, and their number is at least 20 per cent of the electors entitled to vote on the matter, such matter shall thereupon become a valid ordinance[,] resolution or action as the case may be, of the City and shall be binding thereon and any matter proposed by petition and which shall be adopted by the vote of the people as enumerated above, shall be repealed or amended except by vote of the people." Charter, § 50.

***2** Anticipating a plant expansion, some Bristol electors petitioned to have the question stated below voted on at an election. ¶ 31. The petitions stated:

"Whereas it is becoming increasingly important to the health and well-being of all people that the quality of life sustaining AIR, EARTH and WATER be carefully protected and preserved.

"Therefore, we the undersigned electors of the City of Bristol, Connecticut hereby present this petition under the provisions of section 9-369 through 9-371 inclusive of the General Statutes of the State of Connecticut and pursuant to Section 50 of the Charter of the City of Bristol, demand the following question be placed on the ballot for binding resolution by Bristol electors at the November 5, 1991 Election as defined in section 9-1 of the Connecticut General Statutes:

"Shall the City of Bristol permit a third burner and a second smoke stack to be installed at any trash to energy plant(s) within Bristol?"

¶ 31, Exhibit A to Revised Complaint.

Sufficient petition signatures were obtained. The City Council ordered the question be placed on the ballot for the November 5, 1991 general election.

¶ 33-34.

At the November 5, 1991 election the following was presented to the electors:

"Shall the City of Bristol permit a third burner and a second smoke stack to be installed at any trash to energy plant(s) within Bristol?" ¶ 35

The final vote was 5,395 "yes" and 6,254 "no." ¶ 39.

The Revised Complaint has seven counts. The defendant, City of Bristol, has moved to strike each of the seven counts.

The Secretary of the State, the Connecticut Siting Council, and the Commissioner of Environmental Protection, have requested permission for *amici curiae* status to file a brief. The Secretary of the State, the Connecticut Siting Council, and the Commissioner of Environmental Protection, each claim a special interest or responsibility with respect to the subject matter of the First, Fourth and Fifth Counts, respectively. "The State Amici submit this brief in support of the defendant's motion with regard to these three issues touching upon the State Amici's duties and jurisdiction." Brief of Amicus Curiae Connecticut Siting Council, Commissioner of Environmental Protection, and Secretary of the State, May 17, 1993, p. 4.

Plaintiffs oppose the request. Bristol supports the motion. The court is not aware of any authority for such in the trial court. The motion has not been heard by the court. The court has not acted on the motion. The court has read the brief submitted by the Attorney General on behalf of the State Amici. The court has also read plaintiffs' brief in opposition to the request and brief filed by the Attorney General.

Each count of the Revised Complaint and the Motion to Strike as directed to each count is addressed below.

I

The First Count is a request for a declaratory judgment. Plaintiffs seek a "judgment declaring the Initiative Proposal voted on by the electors of the City of Bristol on November 5, 1991, to be null and void and of no force or effect...." Revised Complaint, p. 25. [109]

***3** Plaintiffs assert the vote on the initiative question is invalid and has not become effective because it is "contrary to Section 50 of the Bristol City Charter for the following reasons:

"a. The language of the Initiative Proposal on the ballot did not conform to the requirements for initiative proposals contained in Section 50 of the Bristol City Charter because the question was not phrased as required by that section; and

"b. Section 50 of the Bristol City Charter provides that an initiative may become effective only if a majority of qualified electors vote 'in favor' of it and their number is at least 20 percent of the electors entitled to vote on the matter, and a majority of the qualified electors voting on the Initiative Proposal on November 5, 1991, did not vote 'in favor' of the Initiative Proposal but, rather, a majority voted 'No.' Revised Complaint, ¶ 38, pp. 10- 11.

Bristol claims:

"The first count fails to state a claim upon which relief can be granted in that the allegations do not state a good cause of action to show that the language of the initiative proposal was not in conformance with statutory requirements for election ballot questions under the election laws of the State of Connecticut and fail to show that the results of the ballot were not clear as a matter of law." Motion To Strike, ¶ 1. [113]

The essence of plaintiffs' claim is that the language of the initiative proposal and the vote thereon did not comply with the requirements of the Charter's section 50.

Plaintiffs seek a judgment declaring that the Initiative "to be null and void and of no force or effect." Revised Complaint, p. 25.

While not raised specifically, there is a question as to what was to be accomplished by the initiative vote. Was an ordinance to be enacted? Was a resolution intended?

Section 50 says:

"The electors of the Town and City of Bristol shall have the power to propose *ordinances, resolutions and any other proper questions* to the City Council ... The petition for each elector's meeting shall state specifically the *ordinance, resolution and any other proper question* it is desired to have submitted to vote at such meeting

... The question of the passage of any such matter shall be designated on the voting machine, or on the ballot, if required, in the following words '*for the ordinance, resolution or question*' as the case may be, (stating the nature of the proposed matter) and '*against the ordinance, resolution or question*' as the case may be ... If a majority of the qualified electors voting upon any proposed matter shall vote in favor thereof, and their number is at least 20 per cent of the electors entitled to vote on the matter, such matter shall thereupon become a *valid ordinance[,] resolution or action* as the case may be, of the City and shall be binding thereon and any matter proposed by petition and which shall be adopted by the vote of the people as enumerated above, shall be repealed or amended except by vote of the people." Charter, § 50.

***4** There is a distinction between an **ordinance** and a **resolution**.

"An **ordinance** is a municipal legislative **enactment**, *Duplin v. Shiels, Inc.*, 165 **Conn.** 396, 398; *Great Atlantic & Pacific Tea Co. v. Scheuy*, 148 **Conn.** 721, 723. It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform and permanent rules of conduct relating to the corporate affairs of the municipality. 5 McQuillin, Municipal Corporations (3rd Ed.) § 15.01. The passage of an ordinance must follow the formal procedural steps specified by statute or charter. *First Church of Christ, Scientist v. Friendly Ice Cream*, 161 Conn. 223, 227-28; *Edward Balf Co. v. East Granby*, 152 Conn. 319, 325-26; *Jack v. Torrant*, 136 Conn. 414, 419.

"An ordinance prescribes some permanent rule of conduct or of government which is to continue in force until the ordinance is repealed. A resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality. 5 McQuillin, Municipal Corporations (3d Ed.) § 15.02. Regulatory measures enacted by a city council pursuant to the police power must be in the form of an **ordinance**, while matters such as public works may originate with **resolution**. *Hayes v. Hartford*, 144 **Conn.** 74, 76." *Morris v. Newington*, 36 Conn.Supp. 74, 80 (1979), *aff'd.* 180 **Conn.** 89 (1980).

Did the vote on the initiative result in the **enactment** of an **ordinance** or the adoption of a **resolution**? The definitions given above are not particularly helpful.

The language of the petitions suggests the answer:

"Therefore, we the undersigned electors of the City of Bristol, **Connecticut** hereby present this petition under the provisions of section 9-369 through 9-371 inclusive of the **General Statutes** of the State of **Connecticut** and pursuant to Section 50 of the Charter of the City of Bristol, demand the *following question be placed on the ballot for binding **resolution** by Bristol electors* at the November 5, 1991 Election as defined in section 9-1 of the **Connecticut General Statutes** :

"Shall the City of Bristol permit a third burner and a second smoke stack to be installed at any trash to energy plant(s) within Bristol?" [Italics added.]

The words, "question" and "binding **resolution**" suggest a **resolution**, the electors' "expression of opinion or mind concerning some particular item of business [plant expansion] coming within the legislative body's official [City Council's] cognizance."

Of course the strongest point against the initiative's resulting in an **ordinance** is the question's language. If **enactment** of an **ordinance** were intended, the matter should not have been phrased as it was; the question on the ballot should have contained the exact language of the proposed **ordinance**. For example:

***5** "Shall the following **ordinance** be enacted:

"The City of Bristol shall not permit a third burner and a second smoke stack to be installed at any trash to energy plant(s) within Bristol."

The subject of the question being phrased as a question negates its being an ordinance. Laws usually are written as declaratory statements, not in the interrogative mode.

Since the number of signatures on the petitions were of sufficient number, the City Council had to order the petition proposal placed on the ballot for the coming general election. Section 50 does not permit the election officials to "fix up" the wording

late publication. The defendant concedes in its motion that "through error of the town either the **ordinance** had not been published prior hereto, or no record was kept of such publication."

General Statute § **7-157** does not set forth any definite time after a vote to adopt an **ordinance** but only that it "shall become effective thirty days after publication ..." Since the statute does not provide for a time of publication, the court must infer that the legislature intended that publication be done within a reasonable time. In interpreting a statute, a court must assume a reasonable and rational result was intended by the legislature, *Norwich Land Co. v. Public Utilities Commission,* 170 **Conn.** 1, 4 and has a duty to carry out the legislative intent. *Royce v. Heneage,* 170 **Conn.** 387, 391. Likewise, the general purpose of the act must be considered in construing it. *United Aircraft Corporation v. Fusari,* 163 **Conn.** 401, 417. Publication about five years after adoption is not in compliance with the statute.

The obvious purpose of section **7-157** is to give notice to the public of the terms of any **ordinance**. It would be a totally unreasonable construction to construe the statute so that an **ordinance** could be voted but not published until someone threatened action contrary to its provisions at some date in the future.

Finally, in this case, by the time of publication the exception "that stockpiles of earth products excavated outside of the Town of Beacon Falls which are in existence at legal processing facilities in industrial or industrial park zones in the Town of Beacon Falls as of September 1, 1990 must be entirely processed as of September 1, 1990...." would have become a nullity. The court finds any publication in August 1993 to be a nullity.

For the reasons stated, the court declares the ordinance adopted on October 24, 1988 null and void. In view of that finding, judgment may enter for the plaintiff on the defendants' counterclaim.

1993 WL 427342 (Conn.Super.), 10 Conn. L. Rptr. 194

END OF DOCUMENT

167 A.2d 862
(Cite as: 148 Conn. 721, 167 A.2d 862)

Supreme Court of Errors of Connecticut.

GREAT ATLANTIC AND PACIFIC TEA COMPANY
v.
Hary E. SCHEUY.

Jan. 31, 1961.

Action in nature of mandamus to compel defendant to certify to liquor control commission plaintiff's application for grocery store beer permit. The Court of Common Pleas, Hartford County, Robert A. Wall, J., rendered judgment for defendant, and plaintiff appealed. The Supreme Court of Errors, Per Curiam, held that, properly construed, New Britain ordinance prohibited sale of packaged beer at supermarket only if its entrance was within 1,500 feet of an entrance to premises having same type of permit, and held that existence of outlet selling liquor under package store permit within prescribed area was not bar to granting of grocery store beer permit to supermarket.

Error; judgment directed.

West Headnotes

[1] Intoxicating Liquors ⚿66(.5)
223k66(.5) Most Cited Cases
(Formerly 223k66)

[1] Mandamus ⚿87
250k87 Most Cited Cases

Issuance by town clerk of certificate stating that sale of packaged beer at plaintiff's store under grocery store beer permit was not prohibited by zoning ordinances was prerequisite to granting of permit by liquor control commission; and mandamus was proper remedy if clerk's refusal to issue certificate was erroneous. C.G.S.A. §§ 30-15(c)(3), 30-20(c), 30- 44(2).

[2] Municipal Corporations ⚿105
268k105 Most Cited Cases

An ordinance is a municipal legislative enactment.

[3] Municipal Corporations ⚿120
268k120 Most Cited Cases

[3] Statutes ⚿174
361k174 Most Cited Cases

Same canons of construction are applicable whether ordinance or Act of General Assembly is involved.

[4] Municipal Corporations ⚿120
268k120 Most Cited Cases

[4] Statutes ⚿206
361k206 Most Cited Cases

If reasonably possible, legislative enactment should be son construed that no clause, sentence or word is superfluous, void or insignificant.

[5] Intoxicating Liquors ⚿59(1)
223k59(1) Most Cited Cases

Properly construed, New Britain ordinance prohibited sale of packaged beer at supermarket only if its entrance was within 1,500 feet of an entrance to premises having same type of permit; and existence of outlet selling liquor under package store permit within prescribed area was no bar to granting of grocery store beer permit to supermarket. C.G.S.A. § 30-20(a).

****863 *721** Leo V. Gaffney, New Britain, with whom, on the brief, was Bernard D. Gaffney, New Britain, for appellant (plaintiff).

Paul J. McQuillan, Corp. Counsel, New Britain, for appellee (defendant).

Before BALDWIN, C. J., and KING, MURPHY, MELLITZ and SHEA, JJ.

PER CURIAM.

The plaintiff sought a grocery store beer permit issued pursuant to General Statutes § 30-15(c)(3). A permit of that type would authorize the sale of packaged beer, for consumption off the premises, at the plaintiff's supermarket on West Main Street in New Britain. § 30-20(c).

[1] The issuance by the defendant, as town clerk of New Britain, of a certificate

> stating that the sale of packaged beer at the plaintiff's store under that type of permit is not prohibited by the zoning ordinances ***722** of New Britain is a prerequisite to the granting of the permit by the liquor control commission. § 30-44(2); Salerni v. Scheuy, 140 Conn. 566, 569, 102 A.2d 528. Mandamus is a proper remedy if the defendant's refusal to issue the certificate was erroneous. State ex rel. Heimov v. Thomson, 131 Conn. 8, 12, 37 A.2d 689.

The defendant based his refusal solely on his construction of § 11A of the New Britain zoning ordinances, [FN1] which places certain restrictions on liquor ***723** outlets within a radius of 1500 feet of each other. Within that radius of the plaintiff's supermarket there was no outlet selling liquor under a grocery store beer permit, as sought by the plaintiff, but there was an outlet selling liquor under a package store permit issued under § 30-20(a).

FN1. '[New Britain Zoning Ordinances (1925, as amended)] Sec. 11A-- Alcoholic Liquors

* * *

> '[b] No building or premises which prior to the effective date of this ordinance are not the site or location of a business where alcoholic liquor is sold at retail for consumption off the premises under (1) a package store liquor permit, (2) package store beer permit, (3) grocery store beer permit, (4) druggist permit, (5) druggist permit for beer only, issued by the Liquor Control Commission of the State of Connecticut, shall hereafter be used either in whole or in part for the sale of alcoholic liquor, wine, beer or ale under any such (1) package store liquor permit, (2) package store beer permit, (3) grocery store beer permit, (4) druggist permit, (5) druggist permit for beer only; if any entrance to such buildings or premises shall be within a 1500 foot radius from any entrance to any other building or premises which shall be used for the sale of alcoholic liquor, wine, beer or ale under any such (1) package store liquor permit, (2) package store beer permit, (3) grocery store beer permit, (4) druggist permit, (5) druggist permit for beer only.
>
> '[c] No building or premises which prior to effective date of this ordinance are not the site or location of a business where alcoholic liquor is dispensed for consumption on the premises under (1) tavern permit, (2) Restaurant beer permit, (3) Restaurant liquor permit, (4) hotel permit, (5) club permit, issued by the Liquor Control Commission of the State of Connecticut, shall hereafter be used in whole or part for dispensing of alcoholic liquor, wine, beer or ale under any such (1) tavern permit, (2) Restaurant beer permit, (3) Restaurant liquor permit, (4) hotel permit, (5) club permit; if any such building [or] premises shall be within a 1500 foot radius from any entrance to any other building or premises which shall be used for dispensing of alcoholic liquor, wine, beer or ale under any such (1) tavern permit, (2) restaurant beer permit, (3) restaurant liquor permit, (4) hotel permit, (5) club permit.'

The ordinance is far from a model of good draftsmanship. The defendant, and also the court below, construed it as prohibiting the sale of packaged beer at the plaintiff's supermarket because, within a 1500-foot radius, there was an existing ****864** outlet for the sale of liquor under a package store permit. This was one of five types of permit, authorizing the sale of liquor for consumption off the premises, enumerated in subparagraph (b) of the quoted portion of the ordinance.

[2][3][4][5] An ordinance is a municipal legislative enactment. The same canons of construction are applicable whether an ordinance or an act of the General Assembly is involved. Fox v. Zoning Board of Appeals, 146 Conn. 70, 73, 147 A.2d 472. One of these canons is that, if reasonably possible, a legislative enactment should be so construed that no clause, sentence or word is superfluous, void or insignificant. Ibid. The construction placed upon the ordinance by the defendant, and also by the court, gave no operative effect to the word 'such' in the phrase 'any such' permit. The ordinance was construed as though the word 'such' had been omitted and the word 'any,' alone, had been used. The construction claimed by

the plaintiff gives the word 'such' its ordinary meaning. The ordinance, so construed, would prohibit the sale of packaged beer at the supermarket only if its entrance is within 1500 feet of an entrance to premises having the same type of permit, that is, in this case, a grocery store ***724** beer permit. There is no claim that any such premises are within that radius. That there was in operation within that radius an outlet for the sale of liquor under a package store permit was of no consequence, since such a permit is of a different type from the grocery store beer permit sought by the plaintiff. The defendant's refusal to issue the certificate was erroneous.

There is error, the judgment is set aside and the case is remanded with direction to render judgment ordering the issuance of a certificate as prayed for by the plaintiff.

167 A.2d 862, 148 Conn. 721

END OF DOCUMENT

155 A. 507
113 Conn. 776
(Cite as: 155 A. 507)

Supreme Court of Errors of Connecticut.

KATZ
v.
HIGSON et al.

June 22, 1931.

Appeal from Superior Court, Fairfield County; Christopher L. Avery, Judge.

Suit by Lena Katz against Alfred H. Higson and others for an injunction restraining the defendant from erecting a building contrary to zoning regulations. The case was tried to the court. Judgment for defendants, and plaintiff appeals.

No error.

***507** Argued before MALTBIE, C. J., HAINES, HINMAN, and BANKS, JJ. [FN1]

FN1. By agreement of counsel the case was argued before four justices.

West Headnotes

Municipal Corporations ⚿110
268k110 Most Cited Cases

City charter requiring publication of ordinances should be interpreted according to purpose of informing public of laws which govern them.

Zoning and Planning ⚿137
414k137 Most Cited Cases
(Formerly 268k110)

Publication of ordinance which constituted no more than mere notice that zoning ordinance had been enacted, leaving persons interested to ascertain terms, held insufficient. Gen.St.1930, § 426.

Harry L. Edlin, of New Haven, and Lazarus Heyman, of Danbury, for appellant.

Raymond E. Baldwin, of Bridgeport, for appellees.

PER CURIAM.

The question presented in this appeal is whether or not there was in effect on August 9, 1929, a zoning ordinance of the city of Danbury which would have prevented the granting to the appellees of a permit to erect and construct a large building on their premises to be used as a gasoline service station. The charter of the city contains the following provision: "No ordinance shall take effect and be enforced until the same has been published at least twice in some daily newspaper published in said city nor until ten days after its passage." Pursuant to the provisions of section 6, chapter 242, of the Public Acts of 1925, now section 426 of the Revision of 1930, the city appointed a zoning commission. The commission prepared an ordinance and caused it to be published in two newspapers circulating in the city, with an accompanying map and with notice of public hearings to be held upon it. These were held, and substantial changes were made in the ordinance and map. The matter was then placed before the common council of the city, and it gave a further hearing. It then adopted an ordinance ***508** that: "The zoning ordinance as presented by the zoning commission, together with the accompanying map, be, and the same are hereby adopted, with the following exception"; and then followed several material alterations in the zoning of the city. A copy of this ordinance was advertised in two issues of a newspaper published in the city.

[1][2] The purpose of the provision in the charter requiring the publication of ordinances is to inform the public of the laws which govern them, and the requirement should be interpreted accordingly. Higley v. Bunce, 10 Conn. 436, 442. To give effect to that purpose the Legislature deemed it best to require that each ordinance should be published; it evidently considered that more ought to be done than merely to give notice that an ordinance concerning a certain matter had been enacted, leaving persons interested in, or possibly affected by, it to find out for themselves its precise terms. Obviously, this was the effect of the publication of the ordinance before us; any one seeking to ascertain its terms could only do so by searching out the publication of the proposed ordinance of the zoning commission, by consulting the official records of the city council, or by some such independent investigation. Only by printing the

entire ordinance, including that proposed by the commission and made a part of it, would such notice be given as would satisfy the provision we have quoted from the charter. The publication which was made was insufficient.

There is no error.

155 A. 507, 113 Conn. 776

END OF DOCUMENT

Not Reported in A.2d
10 Conn. L. Rptr. 194
(Cite as: 1993 WL 427342 (Conn.Super.))

H
UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Litchfield.

O & G INDUSTRIES, INC.
v.
TOWN OF BEACON FALLS.

No. 054039.

Oct. 13, 1993.

MEMORANDUM OF DECISION

PICKETT, Judge.

***1** On September 17, 1990, the plaintiff, O & G Industries, Inc. commenced this action for declaratory judgment against the defendant, Town of Beacon Falls, seeking to disclose invalid an **ordinance** adopted October 24, 1988. The **ordinance** provided in pertinent part as follows:

> ... all screening, washing, crushing and other processing of stone gravel, sand and other materials excavated from the earth which have not been extracted from within the Town of Beacon Falls, and all importation of such earth products excavated elsewhere into the Town of Beacon Falls for such screening, washing, crushing or other processing, are prohibited; provided, that stockpiles of earth products excavated outside the Town of Beacon Falls which are in existence at legal processing facilities in industrial or industrial park zones in the Town of Beacon Falls as of September 1, 1990 must be entirely processed as of September 1, 1990.

The defendant has filed a counterclaim seeking an injuction based upon the **ordinance**. The plaintiff has raised many issues in support of its claim and in defense of the counterclaim. Only one concerning the validity of the **enactment** need be addressed however. O & G claims that the **ordinance** has never become effective because there has been no compliance with the post- adoption publication **requirement** of Section **7-157** of the **General Statutes**.

The exercise of the powers granted to a municipality by Section 7-148 of the **Connecticut General Statutes**, except to the extent a municipality may wish to exercise those powers on an ad hoc basis, is to be by **ordinance**. C.G.S. Sec. 7-148(b). An **ordinance** is an **enactment** under the provisions of Section **7-157** of the **General Statutes**. Conn.Gen.Stat. Section 1-1(n). Section **7-157**(a) of the **General Statutes** provides that an **ordinance** may be enacted by the legislative body of any town and that any "... **ordinance** enacted at a town or district meeting shall become effective fifteen (15) days after publication thereof in some newspaper having a circulation in such town or in such district, as the case may be ...". Thus, Section **7-157** of the Gen.Stat. has established by whom an **ordinance** may be enacted and the procedure and notice necessary to have such **enactment** become effective. " 'The fundamental rule relating to municipal legislation is that an **ordinance** must be enacted in the manner provided by law ... the rule applicable to corporate authorities of municipal bodies is that when the mode in which their power is to be exercised is prescribed ... that mode must be followed'. *Glensfalls v. Standard Oil Company.". Jack v. Torrant,* 136 **Conn.** 414, 419 (1950).

With respect to non-compliance with the pre-adoption **requirement** of Conn.Gen.Stat. § 7-3 , the plaintiff relies upon a silent record, the absence of evidence of compliance. Upon the issue of non-compliance with the post- **enactment** provisions of Section **7-157**, the evidence affirmatively demonstrates non-compliance. Through Mr. D'Amico, its first selectman since 1977, the Town of Beacon Falls has confessed that neither the text of that **ordinance** nor any notice of the action of the town meeting purporting to adopt same was ever thereafter published in a newspaper having a circulation in the Town of Beacon Falls. At trial the Town failed to offer evidence of compliance.

***2** The Town seeks to remedy the failure to comply with the statute by its request to reopen the trial to offer evidence of publication in the Naugatuck Daily News on August 13, 1993 and August 17, 1993. The court has granted the motion to reopen for the limited purpose of reviewing the evidence of

embodying power to prohibit filling stations).

Missouri. Power "to regulate stone quarries and quarrying the stone," will not sustain an ordinance prohibiting, under penalty, the operation of a stone quarry without permission of the municipal legislative body. St. Louis v. Atlantic Quarry & Construction Co., 244 Mo 479, 148 SW 948.

[13] See § 26.29.

[14] See chs 24 and 26.

III. EXECUTION OF POWERS

§ 10.27. Method of execution of powers.

The powers of a municipal corporation must be exercised in a reasonable, lawful and constitutional manner.[1] Hence, although there is no express limitation in a grant of power, it must be lawfully and reasonably exercised, within the restrictions of the state and federal constitution and laws.[2] Officers or boards may carry out the definitely expressed will of the legislative body, notwithstanding procedural directions and things to be done are specified only in general terms.[3] Action taken by municipal officers must be both legal and reasonable. This is particularly so under general grants of power.[4] And, furthermore, municipal authority to regulate the exercise of a power does not authorize the enlargement of the power.[5]

The state may, and sometimes does, prescribe in what mode or manner a municipal corporation shall exercise its powers.[6] It is generally within the legislative province to direct in what way, through what board of municipal officers or agents, or by what municipal officers the powers given shall be exercised.[7]

Where the applicable law directs in precise or definite terms the manner in which certain corporate acts are to be executed, and points out the departments, officers or agents who are to perform them, such specification must be substantially followed.[8] In some instances, the lawfully prescribed mode of exercising a power is a condition upon which the power is granted.[9] The direction of definite and certain method of procedure in the grant of power to the municipal authorities generally excludes all other methods by implication of law.[10] The mode in such cases constitutes the measure of their power.[11] Where a corporation relies upon a grant of power from the legislature for authority to do any act, it is as much restricted to the mode prescribed by the statute for its exercise as to the thing allowed to be done.[12] In conferring the power with direction as to its exercise, it is the intention that it shall be exercised by the body and in the mode prescribed, and

Chattanooga, 578 SW2d 950 (Tenn App), citing this treatise.

§ 10.29. —Where no method prescribed.

If power is statutorily conferred on a municipal corporation and the law is silent as to the mode of exercising such power, the corporate authorities are necessarily clothed with a reasonable discretion to determine the manner in which such powers shall be exercised; all the reasonable methods of executing such power are inferred.[1] This general doctrine has been said to be based upon necessity, and the law of self-preservation.[2] The general presumption obtains that what was done was proper and valid if nothing to the contrary appears.[3] In the absence of any mode prescribed by law, the council may in its discretion, exercise its power in any usual and appropriate manner,[4] or the municipal corporation may prescribe the manner in which its powers may be exercised, but when so prescribed they must be done in the manner provided and no other.[5] In other words, the general rule is that unless restrained by law a municipal corporation may, in its discretion, determine for itself the means and method of exercising its powers,[6] in the same manner as would a private person or corporation.[7]

Further, where the means selected have not been directly authorized, those means must be reasonable.[8] Thus, if the manner of exercising a granted power is not prescribed, the common council may proceed either by way of ordinance or resolution.[9]

Where the law is silent as to the mode, the rule of strict construction is not applied to the mode chosen by the municipal corporation executing a power that is plainly granted.[10] When the authority to exercise the power appears, wide latitude is allowed in its exercise and, unless some abuse of power or a violation of organic or fundamental right results, it will be upheld.[11]

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[1] **Florida.** City of Boca Raton v. State, 595 So 2d 25 (Fla 1992); State v. Tampa Waterworks Co., 56 Fla 858, 47 So 358.

Indiana. Walker v. Jameson, 140 Ind 591, 602, 37 NE 402, 39 NE 869; Lewisville Natural Gas Co. v. State, 135 Ind 49, 34 NE 702.

Mississippi. Webb v. Meridian, 195 So 2d 832 (Miss), citing McQuillin text; Hawkins v. West Point, 200 Miss 616, 27 So 2d 549.

Missouri. Flordell Hills v. Hardekopf, 271 SW2d 256 (Mo App); Austin Western Road Machinery v.

New Madrid, 185 SW2d 8
App), quoting this treatise
New Mexico. Page v.
NM 239, 191 P 460.
New York. In re Ass
Improvement of Latera
Amundson Avenue, Moun
Misc 2d 618, 194 NYS2d
this treatise.
South Dakota. Robbir
City, 71 SD 171, 23 NW2d
Virginia. Common
County Board of Arlingt
217 Va 558, 232 SE2d 30.
Wyoming. Lakota Oil
Casper, 57 Wyo 329, 116 P
Discretionary powers, s
[2] **Connecticut.** Bric
Housatonuc R. Co., 15 Cor
Missouri. State v. Wa
Mo 383, 24 SW 457.
Oregon. Through its
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individuals. Beers v. Da
Or 334, 18 P 835.
[3] **Florida.** City of Bo
State, 595 So 2d 25 (Fla 1
Missouri. Austin We
Machinery v. New Madri
850, 853 (Mo App), q
treatise.
West Virginia. Philipp
Valley Water Co., 99 W Va
465.
[4] **Arizona.** Tucson v. A
of Sigma Alpha Epsilon,
195 P2d 562.
Arkansas. Kindricks
135 Ark 459, 205 SW 815.
Florida. City of Boc
State, 595 So 2d 25 (Fla 1
v. St. Petersburg, 74 Fl
699.

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n determining the reasona-
rdinance which is question
court, all existing circum-
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object sought to be
nd necessity or lack of
r its adoption, will be con-
'Connor v. Moscow, 69
)2 P2d 401.
Scott v. La Porte, 162 Ind
'E 278, 69 NE 675.
ta. State v. Kinney, 146
.78 NW 815.
a. Standard Oil Co. v.
)6 Neb 558, 184 NW 109.
rk. People v. Atwell, 232
NE 364; Meyers v. New
Division of Housing and
Renewal, 36 AD2d 166,
522; People v. Wheeler, 56
06 NYS 450.
x parte Vance, 42 Tex Crim
2 SW 568.
. Kirkham v. Russell, 76

for municipal legislation,

by resolution, see §§ 15.06,

cky. Waddle v. Somerset,
134 SW2d 956.
Brenham v. Holle & Seel-
SW 345 (Tex Civ App).
la. State v. Ackerly, 69 Fla
32.
or v. Incorporated Town of
, 231 Iowa 907, 2 NW2d
k Water Works Co. v. Keo-
Iowa 718, 277 NW 291,
s treatise.

§ 10.30. Necessity for municipal legislation.

Self-enforcing charter or statutory provision require no municipal legislation,[1] but where merely a grant of power is made, to make such power effective appropriate legislation is essential.[2] Certain municipal powers can only be executed legally by formal enactments of ordinances, resolutions, or similar legislative acts.[3] Where the grant conferring the power is a complete enactment within itself, the provision, whether charter or statutory, becomes self-enforcing, and therefore other legislation is not required.[4] Thus, where an offense is defined, and the penalty and mode of prosecution prescribed, the provision of a statute or charter may be executed without an ordinance.[5]

But where the provision is merely a grant of power, as authority to license and regulate trades, occupations, professions, etc., to regulate or suppress or license the sale of liquor,[6] bawdyhouses, gaming and gambling houses; to prohibit and destroy instruments and devices, etc., of gambling;[7] to abate nuisances;[8] to employ agents and attorneys;[9] to make public improvements;[10] to operate water and sewer systems;[11] to establish waterworks and to fix wharfage dues;[12] to establish public wells;[13] to establish or to exercise the delegated zoning,[14] or police power generally,[15] the passage of proper ordinances or resolutions is required, to make the power effective.

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[1] **Colorado.** Crawford v. Denver, 156 Colo 292, 398 P2d 627 (mayor's power to appoint department heads, officers and employees).

Connecticut. Connelly v. Bridgeport, 104 Conn 238, 132 A 690.

Indiana. Smith v. Madison, 7 Ind 86.

Nevada. State v. White, 36 Nev 334, 136 P 110, quoting this treatise.

Ohio. Taylor v. Cleveland, 87 Ohio App 132, 93 NE2d 594 (charter provision stating council shall by ordinance provide for its enforcement as not self-executing and as ineffective unless ordinance passed to effect it).

[2] **United States.** Tulsa v. Southwestern Bell Tel. Co., 5 F Supp 822, affd 75 F2d 343, cert den 295 US 744.

California. King v. Leavy, 124 Cal App 422, 12 P2d 661.

Illinois. It is elemental that an act of a unit of local government which purports to prescribe a rule or rules of conduct applicable to the general public must be embodied in an ordinance. City of Tuscola v. D&B Refuse Service, Inc., 131 Ill App 3d 168, 475 NE2d 633.

Maryland. Rose v. Baltimore, 51 Md 256 (ordinances as necessary to direct sale of market stalls).

Ohio. Bond v. Littleton, 87 Ohio App 183, 94 NE2d 398 (charter provision prescribing 8 hour day and 48 hour week for city employees not self-executing).

Not Reported in A.2d
(Cite as: 1993 WL 256576 (Conn.Super.))

Superior Court of Connecticut, Judicial District of Fairfield, at Bridgeport.

Daniel CARNESE
v.
PLANNING & ZONING COMMISSION OF THE TOWN OF WESTPORT.

No. CV92 0299969 S.

July 6, 1993.

MEMORANDUM OF DECISION

LEVIN, Judge.

***1** The plaintiff appeals the decision of the Planning and Zoning Commission of the town of Westport ("commission") granting the application of the town of Westport for a special permit and site plan approval for two multipurpose athletic fields on twenty-seven acres owned by the town of Westport. Since the plaintiff owns land abutting those twenty-seven acres, he is statutorily aggrieved by the action of the commission and has standing to maintain this appeal. General Statutes § 8-8; see *McNally v. Zoning Commission,* 225 Conn. 1, 5-8, 621 A.2d 279 (1993); *Caltabiano v. Planning & Zoning Commission,* 211 Conn. 662, 560 A.2d 975 (1989).

The plaintiff claims that (1) the action taken was illegal because a member of the commission had a personal interest in the application and failed to disqualify herself; (2) the commission illegally imposed conditions on the special permit and site plan after it already had approved the application; (3) notice of the commission's decision was invalid under General Statutes § 8-3c(b) because it failed to list the conditions imposed by the commission; and (4) the commission illegally truncated the appeal period by not filing the list of conditions in its office until the day after the notice of decision, which referred to that list, was published. The court finds that the plaintiff's claims lack merit. Accordingly, the appeal is dismissed.

A.

The plaintiff's first claim is that the action of the commission was illegal because one member of that body "knew of circumstances which could reasonably result in a conflict [of interest] or the appearance of conflict and should have disqualified herself from participating in the public hearing but failed to do so."

The facts relevant to this claim are as follows. The application for a special permit and site plan approval reflects that the "applicant" was "Westport Parks & Recreation." The application is signed "Stuart McCarthy, Parks & Rec. Director" and by Douglas Wood, the First Selectman of the Town of Westport. At all relevant times Michael Rea was a member of the Parks & Recreation Commission of the Town of Westport. His spouse, Carla Rea, was at all times a member of the defendant commission and participated in the public hearing, deliberations and decision on the subject application.

General Statutes § 8-11 which, as the plaintiff states, "sets forth the standard regarding the disqualification of members of a" zoning commission provides in pertinent part:

> "No member of any zoning commission ... shall participate in the hearing or decision of the ... commission of which he is a member upon any matter in which he is *directly or indirectly interested in a personal or financial sense.* In the event of such disqualification, such fact shall be entered on the records of the commission ..., and, unless otherwise provided by special act, any municipality may provide by ordinance that an elector may be chosen, in a manner specified in the ordinance, to act as a member of such commission ... in the hearing and determination of such matter, except that replacement shall first be made from alternate members pursuant to the provisions of sections 8- 1b and 8-5a." (Emphasis added.)

***2** A member of a zoning commission is directly or indirectly interest in a matter in a financial sense "when the decision of the zoning authority could enure to his pecuniary benefit." *Anderson v. Zoning Commission,* 157 Conn. 285, 290, 253 A.2d 16 (1968). The plaintiff concedes that Mrs. Rea had

no pecuniary interest in the subject matter of the application or in her commission's decision on that application.

"Section 8-11 also forbids a member of a zoning commission or board of appeals from participating in any matter in which he has a personal interest in the outcome. *Daly v. Town Plan & Zoning Commission,* 150 Conn. 495, 500, 191 A.2d 250 (1963). A personal interest is either an interest in the subject matter or a relationship with the parties before the zoning authority impairing the impartiality expected to characterize each member of the zoning authority. A personal interest can take the form of favoritism toward one party or hostility toward the opposing party; it is a personal bias or prejudice which imperils the open-mindedness and sense of fairness which a zoning official in our state is required to possess." *Anderson v. Zoning Commission,* supra, 290-291; see *Cioffoletti v. Planning & Zoning Commission,* 209 Conn. 544, 554, 552 A.2d 796 (1989). "The test is not whether the personal interest of the commissioner actual conflicted with his public duty but whether it might have conflicted. *Josephson v. Planning Board,* 151 Conn. 489, 495, 199 A.2d 690 (1964)." *Brunswick v. Inland Wetlands Commission,* 29 Conn.App. 634, 639, 617 A.2d 466 (1992).

Notably, a reasonable appearance of impropriety, which is the standard for judicial disqualification, is not the governing standard for administrative adjudicators. "The canons of judicial ethics go far toward cloistering those who become judges, the ultimate arbiters of constitutional and statutory rights, from all extraneous influences that could even remotely be deemed to affect their decisions. Such a rarefied atmosphere of impartiality cannot practically be achieved where the persons acting as administrative adjudicators, whose decisions are normally subject to judicial review, often have other employment or associations in the community they serve. It would be difficult to find competent people willing to serve, commonly without recompense, upon the numerous boards and commissions in this state if any connection with such agencies, however remotely related to the matters they are called upon to decide, were deemed to disqualify them. Neither the federal courts nor [the Supreme Court of this state] require[s] a standard so difficult to implement as a prerequisite of due process of law for administrative adjudication." *Petrowski v. Norwich Free Academy,* 199 Conn. 231, 238, 506 A.2d 139, appeal dismissed, 479 U.S. 882, 107 S.Ct 42, 93 L.Ed.2d 5 (1986).

In addition, "[i]t is presumed that members of administrative boards acting in an administrative capacity are unbiased. *Petrowski v. Norwich Free Academy,* [supra, 236]; see *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). The party who contends that an adjudication is biased bears the burden of proving the disqualifying interest. *Schweiker v. McClure,* 456 U.S. 188, 196, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982); *Petrowski v. Norwich Free Academy,* supra." *Jutkowitz v. Norwich Free Academy,* 220 Conn. 86, 100, 596 A.2d 374 (1991). "To overcome the presumption, the plaintiff ... must demonstrate actual bias, rather than mere potential bias, of the board member[ ] challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable." (Internal quotation marks omitted.) *Clisham v. Board of Police Commissioners,* 223 Conn. 354, 362, 613 A.2d 254 (1992).

***3** The factual predicate for a finding that Mrs. Rea had a personal interest, that is, a bias or prejudice, does not exist. Firstly, the plaintiff has not directed the court to anything in the record which reflects that the Parks and Recreation *Commission* was the applicant. The application is signed by the Director of the Parks and Recreation *Department* and it is noteworthy, though not dispositive, that in their correspondence the town planner and other town officials treated the Director as the applicant. Under the Westport Charter, "of which the court takes judicial notice"; *Nichols v. Ansonia,* 81 Conn. 229, 237, 70 A. 636 (1908); the Parks and Recreation Department, of which the Director is the administrative and operational head, is distinct from the Parks and Recreation Commission, which establishes policy. Westport Code §§ C32-1 to C32-3. Also, the traffic study submitted to the defendant commission states that it was prepared at the request of the Director. Secondly, the plaintiff has not directed the court to anything in the record which reflects that the Parks and Recreation Commission ever took a position on the subject of the application. At most, there was a Field Committee of that commission which advocated the need for additional sports fields. While even local boards and commissions may have an inherent propensity to expand their "turf", such a propensity

may not be the basis for a finding of fact. More, there is no evidence that Mrs. Rea's spouse was a member of that Field Committee. Finally, the plaintiff has not directed the court to anything in the record, nor has he otherwise adduced any evidence, that Mrs. Rea's husband personally favored this application or even participated in any proceedings of the Parks and Recreation Commission concerning its subject matter. [FN1] Therefore, there is no basis for finding that Mrs. Rea had a personal interest which would have disqualified her from participating in the hearing and decision on the application pursuant to General Statutes § 8-11.

> FN1. For these reasons *Tyers v. Planning & Zoning Commission,* Superior Court, Judicial District of Ansonia-Milford, Nos. 36281, 37412 (Nov. 17, 1992), on which the plaintiff relies, is inopposite. In *Tyers,* the husband of a commission member was on the board of directors of a bank which was an owner of the property for which subdivision approval was sought. The court held that the commission member thereby had a personal interest and was disqualified to participate in the proceedings before the commission on the application for subdivision approval. Even if an analogy could be made between a board of directors of a private corporation and a local municipal commission, there is no evidence that the Parks and Recreation Commission was an applicant before the defendant commission or even took a position on the application. This finding also is dispositive of the plaintiff's claim that the Director of the Parks and Recreation Department was an agent of the Parks and Recreation Commission.

B.

The plaintiff's second claim is that the commission illegally reversed itself and imposed additional conditions on the special permit and site plan approval after it had acted on the application.

The commission's minutes reflect that the motion on which it acted was as follows: "To grant application 92-145 as presented with a revised site plan to be submitted, no band practice, no lights and loudspeakers, no cut-off of play before sundown, parking plan to be revised to conform with small car standards and a permeable surface, fencing of the gardens, landscape committee to conduct field inspection." However, the letter of the chairman of the commission to Mr. Stuart McCarthy, Director of the Parks and Recreation Department, notifying him of the commission's decision, contains many more substantive conditions. The plaintiff claims that this evidences that the commission illegally imposed additional conditions to the special permit and site plan approval after its initial action. The defendants claim that the additional conditions were validly imposed in a "work session" of the Director of Planning and Zoning and the Town Planner after the vote to approve the application. "Once a work session is complete, and a vote is taken," argue the defendants, "the staff writes up the resolution based on the conditions imposed by the Commission. The Commission Chairman reviews the draft to determine that it is an accurate reflection of the vote of the Commission before it is disseminated."

***4** "These representations of the [defendants'] counsel are not 'evidence' and certainly not proof." *Cologne v. Westfarms Associates,* 197 Conn. 141, 153, 496 A.2d 476 (1985); see *Pet v. Department of Health Services,* 207 Conn. 346, 363 n. 10, 542 A.2d 672 (1985); see *Pet v. Department of Health Services,* 207 Conn. 346, 363 n. 10, 542 A.2d 672 (1988); *State v. Roman,* 224 Conn. 63, 68, 616 A.2d 216 (1992); *State v. Tillman,* 220 Conn. 487, 496, 600 A.2d 738 (1991), cert. denied, 505 U.S. 1207, 112 S.Ct. 3000, 120 L.Ed.2d 876 (1992); *New Haven v. Freedom of Information Commission,* 205 Conn. 767, 776, 555 A.2d 1297 (1988); *State v. O'Brien,* 29 Conn.App. 724, 732, 618 A.2d 50 (1992); cert. denied, 225 Conn. 902, 621 A.2d 285 (1993); *State v. Hanna,* 19 Conn.App. 277, 278, 562 A.2d 549 (1989); *State v. Weber,* 6 Conn.App. 407, 413, 505 A.2d 1266 (1986), cert. denied, 192 Conn. 810, 508 A.2d 771 (1986). This appeal must be decided on the record. *Blaker v. Planning & Zoning Commission,* 219 Conn. 139, 146, 592 A.2d 155 (1991).

The action of the commission is reflected in its official records, including its minutes. *Northrop v. Waterbury,* 81 Conn. 305, 309, 70 A. 1024 (1908); *Alderman v. New Haven,* 81 Conn. 137, 142, 70 A. 626 (1908). Here, those documents reflect that on October 28, 1992 the commission granted the

town's application subject to certain enumerated conditions. That action did not authorize or delegate to the commission's chairman or staff the authority to impose any additional conditions. Any additional conditions subsequently developed by the commission's director and the town planner, even if approved by the commission's chairman, are a nullity. A zoning commission can only take valid action at a meeting of which all members have proper notice and at which a majority are present. *Ghent v. Zoning Commission,* 220 Conn. 584, 598, 600 A.2d 1010 (1991); *Strain v. Mimms,* 123 Conn. 275, 281, 193 A. 754 (1937). "Members of a municipal board cannot exercise their powers and duties separately. They must meet and act as a board at authorized meetings duly held. *Jack v. Torrant,* 136 Conn. 414, 420, 71 A.2d 705 (1950); 2 Am.Jur.2d, Administrative Law, § 227." *Ziomek v. Bartinole,* 156 Conn. 604, 612, 244 A.2d 380 (1968); see *Pepe v. New Britain,* 203 Conn. 281, 290, 524 A.2d 629 (1987); 2 J. Dillon, *Municipal Corporations* (5th Ed.) § 50, p. 825.

Therefore, both the claim of the plaintiff and the claim of the defendants are untenable. The commission neither reversed itself nor did it add additional conditions to its approval after its action on October 28, 1992.

C.

The plaintiff's third claim is that the commission's notice of decision is invalid under General Statutes § 8-3c(b) because it failed to list the conditions imposed by the commission. [FN2]

> FN2. General Statutes § 8-3c(b) provides in pertinent part: "Notice of the decision of the commission shall be published in a newspaper having a substantial circulation in the municipality....

The notice of the commission's decision appeared in the Westport News and stated as follows:

> ***5** "Notice is hereby given that at a meeting held on October 28, 1992 the Westport Planning & Zoning Commission took the following actions: 1. Granted. Cross Highway/Silent Grove South (Wakeman Farm): Appl. # 92-145 by the Town of Westport for property owned by the Town of Westport for a Special Permit and Site Plan Approval for multi-purpose athletic fields in a Res. AAA, Map 5442-1, Lot. 16-2 through 16-19."

Item two in the notice was the granting of another application. The notice then continued: "The above items were granted with conditions which are on file with the Planning & Zoning Office in Town Hall at 110 Myrtle Avenue."

Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals, 195 Conn. 276, 487 A.2d 559 (1985), is dispositive of the plaintiff's claim. There the principal issue was "the timeliness of the plaintiff's appeal, the resolution of which depend[ed] upon the adequacy of the notice of decision provided by the zoning board." (Footnote omitted.) Id., 280. The material part of that notice stated that [the board] had rendered the following decision: "4531-4575 MAIN ST. Petition of First National Stores, Inc. GRANTED CONDITIONALLY." Id., 279 n. 20. Said the court:

> "In reviewing the adequacy of the notice of decision ..., we are mindful of the purpose such notice is meant to serve. 'The right of appeal, if it is to have any value, must necessarily contemplate that the person who is to exercise the right be given the opportunity of knowing that there is a decision to appeal from and of forming an opinion as to whether that decision presents an appealable issue. Until the prospective appellant has either actual or constructive notice that a decision has been reached, the right of appeal is meaningless.' *Hubbard v. Planning Commission,* 151 Conn. 269, 271-72, 196 A.2d 760 (1963). The notice of decision here, together with the hearing notice incorporated therein fulfilled these objectives. There can be no doubt that the notice of decision published on December 16, 1982, gave the plaintiff the opportunity of knowing that there was a decision to appeal from. The notice of decision explicitly stated that a decision relating to specifically identified property ... had been rendered *granting the ... petition conditionally.* The adequacy of the notice with regard to the opportunity granted the plaintiff 'of forming an opinion as to whether that decision presents an appealable issue' must be determined from the notice construed as a whole, *including its references* to the prior notice of hearing.... *It is not essential that a notice of decision expressly state every consideration that might be relevant to any party who might want to appeal the board's decision.* It is only necessary to provide

notice adequate to ensure *a reasonable opportunity within the appealable time constraints to obtain the information required to form an opinion whether or not to appeal.*"
(Emphasis added.) Id., 281-282. Judged against this standard, the notice of decision here clearly passes muster. Notice of the conditional granting of a zoning application is not invalid because the notice does not enumerate the conditions imposed, at least where, as here, the notice states that the conditions are on file in a local public building which is identified.

***6** In support of his position the plaintiff cites *Katz v. Higson,* 113 Conn. 776, 155 A. 507 (1931). In that case the court, in a per curiam opinion, invalidated a zoning ordinance because the entire text had not been published in a newspaper. There, however, "[t]he charter of the city contain [ed] the following provision: 'No ordinance shall take effect and be enforced until the same has been published at least twice in some daily newspaper published in said city, nor until ten days after its passage.' " Ibid. In the present case, Connecticut General Statutes § 8-3c(b) does not require that the entire text of a decision be published. Rather, General Statutes § 8-3c(b) simply provides in relevant part: "Notice of the decision of the commission shall be published in a newspaper, having a substantial circulation in the municipality...." *Bridgeport Bowl-O-Rama,* supra, makes clear that a "notice of decision" need not include the entire text of the decision. Moreover, the notice in *Katz* did not direct the public to a place where the entire text of the decision was available. See *Katz v. Higson,* supra, 777.

The plaintiff also cites *Polzella v. Planning & Zoning Commission,* Superior Court, Judicial District of Waterbury, No. 052640 (1981). In *Polzella,* the court held that a notice of the granting of a special permit was invalid because it contained only three of nine conditions imposed. Such is not the case here. "A statement that is partial or incomplete may be a misrepresentation because it is misleading, when it purports to tell the whole truth and does not." Restatement (Second), Torts § 551, comment on clause (b), p. 121. To the extent that *Polzella* held that the entire text of a zoning decision must be published, enumerating all conditions imposed, it is not binding on this coordinate court and is inconsistent with the subsequent Supreme Court decision in *Bridgeport Bowl-O-Rama,* supra. See Fuller, *Land Use law and Practice* (West 1993), § 46.5, p. 753.

D.

The plaintiff's final claim is that the commission illegally truncated the fifteen day statutory appeal period because it failed to file in its office, as represented in the published notice of decision, the list of conditions imposed on the granting of the special permit and site plan approval until the day after the notice of its decision was published in a newspaper. [FN3]

FN3. As to this issue, the court permitted the parties to introduce evidence outside of the record. See General Statutes § 8-8(k)(2). Based on that evidence, the court finds that on November 5 ,1993, the day after notice of the commission's decision was published, Mr. Michael Drummy went to the commission's office. Mr. Drummy is an employee of the law firm which represents the plaintiff. He requested permission to examine the conditions to which the commission's approval of the special permit and site plan were subject. Although the commission's staff was unable to provide Mr. Drummy with a copy of the conditions at that moment, the court finds that the list of conditions was available in the commission's office and would have been provided to Mr. Drummy earlier that morning or later that day.

General Statutes § 8-8(b) provides in relevant part that an aggrieved person may appeal the decision of a zoning commission to the superior court "within fifteen days from the date that notice of the decision was published as required by the general statutes." However, "[i]t is not essential that a notice of decision expressly state every consideration that might be relevant to any party who might want to appeal the board's decision. It is only necessary to provide notice adequate to ensure *a reasonable opportunity within the applicable time constraints to obtain the information* required to form an opinion whether or not to appeal." (Emphasis added.) *Bridgeport Bowl-O- Rama, Inc. v. Zoning Board of Appeals,* supra, 282. Even assuming that the list of conditions imposed by the commission

was not filed in its office until the day after the notice of decision was published, the plaintiff and the rest of the public nonetheless had "a reasonable opportunity within the applicable time constraints to obtain the information required to form an opinion whether or not to appeal." Ibid. [FN4]

FN4. The court need not determine whether an appellant would be entitled to a tolling of the time to appeal where she was not afforded "a reasonable opportunity within the applicable time constraints to obtain the information required to form an opinion whether or not to appeal." Ibid. By statutory fiat, the running of the appeal period is contingent upon sufficient statutory publication. General Statutes § 8-8(b). However, General Statutes § 8-8(b) "is a statute of general application. Statutes general in their terms are, in certain circumstances, construed to admit implied exceptions. *New Haven Savings Bank v. Warner,* 128 Conn. 662, 669, 25 A.2d 50 (1942); *Kelly v. Killourey,* 81 Conn. 320, 321, 70 A. 1031 (1908)." *Kron v. Thelen,* 178 Conn. 189, 197, 423 A.2d 857 (1979); see also *Connors v. New Haven,* 101 Conn. 191, 199, 125 A. 375 (1924). In accordance with the presumed intent of the legislature, such a statute will not be read so as to empower the tribunal from which an appeal is sought to be taken to nullify a party's statutory right of appeal by its mistake, omission or delay in giving due notice or in providing aggrieved persons with the information required to form an opinion whether or not to appeal. *Kron v. Thelen,* supra; see *Plasil v. Tableman,* 223 Conn. 68, 76, 612 A.2d 763 (1992); *Trap Falls Realty Holding Limited Partnership v. Board of Tax Review,* 29 Conn.App. 97, 104, 612 A.2d 814 (1992), cert. denied, 224 Conn. 911, 617 A.2d 170 (1992); *Cholewinski v. Conway,* 14 Conn.App. 236, 242, 540 A.2d 391 (1988); *State v. Lytwyn,* 27 Conn.Sup. 78, 80-81, 230 A.2d 40 (1967).

***7** The appeal is dismissed.

1993 WL 256576 (Conn.Super.)

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474 A.2d 97
(Cite as: 193 Conn. 1, 474 A.2d 97)

C

Supreme Court of Connecticut.

CHESHIRE TAXPAYERS' ACTION COMMITTEE, INC., et al.
v.
Burton I. GUILFORD et al.

Argued Jan. 5, 1984.
Decided April 24, 1984.

Taxpayer brought action for writ of mandamus to compel town council to submit proposed ordinance to referendum. The Superior Court, Judicial District of Newhaven, Smith, J., issued writ, and town council appealed. The Supreme Court, Speziale, C.J., held that as town council maintained that proposed ordinance was actually improper amendment to town charter, trial court erred in finding that taxpayer had clear legal right to mandamus without first determining whether proposed ordinance clearly exceeded legislative power of electorate.

Judgment set aside; new trial ordered.

West Headnotes

[1] Mandamus ⚿3(5)
250k3(5) Most Cited Cases

Statute which provided that electorate could petition for amendment of city charter, but which left town council free to accept or reject recommended change, was not "adequate remedy at law" for taxpayer who sought writ of mandamus to compel town council to submit recommended ordinance to direct referendum by voters. C.G.S.A. § 7-188.

[2] Mandamus ⚿16(1)
250k16(1) Most Cited Cases

Amended **charter** provision that operating budget of city could be submitted to referendum if petition signed by at least ten percent of registered electors was filed was not substantially same as **proposed ordinance** which would **require** that every budget of town be submitted to referendum, and thus, taxpayer's action for writ of mandamus to compel town council to submit such **proposed ordinance** to referendum was not moot by virtue of amended **charter** provision.

[3] Mandamus ⚿174
250k174 Most Cited Cases

Where town council maintained, in action for writ of mandamus to compel them to submit **proposed ordinance** to referendum, that **proposed ordinance** was improper as actually being amendment to town **charter**, trial court erred in finding that proponent had clear legal right to mandamus without first determining whether **proposed ordinance** clearly exceeded legislative power of electorate. C.G.S.A. § 7-188.

****97 *2** John K. Knott, Jr., New Haven, for appellants (defendants).

James M. Ullman, Meriden, for appellee (plaintiff Eric Schrumm).

Before ***1** SPEZIALE, C.J., and PETERS, HEALEY, SHEA and GRILLO, JJ.

***2** SPEZIALE, Chief Justice.

The question on this appeal is whether the trial court erred in issuing a writ of mandamus to compel the defendant members of the Cheshire town council [FN1] to submit an ordinance proposed by initiative petition to referendum. Because the trial court refused to consider whether the proposed ordinance clearly exceeded the power of the electorate, we find error and remand for a new trial.

> FN1. The members of the town council named as defendants in the original complaint are Burton Guilford, James McKenney, Lewis Lagervall, Jack Foster, Robert Bown, Raymond Voelker, Joseph Raines, Selina McArdle, and David Thorpe.

The underlying facts are not in dispute. The plaintiff appellee is a taxpayer and elector in the town of Cheshire. [FN2] In July, ****98** 1979, the plaintiff and other electors circulated a petition which **proposed** an **ordinance requiring** an annual

budget referendum. [FN3] This petition was circulated pursuant to the power of initiative reserved to the electors by § 3- 7 of the town of Cheshire **charter**. [FN4] The town clerk, in accordance with the **charter**, ***3** certified the petition to the town council. The town council failed to adopt the **proposed ordinance** and informed the plaintiff of the council's belief that the **ordinance** was invalid as presented. On January 25, 1980, the plaintiff sought a writ of mandamus to compel the town council to submit the **proposed ordinance** to the electors of the town of Cheshire pursuant to § 3-7 of the **charter** which provides in relevant part: "If the Council fails to adopt an **ordinance** so **proposed** without any change in substance within thirty (30) days after a petition making such a **proposal** shall have been certified to the Council ... the electors may adopt or reject the same at a referendum called by the Council and held within ninety (90) days after such **proposed ordinance** has been certified to the Council."

FN2. The complaint was brought by both the Cheshire Taxpayers' Action Committee and Eric Schrumm. The trial court dismissed the Cheshire Taxpayers' Action Committee as a plaintiff for lack of standing. A cross appeal by the Cheshire Taxpayers' Action Committee was withdrawn.

FN3. The proposed ordinance provided:
"Section 1. No budget of the Town of Cheshire shall be deemed approved nor can it be implemented until it has been submitted to the electorate of the Town of Cheshire at a referendum and approved by a majority vote of the electors voting in said referendum.
"Section 2. All **ordinances** or parts of **ordinances** inconsistent with this **ordinance** are hereby repealed.
"Section 3. This **ordinance** shall take effect on January 1, 1980."

FN4. The **charter** of the town of Cheshire provides in relevant part: "3-7. POWER OF INITIATIVE. The electors of the Town shall have the power to **propose ordinances** to the Council. If the Council fails to adopt an **ordinance** so **proposed** without any change in substance within thirty (30) days after a petition making such a **proposal** shall have been certified to the Council, as provided herein, the electors may adopt or reject the same at a referendum called by the Council and held within ninety (90) days after such **proposed ordinance** has been certified to the Council. **Notice** of such referendum, accompanied by the **proposed ordinance** in its **entirety,** shall be given at least ten (10) days in advance by **publication** in a newspaper having a substantial circulation in the Town and by posting a **notice** in a public place. Any such petition may be filed by any elector of the Town with the Town Clerk and, except as provided herein, such petition shall conform to the **requirements** of Section 79 of the General Statutes, as amended. Said petition shall contain the full text of the **ordinance proposed** and shall be signed in ink or indelible pencil by qualified electors registered at the last regular **municipal** election. Said petition shall be accompanied by affidavits signed and sworn to by each circulator as provided in said Section 7-9. The Town Clerk shall, within five (5) days after receipt of the last page of said petition within the time provided herein, determine whether the petition and the affidavits are sufficient as prescribed by law, and certify said petition to the Council. A vote of the electors to adopt the proposed ordinance shall not become effective unless a majority numbering twenty (20) per cent or more of the electors shall have voted to adopt the proposed ordinance. Said ordinance shall become effective upon certification of the results of the voting thereon regardless of any defect in the petition. No ordinance which shall have been adopted in accordance with the provisions of this section shall be repealed or amended by the Council except by vote of the electors. (Amended 11-5-74; Amended 11-8-77)"

The trial court refused to consider the defendants' special defense that the "matter ... is not one within ***4** the proper scope of law which may be made by

an ordinance" and found that mandamus was a proper remedy in this case.

[1][2][3] The defendants have appealed from the judgment of the trial court and claim that the trial court erred: (1) in concluding that the plaintiff had a clear legal right to a referendum; (2) in failing to examine the validity of the proposed ordinance; [FN5] (3) in failing to conclude that the ****99** plaintiff had an adequate remedy at law; and (4) in failing to find the issues moot on the ground that the plaintiff received the substance of his petition following a charter amendment. Although we hold that the plaintiff did not have an adequate remedy at law [FN6] and that the issue was not moot, [FN7] we conclude that the trial ***5** court should have first determined whether the proposed ordinance clearly exceeded the legislative power of the electorate before finding that the plaintiff had a clear legal right to mandamus.

FN5. As part of this claim of error, the defendants alleged that the trial court erred: (a) in failing to conclude that the Home Rule Act; General Statutes §§ 7-187 through 7-194; the town charter, and court decisions impose upon the defendant the duty to refuse to put to referendum an ordinance that would be void as contrary to the charter; (b) in refusing to consider the possible invalidity of the petitioned ordinance on the grounds that such consideration would result in an advisory opinion and in interference with the legislative process; and (c) in failing to find that the proposed ordinance would be void or illegal under the Home Rule Act as contrary to the charter.

FN6. The defendants argue that General Statutes § 7-188, which provides a method for amending a town charter, provides an adequate remedy at law. General Statutes § 7-188 provides that the electorate can petition for an amendment to the charter. Once the petition is certified, however, the town council designates a commission to consider the recommendation proposed in the petition. General Statutes § 7-190. The town council may accept or reject the final report of the commission. This is obviously very different from the process described in § 3-7 of the charter where the people directly propose provisions and the electorate may directly adopt such provision if the town council fails to adopt the provision. General Statutes § 7-188 does not provide an adequate remedy at law for this plaintiff.

FN7. The defendants allege that since the charter was amended in 1980, after the petition was certified, the plaintiff has received the substance of the **proposed ordinance** and thus this case is moot. The plaintiff's **proposed ordinance requires** that each budget be submitted to the electorate and be approved by a majority vote of the electors voting at a referendum. The amended **charter** provides that the annual operating budget may be submitted to referendum if a petition signed by at least ten percent of the registered electors is filed with the town clerk. The budget is adopted if fewer than twenty percent of the qualified electors vote, or, where more than twenty percent of the qualified electors vote, if the majority of those voting approve the budget. If a budget is rejected, the town council adopts a new budget, which is not subject to referendum. The method of budget approval contained in the proposed ordinance, however, would mandate that *every* budget of the town of Cheshire be submitted to referendum for approval by a majority of the voting electors. The method of budget approval contained in the proposed ordinance is not substantially the same as the method set forth in the amended charter and thus the plaintiff's case is not moot.

"Mandamus is an extraordinary remedy. It is designed to enforce a plain positive duty. The writ will issue only when the person against whom it is directed is under a clear legal obligation to perform the act compelled and the party seeking the writ has a clear legal right to the performance. *Kosinski v. Lawlor,* 177 Conn. 420, 426, 418 A.2d 66 (1979)." *West Hartford Taxpayers Assn. v. Streeter,* 190 Conn. 736, 740, 462 A.2d 379 (1983). See *Monroe v. Middlebury Conservation Committee,*

187 Conn. 476, 481, 447 A.2d 1 (1982); *Milford Education Assn. v. Board of Education,* 167 Conn. 513, 518, 356 A.2d 109 (1975).

The defendants allege that because the proposed ordinance would be invalid if adopted, there is neither an obligation on the part of the town council to call a referendum nor a right on the part of the plaintiff to have a referendum called. The defendants contend that the proposed ordinance is improper as it is actually an amendment to the town charter. Thus, calling the referendum as required by § 3-7 would violate General Statutes § 7-188 of the Home Rule Act, which provides the proper procedures for amending a charter. Because the proposal is invalid, the defendants argue, the plaintiff has no clear legal right to mandamus.

***6** The plaintiff argues that § 3-7 of the charter imposes the clear, ministerial, and nondiscretionary duty on the town council to call a referendum where the town council fails to adopt the **ordinance**. The plaintiff contends that neither the town council nor the court may examine the validity of the **proposal** prior to the mandatory referendum.

This case demonstrates the tension between the traditional and time-honored power of the people to legislate directly through the process of initiative and referendum on the one hand and the mandate **requiring** elected representatives to discharge their duties in accordance with law on the other hand. "The initiative is a form of direct action legislation by the people." ****100** *West Hartford Taxpayers Assn. v. Streeter,* supra, 190 Conn. 739, 462 A.2d 379. This fundamental reservation of power by the people should be highly respected. "Ordinarily courts will not enjoin the holding of an initiative election even in the face of a claim that the proposal is invalid or unconstitutional. *Dulaney v. City of Miami Beach,* 96 So.2d 550 (Fla.App.1957); *Unlimited Progress v. Portland,* 213 Or. 193, 324 P.2d 239 (1958); 5 McQuillin, Municipal Corporations (3d Ed.Rev.) § 16.69; annot., 19 A.L.R.2d 519, 522. Judicial abstention can be justified on the grounds that until the results are known there can be no showing of irreparable harm, that judicial intrusion into and interruption of the political process is inappropriate and that the fact that, if the proposal is later held invalid, the election may be useless does not render such election illegal." *West Hartford Taxpayers Assn. v. Streeter,* supra.

On the other hand, "a public officer cannot be compelled to perform an act which is unlawful, contrary to or forbidden by law, or which would aid in an unlawful transaction." *Stolberg v. Caldwell,* 175 Conn. 586, 612, 402 A.2d 763 (1978). See *State ex rel. Shelton v. Edwards,* 109 Conn. 249, 254, 146 A. 382 (1929). ***7** "Although courts should not examine direct action legislation so critically as to frustrate the exercise of the franchise, nevertheless, if the proposed legislation *clearly exceeds* the legislative power of the electorate it is entirely appropriate for the court, in a proper case, to withhold the judicial command." (Emphasis added.) *West Hartford Taxpayers Assn. v. Streeter,* supra, 190 Conn. 740, 462 A.2d 379. This limited examination of the proposed ordinance to determine whether it "clearly exceeds the legislative power of the electorate" best protects both the rights of the people to propose legislation and the rights of the town officials to perform their duties in accordance with law.

Whether the plaintiff has a "clear legal right" to mandamus depends upon whether the proposal "clearly exceeds the legislative power of the electorate." The trial court erred in the instant case in refusing to inquire whether "the proposed legislation *clearly exceeds* the legislative power of the electorate ...." (Emphasis added.) *West Hartford Taxpayers Assn. v. Streeter,* supra.

There is error, the judgment is set aside, and a new trial is ordered.

In this opinion the other Judges concurred.

474 A.2d 97, 193 Conn. 1

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Not Reported in A.2d
(Cite as: 2003 WL 21040162 (Conn.Super.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Fairfield.

Edward SCHNEIDER et al.,
v.
Andrew BROWN et al.

No. 340692.

April 23, 2003.

Palmesi Kaufman Goldstein & Petruce, Trumbull, CT, for Edward and Lorrie Schneider.

Coyne Von Kuhn Brady & Fries LLC, Stratford, CT, for Hartford Insurance Company of the Midwest.

Pullman & Comley LLC, Bridgeport, CT, for Andrew G. Brown and Gerald Brown.

Jontos & Lotty, Fairfield, CT, for CNA Insurance Company.

BRUCE L. LEVIN, Judge.

***1** The principal issue raised by the motion before the court is whether, pursuant to General Statutes (Rev.1995) § 38a-343(a), a notice of cancellation of insurance sent by certified mail, must actually be received by the insured to be effective. Based on General Statutes § 38a-344, this court holds that it does not.

This is an action seeking damages for personal injuries sustained by the plaintiffs Edward Schneider and Lorrie Schneider in a motor vehicle accident on January 24, 1996, which was allegedly caused by the negligence of the defendant Andrew Brown in the operation of a motor vehicle owned by the defendant Gerald Brown. [FN1] Earlier in these proceedings, the court granted the defendants' motion to cite in and assert a third-party complaint against CNA Insurance Company (CNA). The defendants' third-party complaint alleges that at the time of the accident, the defendants were insured by a policy of insurance issued by CNA, that they provided CNA with timely notice of the accident involving the plaintiffs and demanded that CNA provide them with a defense and indemnification. The defendants allege that CNA breached its contract with them by refusing their demand for a defense and indemnification. CNA answered the third-party complaint, denying that it had breached its insurance contract with the defendants.

FN1. Hereafter, Gerald Brown is referred to as the defendant.

On June 23, 1997, the plaintiffs commenced an action against the Hartford Insurance Company of the Midwest (Hartford) seeking uninsured motorist benefits for injuries arising out of the January 24, 1996 accident with the defendants' vehicle. *Edward Schneider et al. v. Hartford Insurance Company of the Midwest,* Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 97 0344450. On May 15, 2001, the court rendered judgment in that action for the plaintiffs and against Hartford in the amount of $50,000, in accordance with a stipulation between the plaintiffs and Hartford.

On May 17, 2001, Hartford moved for permission to join as a third-party plaintiff in this action for the purposes of asserting a complaint against CNA. On October 30, 2001, the court granted Hartford's motion. In its complaint against CNA, Hartford alleges that CNA was required to pay the plaintiff's uninsured motorists benefits because it wrongfully denied coverage to the defendants under a policy of insurance that was in full force and effect at the time of the accident.

Hartford now moves for summary judgment on its complaint against CNA. Hartford claims that it is entitled to judgment "because there exists no genuine issue of material fact that CNA failed to comply with the notice provisions of General Statutes § 38a-343(a) in canceling Gerald Brown's insurance policy." In connection with its motion, Hartford has filed the affidavit of the defendant Gerald Brown. In his affidavit, the defendant avers that he maintained insurance through CNA on the

vehicle that was involved in the accident with the plaintiffs, and that he provided CNA with timely notice of the accident and made a demand that CNA defend and indemnify him. When CNA declined, his insurance representative, Litchfield Insurance Group, notified him that it had failed to receive the insurance premium that was due in November 1995. A representative from Litchfield Insurance Group also informed the defendant that CNA had sent him a notice by registered mail that the policy was being canceled for nonpayment of premium. The defendant states, however, that he never received such a notice of cancellation and "at no time did the mailman assigned to my residence either leave notice in my mailbox of the certified letter or come to my door to deliver this document." (Affidavit of Gerald Brown.)

***2** In response, CNA has filed the affidavit of the letter carrier employed by the U.S. Postal Service whose postal route in January 1996 included the defendant's home. The letter carrier states in his affidavit that on January 9, 1996, he attempted to deliver a certified letter, # P 169 184 465, from CNA but was unable to do so because of snow accumulation on the walkway from the street to the entrance of the house and that he left a notice in the mailbox stating that the certified letter could be picked up at the main post office in town. (Affidavit of Vincent Mancini.) Attached to that affidavit is a copy of the CNA envelope which the letter carrier attempted to deliver, and which contains notations that delivery was twice attempted, that the walk was not clean and that a dog was loose. [FN2] The certified letter was never picked up.

> FN2. The defendant confirms this notation in his affidavit, stating that he recalls a significant snowstorm in his town in January 1996 and that at that time, he owned a fifteen year old dog.

Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party ... The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law." (Citation omitted; internal quotation marks omitted.) *LaFlamme v. Dallessio,* 261 Conn. 247, 250, 802 A.2d 63 (2002). "[Summary judgment] is appropriate only if a fair and reasonable person could conclude only one way." *Miller v. United Technologies Corp.,* 233 Conn. 732, 751, 660 A.2d 810 (1995). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." *Nolan v. Borkowski,* 206 Conn. 495, 500, 538 A.2d 1031 (1988).

Hartford argues that pursuant to General Statutes § 38a-343(a), CNA was required to give the defendant actual notice of its cancellation of the policy since cancellation was based on nonpayment of an insurance premium. CNA counters that it complied with the statute by sending notice by certified mail and that actual notice was not required. Resolution of this issue requires an interpretation of our statutes governing cancellation of an automobile insurance policy for nonpayment of premium.

In *State v. Courchesne,* 262 Conn. 537, 562, 816 A.2d 562 (2003), our Supreme Court abandoned the **"plain meaning rule"** of **statutory** interpretation and adopted the "*Bender* formulation." The *Bender* formulation provides that **statutory** interpretation must consist of a "reasoned search for the intention of the legislature," even if the text of the statute appears **plain** and unambiguous. *Id.* In other words, the court will always engages in "a reasoned search for 'the **meaning** of the **statutory** language as applied to the facts of [the] case, including the question of whether the language actually does apply.' " *Id.,* at 562-63. *Courchesne* did not, however, deviate from the well established principles of **statutory construction** that "[a] court interpreting a statute must consider all relevant sources of **meaning** of the language at issue--namely, the words of the statute, its legislative history and the circumstances surrounding its enactment, the legislative policy it was designed to implement, and its relationship to existing legislation and to common-law principles governing the same general subject matter." *Id.*

***3** "General Statutes §§ 38a-341 through 38a-344 govern the procedures for the cancellation of an

automobile insurance policy by an insurer." *Majernicek v. Hartford Casualty Ins. Co.,* 240 Conn. 86, 92, 688 A.2d 1330 (1997). The first and most important factor used to interpret these statutes, and the starting point of any statutory analysis, is the words of the statutes themselves. [FN3] *Rivera v. Double A Transportation, Inc.,* 248 Conn. 21, 25, 727 A.2d 204 (1999). In January 1996, when CNA claims to have given the defendant notice of cancellation of the insurance policy, General Statutes § 38a-343(a) provided: "No notice of cancellation of policy to which Section 38a- 342 applies may be effective unless sent, by registered or certified mail or by mail evidenced by a certificate of mailing, or delivered by the insurer to the named insured at least forty-five days before the effective date of cancellation, provided where cancellation is for nonpayment of premium at least ten days' notice of cancellation accompanied by the reason therefor shall be given. No notice of cancellation of a policy which has been in effect for less than sixty days may be effective unless mailed or delivered by the insurer at least forty-five days before the effective date of cancellation, provided that at least ten days' notice shall be given where cancellation is for nonpayment of premium or material misrepresentation. The notice of cancellation shall state or be accompanied by a statement specifying the reason for such cancellation." [FN4]

FN3. "[T]he language of the statute is the most important factor to be considered, for three very fundamental reasons. First, the language of the statute is what the legislature enacted and the governor signed. It is, therefore, the law. Second, the process of interpretation is, in essence, the search for the meaning of that language as applied to the facts of the case, including the question. of whether it does apply to those facts. Third, all language has limits, in the sense that we are not free to attribute to legislative language a meaning that it simply will not bear in the usage of the English language." (Emphasis in original.) *State v. Couzchesne, supra,* 262 Conn. at 563-64.

FN4. In 1998 and 2002 General Statutes § 38a-343 was amended. There is no claim that those amendments apply to this case.

No issue has been raised over the timeliness or the contents of the notice, only its mode. With respect to the mode by which notice is given, the rule is that "[s]trict compliance by an insurer with the statutory mandates and policy provisions as to notice is essential to effect a cancellation through such notice." *Travelers Ins. Co. v. Hendrickson,* 1 Conn.App. 409, 412, 472 A.2d 356 (1984).

Hartford focuses on the statutory language that provides that where a policy is cancelled for nonpayment of premium, notice must be "given." "Given" is the past participle of the verb to give, and it is also a verb. The dictionary contains well over a dozen definitions of the word "give," including proffer, deliver, provide and to cause to have or receive. Merriam Webster's Collegiate Dictionary (10th Ed., 1996).

In *Rapid Motor Lines v. Cox,* 134 Conn. 235, 237, 256 A.2d 519 (1947), the plaintiff brought an action under General Statutes (Rev.1930) § 1481, now General Statutes § 13a-144, the state highway defect statute. A statutory condition precedent to bringing such an action was that notice of the injury and other particulars "shall have been given within sixty days thereafter to the highway commissioner." The issue in *Cox* was whether a notice mailed within the sixty-day period, but not received by the commissioner until after sixty days, satisfied the requirement of the statute. The court held that it did not.

***4** The court in *Cox* stated: "One meaning of the verb 'give' is 'to make over or bestow.' Another is 'to deliver or transfer; to ... hand over.' The idea of delivery is predominant in other meanings of the word. Webster's New International Dictionary (2d Ed.). It is obvious from the context of the statute that 'give' was not used in the former sense. To accord it the latter meaning is the reasonable and natural interpretation, in view of the purpose of the provision, which, it must be held, is to fix a definite limit upon the time within which notice shall be received by the highway commissioner. Any other **construction** would give rise to needless and undesirable uncertainty." *Rapid Motor Lines, Inc. v. Cox, supra,* 134 Conn. at 237-38.

As *Hartford* observes, the statute here employs the

Westlaw Attached Printing Summary Report
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RICHARDS, SYBIL 3309834 Friday, June 06, 2003 00:07:26 Central

Request Created Date/Time:	Friday, June 06, 2003 00:07:00 Central
Client Identifier:	SYBIL V. RICHARDS
DataBase:	USER-DEFINED-MB
Citation Text:	Not Reported in A.2d
Query Text:	PLAIN MEANING RULE AND STATUTORY CONSTRUCTION
Lines:	251
Documents:	1
Images:	0

Superior Court of Connecticut,
Judicial District of Tolland.

William A. GRAYDUS,
v.
GEORGES R. EL-ACHKAR et al.

No. CV020080322.

May 20, 2003.

Roberson Dale C. Law Office LLC, Ellington, for William A. Graydus.

William Sassi Jr, Hartford, for Georges R. El-Achkar and Joseph M. Harb.

JANE S. SCHOLL, J.

***1** This is an action brought in five counts arising out of an automobile accident in which it is alleged that the car operated by the Plaintiff was struck from behind by a car operated by the Defendant, Georges El-Achkar, and owned by the Defendant, Joseph Harb. The Defendants have moved to strike the Fifth Count of the complaint as well as the accompanying demand for relief in which the Plaintiff seeks double or treble damages pursuant to General Statutes § 14-295 [FN1] against the Defendant Harb. The Defendants claim that there is no vicarious liability for multiple damages against the owner.

FN1. General Statutes § 14-295 provides: "In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a, 14-230, 14-234, 14-237, 14-239 or 14- 240a, and that such violation was a substantial factor in causing such injury, death or damage to property."

" 'The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted.' (Internal quotation marks omitted.) *Faulkner v. United Technologies Corp.,* 240 Conn. 576, 580, 693 A.2d 293 (1997); see Practice Book § 10-39. 'A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court ... We take the facts to be those alleged in the complaint ... and we construe the complaint in the manner most favorable to sustaining its legal sufficiency ... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.' (Citations omitted; internal quotation marks omitted.) *Vacco v. Microsoft Corp.,* 260 Conn. 59, 64-65, 793 A.2d 1048 (2002). 'A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged.' *Novametrix Medical Systems, Inc. v. BOC Group, Inc.,* 224 Conn. 210, 215, 618 A.2d 25 (1992)." *Fort Trumbull Conservancy, LLC v. Alves,* 262 Conn. 480, 498 (2003).

The Fifth Count of the complaint alleges that Harb owned the motor vehicle that was operated by El-Achkar at the time of the collision, that Harb maintained the motor vehicle and gave permission to El-Achkar to operate the vehicle at that time, and that as a result, Harb is liable for the **statutory** recklessness of El-Achkar as referred to in General Statutes § 52-183. That statute provides that: "In any civil action brought against the owner of a motor vehicle to recover damages for the negligent or reckless operation of the motor vehicle, the operator, if he is other than the owner of the motor vehicle, shall be presumed to be the agent and servant of the owner of the motor vehicle and operating it in the course of his employment." In his prayer for relief the Plaintiff claims as to the Fifth Count, "double or treble damages in accordance with C.G.S. § 14-240." [FN2]

FN2. The reference to General Statutes § 14-240 appears to be in error and all

> parties have proceeded on the basis that the claim for multiple damages is brought pursuant to General Statutes § 14-295.

The parties note that there is a split of authority in the trial courts as to whether such a claim will be allowed. Some of the more recent cases which support a claim for multiple damages against an owner are *Batchelor v. Veliz,* Superior Court, judicial district of Stamford Norwalk at Stamford, Docket No. CV 01-0185583 (March 31, 2003); *Thompson v. Arsenault,* Superior Court, judicial district of New London at New London, Docket No. 124579 (March 20, 2003) (34 Conn. L. Rptr. 346); and *Welcome v. Ouellette McGregor,* Superior Court, judicial district of Hartford at Hartford, Docket No. CV 01-0811-39 (November 21, 2002) (33 Conn. L. Rptr. 454). In *Welcome v. Ouellette McGregor* the court notes that, "Moreover, '[t]he language in General Statutes Section 52-183 clearly establishes an agency relationship between the owner and operator of a motor vehicle for the purposes of recovering damages in a civil action brought for negligent or reckless operation of a motor vehicle. Section 14-295 clearly provides for multiple damages for violations of certain motor vehicle statutes. It is neither necessary nor warranted for this court to attempt to read beyond the **plain** language of the statutes.' ... *Bostick v. Dvornek,* Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 01 0383575 (December 13, 2001, Gallagher, J.)." In *Thompson v. Arsenault* the court quotes its earlier decision in *Johnson v. Campo,* Superior Court, judicial district of New London at New London, Docket No. 0553378 (July 25, 2000) (27 Conn. L. Rptr. 598), where it stated: "The separate mention of negligence and recklessness in General Statutes § 52-183 supports an inference that the legislature anticipated employer liability for recklessness damages in addition to ordinary negligence damages. 'When it enacted the statute the legislature must be presumed to have been aware of the well established principle announced in *Maisenbacker v. Society Concordia,* 71 Conn. 369, 379 [42 A. 67] (1899), ... that there was no vicarious liability for reckless misconduct at common law ... Thus for the legislature to have set up an evidentiary presumption in two distinct categories of cases, i.e., negligence and recklessness, without that constituting recognition of a cause of action for vicarious recklessness would be attributing to the legislature a useless act." In *Batchelor v. Veliz* the court, quoting, *Santillo v. Arredono,* Superior Court, judicial district of New Haven, Docket No. 442323 (March 21, 2001) stated: "The legislative reference to damages for recklessness in § 52-183 can reasonablely read as encompassing double or treble damages imposed under § 14-295."

***2** In a recent decision denying exemplary or punitive damages against an owner or employer under General Statutes § 52-183, *Washburn v. Potter,* Superior Court, judicial district of New Britain at New Britain, Docket No. CV02-051531S (January 6, 2003) (33 Conn. L. Rptr. 662), the court based its decision on its determination that the statute did not clearly and unambiguously create a cause of action for double or treble damages against a non-operator owner sufficient to overcome the common law rule that a person who is vicariously liable for the acts of another is not liable for punitive or exemplary damages. This is consistent with earlier decisions which support this same view. E.g., *Coman v. Mannix,* Superior Court, judicial district of Windham at Putnam, Docket No. 065645 (April 11, 2002) (31 Conn. L. Rptr. 680).

Recently the Supreme Court rejected the **plain meaning rule** of **statutory construction** and held that " 'The process of **statutory** interpretation involves a reasoned search for the intention of the legislature ... In other words, we seek to determine, in a reasoned manner, the **meaning** of the **statutory** language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that **meaning**, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter ... Thus, this process requires us to consider all relevant sources of the **meaning** of the language at issue, without having to cross any threshold or thresholds of ambiguity. Thus, we do not follow the **plain meaning rule**. In performing this task, we begin with a searching examination of the language of the statute, because that is the most important factor to be considered. In doing so, we attempt to determine its range of plausible **meanings** and, if possible, narrow that range to those that appear most plausible. We do not, however, end with the language. We recognize, further, that the purpose or

purposes of the legislation, and the context of the language, broadly understood, are directly relevant to the **meaning** of the language of the statute. This does not **mean**, however, that we will not, in a given case, follow what may be regarded as the **plain meaning** of the language, namely, the **meaning** that, when the language is considered without reference to any extra textual sources of its **meaning**, appears to be the **meaning** and that appears to preclude any other likely **meaning**. In such a case, the more strongly the bare text supports such a **meaning**, the more persuasive the extra textual sources of **meaning** will have to be in order to yield a different **meaning**.' (Citations omitted; emphasis in original; internal quotation marks omitted.) *State v. Courchesne,* 262 Conn. 537, 577-78 (2003)." *Bhinder v. Sun Co.,* 263 Conn. 358, 367-68 (2003).

***3** A review of the legislative history of General Statutes § 52-183 reveals that it was enacted in substantially its present form in 1935, 1935 Sup. § 1661c. Even at that time, there had long been a provision, such as General Statutes § 14-295, providing for the imposition of double or treble damages. "In unbroken precedents dating back to 1913, judicial discretion to impose multiple damages under 14-295 or its precursors has been held to be limited to cases where the record demonstrates more than ordinary negligence. Although its statutory designation has changed over time, 14-295 has remained essentially unchanged since 1909. See Public Acts 1909, c. 268 ... The statute thus incorporates standards that have long been recognized at common law. See, e.g., *Kowal v. Hofher,* 181 Conn. 355, 361-62, 436 A.2d 1 (1980) ..." *Bishop v. Kelly,* 206 Conn. 608, 613-14 (1988).

Similarly, the liability of an employer for the damages caused by his employee while using the employer's motor vehicle in the course of his employment was recognized by the courts even prior to 1935 when the precursor to General Statutes § 52-183 was enacted. *Mastrilli v. Herz,* 100 Conn. 702 (1924); *McKierson v. Lehmaier,* 85 Conn. 111 (1911). In *Mastrilli* the Court noted: "The fact that an automobile is a dangerous instrumentality and that the permitting an employee to use it for his own purposes is in the nature of a use for family purposes, has influenced the courts for reasons of public policy to construe strictly the extent of the license involved in such permissive use of an automobile by an employee." In *Levick v. Norton,* 51 Conn. 461 (1883), the court recognized that by statute for over three quarters of a century, a master was liable for treble damages for the injury caused by a negligent or malicious servant who operated a vehicle for the conveyance of persons. The statute relied upon by the Court in *Levick* was subsequently amended in 1905 and then repealed in 1921. The replacement statute, enacted in 1925, although referring to the liability of a person renting or leasing a motor vehicle, made no reference to the liability of an owner or employer. *Gionfriddo v. Rent a Car Systems, Inc.,* 192 Conn. 280, 287 fn.3 (1984). Yet despite this void, the court in *Mastrilli* in 1924 continued to recognize the liability of an employer for the injuries caused by the use of his motor vehicle by his employee.

Thus, at the time General Statutes § 52-183 was adopted, the concept of double or treble damages for reckless use of a motor vehicle was well established. Similarly recognized was the responsibility of an employer for the damages caused by an employee in the operation of the employer's motor vehicle in the course of his employment. The choice to use the words "negligent or reckless operation of the motor vehicle" the legislature made in enacting General Statutes § 52-183 appropriately codified these long held legal tenants.

***4** The fact that the common law, as cited in *Washburn v. Potter,* was reluctant to impose liability for punitive or exemplary damages on one who is vicariously liable for the acts of another, is not relevant. As the Court stated in *Gionfriddo v. Rent a Car Systems, Inc.,* 192 Conn. 280, 288-89 (1984), when discussing the applicability of General Statutes § 14-154a regarding the liability of a rental car company for double and treble damages resulting from an accident caused by a driver to whom they had leased a car: "It is not relevant, in the light of an operative statute, that the common law was reluctant to impose liability upon employers for punitive damages assessed against employees; *Maisenbacker v. Society Concordia,* 71 Conn. 369, 379, 42 A. 67 (1899) ... Our statute is different, and it governs. Its broad reference to 'any damage to any person or property' must be construed, in view of the statutory purpose of protecting the public from unsafe drivers, to include responsibility for any damages to person or property for which the offending driver is properly held liable. As in other branches of the law where strict

liability is imposed, the legislature is free to conclude that costs associated with rentals to unsafe drivers should be borne by the enterprise that affords such drivers access to the highways, without requiring the injured party to show the negligence of the enterprise itself. See *Garthwait v. Burgio,* 153 Conn. 284, 289-90, 216 A.2d 189 (1965), and General Statutes 52-572m et seq." (Footnotes omitted.) It should be noted that *Masisenbacker,* the case most often cited for the common law principle that an employer is not liable for punitive damages accessed against its employee, involved a claim for personal injuries arising out of an assault and not injuries from a motor vehicle. The legislature has, because of the dangerousness of a motor vehicle, treated vicarious liability different in that context than in the usual employer- employee situation. It can be gleaned from the statutes as well as the judicial decisions in this area that this is in recognition of the fact that one who entrusts a dangerous instrumentality to another should be held liable for any injuries caused thereby. Like the Court recognized in *Gionfriddo* the legislature is free to conclude that the costs associated with the provision by employers of motor vehicles to unsafe drivers should be borne by the employers who afford such drivers access to the highways.

Lastly, where the legislature has sought to preclude an employer from liability for the reckless conduct of his employees the legislature has done so. General Statutes § 4-165 (state not liable for reckless conduct of its employees); General Statutes § 5-141d (state not liable to indemnify its employees where their conduct has been reckless); General Statutes § 10-235 (boards of education not liable to indemnify its employees where their conduct has been reckless); General Statutes § 29-8a (state not liable to indemnify state police where their conduct has been reckless). Similarly, where the legislature has sought to impose liability on an entity for only the negligent, and not reckless, use of its motor vehicles by others, such as the state, where no such liability would exist otherwise, it has done so. General Statutes § 52-556 provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury."

***5** Therefore this court agrees with those decisions which hold that General Statutes § 52-183 permits an owner or employer to be held liable for double or treble damages pursuant to General Statutes § 14-295.

The Motion to Strike is denied and the Objection is sustained.

2003 WL 21267446 (Conn.Super.)

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deemed necessary, the term "power" has ordinarily been considered as referring to capacity or authority to act, while "function" embodies the concept of performance of an act.[1]

[1] **Louisiana.** La Fleur v. Baton Rouge, 124 So 2d 374 (La App) (function as onus or obligation to execute power granted).

Tennessee. Bean v. Knoxville, 180 Tenn 448, 175 SW2d 954.

§ 10.03. Sources of powers of municipal corporation.

The sources of powers of a municipal corporation[1] are (1) the constitution of the state, so far as it provides;[2] (2) the statutes of the state,[3] including (a) those applicable to all municipal corporations or to the class to which the particular city belongs[4] and (b) special acts of the legislature, so far as authorized, applicable to the particular municipal corporation;[5] (3) the charter,[6] including a home rule charter if one has been adopted;[7] and (4) in some states an inherent right of self-government with respect to certain municipal matters.[8] The powers of a municipality are not confined to a single enactment of the legislature,[9] and they may be derived from one or from several provisions or subsections of the statutes.[10] However, it should be noted that municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.[11]

Power cannot be conferred on a municipal corporation by the corporation itself,[12] except insofar as powers may be conferred by a home rule charter.[13] The national government ordinarily cannot be the source of any of the powers of a municipal corporation organized under the laws of a state.[14] The original charter from a territory is the sole measure of its powers where the municipality did not exercise its privilege of becoming subject to general laws.[15]

Historically, the constitutional principle of the separation of powers has not been applied to the government of cities.[16] The rationale is that separation of powers reduces the threat of an unchecked governing body, but that threat is slight where the governing body is subordinated to the powers of a higher level of government.[17]

[1] **Alabama.** Davis v. Mobile, 245 Ala 80, 16 So 2d 1.

Arkansas. Jones v. American Home Life Ins. Co., 293 Ark 330, 738

662 A.2d 1281
102 Ed. Law Rep. 1116
(Cite as: 234 Conn. 513, 662 A.2d 1281)

Supreme Court of Connecticut.

WINDHAM TAXPAYERS ASSOCIATION et al.
v.
BOARD OF SELECTMEN OF THE TOWN OF WINDHAM et al.

No. 15242.

Argued May 26, 1995.
Decided Aug. 1, 1995.

Taxpayer association and individual taxpayers sought writ of mandamus to compel board of selectmen to hold special referendum to rescind appropriation for design and construction of middle school building. The Superior Court, Judicial District of Windham, Foley, J., entered judgment for board. Board appealed and association and individual taxpayers cross-appealed. Matter was transferred from the Appellate Court. The Supreme Court, Katz, J., held that: (1) board did not have standing to appeal; (2) individual taxpayers and association had standing to challenge action of board; (3) procedures for reconsideration of appropriation were of local concern and were governed by town charter, rather than general statutes; and (4) town charter did not require town meeting decision on petition for reconsideration of prior appropriation.

Affirmed.

West Headnotes

[1] Courts 37(2)
106k37(2) Most Cited Cases

Possible absence of subject matter jurisdiction must be addressed and decided whenever issue is raised.

[2] Mandamus 187.3
250k187.3 Most Cited Cases

Board of selectmen and related parties were not "aggrieved" by trial court's decision denying mandamus relief compelling special referendum for rescission of appropriation for design and construction of middle school, as was necessary for them to have standing to appeal decision, where they challenged only basis for decision.

[3] Appeal and Error 1
30k1 Most Cited Cases

Right to appeal is purely statutory and disallowed only if conditions fixed by statute are met.

[4] Appeal and Error 151(1)
30k151(1) Most Cited Cases

In all civil actions requisite element of appealability is that party claiming error be aggrieved by decision of trial court.

[5] Appeal and Error 151(2)
30k151(2) Most Cited Cases

Test for determining aggrievement necessary for appeal encompasses well settled twofold determination: first, party claiming aggrievement must demonstrate specific personal and legal interest in subject matter of decision, as distinguished from general interest shared by community as whole; second, party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by decision.

[6] Appeal and Error 151(2)
30k151(2) Most Cited Cases

Mere status as party or participant in proceedings below does not in and of itself constitute aggrievement for purposes of appellate review. Practice Book 1978, § 4000.

[7] Action 13
13k13 Most Cited Cases

"Standing" is legal right to set judicial machinery in motion; one cannot rightfully invoke jurisdiction of court unless he or she has, in individual or representative capacity, some real interest in cause of action, or legal or equitable right, title, or interest in subject matter of controversy.

[8] Action 13
13k13 Most Cited Cases

"Standing" is not technical rule intended to keep aggrieved parties out of court, nor is it test of

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CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 7. MUNICIPALITIES
CHAPTER 98. MUNICIPAL POWERS

Current through Gen. St., Rev. to 1-1-03,
including the January 6, 2003 Special Session

§ 7-148. Scope of **municipal powers**

(a) **Definitions.** Whenever used in this section, **"municipality"** means any town, city or borough, consolidated town and city or consolidated town and borough.

(b) **Ordinances. Powers granted** to any **municipality** under the general **statutes** or by any charter or special act, unless the charter or special act provides to the contrary, shall be **exercised** by **ordinance** when the **exercise** of such **powers** has the effect of:

(1) Establishing rules or regulations of general **municipal** application, the violation of which may result in the imposition of a fine or other penalty including community service for not more than twenty hours; or

(2) Creating a permanent local law of general applicability.

(c) **Powers**. Any **municipality** shall have the **power** to do any of the following, in addition to all **powers granted** to **municipalities** under the constitution and general **statutes**:

(1) **Corporate powers**. (A) Contract and be contracted with, sue and be sued, and institute, prosecute, maintain and defend any action or proceeding in any court of competent jurisdiction;

(B) Provide for the authentication, execution and delivery of deeds, contracts, **grants**, and releases of **municipal** property and for the issuance of evidences of indebtedness of the **municipality**;

(2) **Finances and appropriations.** (A) Establish and maintain a budget system;

(B) Assess, levy and collect taxes for general or special purposes on all property, subjects or objects which may be lawfully taxed, and regulate the **mode** of assessment and collection of taxes and assessments not otherwise provided for, including establishment of a procedure for the withholding of approval of building application when taxes or water or sewer rates, charges or assessments imposed by the **municipality** are delinquent for the property for which an application was made;

(C) Make appropriations for the support of the **municipality** and pay its debts;

(D) Make appropriations for the purpose of meeting a public emergency threatening the lives, health or property of citizens, provided such appropriations shall require a favorable vote of at least two-thirds of the entire membership of the legislative body or, when the legislative body is the town meeting, at least two-thirds of those present and voting;

substantive rights; rather, it is practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect rights of others are forged in hot controversy, with each view fairly and vigorously represented.

[9] Mandamus 23(2)
250k23(2) Most Cited Cases

Registered voters who were qualified to vote at both proposed petition referendum and proposed special town meeting had standing to seek mandamus relief to compel board of selectmen to hold special referendum for rescission of appropriation for design and construction of middle school, having been aggrieved by deprivation of opportunity to vote caused by board's denial of petitions for special town meeting and for referendum.

[10] Associations 20(1)
41k20(1) Most Cited Cases

Association satisfies requirements of standing in its representative capacity if it members would otherwise have standing to sue in their own right, interests association seeks to protect are germane to its purpose, and neither claim asserted nor relief requested requires participation of individual members in lawsuit.

[11] Mandamus 23(2)
250k23(2) Most Cited Cases

Taxpayers association had standing to seek mandamus relief to compel board of selectmen to hold special referendum to rescind appropriation for design and construction of middle school, in light of standing of its individual members, its interests in promoting fiscal conservatism and power of initiative, and nature of requested relief.

[12] Municipal Corporations 57
268k57 Most Cited Cases

As creation of state, municipality has no inherent powers of its own.

[13] Municipal Corporations 57
268k57 Most Cited Cases

[13] Municipal Corporations 59
268k59 Most Cited Cases

Municipality has only those powers that have been expressly granted to it by state or that are necessary for it to discharge its duties and to carry out its objects and purposes.

[14] Municipal Corporations 57
268k57 Most Cited Cases

Under Home Rule Act, municipalities have power to adopt charter to serve as organic law of that municipality. C.G.S.A. § 7-188(a).

[15] Towns 15
381k15 Most Cited Cases

Town's charter is fountainhead of municipal powers and serves as enabling act, both creating power and prescribing form in which it must be exercised. C.G.S.A. § 7-188(a).

[16] Towns 16
381k16 Most Cited Cases

In matters of primarily local concern, statutory requirement that town meeting be held upon petition of 20 or more qualified voters does not preempt town's charter, enacted pursuant to Home Rule Act, that vests legislative authority in board of selectmen and delineates limited situations requiring town meeting; however, statutory requirement preempts charter in matters of statewide concern. C.G.S.A. §§ 7-1 to 7-3, 7-7, 7-188(a).

[17] Statutes 190
361k190 Most Cited Cases

[17] Statutes 212.6
361k212.6 Most Cited Cases

When words of statute are plain and unambiguous, court need look no further for interpretive guidance because it assumes that words themselves express intention of legislature.

[18] Statutes 184
361k184 Most Cited Cases

[18] Statutes 188
361k188 Most Cited Cases

[18] Statutes 215
361k215 Most Cited Cases

[18] Statutes 217.4
361k217.4 Most Cited Cases

When court is confronted with ambiguity in statute, it seeks to ascertain actual intent by looking to words of statute itself, legislative history and circumstances surrounding enactment of statute, and purpose statute is to serve.

[19] Towns 49
381k49 Most Cited Cases

Petition to reconsider whether town would appropriate over $20,000 for design and construction of middle school did not come within town charter's requirement of town meeting for appropriations in excess of $20,000, in absence of any claim that initial appropriation was made unlawfully. Windham, Conn., Town Charter Art. XI-3(b).

[20] Municipal Corporations 65
268k65 Most Cited Cases

Purpose of Home Rule Act is clearly twofold: to relieve General Assembly of burdensome task of handling and enacting special legislation of local municipal concern and to enable municipality to draft and adopt home rule charter or ordinance which shall constitute organic law of city, superseding its existing charter and any inconsistent special acts. C.G.S.A. § 7-188.

[21] Municipal Corporations 65
268k65 Most Cited Cases

Rationale of Home Rule Act is that issues of local concern are most logically answered locally, pursuant to home rule charter, exclusive of provisions of general statutes. C.G.S.A. § 7-188.

[22] Towns 16
381k16 Most Cited Cases

Whether board of selectmen could be compelled to hold referendum on petition of town's voters for rescission of appropriation for design and construction of middle school was matter of purely local interest, governed by town charter, rather than by general statutes. C.G.S.A. §§ 7-1 to 7-3, 7-7, 7-188(a).

[23] Towns 49
381k49 Most Cited Cases

That town meeting approval was required under town charter for appropriation in excess of $20,000 for design and construction of middle school did not make town meeting to rescind appropriation mandatory upon petition, in absence of provision for reconsideration in town charter.

[24] Towns 49
381k49 Most Cited Cases

Voters' power under town charter to petition for adoption or referendum on proposed ordinance did not include power to compel special referendum for rescission of previously adopted appropriation. Windham, Conn., Town Charter Art. V-7.
****1283 *514** Richard S. Cody, with whom, on the brief, was Joseph B. Mathieu, Hartford, for appellants-appellees (defendants).

Lori Welch-Rubin, New Haven, for appellees-appellants (plaintiffs).

Mary-Michelle U. Hirschoff, Bethany, filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Before ***513** BORDEN, BERDON, NORCOTT, KATZ and SPEAR, JJ.

***514** KATZ, Associate Justice.

The dispositive issue in this appeal and cross appeal is whether the defendant board of selectmen (board) [FN1] was required to submit a proper petition by the plaintiff Windham Taxpayers Association (association), [FN2] pursuant to a special town meeting, to a special ***515** referendum for the purpose of reconsidering an appropriation of money to construct a school. In order to consider that issue, we must address the underlying issue of whether ****1284** General Statutes § 7-1, [FN3] which requires that a town meeting be held upon petition of twenty or more qualified voters,

preempts a town's charter, enacted pursuant to the Home Rule Act, [FN4] that vests legislative authority in a board of selectmen and delineates the limited situations requiring a town meeting. We conclude that because the procedures for reconsideration of a prior legislative act are of local concern, the charter controls the resolution of this issue and that, therefore, the board was empowered to decide whether to reconsider the appropriation.

FN1. The named defendant is the board of selectmen of the town of Windham. In addition, the other defendants are Walter Pawelkiewicz, George E. Barton, Hanna K. Clements, Joseph S. Marsalisi, John J. McGrath, Jr., Yolanda Negron, Charlotte S. Patros, Lawrence Schiller, Sam Shifrin, Sebastian Ternullo, Thomas W. White, Windham Middle School Building Committee, Susan Collins, Rebecca Grillo, Paulann Lescoe, Barbara McGrath, Angela Mesick, Juan Montalvo, George Patros and Lynne Weeks.

FN2. The plaintiffs are the association, William Rood and Steven Edelman. The association is a nonprofit organization comprised of a group of individuals who are qualified to vote and who are taxpayers in Windham. The association organized both rescission referendum petitions. The individual plaintiffs, Rood and Edelman, are qualified voters and taxpayers in Windham. They both reside in Windham and are members of the association.

FN3. General Statutes § 7-1 provides: "(a) Except as otherwise provided by law, there shall be held in each town, annually, a town meeting for the transaction of business proper to come before such meeting, which meeting shall be designated as the annual town meeting. Special town meetings may be convened when the selectmen deem it necessary, and they shall warn a special town meeting on application of twenty inhabitants qualified to vote in town meetings, such meeting to be held within twenty- one days after receiving such application. Any town meeting may be adjourned from time to time as the interest of the town requires.
"(b) Where any town's public buildings do not contain adequate space for holding annual or special town meetings, any such town may hold any such meeting outside the boundaries of the town, provided such meetings are held at the nearest practical locations to the town."

FN4. The Home Rule Act is codified at General Statutes §§ 7-187 through 7-201.

The trial court, *Foley, J.*, found the following relevant facts. In 1990, discussions began for the construction of a new middle school in Windham. On March 1, 1994, a town meeting was held to consider the appropriation of $24,500,000 for the design and construction of a new middle school to be located on Quarry Street ***516** in the Willimantic section of Windham. [FN5] The town decided to send this issue to a referendum vote, which, if passed, would also authorize the issuance of bonds and other obligations to help finance the construction of the school. On March 15, 1994, Windham passed this referendum by a four vote majority. Following the passage of the referendum, Windham entered into a contract with the architectural firm of Russell Gibson von Dohlen, Inc., to design and construct the school.

FN5. On November 17, 1993, the Windham board of finance had approved the appropriation of $20,000 to pay for prereferendum architectural services.
A notice of this town meeting had stated that one of its purposes was "[t]o consider a resolution, (a) to appropriate $24,500,000 for design and construction of an approximately 1,100 student capacity middle school serving grades five through eight to be located on Town-owned land known as 123 Quarry Street in the Willimantic section of the Town, including drives, parking areas, sidewalks, athletic fields, utilities and other related improvements. The appropriation may be spent for design and construction costs,

equipment, furnishings, materials, architects' fees, engineering fees, construction management fees, study, test and permits costs, legal fees, net temporary interest and other financing costs, and other expenses related to the project;
"(b) to authorize the issue of bonds or notes of the Town in an amount not to exceed $24,500,000; to determine, or authorize the First Selectman and the Treasurer to determine, the amount, date, interest rates, maturities, form and other particulars of the bonds or notes...."

On March 28, 1994, 702 individuals qualified to vote in Windham presented a petition to the board pursuant to General Statutes §§ 7-1, [FN6] 7-2, [FN7] and 7-7, [FN8] requesting ***517** that ****1285** the board call a special town meeting for the purpose of setting the time and place of a special referendum to rescind the action on the ballot question of March 15, 1994. [FN9] The board rejected the March 28 petition and did not call a town meeting.

FN6. See footnote 3 for the text of § 7-1.

FN7. General Statutes § 7-2 provides: "Notwithstanding the provisions of section 7-1, any town may adopt an ordinance, in the manner provided by section 7-157, requiring that a special town meeting be warned by the selectmen on application of at least fifty inhabitants qualified to vote at town meetings, such meeting to be held within twenty- one days after such application is received by the selectmen; provided nothing in this section shall be construed to affect any ordinance legally adopted prior to October 1, 1957."

FN8. General Statutes § 7-7 provides: "All towns, when lawfully assembled for any purpose other than the election of town officers, and all societies and other municipal corporations when lawfully assembled, shall choose a moderator to preside at such meetings, unless otherwise provided by law; and, except as otherwise provided by law, all questions arising in such meetings shall be decided in accordance with standard parliamentary practice, and towns, societies and municipal corporations may, by ordinance, adopt rules of order for the conduct of their meetings. At any such town meeting the moderator shall be chosen from the last-completed registry list of such town. Two hundred or more persons or ten per cent of the total number qualified to vote in the meeting of a town or other municipal corporation, whichever is less, may petition the clerk or secretary of such town or municipal corporation, in writing, at least twenty-four hours prior to any such meeting, requesting that any item or items on the call of such meeting be submitted to the persons qualified to vote in such meeting not less than seven nor more than fourteen days thereafter, on a day to be set by the town meeting or, if the town meeting does not set a date, by the town selectmen, for a vote by paper ballots or by a 'Yes' or 'No' vote on the voting machines, during the hours between twelve o'clock noon and eight o'clock p.m.; but any municipality may, any provision of any special act to the contrary notwithstanding, by vote of its legislative body provide for an earlier hour for opening the polls but not earlier than six o'clock a.m. The selectmen of the town may, not less than five days prior to the day of any such meeting, on their own initiative, remove any item on the call of such meeting for submission to the voters in the manner provided by this section or may submit any item which, in the absence of such a vote, could properly come before such a meeting to the voters at a date set for such vote or along with any other vote the date of which has been previously set. The paper ballots or voting machine ballot labels, as the case may be, shall be provided by such clerk or secretary. When such a petition has been filed with such clerk or secretary, the moderator of such meeting, after completion of other business and after reasonable discussion, shall adjourn such meeting and order such vote on such item

or items in accordance with the petition; and any item so voted may be rescinded in the same manner. If such moderator resigns or is for any other cause unable to serve as moderator at such adjourned meeting, such clerk or secretary shall serve, or may appoint an elector of such municipality to serve, as moderator of such adjourned meeting. Such clerk or secretary, as the case may be, shall phrase such item or items in a form suitable for printing on such paper ballots or ballot labels, provided that the designation of any such item shall be in the form of a question, as prescribed under section 9-369. The vote on any item on the call of a town or other municipal corporation shall be taken by paper ballot if so voted at the meeting, if no petition has been filed under this section with reference to such item."

FN9. The ballot question of March 15, 1994, provided: "Shall the Town of Windham appropriate $24,500,000.00 for design and construction of a middle school to be located on Town-owned land on Quarry Street in Willimantic and authorize the issue of bonds and notes in the same amount to defray said appropriation?"

***518** Subsequently, on April 29, 1994, thirty-eight individuals qualified to vote in Windham presented a petition to the board requesting it to call a special town meeting to reconsider the March 28 petition for the purpose of rescinding the action on the ballot question of March 15. The board also rejected this petition.

After the board's decision to reject the March 28 referendum petition, the plaintiffs brought this action against the defendants seeking: "(1) a writ of mandamus ordering that the defendant-selectmen, forthwith set the time and place of a special referendum to rescind the action on the ballot question: 'Shall the Town of Windham appropriate $24,500,000.00 for the design and construction of a middle school to be located on Town-owned land on Quarry Street in Willimantic and authorize the issue of bonds and notes in the same amount to defray said appropriation?' of March 15, 1994; alternatively (2) a writ of mandamus ordering that the defendant-selectmen, forthwith call a special town meeting to reconsider the petition submitted to rescind the action on the ballot question: 'Shall the Town of Windham appropriate $24,500,000.00 for design and construction of a middle school to be located on Town-owned land on Quarry Street in Willimantic and authorize the issue of bonds and notes in the same amount to defray said appropriation?' of March 15, 1994 and to reconsider and vote on said petition by the legislative body. The plaintiffs further claim (3) an injunction to stop the construction and continued expenditure of funds for the proposed Windham Middle School...." [FN10] The trial court determined that the plaintiffs were not entitled to either mandamus or injunctive relief.

FN10. A fourth claim for declaratory relief was withdrawn.

***519** The trial court first determined that the plaintiffs had both voter and taxpayer standing to bring the action against the defendants. Rood and Edelman had voter standing because they were aggrieved by the board's failure to hold the requested town meeting at which they would have had the right to vote. The trial court also found that, because Rood and Edelman had suffered an ****1286** injury in the form of increased taxes to pay for the new school, they had taxpayer standing. Furthermore, the trial court found that the association had standing "in its representative capacity as a nonprofit corporation comprised solely of residents and taxpayers of the Town of Windham, whose organizational purpose is to promote fiscal conservatism and the power of initiative. Having organized the two petition campaigns at issue herein, and having many members [who] signed the petitions, the plaintiff Windham Taxpayers Association had a legally cognizable interest that the referendum or special town meeting be held." [FN11]

FN11. The trial court also concluded that the association had standing under a three part test: "(1) its members would 'otherwise have standing to sue in their own right'; (2) the interests the association

seeks to protect are 'germane to the organization's purpose'; and (3) 'neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' "

Moreover, the trial court determined that the matter was justiciable, disagreeing with the defendants' argument that the matter was incapable of being adjudicated because it is a political question. The trial court determined that this issue did not present a political question because its adjudication would not place the court in conflict with a coequal branch of government.

On the merits, the trial court focused on the defendants' contention that the board was not required to submit the March 28 petition to a town meeting because such a petition did not fall within one of the four enumerated categories in Section XI-3 of the town charter, which delineates the circumstances requiring a ***520** town meeting. [FN12] The trial court disagreed with the defendants' position, concluding that these provisions of the charter were preempted by §§ 7-1, 7-2, 7-6 and 7-7 because, in the court's view, there was a conflict between the charter and the statutes. The court reasoned that state law protects the power of initiative, which cannot be destroyed by a conflicting town charter. See General Statutes §§ 7-1, 7-2, 7-6 and 7-7. The trial court stated: "Because the defendants' *interpretation* of the Town Charter, as read in conjunction with the Home Rule Act, removes that right of initiative by petition in virtually all situations except four, a right created by state statute, that the state has expressly bestowed on the people, and the state and federal constitutions guarantee, such interpretation cannot legally stand. By definition, the defendants' contention that, 'unless the subject matter of the petition falls within the mandatory subjects of Article XI-3 of the Windham Charter, it is up to the selectmen's [unbridled] discretion whether to warn a Special Town meeting' irreconcilably conflicts with General Statutes §§ 7-1, 7-2, 7-6 and 7-7, thus exceeding the powers allotted to a municipality.... General Statutes §§ 7-1 and 7-7 mandate that a special town meeting and referendum respectively shall be held upon a proper petition. The Charter of the Town of Windham is not in conflict with the statutes; the interpretation of the Charter presently ***521** being advanced by the defendants, is in conflict with the state statutes." (Citations omitted; emphasis in original.)

FN12. Section XI-3 of the Windham town charter provides: "Town meeting approval shall be required for the following: (a) consideration of the annual budget; (b) approval of any additional appropriation in excess of $20,000 for any purpose; (c) authorizing the issuance of bonds or notes or other borrowing; (d) any sale or purchase of real estate of the Town used or reserved for Town or Service District purposes. The Board of Selectmen may submit any other matter it desires to town meeting for its consideration. The town meeting shall not act upon any appropriation in excess of $20,000 except upon the recommendation of the Board of Finance, nor shall it increase the amount of any appropriation above the amount recommended by the Board of Finance."

In considering whether to issue a writ of mandamus, the trial court examined whether the plaintiffs' petitions to the board were proper. It concluded that they were not for a proper purpose because there was no provision in either petition for the protection of the architects who had contracted with Windham to construct the new school. Thus, the court concluded: "Accordingly, based upon the facts of this case where a referendum has occurred allowing for the expenditure of public funds, and where an attempt is made to subsequently rescind the prior vote, this court holds that it is proper for the selectmen to reject a proposed initiative that fails to protect persons who have acted upon the ****1287** faith of the [prior] vote and fails to provide for payment of legal obligations of the [municipality] arising from contracts already made and entered into by the [municipality] prior to such rescission." (Internal quotation marks omitted.) Accordingly, the trial court denied the plaintiffs' request for writs of mandamus. [FN13]

FN13. Concluding that mandamus is available as an appropriate remedy at law

> if a proper petition is submitted to the board and is denied, the trial court denied the plaintiffs' request for an injunction because they had failed to prove the lack of an adequate remedy at law. *Clark v. Gibbs,* 184 Conn. 410, 419, 439 A.2d 1060 (1981).

Thereafter, the defendants appealed and the plaintiffs cross appealed to the Appellate Court. We transferred the appeal and the cross appeal to this court pursuant to Practice Book § 4023 and General Statutes § 51-199(c).

On appeal, the defendants, although agreeing with the trial court's denial of the plaintiffs' claims for relief, claim that the trial court incorrectly decided that: (1) ***522** General Statutes §§ 7-1, 7-2 and 7-7 required the board to hold a town meeting upon the petition of twenty or more qualified voters, notwithstanding contrary provisions in Windham's town charter; (2) the plaintiffs had standing to maintain an action for mandamus and injunctive relief; (3) the plaintiffs' action presented a justiciable controversy; and (4) the court could rely on the testimony of former town selectmen in determining whether the board was required to hold a town meeting. On their cross appeal, the plaintiffs claim that the petitions were presented for a proper purpose because the architects' interests were adequately protected by contract law and, consequently, the trial court improperly denied their request to compel the board to hold a referendum.

I

[1] Before reaching the merits of the case, we must address the jurisdictional issues presented by this appeal. "A possible absence of subject matter jurisdiction must be addressed and decided whenever the issue is raised." *Sadloski v. Manchester,* 228 Conn. 79, 84, 634 A.2d 888 (1993)

A

[2][3][4] We first determine whether this court has jurisdiction to hear the defendants' appeal from the trial court. "It is settled law that the right to appeal is purely statutory and is allowed only if the conditions fixed by statute are met. *Zachs v. Public Utilities Commission,* 171 Conn. 387, 394, 370 A.2d 984 [1976]; *Prevedini v. Mobil Oil Corporation,* 164 Conn. 287, 293, 320 A.2d 797 [1973]. *In re Juvenile Appeal (Anonymous),* 181 Conn. 292, 293, 435 A.2d 345 (1980). *Local 1303 & Local 1378 v. [Freedom of Information Commission],* 191 Conn. 173, 175, 463 A.2d 613 (1983).... In all civil actions a requisite element of appealability is that the party claiming error be aggrieved by the decision of the trial court....

523** [5][6] "The test for determining aggrievement encompasses a well settled twofold determination: first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision. *Zoning Board of Appeals v. Freedom of Information Commission,* 198 Conn. 498, 502, 503 A.2d 1161 (1986) [superseded on other grounds by *Hartford v. Freedom of Information Commission,* 201 Conn. 421, 518 A.2d 49 (1986)]; *Cannavo Enterprises, Inc. v. Burns,* 194 Conn. 43, 47, 478 A.2d 601 (1984); *Local 1303 & Local 1378 v. [Freedom of Information Commission],* supra, [191 Conn. at] 176 [463 A.2d 613]; *Mystic Marinelife Aquarium, Inc. v. Gill,* 175 Conn. 483, 493, 400 A.2d 726 (1978). Mere status as a party or a participant in the proceedings below does not in and of itself constitute aggrievement for the purposes of appellate review. *Hartford Distributors, Inc. v. Liquor Control Commission,* 177 Conn. 616, 620, 419 A.2d 346 (1979)." (Internal quotation marks omitted.) ****1288Milford v. Local 1566,* 200 Conn. 91, 95-96, 510 A.2d 177 (1986); see Practice Book § 4000. [FN14]

> FN14. Practice Book § 4000 provides: "If a party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, that party may appeal from the final judgment of the court or of such judge, or from a decision setting aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in Gen.Stat. §§ 8-8, 8-9, 8-28

and 8-30."

Because the defendants prevailed at trial, and they have not otherwise indicated how their interests were affected by the decision, [FN15] they were not aggrieved by ***524** the trial court's decision. See *Equitable Life Assurance Society of the United States v. Slade,* 122 Conn. 451, 464-65, 190 A. 616 (1937); C. Tait, Connecticut Appellate Practice and Procedure (2d Ed.1993) §§ 2.28, 3.4(b); see also *Water Pollution Control Authority v. Keeney,* 234 Conn. 488, 494-96, 662 A.2d 124 (1995). Therefore, the defendants do not have standing and we do not have jurisdiction to consider the issues directly raised in their appeal. See *In re Application of Pagano,* 207 Conn. 336, 340, 541 A.2d 104 (1988). Accordingly, the defendants' appeal is dismissed. If we have jurisdiction over the plaintiffs' cross appeal, however, we can consider the defendants' claims as alternate grounds for affirmance. [FN16]

FN15. We recognize that, following the trial court's decision, the plaintiffs submitted to the board a third petition incorporating the trial court's suggestions for the contents of a proper petition. To the extent that the defendants suggest that they are aggrieved due to the collateral effects that the trial court's decision would have on litigation related to the plaintiffs' subsequent petition to the board, we note that, as in *Water Pollution Control Authority v. Keeney,* 234 Conn. 488, 494-96, 662 A.2d 124 (1995), the defendants have failed to show how the trial court's decision would have any collateral effect on a subsequent proceeding.

FN16. Although pursuant to Practice Book § 4013, a party must give notice of alternate grounds for affirmance, under the circumstances of this case, the defendants' appeal gave adequate notice to the plaintiffs, who responded substantively thereto.

Because the plaintiffs were denied their requested relief and were therefore "injured" by the trial court's decision, the plaintiffs were aggrieved by the decision of the trial court if the injury was to a "specific, personal and legal interest in the subject matter" of the trial court's decision. Thus, if the plaintiffs possessed such an interest, they have standing to bring their cross appeal in this court, and we have jurisdiction to determine the issues raised in that cross appeal. See Practice Book § 4005. [FN17]

FN17. Practice Book § 4005 provides: "Any appellee or appellees aggrieved by the judgment or decision from which the appellant has appealed may jointly or severally file a cross appeal within ten days from the filing of the appeal. Except where otherwise provided, the filing and form of cross appeals, extensions of time for filing them, and all subsequent proceedings shall be the same as though the cross appeal were an original appeal. No entry or record fee need be paid, but security to the appellant for costs shall be given as upon an original appeal."

***525** B

[7][8] We next determine whether the plaintiffs possessed such an interest, in the context of considering whether they originally had standing to bring suit against the board. [FN18] "Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy.... Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Citations ****1289** omitted; internal quotation marks omitted.) *Sadloski v. Manchester,* supra, 228 Conn. at 84, 634 A.2d 888; *Unisys*

Corp. v. Dept. of Labor, 220 Conn. 689, 693, 600 A.2d 1019 (1991).

> FN18. We recognize that the issue of whether the plaintiffs had standing to bring suit in the Superior Court was raised in this court by the defendants in their appeal and that we have already concluded that the defendants do not have standing to appeal the judgment of the trial court. Because the issue of standing implicates the court's subject matter jurisdiction, however, we review the trial court's determination that the plaintiffs had demonstrated an injury to their legal interest in the controversy sufficient to establish standing to bring suit.

To establish standing, the party bringing suit must allege aggrievement caused by the actions of an entity of the municipality. *Double I Ltd. Partnership v. Glastonbury,* 14 Conn.App. 77, 79-80, 540 A.2d 81, ***526** cert. denied, 208 Conn. 802, 545 A.2d 1100 (1988). As we stated above, "[f]irst, the party claiming aggrievement must demonstrate a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must establish that this specific, personal and legal interest has been specially and injuriously affected by the decision." *Hall v. Planning Commission,* 181 Conn. 442, 444, 435 A.2d 975 (1980); *Double I Ltd. Partnership v. Glastonbury,* supra, at 80, 540 A.2d 81.

[9] We agree with the trial court that both Rood and Edelman satisfied the requirements of voter standing because, as registered voters in Windham, they were qualified to vote at both the proposed petition referendum and the proposed special town meeting. This right to vote was their legal interest in the present controversy. They were deprived of the opportunity to vote by the board. Therefore, they were aggrieved because if the board had been required to grant either petition and had called a special town meeting, Rood and Edelman would have been able to exercise their right to vote. *Quoka v. Drapko,* Superior Court, judicial district of Ansonia-Milford, Docket No. 0036714S, 1992 WL 361717 (November 25, 1992) (taxpayer had standing to bring mandamus action because he was qualified to vote under provisions of General Statutes § 7-6 at special town meeting); see *Clark v. Gibbs,* 184 Conn. 410, 439 A.2d 1060 (1981).

[10][11] Furthermore, the association satisfied the requirements of standing in its representative capacity because it meets the three conditions of standing for associations: (1) its members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested ***527** requires the participation of individual members in the lawsuit. See *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); *Timber Trails Corp. v. Planning & Zoning Commission,* 222 Conn. 380, 393, 610 A.2d 620 (1992). First, the association's members would have otherwise had standing to sue in their own right. Here, we have determined that the individual plaintiffs had standing to sue. Second, the interests that the association seeks to protect were germane to its purpose. The purpose of the association is to promote fiscal conservatism and the power of initiative. The interest that it sought to protect was the town citizens' right to vote. Third, neither the claim asserted nor the relief requested required the participation of individual members in the lawsuit. Writs of mandamus to compel a referendum can be pursued without the participation of individuals. Therefore, the plaintiffs had voter standing to bring this action in the Superior Court. [FN19]

> FN19. Because we hold that the plaintiffs had voter standing, we do not reach the issue of whether they had taxpayer standing.

Having concluded that the plaintiffs had a "specific, personal and legal interest in the subject matter of the decision," we further conclude that that interest was injured by the trial court's denial of their requested relief. Consequently, the plaintiffs were aggrieved by the decision of the trial court and have standing to appeal that court's decision to this court. As a result, we have jurisdiction to hear the plaintiffs' cross appeal.

II

We next consider the plaintiffs' claim on cross appeal: that the trial court improperly denied their requests for writs of mandamus and injunctive relief on the basis that they ****1290** had failed to present the petitions for a ***528** "proper purpose." [FN20] Because the validity of the trial court's conclusion on this issue necessarily depends on the claim asserted by the defendants, namely that the trial court improperly concluded that §§ 7-1, 7-2 and 7-7 preempt the town's charter to the extent that the charter may be interpreted as permitting the board to deny the plaintiffs' petitions, we must first address whether these statutory provisions required the board to act on the plaintiffs' petitions under any circumstances. In other words, in deciding whether the trial court properly denied the plaintiffs' requests for writs of mandamus and injunctive relief on the grounds of lack of "proper purpose," we necessarily must first decide whether the trial court could have granted such relief even if there had been such a proper purpose. In deciding this underlying question, we must first determine whether the board had the discretion to deny the plaintiffs' petitions. If we conclude that the board did possess such discretion, then the trial court would not have been authorized to grant the plaintiffs their requested relief even if the plaintiffs' requests had otherwise been for a "proper purpose," because the board would have lawfully exercised its discretion in deciding not to call a referendum vote. We conclude that the board, as the primary legislative body in Windham pursuant to the charter, had the discretion to decide whether to call a town meeting for a rescission referendum on the appropriation of funds to build a town school. We therefore affirm the trial court's decision to reject the plaintiffs' requested relief, but on alternate grounds.

> FN20. In light of our decision that the board was not required to hold a town meeting upon petition to reconsider the appropriation of money for the construction of a new middle school, we do not reach the issue of whether the architects were required to be protected.

[12][13] "It is settled law that as a creation of the state, a municipality has no inherent powers of its own. ***529***City Council v. Hall,* 180 Conn. 243, 248, 429 A.2d 481 (1980); *Pepin v. Danbury,* 171 Conn. 74, 83, 368 A.2d 88 (1976); *New Haven Water Co. v. New Haven,* 152 Conn. 563, 566, 210 A.2d 449 (1965); *State ex rel. Coe v. Fyler,* 48 Conn. 145, 158 (1880). *New Haven Commission on Equal Opportunities v. Yale University,* 183 Conn. 495, 499, 439 A.2d 404 (1981). A municipality has only those powers that have been expressly granted to it by the state or that are necessary for it to discharge its duties and to carry out its objects and purposes. *City Council v. Hall,* supra, [at] 248, 429 A.2d 481. See *Pepin v. Danbury,* supra, [74, 368 A.2d 88]." (Internal quotation marks omitted.) *Norwich v. Housing Authority,* 216 Conn. 112, 123, 579 A.2d 50 (1990) . Consequently, in order to determine whether the town charter properly gave the board discretion to deny the plaintiffs' petitions to put a rescission referendum to a town meeting, we must search for statutory authority for this grant of discretion.

[14][15] The Home Rule Act (act) is the relevant statutory authority. Under the act, municipalities have the power to adopt a charter to serve as the organic law of that municipality. [FN21] General Statutes § 7-188(a); *Caulfield v. Noble,* 178 Conn. 81, 86, 420 A.2d 1160 (1979). "It is well established that a [town's] charter is the fountainhead of municipal powers. *State ex rel. Raslavsky v. Bonvouloir,* 167 Conn. 357, 362, 355 A.2d 275 (1974). The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. *Food, Beverage & Express Drivers Local Union v. Shelton,* 147 Conn. 401, 405, 161 A.2d 587 (1960); *Thomson v. New Haven,* 100 Conn. 604, 606, 124 A. 247 (1924); *State ex rel. Southey v. Lashar,* 71 Conn. 540, 545-46, 42 A. 636 (1899). *Perretta v. New Britain,* 185 Conn. 88, 92, 440 A.2d 823 (1981)." (Internal ***530** quotation marks omitted.) *West Hartford Taxpayers Assn., Inc. v. Streeter,* 190 Conn. 736, 742, 462 A.2d 379 (1983).

> FN21. The act provides a detailed procedure for the adoption of a charter. See General Statutes §§ 7-188 through 7-191.

The act requires charters to conform to certain

standards. General Statutes § 7-193. Of particular relevance in this case are the provisions listing the various forms of legislative bodies that municipalities may ****1291** adopt. General Statutes § 7-193(a)(1) provides: "Any charter adopted or amended under the provisions of this chapter shall conform to the following requirements: (1) The municipality shall have a legislative body, which may be: (A) A town meeting; (B) a representative town meeting; (C) a board of selectmen, council, board of directors, board of aldermen or board of burgesses; or (D) a combination of a town meeting or representative town meeting and one of the bodies listed in subparagraph (C). In any combination, the body having the greater number of members shall have the power to adopt the annual budget and shall have such other powers as the charter prescribes, and the body having the lesser number of members shall have the power to adopt, amend and repeal ordinances, subject to any limitations imposed by the general statutes or by the charter. The number of members in any elective legislative body, the terms of office of such members and the method by which they are elected shall be prescribed by the charter."

Windham adopted a charter in 1992, pursuant to the act. It created a combination form of government pursuant to § 7-193(a)(1)(D), combining the board and town meeting forms of government. Although this charter includes many provisions, only a few are relevant here. Most importantly, the charter vested the legislative power of Windham in the board. The charter gave the board the power to "enact, amend or repeal ordinances and resolutions not inconsistent with the Charter or the Connecticut General Statutes providing ***531** for the preservation of good order, peace, health, safety and welfare of the Town and its inhabitants." [FN22] Windham Town Charter c. V-3(a). Regarding particular enumerated matters, however, the charter specifies that the board may act only after town meeting approval. Chapter XI-3 of the charter, entitled "When Action by Town Meeting Required," provides that "[t]own meeting approval shall be required for the following: (a) consideration of the annual budget; (b) approval of any additional appropriation in excess of $20,000 for any purpose; (c) authorizing the issuance of bonds or notes or other borrowing; (d) any sale or purchase of real estate of the Town used or reserved for Town or Service District purposes. The Board of Selectmen may submit any other matter it desires to town meeting for its consideration. The town meeting shall not act upon any appropriation in excess of $20,000 except upon the recommendation of the Board of Finance, nor shall it increase the amount of any appropriation above the amount recommended by the Board of Finance."

FN22. Chapter V-3 of the Windham town charter, entitled "General Powers and Duties," provides: "Except as otherwise provided in this Charter, the Board of Selectmen shall have the powers and duties conferred by law on boards of selectmen. Except as otherwise provided in this Charter, the legislative power of the Town shall be vested in the Board of Selectmen. The Board of Selectmen shall have the power to (a) enact, amend or repeal ordinances and resolutions not inconsistent with this Charter or the Connecticut General Statutes providing for the preservation of good order, peace, health, safety and welfare of the Town and its inhabitants; (b) create or abolish by ordinance boards, authorities, commissions, departments or offices except those established by Sections VII-4, VII-5, VII-6, VII-7, VII-8 and VII-9 of this Charter and the elected offices established by Article IV of this Charter; (c) establish by resolution such study, advisory or consulting committees and such employment positions as the Board may determine to be necessary to appropriate for the general welfare of the Town, and (d) establish by resolution the salaries, if any, and the provisions for reimbursable expenses of all appointive officials. The Board of Selectmen may contract for services and the use of facilities of the United States or any federal agency, the State of Connecticut and any political subdivision thereof, or may, by agreement, join with such political subdivision to provide services and facilities."

***532** [16] The plaintiffs argue that, notwithstanding the enumeration of a limited

number of situations requiring town meeting approval under chapter XI-3, the charter must also comply with General Statutes §§ 7-1, 7-2, 7-3 and 7-7. In the plaintiffs' view, these statutory provisions always control, regardless of whether Windham's charter requires less town meeting involvement. An examination of the intent of the legislature in enacting the act, however, reveals that, unlike in matters of statewide concern, in which the statute preempts the charter; *Caulfield v. Noble,* supra, 178 Conn. at 86-87 n. 3, 420 A.2d 1160; in matters primarily concerning ****1292** local matters, the provisions of the town charter control. Because we conclude that the extent of town meeting involvement is a matter of local concern, we agree with the defendants that the statutory provisions do not preempt the charter to require the board to call a town meeting on the petition of twenty registered voters.

[17][18] In making this determination, we look to the act itself. " 'When the words of a statute are plain and unambiguous, we need look no further for interpretive guidance because we assume that the words themselves express the intention of the legislature. *Johnson v. Manson,* 196 Conn. 309, 316, 493 A.2d 846 (1985), cert. denied, 474 U.S. 1063, 106 S.Ct. 813, 88 L.Ed.2d 787 (1986); *Mazur v. Blum,* 184 Conn. 116, 118-19, 441 A.2d 65 (1981). When we are confronted, however, with ambiguity in a statute, we seek to ascertain the actual intent by looking to the words of the statute itself; *State v. Kozlowski,* [199 Conn. 667, 673, 509 A.2d 20 (1986)]; *Dukes v. Durante,* 192 Conn. 207, 214, 471 A.2d 1368 (1984); the legislative history and circumstances surrounding the enactment of the statute; *State v. Kozlowski,* supra, at 673, 509 A.2d 20; *DeFonce Construction Corporation v. State,* 198 Conn. 185, 187, 501 A.2d 745 (1985) [superseded on other grounds by ***533** *Ducci Electrical Contractors, Inc. v. Dept. of Transportation,* 28 Conn.App. 175, 611 A.2d 891 (1992)]; *State v. Parmalee,* 197 Conn. 158, 161, 496 A.2d 186 (1985); *State v. Delafose,* [185 Conn. 517, 522, 441 A.2d 158 (1981)]; and the purpose the statute is to serve. *Peck v. Jacquemin,* 196 Conn. 53, 64, 491 A.2d 1043 (1985); *Verrastro v. Sivertsen,* 188 Conn. 213, 221, 448 A.2d 1344 (1982); *Robinson v. Unemployment Security Board of Review,* 181 Conn. 1, 8, 434 A.2d 293 (1980).' *Rhodes v. Hartford,* 201 Conn. 89, 93, 513 A.2d 124 (1986)." *Norwich v. Housing Authority,* supra, 216 Conn. at 117-18, 579 A.2d 50.

The language of the act unambiguously states that a town charter may prescribe the form of legislative body, provided that such provisions conform to one of the four enumerated types listed in § 7-193(a)(1). Furthermore, the act states that in a town such as Windham that has chosen a combination of legislative bodies, "the body having the greater number of members shall have the power to adopt the annual budget and shall have such other powers *as the charter prescribes....*" (Emphasis added.) General Statutes § 7-193(a)(1). This language suggests that if a municipality chooses to do so, it may limit the involvement of the town meeting to only the adoption of the annual budget. In Windham, the town meeting is the body with the greater number of members.

[19] Pursuant to this section of the act, the Windham charter prescribes those instances requiring a town meeting. A petition to reconsider whether the residents of the town want to appropriate over $20,000 is not one of the enumerated situations. Nonetheless, the plaintiffs argue that this situation falls under chapter XI-3(b) because it is a continuation of the approval of an appropriation in excess of $20,000. We are not persuaded. The appropriation had already been approved at the March 15 town meeting. The plaintiffs are not claiming that the appropriation was made unlawfully. Instead, they did not like the result of the first vote ***534** and want a second bite at the apple. This provision of the charter cannot reasonably be construed to provide for such an interpretation.

[20][21] In addition to the language of the act, the purpose of the act supports our conclusion. "The purpose ... of Connecticut's Home Rule Act is clearly twofold: to relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern and to enable a municipality to draft and adopt a home rule charter or ordinance which shall constitute the organic law of the city, superseding its existing charter and any inconsistent special acts. General Statutes § 7-188; *Sloane v. Waterbury,* 150 Conn. 24, 26-27, 183 A.2d 839 (1962); *State ex rel. Sloane v. Reidy,* 152 Conn. 419, 209 A.2d 674 (1965); *Shalvoy v. Curran,* 393 F.2d 55, 59 (2d Cir.1968); see Littlefield, 'Municipal Home

Rule--Connecticut's Mature Approach,' 37 Conn.B.J. 390, 402 (1963); 56 Am.Jur.2d [182-83], Municipal Corporations § 126 [1971]; 62 C.J.S., Municipal Corporations ****1293** § 124. The rationale of the act, simply stated, is that issues of local concern are most logically answered locally, pursuant to a home rule charter, exclusive of the provisions of the General Statutes. See Lockard, 'Home Rule for Connecticut's Municipalities,' 29 Conn.B.J. 51, 54 (1955). Moreover, home rule legislation was enacted 'to enable municipalities to conduct their own business and control their own affairs to the fullest possible extent in their own way ... upon the principle that the municipality itself knew better what it wanted and needed than did the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.' *Fragley v. Phelan,* 126 Cal. 383, 387, 58 P. 923 (1899); accord 1 Antieau, Municipal Corporation Law, § 3.03; 1 McQuillin, Municipal Corporations (2d Ed.) § 93." *Caulfield v. Noble,* supra, 178 Conn. at 85-87, 420 A.2d 1160.

***535** "In furtherance of this stated goal of home rule legislation, it has been held that a general law, in order to prevail over a conflicting charter provision of a city having a home rule charter, must pertain to those things of general concern to the people of the state, and it cannot deprive cities of the right to legislate on purely local affairs germane to city purposes. *Portland v. Welch,* 154 Or. 286, 59 P.2d 228 (1936); see 62 C.J.S., Municipal Corporations § 125; 5 McQuillin, Municipal Corporations (3d Ed.1969 Rev.) § 15.20 (issues relating strictly to municipal affairs are within the exclusive delegated power of municipalities coming under home rule). In the numerous jurisdictions having either constitutional or legislative municipal home rule, the overwhelming view accords to the municipality the fullest extent of home rule authority, consistent with law, in matters of local concern. See, e.g., Littlefield, [supra, 37 Conn.B.J. 390]; Klemme, 'The Powers of Home Rule Cities in Colorado,' 36 Colorado L.Rev. 321 (1964)." *Caulfield v. Noble,* supra, 178 Conn. at 87-88, 420 A.2d 1160. Furthermore, in order to achieve the goal of local autonomy over issues of local concern, we do not "apply a strict construction to the home rule legislation, because to do so would stifle local initiative...." *Norwich v. Housing Authority,* supra, 216 Conn. at 116, 579 A.2d 50.

In *Caulfield v. Noble,* supra, 178 Conn. at 91, 420 A.2d 1160, we held that decisions regarding the appropriation of surplus revenues are matters of local concern. In *Shelton v. Commissioner of Environmental Protection,* 193 Conn. 506, 521, 479 A.2d 208 (1984), we held that the organization of local government or local budgetary policy is a matter of local concern. Furthermore, the enactment of ordinances by initiative and referendum has been recognized as a matter of local interest. *In re Pfahler,* 150 Cal. 71, 82, 88 P. 270 (1906); 56 Am.Jur.2d 193, supra, § 138.

***536** In contrast, matters that concern public health and safety, and other areas within the purview of a state's police power, have traditionally been viewed as matters of statewide concern. *Kansas City v. J.I. Case Threshing Machine Co.,* 337 Mo. 913, 926, 87 S.W.2d 195 (1935); *Axberg v. Lincoln,* 141 Neb. 55, 60, 2 N.W.2d 613 (1942); 56 Am.Jur.2d 185, supra, § 128. For example, in *Dwyer v. Farrell,* 193 Conn. 7, 475 A.2d 257 (1984), we held that a local ordinance placing restrictions on the sale of handguns more substantial than those in the state statutes was preempted by the state statutes. The purpose of the state statutes at issue in *Dwyer* was to protect the public. *Id.,* at 12, 475 A.2d 257. The statutes "clearly indicate a legislative intent 'to protect the safety of the general public from individuals whose conduct has shown them to be lacking the essential character or temperament necessary to be entrusted with a weapon.' *Rabbitt v. Leonard,* 36 Conn.Sup. 108, 115-16, 413 A.2d 489 (1979)." *Id.,* at 12-13, 475 A.2d 257.

[22] At issue in this case is whether Windham's primary legislative body-- the board of selectmen--can be compelled to hold a referendum on the petition of the town's voters despite the fact that the charter explicitly lists the situations in which a town meeting is required. We conclude that this matter is of purely local interest. It is similar to the enactment of an ordinance by referendum or petition, which has been held to be a local issue. *In re Pfahler,* supra, 150 Cal. at 82, 88 P. 270; 56 Am.Jur.2d 193, ****1294** supra, § 138. It is also similar to the appropriation of a town's budget, which is also a local matter, in that it relates to concerns that are of particular importance to the town itself. It is of no import to the rest of Connecticut whether the town of Windham holds a second referendum to reconsider an issue on which

its voters have already voted. Indeed, unlike the sale of handguns, the regulation of which may clearly impact the " 'safety of the *general public*' "; (emphasis added) ***537** *Dwyer v. Farrell,* supra, 193 Conn. at 12, 475 A.2d 257; the use of the town meeting form of government impacts only the municipality itself and does not affect the interests of the rest of the state.

[23] Alternatively, the plaintiffs argue that, for purposes of appropriating funds in excess of $20,000, the legislative body is the town meeting instead of the board of selectmen. They claim that "[i]f a legislative body has the power to adopt a binding resolution or ordinance, it necessarily must have the concomitant power to rescind such legislative action when it deems such measure appropriate." The plaintiffs argue, therefore, that a town meeting to rescind a prior legislative act is mandatory upon petition.

Although the plaintiffs' first statement is a fair reading of Windham's charter only to the extent that town meeting approval is required for appropriations in excess of $20,000, the second claim completely ignores the charter. In fact, the plaintiffs' only support for this second proposition consists of citations to cases that arose prior to the enactment of the act. See, e.g., *Madison v. Kimberly,* 118 Conn. 6, 169 A. 909 (1934); *Staples v. Bridgeport,* 75 Conn. 509, 54 A. 194 (1903); *Terrett v. Sharon,* 34 Conn. 105 (1867). It does not necessarily follow that "[i]f town meeting approval is necessary to approve construction of a new middle school ... the only legislative body capable of exercising the well settled power to rescind such action is the town meeting." As we have already stated, the extent of the use of the town meeting form of government is a matter of purely local concern. Windham's town charter enumerates those situations in which town meeting approval is required. A referendum to reconsider the prior appropriation of more than $20,000 is not one of these enumerated situations. Had the town wished to require a town vote upon petition to repeal or reconsider a prior appropriation, such a provision ***538** could have been included in the charter. Similarly, had the town wished to require a town meeting upon petition by a certain number of people, such provision also could have been included in the charter.

[24] The plaintiffs also claim that chapter V-7 of the town charter indicates that the board was required to put the plaintiffs' petition to a referendum vote. [FN23] That provision provides in relevant part that "[a]ny elector of the Town may file with the Town Clerk a petition which conforms with the requirements of Section 7-9 of the Connecticut General Statutes, Revision of 1958 as amended, except as provided herein, and requests that a proposed *ordinance* be adopted. The petition shall be signed ... by qualified electors of the Town numbering at least two hundred (200) or ten percent (10%) of the electors voting in the last regular Town election, whichever is less.... If the Board of Selectmen fails to adopt the proposed *ordinance,* without any substantial change, within thirty (30) days after receipt of such certification, the Board shall schedule a referendum to be held within forty-five (45) days of the end of the period in which the Board of Selectmen has to adopt such proposed *ordinance.*" (Emphasis added.) General Statutes § 7-148(b) states that "[p]owers granted to any municipality under the general statutes or by any charter or special act, unless the charter or special act provides to the contrary, shall be exercised by ordinance when the exercise of such powers has the effect of: (1) Establishing rules or regulations of general municipal application, the violation of which may result in the imposition of a fine or other ****1295** penalty; or (2) [c]reating ***539** a permanent local law of general applicability." This language, expressly limited to ordinances, cannot reasonably be construed to apply to the present situation. The plaintiffs have not proposed an ordinance. Their petitions to the board would neither establish rules or regulations nor create a permanent local law. Instead, they were merely petitioning for a rescission referendum. [FN24]

> FN23. The plaintiffs also argue that because there is a constitutional right to petition pursuant to article first, § 14, of the Connecticut constitution, the board was required to hold a referendum upon petition. The plaintiffs have misinterpreted this "right." This right refers to the right of an individual to petition the government. It does not obligate the government to act on such a petition. In this case, the plaintiffs have not been denied their right to petition the

board.

FN24. While the plaintiffs may be correct in that a petition involving an appropriation can be in the form of an ordinance, that is not the case here.

We conclude that General Statutes § 7-1 does not preempt the provisions in the Windham town charter that delineate the circumstances requiring town meeting involvement. Consequently, the board was not required to act on the plaintiffs' petitions, because they did not fall within one of the enumerated circumstances requiring town meeting involvement. Thus, the trial court properly denied the plaintiffs' request for mandamus and injunctive relief.

The judgment of the trial court is affirmed.

In this opinion the other Justices concurred.

662 A.2d 1281, 234 Conn. 513, 102 Ed. Law Rep. 1116

END OF DOCUMENT

(m) Except as provided in section 7-452, the words "legislative body," as applied to unconsolidated towns, shall mean the town meeting; as applied to cities and consolidated towns and cities, shall mean the board of aldermen, council or other body charged with the duty of making annual appropriations; as applied to boroughs and consolidated towns and boroughs, shall mean the board of burgesses; as applied to all other districts and associations, shall mean the district committee or association committee or other body charged with the duty of making annual appropriations.

(n) "Ordinance" shall mean an enactment under the provisions of section 7-157.

(o) "Voters" shall mean those persons qualified to vote under the provisions of section 7-6.

(p) Repealed. (1976, P.A. 76-186.)

(q) Except as otherwise specifically defined, the words "agriculture" and "farming" shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, including horses, bees, poultry, fur-bearing animals and wildlife, and the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish; the operation, management, conservation, improvement or maintenance of a farm and its buildings, tools and equipment, or salvaging timber or cleared land of brush or other debris left by a storm, as an incident to such farming operations; the production or harvesting of maple syrup or maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations or the harvesting of mushrooms, the hatching of poultry, or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term "farm" includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoophouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities. The term "aquaculture" means the farming of the waters of the state and tidal wetlands and the production of protein food, including fish, oysters, clams, mussels and other molluscan shellfish, on leased, franchised and public underwater farm lands. Nothing herein shall restrict the power of a local zoning authority under chapter 124. [FN1]

(r) Repealed. (1969, P.A. 828, § 214.)

(s) When a statute repealing another is afterwards repealed, the first shall not be revived without express words to that effect.

(t) The repeal of an act shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, or prosecution, or proceeding pending at the time of the repeal, for an offense committed, or for the recovery of a penalty or forfeiture incurred under the act repealed.

(u) The passage or repeal of an act shall not affect any action then pending.

(v) All provisions of the statutes relating to annual town meetings or elections shall be applicable to biennial meetings or elections unless a contrary intent appears.

(w) "Correctional institution", "state prison", "community correctional center" or "jail" means a correctional facility administered by the Commissioner of Correction.

(x) Whenever a title which denotes gender is applied to an individual the title shall suit the gender of the individual.

Not Reported in A.2d
8 Conn. L. Rptr. 44
(Cite as: 1992 WL 361717 (Conn.Super.))

H
UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Ansonia-Milford, at Milford.

Paul QUOKA, ET AL.
v.
Raymond DRAPKO, ET AL.

No. CV91 0036714S.

Nov. 25, 1992.

MEMORANDUM OF DECISION

FLYNN, Judge.

***1** This is an action for mandamus in which the plaintiffs seek an order of the court requiring that the Oxford Board of Selectmen call a town meeting to act upon an ordinance to "make vacant, vacate, and leave vacant position of town planner." The selectmen have refused to do so.

Because the court finds that the plaintiffs have not established a clear legal right to the extraordinary remedy of mandamus, relief is denied.

The following facts are not in dispute. The town meeting serves as the legislative branch of government in Oxford, Connecticut and a three member Board of Selectmen serves as the executive branch. Prior to November 19, 1991, the Board of Selectmen was comprised of First Selectman Raymond Drapko, and Selectmen Christopher Jaran and John Montefalco. From November 19, 1991 to the present time the Board of Selectmen has been comprised of First Selectman Edward Oczkowski, and Selectmen Robert DeBisschop and Lillian Frolisch. The Oxford town clerk received petitions requesting the call of a town meeting to take up the ordinance at issue in this case on June 17, 1991 and determined that more than 50 qualified town meeting voters had signed those petitions and that they were proper in form. The petitions calls for the selectmen to call a meeting to adopt the following ordinance: "The Board of Selectmen for the Town of Oxford shall make vacant, vacate and leave vacant the position of town planner."

On June 17, 1991, the town clerk of the Town of Oxford forwarded notice of the petition to call the town meeting to the Board of Selectmen. Upon receipt of it, the selectmen commissioned the town attorney to give an opinion whether the petition was for a lawful object. The attorney rendered his opinion to the Board of Selectmen and advised them that in his opinion the petition was not for a "lawful object". Based upon that opinion, the Board of Selectmen refused to call and warn to town meeting requested by the petition. To date no such meeting has been called.

Hiram Peck was hired as the Oxford Town Planner by the Oxford Board of Selectmen in March 1987 and he continues to serve in that capacity. He operates under the policy direction of the Oxford Planning and Zoning Commission. Funds for the Oxford Town Planner's salary have been appropriated directly to the budget of the Oxford Planning and Zoning Commission. Convening of a town meeting requires the expenditure of Town of Oxford funds.

Mr. Quoka testified at trial that while he does not live in the Town of Oxford he is a taxpayer there on an assessment of not less than $1,000.00 and therefore would be qualified to vote at the meeting which he is petitioning. The court therefore concludes that he has standing to bring this lawsuit under provisions of General Statutes § 7-6.

Both parties agree that the court's function in determining the right to mandamus must focus not just on the ministerial act required in the calling of a town meeting but also on whether or not the town meeting has the right to pass on the proposed ordinance which would be the subject of such a meeting.

***2** The plaintiff claims that: 1) Charter § 9-2 clearly grants the town meeting the right to control the selectmen's discretion; 2) that the court has jurisdiction to hear this writ; 3) that specific provisions of § 9-2 limiting the selectmen's authority take precedence over more general provisions of § 9-2 of the **Charter** relating to the selectmen's general powers over employees; 4) any

apparent conflict between personnel regulations and an **ordinance** permitted by the **Charter** must result in such existing personnel regulations giving way; 5) the town planner position is not mandated by state law and therefore there is no independent general statutory requirement necessitating the maintenance of such a position; 6) the **proposed ordinance** does not conflict with §§ 9-10 and 9-11 of the **Charter** because the **charter** provision indicating that the town planner maintains his position until a successor is appointed is merely a saving clause designed to continue employment of administrative officers holding office prior to **Charter** adoption but that this does not evidence a requirement to keep all positions held for all time; 7) **Charter** provision 7-14 permitting the Oxford Planning and Zoning Commission the right to hire employees it needs is not applicable because the Planning and Zoning Commission does not have the right to appoint the town planner because that appointment power is strictly delegated to the Board of Selectmen as set forth in § 9-2 of the **Charter**; 8) the Selectmen do not have an unfettered discretion not to call town meetings by virtue of **Charters** §§ 3-7 because such an important power would have been specifically listed in **Charter** §§ 4-3 and 4-4 setting out the Selectmen's powers as to **ordinances**; 9) the town meeting has the right to vacate the town planner's office because prohibition against recall of officials is limited only to elected officials of **municipalities** not appointed officials like the town planner; 10) the plaintiffs are entitled to resort to the courts for legal relief rather than to the elective political process.

"An action of mandamus may be brought in his individual right by any person who claims that he is entitled to that remedy to enforce a private duty owned to him...." Practice Book § 541.

> It bears emphasis, however, that "[t]he writ of mandamus is an extraordinary remedy to be applied only under exceptional conditions, and is not to be extended beyond its well-established limits." *Lahiff v. St. Joseph's Total Abstinence Society,* 76 Conn. 648, 651, 57 A. 692 (1904); *McAllister v. Nichols,* 193 Conn. 168, 171, 474 A.2d 792 (1984). Furthermore, "[m]amdamus neither gives nor defines rights which one does not already have. It enforces, it commands, performance of a duty. It acts at the instance of one having a complete and immediate legal right; it cannot and it does not act upon a doubtful or a contested right...." *State ex rel. Comstock v. Hempstead,* supra, 561; *McAllister v. Nichols,* supra, 171-72.

***3** *Hennessey v. Bridgeport,* 213 Conn. 656, 659, 569 A.2d 1122 (1990).

> A party seeking a writ of mandamus must establish: "(1) that the party has a clear legal right to the performance of a duty by the defendant; (2) that the defendant has no discretion with respect to performance of that duty; and (3) that the plaintiff has no adequate remedy of law." *Vartuli v. Sotire,* 192 Conn. 353, 365, 472 A.2d 336 (1984); *Harlow v. Planning & Zoning Commission,* 194 Conn. 187, 196, 479 A.2d 808 (1984). Even satisfaction of this demanding test does not, however, automatically compel issuance of the requested writ of mandamus. *Hackett v. New Britain,* 2 Conn.App. 225, 229, 477 A.2d 148, cert. denied, 194 Conn. 805, 482 A.2d 710 (1984). In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity. *Sullivan v. Morgan,* 155 Conn. 630, 635, 236 A.2d 906 (1967). In the exercise of that discretion, special caution is warranted where the use of public funds is involved and a burden may be unlawfully placed on the taxpayers...." Id.

Id., 659-60. The court may further exercise its discretion in declining to issue writ "to compel a technical compliance with the letter of the law ... or to enforce a mere abstract right ... or to accomplish a result which is not authorized by law." *West Hartford Taxpayers Assn., Inc. v. Streeter,* 190 Conn. 736, 740, 462 A.2d 379 (1983) (citations omitted).

"Whether the plaintiff has a 'clear legal right' to mandamus depends upon whether the proposal 'clearly exceeds the legislative power of the electorate.' " *Cheshire Taxpayers' Action Committee, Inc. v. Guilford,* 193 Conn. 1, 7, 474 A.2d 97 (1984).

In the *Cheshire* case the court held that the trial court erred in issuing a writ of mandamus to compel the members of the Cheshire Town Council to submit an ordinance, proposed by initiative petition, to referendum. Id., 2. The court reasoned that *the trial court should have first considered whether the proposed ordinance clearly exceeded the power of the electorate in that the ordinance would be void*

as contrary to the charter. Id., 4-5.

General Statutes § 7-1 provides in pertinent part:

> Except as otherwise provided by law, there shall be held in each town, annually, a town meeting for the transaction of business proper to come before such meeting, which meeting shall be designated as the annual town meeting. Special town meetings may be convened when the selectmen deem it necessary, and they shall warn a special town meeting on application of twenty inhabitants qualified to vote in town meetings, such meeting to be held within twenty-one days after receiving such application.

General Statutes § 7-1(a).

General Statutes § 7-2 provides as follows:

> Notwithstanding the provisions of section 7-1, any town may adopt an ordinance, in the manner provided in section 7-157, requiring that a special town meeting be warned by the selectmen on application of at least fifty inhabitants qualified to vote at town meetings, such meeting to be held within twenty-one days after such application is received by the selectmen, provided nothing in this section shall be construed to affect any ordinance legally adopted prior to October 1, 1957.

***4** General Statutes § 7-2.

Pursuant to § 7-2 the Town of Oxford adopted Charter § 3-7 which provides as follows:

> The Board of Selectmen, upon receipt by the Town Clerk of a petition signed by fifty (50) persons qualified to vote at Town Meetings, shall call a Special Town Meeting within twenty-one (21) days. The matter or matters contained in the said petition, if proper subjects for legislative action at a Town Meeting as determined by the Board of Selectmen, shall be presented first on the call of the Special Town Meeting. The Board of Selectmen, in its discretion, may add other items to the call of the meetings.

In construing the requirements of General Statutes § 7-1 (formerly § 491 as amended by § 157c) the courts have held that the statute reposes no discretion in selectmen when presented with a proper application. See *Cumming v. Looney,* 89 Conn. 557, 561, 95 A. 19 (1915); *Peck v. Booth,* 42 Conn. 271, 274-75 (1875); *Lyon v. Rice,* 41 Conn. 245, 248-49 (1874); *State ex rel. Feigl v. Raacke,* 32 Conn.Sup. 237, 244, 349 A.2d 150 (1975); *Willis v. Sauer,* 19 Conn.Sup 215, 218, 111 A.2d 36 (1954). A proper application must be for a legitimate, lawful, proper purpose, and not frivolous. See *Lyon,* supra; *Feigl,* supra.

Because **Charter** § 3-7 is an offspring of General Statutes § 7-1, the rules set out in our case law concerning § 7-1 are equally applicable to Oxford **Charter** § 3-7. The court must look to the purpose of the plaintiff's petition seeking a special town meeting.

The **ordinance** which the plaintiffs seek to enforce provides that, "The board of Selectmen for the Town of Oxford shall make vacant, vacate, and leave vacant the position of Town Planner." Section 9-2 of the Oxford Town **Charter** provides as follows:

> In accordance with Section 9-1 of this **Charter** the Board of Selectmen shall hire qualified persons to the following officers to serve at the pleasure of the Selectmen, unless otherwise specified in the rules, regulations or **ordinances** of the Town of Oxford, and whose powers and duties shall be as prescribed in the General Statutes of the State of Connecticut and the **Ordinances** of the Town of Oxford:
> (a) Civil Preparedness Coordinator
> (b) Director of Public Assistance
> (c) Building Official
> (d) Tree Warden
> (e) Director of Health
> (f) Dog Warden
> (g) Assessor
> (h) Town Planner

Oxford Town **Charter** § 9-2.

The provisions of § 9-2(h) of the **Charter** stating that the Town Planner serves "at the pleasure of the selectmen unless otherwise specified in the ... **ordinances** of the Town of Oxford" arguably permits the duration of an appointment to be changed to a definite term by **ordinance**. The phrase "unless otherwise specified" clearly modifies the **charter** phrase "serve at the pleasure of". Otherwise, the plaintiff's construction applying it to the appointments generally would permit the town meeting to change by **ordinance** the **charter** requirement that only "qualified" persons be appointed and would authorize **ordinances** to eliminate positions such as "Health Director" or

"Building Official" or "Assessor", that the General Statutes mandate in all towns. The plaintiffs in arguing that there is no mandate of state law requiring a town planner for each **municipality** appear to be contending that since no general statute mandates the **municipal** office of the town planner and **Charter** § 9-2 leaves the description of powers and duties to local **ordinance**, adoption of an **ordinance** perpetually vacating the office is permissible. Plaintiff's interpretation misses the point that § 9-2 of the **Charter** mandates the office.

***5** Section 9-1 of the Oxford Town **Charter** provides in pertinent part:

> The Board of Selectmen shall have the power to hire, establish the working conditions of, promote, discipline, suspend and dismiss all persons employed by the Town, either full or part time, except as otherwise specified in this **Charter**.

Oxford Town **Charter** § 9-1.

General Statutes § 7-188 is the exclusive means available to a **municipality** to amend its **charter**. *Sloane v. Waterbury,* 150 Conn. 24, 30-31, 183 A.2d 839 (1962). An **ordinance** cannot modify the provisions of a city **charter** and any **ordinance** purporting to do so is invalid. *Rousseau v. Montensen,* 13 Conn.Sup. 254, 256, 536 A.2d 969 (Super.Ct., 1945). This is so because a **charter** of a **municipality** is akin to the constitution of a state. Just as a state statute cannot amend provisions of a state constitution so an **ordinance** of a **municipality** cannot amend the **charter** of that town. In other words, the **charter** like the constitution is a fundamental grant of authority of greater weight and dignity than the lesser **ordinance** or regulation adopted under its authority.

Section 7-188 of the statute provides in pertinent part:

> (a) Any **municipality**, in addition to such powers as it has under the provisions of the general statutes or any special act, shall have the power to (1) adopt and amend a **charter** which shall be its organic law and shall supersede any existing **charter**, including amendments thereto, and all special acts inconsistent with such **charter** or amendments, which **charter** or amended **charter** may include the provisions of any special act concerning the **municipality** but which shall not otherwise be inconsistent with the constitution or general statutes, provided nothing in this section shall be construed to provide that any special act relative to any **municipality** is repealed solely because such special act is not included in the **charter** or amended **charter**; (2) amend a home rule **ordinance** which has been adopted prior to October 1, 1982, which revised home rule **ordinance** shall not be inconsistent with the constitution or the general statutes; and (3) repeal any such home rule **ordinance** by adopting a **charter**, provided by the rights or benefits granted to any individual under any **municipal** retirement or pension system shall not be diminished or eliminated.
>
> (b) Any action pursuant to subsection (a) of this section shall be initiated by a resolution adopted by a two-thirds vote of the **entire** membership of the appointing authority of such **municipality**, or by petition filed with the clerk of such **municipality** for submission to the appointing authority and signed by not less than ten per cent of the electors of such **municipality**, as determined by its last-completed registry list; provided, in the case of a consolidated town and city having a town clerk and a city clerk, such petition shall be filed with the city clerk.

General Statutes § 7-188(a) and (b).

Oxford Town Charter § 10-6 incorporates the requirements of General Statutes § 7-188(b) and provides the manner by which a proposed amendment is to be considered as follows:

> ***6** (a) The amendment of this Charter may be initiated either by a two- thirds (2/3) vote of the entire Board of Selectmen or by a petition signed by no less than ten (10%) per cent of the electors of the Town as determined by the last completed registry of the Town, and this initiation in either instance shall result in the appointment by the Board of Selectmen of a Charter Revision Commission, which shall consider any proposed amendments to the then existing Charter, present these at one or more public hearings, and submit its report for review to the Board of Selectmen, as prescribed in Charter 99 of the General Statutes, as amended. Such amendments shall not become effective until they have been approved by a majority of the Town electors voting thereon at a regular election, or by a majority equal to at least 15 (15%) per cent of the Town, as determined by the last completed registry of the Town, at a special election.

> (b) To the extent that the provisions of Chapter 99 of the General Statutes, as amended, as may now or hereafter apply to the manner of amending this **Charter**, shall no longer authorize any portion of the above procedure, then the applicable provision in this **Charter** shall be used **instead**.

Oxford Town **Charter** § 10-6.

The purpose of the special town meeting is to enforce the town **ordinance** thereby ousting the Town Planner from his position and keeping the office vacant. This purpose is contrary to the express language of **Charter** §§ 9-1 and 9-2(h) which creates and mandates the position and gives the selectmen the power to hire, suspend, and dismiss employees. In the court's opinion, the Home Rule Act which authorized adoption of the **charter** provision which mandates a town planner position, does not contemplate the permissible elimination of such a charter mandate by adoption of an ordinance the effect of which would be to keep the position the charter mandates forever vacant. The plaintiffs have not alleged that they have met the requirements for amending the charter. The proposed purpose for the special town meeting is improper insofar as it seeks to derogate through the ordinance making legislative power of the town meeting what has already been mandated by charter. The court will not issue the writ of mandamus because the plaintiffs have failed in their burden to establish a clear legal right to the relief sought.

1992 WL 361717 (Conn.Super.), 8 Conn. L. Rptr. 44

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Not Reported in A.2d
(Cite as: 1995 WL 410806 (Conn.Super.))

Superior Court of Connecticut, Judicial District of Hartford/New Britain at New Britain.

BRISTOL RESOURCE RECOVERY FACILITY OPERATING COMMITTEE and Ogden Martin Systems of Bristol, Inc.
v.
CITY OF BRISTOL.

No. CV 92 0453461.

June 30, 1995.

MEMORANDUM OF DECISION
MOTION TO STRIKE
[113]

PARKER

***1** This action involves a "trash-to-energy" plant located in Bristol, Connecticut. The plant has two furnaces for burning solid waste and one stack for releasing the furnace generated gases. Revised Complaint, ¶s 19-25. [109] [Paragraph references, e.g., ¶ 19, are to paragraphs of the Revised Complaint, dated March 16, 1993. {109}]

The plaintiff, Ogden Martin Systems of Bristol, Inc. [Ogden Martin], a Bristol taxpayer, owns and operates the plant. ¶s 2-3.

The idea for the plant was conceived in the early or mid-1980's. In 1985, eight municipalities agreed with Ogden Martin to have Ogden Martin build and operate a regional waste-to-energy resource recovery plant in Bristol, Connecticut. The plant would provide the municipalities with solid waste disposal services. Electric power would also be generated. ¶ 6-8.

The eight municipalities [FN1] created an operating committee to represent them in matters relating to the plant, etc. The project is called the "Bristol Resource Recovery Project." ¶ 7. Six more municipalities [FN2] have joined the project. There are now 14 municipalities participating. ¶ 1, 18. The plaintiff, Bristol Resource Recovery Facility Operating Committee [BRRFOC] is the operating committee created pursuant to the agreement of the participating municipalities. ¶s 1, 8. The agreement between and among the 14 municipalities authorizing the plaintiff, BRRFOC, is authorized by statute. See C.G.S. §§ 7-339a and 22a-221. ¶ 1, 8.

FN1. Berlin, Bristol, Burlington, New Britain, Plainville, Plymouth, Southington, and Washington. ¶ 6.

FN2. Branford, Hartland, Prospect, Seymour, Warren, and Wolcott, ¶s 9-17.

In May 1988, the plant began commercial operation. ¶ 24.

In 1991, an expansion of the plant was contemplated. Proposals for the expansion were submitted to Stamford, Waterbury, and the Housatonic Resource Recovery Authority to induce them to participate in the construction and operation of the expanded plant. ¶ 26-27.

Plaintiffs claim that a plant expansion will be beneficial to all the participating municipalities. The solid waste disposal costs of the participating municipalities will be reduced. Bristol will benefit twofold. Its solid waste disposal costs will be reduced. Bristol will receive additional revenue because it is paid an amount based on the tonnage of solid waste accepted at the plant. Ogden Martin will benefit from the economies of scale and will receive more revenue due to increased tonnage accepted and electricity generated. ¶ 28-30.

Bristol has a Home Rule Charter. Section 50 of that Charter provides for an initiative procedure. ¶ 32. It provides:

"Sec. 50. Initiative and Removal

"(a) Initiative. The electors of the Town and City of Bristol shall have the power to propose ordinances, resolutions and any other proper

questions to the City Council. Special meetings of the electors for the purpose of voting on the aforesaid may be called at any time by the mayor or by the City Council, and shall be called whenever electors to the number of 15 percent of the electors who were entitled to vote at the last general city election shall petition that such meeting be called. The signatures to such a petition need not all be appended to one paper, but each signer shall add to his signature a statement of his place of residence, giving the street and number, if any. One of the signers of the petition shall make oath before an officer competent to administer oaths that each signature appended to such paper is the genuine signature of the person whose name it purports to be. Within five days from the filing of such petition with the town clerk, said town clerk shall ascertain if such petition is signed by the regular number of qualified electors, and he shall attach to such petition a certificate showing the result of such examination. If, by said clerk's certificate, the petition is found to be insufficient, it may be amended within ten days from the date of such certificate. The clerk shall make like examination of the amended petition, and, if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same effect. If the petition shall be found to be sufficient, the clerk shall, without delay, submit the same to the City Council. The petition for each elector's meeting shall state specifically the ordinance, resolution and any other proper question it is desired to have submitted to vote at such meeting. Upon receipt of such petition, the City Council shall either (a) pass such matter without alteration, within 20 days after attachment of the clerk's certificate to the accompanying petition, in which case the petition shall become of no effect, or (b) if the petition shall not have been withdrawn in a written statement signed by a majority of the signers of the original petition, call a special meeting of the electors within 30 days unless a general municipal election is to be held within 90 days thereafter; and at such special or general meeting, the matter shall be submitted to a vote of the electors of said city. All votes at the meeting of the electors shall be taken by the check list at the polling places in the several voting districts. The registrars of voters shall have the power to appoint such election officers as are necessary. The question of the passage of any such matter shall be designated on the voting machine, or on the ballot, if required, in the following words 'for the ordinance, resolution or question' as the case may be, (stating the nature of the proposed matter) and 'against the ordinance, resolution or question' as the case may be. At the close of the election, the votes registered or ballots cast shall be counted immediately and the result in each voting district shall be declared by the moderator. The moderator for the first voting district shall declare the general result on this and all other elections and he shall certify the results to the town clerk forthwith. The registrars shall, if requested, appoint one challenger from each side of the matter to be voted upon. If a majority of the qualified electors voting upon any proposed matter shall vote in favor thereof, and their number is at least 20 per cent of the electors entitled to vote on the matter, such matter shall thereupon become a valid ordinance[,] resolution or action as the case may be, of the City and shall be binding thereon and any matter proposed by petition and which shall be adopted by the vote of the people as enumerated above, shall be repealed or amended except by vote of the people." Charter, § 50.

***2** Anticipating a plant expansion, some Bristol electors petitioned to have the question stated below voted on at an election. ¶ 31. The petitions stated:

"Whereas it is becoming increasingly important to the health and well-being of all people that the quality of life sustaining AIR, EARTH and WATER be carefully protected and preserved.

"Therefore, we the undersigned electors of the City of Bristol, Connecticut hereby present this petition under the provisions of section 9-369 through 9-371 inclusive of the General Statutes of the State of Connecticut and pursuant to Section 50 of the Charter of the City of Bristol, demand the following question be placed on the ballot for binding resolution by Bristol electors at the November 5, 1991 Election as defined in section 9-1 of the Connecticut General Statutes:

"Shall the City of Bristol permit a third burner and a second smoke stack to be installed at any trash to energy plant(s) within Bristol?"

¶ 31, Exhibit A to Revised Complaint.

Sufficient petition signatures were obtained. The City Council ordered the question be placed on the ballot for the November 5, 1991 general election.

CT ST § 7-157
C.G.S.A. § 7-157

C

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 7. MUNICIPALITIES
CHAPTER 98. MUNICIPAL POWERS

Current through Gen. St., Rev. to 1-1-03,
including the January 6, 2003 Special Session

§ 7-157. **Publication**. Referendum. **Publication** of summary

(a) **Ordinances** may be **enacted** by the legislative body of any town, city, borough or fire district. Any such **ordinance** so **enacted**, except when **enacted** at a town or district meeting, shall become effective thirty days after **publication** thereof in some newspaper having a circulation in the **municipality** in which it was **enacted**, provided, upon a petition of not less than fifteen per cent of the electors of such **municipality** filed with the town or borough clerk, as the case may be, within thirty days after the **publication** of such **ordinance**, asking that the same be submitted to the voters of such **municipality** at its next regular or special meeting, it shall be so submitted and in such event shall not become effective unless a majority of the voters voting at such meeting vote in favor thereof. Any **ordinance enacted** at a town or district meeting shall become effective fifteen days after **publication** thereof in some newspaper having a circulation in such town or in such district, as the case may be. Cities and other **municipalities** whose **charters** provide for the manner in which they may **enact ordinances** may **enact ordinances** in such manner.

(b) Whenever any town, city, borough or fire district is **required** to **publish** any **proposed ordinance** or **ordinance** in accordance with subsection (a) of this section, the legislative body of such town, city, borough or fire district may provide that a summary of such **proposed ordinance** or **ordinance** shall be **published** in lieu of such **proposed ordinance** or **ordinance**, provided that, in any case in which such a summary is **published**, the clerk of such town, city, borough or fire district shall make a copy of such **proposed ordinance** or **ordinance** available for public inspection and shall, upon request, mail a copy of such or **proposed ordinance** or **ordinance** to any person requesting a copy at no charge to such person. Any summary so **published** shall bear a disclaimer as follows: "This document is prepared for the benefit of the public, solely for purposes of information, summarization and explanation. This document does not represent the intent of the legislative body of (here insert the name of the town, city, borough or fire district) for any purpose." The provisions of this subsection shall not apply to any proposed ordinance or ordinance which makes or requires an appropriation.

(c) No **ordinance enacted** prior to June 1, 1992, shall be invalid for failure of a **municipality** to comply with the provisions of this section and each **municipality** shall be held harmless from any liability or causes of action which might arise from such failure. If a person affected by an **ordinance** shows prejudice because of the failure of the **municipality** to comply with such provision, no penalties may be imposed against such person pursuant to the **ordinance**. Any **ordinance enacted** prior to June 1, 1992, for which the provisions of this section were not complied with shall be deemed to be effective thirty days after such enactment.

CREDIT(S)

1999 Main Volume

NOTES OF DECISIONS

1. Enactment of ordinances

The fundamental rule relating to municipal legislation is that an ordinance must be enacted in manner provided by law, and when mode in which enacting power is to be exercised is prescribed, that mode must be followed. Jack v. Torrant (1950) 71 A.2d 705, 136 Conn. 414.

2. Referendum

Statutes relating to change in city charter do not empower board of aldermen to call a referendum when the question arises by petition, and do not empower the town clerk or the signers of the petition to set the election day. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

Method of initiating by petition election on question of change in city **charter** is not dependent upon approval by the board of aldermen. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

3. Special elections

Where electors petitioned for submission of question relating to change of city **charter** and board of aldermen set date of special election for submission of such question, town clerk would be enjoined from calling such special election. State ex rel. Rourke v. Barbieri (1952) 18 Conn.Supp. 118.

4. Publication

Gen.St.1930, § 391 (now, this section) **requiring publication**, and upon petition granting opportunity for referendum vote, applies only to town's by- laws enumerated in Gen.St.1930, § 390 (see, now, § 7-148). Town of Madison v. Kimberly (1934) 169 A. 909, 118 Conn. 6.

Under Gen.St.1930, § 390 (see, now, § 7-148) giving towns authority to do certain acts by by-laws, reference to "construction of buildings" does not include by-laws governing zoning so that Gen.St.1930, § 391 (now this section) would require that zoning by-law be published and that opportunity be given for referendum vote. Town of Madison v. Kimberly (1934) 169 A. 909, 118 Conn. 6.

City **charter requiring publication** of **ordinances** should be interpreted according to purpose of informing public of laws which govern them. Katz v. Higson (1931) 155 A. 507, 113 Conn. 776.

Under St. Revision 1821, tit. "Towns," § 7, p. 458, providing that every town at a lawful meeting may adopt by-laws for restraining animals from going at large, and providing that such by-laws shall not be in force until published four weeks successively in a newspaper printed in such town or in the town nearest thereto in which a newspaper is printed, or in some other newspaper generally circulated in the town where such by-law is made, "as the town shall direct," a by-law of a town restraining animals from running at large is not valid unless published in a newspaper selected by the town, and a publication in a newspaper pursuant to the direction of the town clerk is insufficient. Higley v. Bunce (1835) 10 Conn. 436.

Where a statute of Connecticut provided that "every town shall have power to make by-laws for restraining horses, cattle, etc., provided that such by-laws shall not be in force till published" in one of three enumerated classes of newspapers, "as the town shall direct.", a by-law was void which was published (in the manner prescribed by the statute, and in one of the classes of newspapers therein mentioned) by order of the town clerk, without the direction of the town as to the newspaper. Higley v. Bunce (1835) 10 Conn. 436.

An adoption by a municipality, at a single meeting, of the state building code with amendments thereto, prepared by others than the State Housing Authority, did not come within the purview of 1947, P.A. No. 37, as to elimination of publication of the Code. 25 Op.Atty.Gen. 229 (March 19, 1948).

C. G. S. A. § 7-157

CT ST § 7-157

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a 150, 173 A2d 461 (stapling ordiance in book insufficient); Ulrich v. oaldale Borough, 53 Pa Super 246.

Statute or municipal act curing ordiance or resolution void for want of ecording, § 16.91 et seq.

[9] **New York.** Northern Operating Corp. v. Town of Ramapo, 31 AD2d 22, 297 NYS2d 777.

Wisconsin. Schwartz v. Oshkosh, 5 Wis 490, 13 NW 450.

[10] **Illinois.** O'Beirne v. Elgin, 187 Ill App 581.

[11] **Iowa.** Peairs v. Des Moines, 196 owa 1222, 191 NW 136.

[12] **Pennsylvania.** Appeal of Borough of Verona, 108 Pa 83; Marshall v. Commonwealth, 59 Pa 455.

[13] **Wisconsin.** Klais v. Pulford, 36 Wis 587.

atutes to provide that all ordiposited with the clerk or other ent may be merely directory.[2] ce by the clerk, the legal custocie evidence to show that it was been said that an ordinance is vered to the proper officer and e; the deposit with the officer is filing is but evidence.[4] A filing equired.[5] Such a requirement, ctory,[6] a failure to comply not

requiring all ordinances to be for that purpose and to be kept luly enacted, published, and the book containing it was kept the mayor's office.[8]

Michigan. L.A. Thompson Scenic Ry. Co. v. McCabe, 211 Mich 133, 178 NW 662.

Custodian of municipal records, § 14.02.

[2] **United States.** De Lano v. Tulsa, 26 F2d 640.

[3] **Illinois.** Schofield v. Tampico, 98 Ill App 324.

[4] **Illinois.** McGregor v. Lovington, 48 Ill App 202.

New York. Stanley v. Board of Appeals of Village of Pierpont, 168 Misc 797, 5 NYS2d 956.

[5] **New York.** Schacht v. New York, 30 Misc 2d 77, 219 NYS2d 53; People v. Shoen, 142 Misc 788, 256 NYS 390; People v. Averill, 124 Misc 383, 208 NYS 774.

[6] **New York.** Schacht v. New York, 30 Misc 2d 77, 219 NYS2d 53.

[7] **New York.** People v. Merrill, 156 Misc 637, 282 NYS 809 (under particular circumstances).

[8] **Pennsylvania.** Beaumont v. Wilkes-Barre, 142 Pa 198, 21 A 888.

§ 16.76. Publication and notice of pendency.

Publication or notice of pendency of ordinances, unless required by charter or statute, is not necessary to their enactment or validity.[1] However, publication or other notice of municipal legislative action at some stage before it becomes effective often is required.[2] Thus, publication of ordinances after passage, or sufficient notice of passage before they take effect, may be required,[3] or their publication before their passage, or publication or notice of their pendency before they are enacted or of intention to pass them, or of notice of their pendency in some other mode, may be required by charter or statutory provision.[4] Where the charter makes no specific provision for publication the court may look to the general law for that provision.[5] It has been held that compliance with statutory publication requirements will not prevent a municipal resolution from being declared a nullity where stricter local requirements had not been satisfied.[6] If an ordinance has not been adopted at the time of its publication, it is not an ordinance, and any such publication is ineffective,[7] although there is contrary authority.[8] Where an ordinance is published before its final passage and then is materially altered by a substantive amendment, it may be necessary to republish the amended ordinance prior to adoption.[9]

Various state laws as to publication or notice or printing have been construed as not applicable to certain cities[10] or to ordinances.[11] Frequently, provisions requiring publication of ordinances are not applicable to all ordinances.[12] Resolutions and orders may[13] or may not[14] have to be published.

Obviously, a publication requirement operates to avoid hasty or ill-considered action.[15] Although not an insurance against local maladministration, action by ordinance is a reflective process that affords an opportunity for expression of opinion; this manifestly is the rationale of statutory requirements of publication or notice of pendency of ordinances.[16] Other purposes of a publication requirement may be to advise those interested that the matter is up for consideration,[17] or to inform them with reference to any ordinance that has been adopted[18] so that they may regulate their actions and conduct accordingly,[19] e.g., to commence timely proceedings for judicial review.[20]

Substantial compliance with provisions as to publication or notice of ordinances is essential, as a rule, to their enactment and validity,[21] otherwise they may never become effective[22] or become effective only upon their publication.[23] In some jurisdictions a substantial compliance standard for publication has been rejected and a policy of strict compliance with publication requirements adopted.[24]

The publication of an ordinance serves as notice, and when it is made as prescribed by law, no further notice,[25] e.g., to individuals who may be affected,[26] is required.

Where there is publication of an initial meeting relative to final passage of an ordinance as required by statute, but the meeting is postponed, further legal publication of the new meeting date may not be required.[27]

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[1] **Colorado.** Houston v. Kirschwing, 117 Colo 92, 184 P2d 487.

Florida. Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905; Davis v. Melbourne, 126 Fla 282, 170 So 836.

Indiana. Albion Nat. Bank v. Department of Financial Institutions, 171 Ind App 211, 355 NE2d 873, citing this treatise.

Kentucky. Paducah v. Ragsdale, 122 Ky 425, 92 SW 13, 28 Ky L Rep 1057; Miller v. Lexington-Fayette Urban County Government, 557 SW2d 430 (Ky App).

Maryland. Chissell v. Mayor & Council of Baltimore, 193 Md 535, 69 A2d 53.

Massachusetts. James v. Mayor of New Bedford, 319 Mass 74, 64 NE2d 638 (applying city charter).

Mississippi. Corinth v. Sharp, 107 Miss 696, 65 So 888, 64 So 379.

New Hampshire. Marsh v. Town of Hanover, 113 NH 667, 313 A2d 411.

New York. Cherubino v. Meenan, 253 NY 462, 171 NE 708, affg 228 App Div 706, 238 NYS 807; In re New Rochelle, 182 Misc 176, 46 NYS2d 645, citing this treatise.

Oregon. State v. Dalles City, 72 337, 143 P 1127.

Tennessee. Sweetwater Val Memorial Park, Inc. v. Sweetwat 213 Tenn 1, 372 SW2d 168, citing t treatise.

Notice of ordinances, § 15.27.

[2] **United States.** Woods v. Babco 88 DC App 37, 185 F2d 508 (apply city charter of Los Angel California).

Arkansas. City of Fort Smith O.K. Foods, Inc., 293 Ark 379, SW2d 96 (1987).

Georgia. Hamilton v. North G gia Elec. Membership Corp., 201 689, 40 SE2d 750.

Iowa. Stanfield v. Polk County, NW2d 648 (Iowa 1993).

Mississippi. Evans v. Jackson, Miss 14, 30 So 2d 315.

New Jersey. Samuel v. Boroug South Plainfield, 136 NJL 187, 54 717; Squires v. Atlantic County B of Chosen Freeholders, 200 NJ S 496, 491 A2d 823.

New York. 41 Kew Gardens F Associates v. Tyburski, 124 AD2d 507 NYS2d 698 (1986).

Ohio. State v. Waller, 44 Oh Abst 591, 69 NE2d 438.

Pennsylvania. City of Philadel v. Shanahan, 121 Pa Commw 602, A2d 1388 (1988) (newspaper strik excusing compliance with n requirement).

Utah. Naples City v. Mecham, P2d 359 (Utah).

Republication of ordina amended after initial publica § 16.88.

[3] **Alabama.** Pappas v. Alab Power Co., 270 Ala 472, 119 So 2d Rudulph v. Homewood, 245 Ala 18 So 2d 563.

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Ohio. State v. Waller, 44 Ohio L Abst 591, 69 NE2d 438.

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Utah. Naples City v. Mecham, 709 P2d 359 (Utah).

Republication of ordinances amended after initial publication, § 16.88.

[3] **Alabama.** Pappas v. Alabama Power Co., 270 Ala 472, 119 So 2d 899; Rudulph v. Homewood, 245 Ala 648, 18 So 2d 563.

Arkansas. City of Fort Smith v. O.K. Foods, Inc., 293 Ark 379, 738 SW2d 96 (1987).

California. Hellman v. Shoulters, 114 Cal 136, 44 P 915, 45 P 1057; Hollander v. Denton, 69 Cal App 2d 348, 159 P2d 86 (applying San Diego city charter); Sacramento Paving Co. v. Martyr, 1 Cal App xviii, 82 P 1071.

Florida. Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905 (statute requiring posting and publishing); Carlton v. Jones, 117 Fla 622, 158 So 170; Adams v. Isler, 101 Fla 457, 134 So 535.

Georgia. Hamilton v. North Georgia Elec. Membership Corp., 201 Ga 689, 40 SE2d 750.

Illinois. Tisdale v. Minonk, 46 Ill 9; Raker v. Maquon, 9 Ill App 155.

Indiana. State v. Meredith, 247 Ind 273, 215 NE2d 183 (ordinance imposing penalty); Loughbridge v. Huntington, 56 Ind 253.

Iowa. Stanfield v. Polk County, 492 NW2d 648 (Iowa 1993); Des Moines v. Miller, 219 Iowa 632, 259 NW 205; Larkin v. Burlington, C.R.&N.R. Co., 91 Iowa 654, 60 NW 195; Albia v. O'Harra, 64 Iowa 297, 20 NW 444.

Kansas. Pittsburg v. Reynolds, 48 Kan 360, 29 P 757; Leavenworth v. Douglass, 3 Kan App 67, 44 P 1099.

Kentucky. Hazard v. Collins, 304 Ky 379, 200 SW2d 933; Turner v. Kelly, 217 Ky 773, 290 SW 711 (order changing limits); Louisville v. Roberts & Krieger, 105 SW 431, 32 Ky L Rep 182.

Michigan. Morley Bros. v. Carrollton Tp., 305 Mich 285, 9 NW2d 543 (single publication not sufficient); Boehme v. Monroe, 106 Mich 401, 64 NW 204; Thornton v. Sturgis, 38 Mich

639; Van Alstine v. People, 37 Mich 523.

Mississippi. In re Extension of Boundaries of Hazlehurst, 247 Miss 527, 153 So 2d 809; Evans v. Jackson, 201 Miss 14, 30 So 2d 315.

Nebraska. Bailey v. State, 30 Neb 855, 47 NW 208.

New Jersey. Hoboken v. Gear, 27 NJL 265; Bruno v. Borough of Shrewsbury, 2 NJ Super 550, 65 A2d 131 (publication mandatory after passage); Board of Com'rs, of Newark v. Grodecki, 21 NJ Misc 241, 33 A2d 115 (applying Home Rule Act); Jackson v. Gloucester City, 6 NJ Misc 451, 141 A 743.

New York. De Loge v. New York Cent. & H.R. Co., 157 NY 688, 51 NE 1090, affd 92 Hun 149, 36 NYS 697, 71 NY St 720; Watkins v. Hillerman, 73 Hun 317, 26 NYS 252; Glens Falls v. Standard Oil Co., 127 Misc 104, 215 NYS 354.

Oklahoma. Moore v. Oklahoma City, 161 Okla 205, 17 P2d 953; Staley v. Park, 125 Okla 233, 257 P 311.

Pennsylvania. Fierst v. Wm. Penn Memorial Corp., 311 Pa 262, 166 A 761 (zoning ordinance); City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement); In re Borough of Castle Shannon & Mount Lebanon Tp., Allegheny County, 160 Pa Super 475, 51 A2d 526.

Texas. Texas Traction Co. v. Scoggins, 175 SW 1128 (Tex Civ App).

Wisconsin. Lake Geneva v. Smuda, 75 Wis 2d 532, 249 NW2d 783 (by statute); Janesville v. Dewey, 3 Wis 245.

Time after publication when ordinance takes effect, § 15.39.

Municipal action as to which publication required, § 16.77.

Proof of publication, ch 22.

[4] **Colorado.** Houston v. Kirschwing, 117 Colo 92, 184 P2d 487.

Illinois. Harvey v. Aurora, 186 Ill 283, 57 NE 857.

Iowa. Stanfield v. Polk County, 492 NW2d 648 (Iowa 1993).

Kentucky. Hazard v. Collins, 304 Ky 379, 200 SW2d 933.

Missouri. Heman v. Allen, 156 Mo 534, 57 SW 559.

New Jersey. Byrnes v. Riverton, 64 NJL 210, 44 A 857; Cape May v. Cape May, D.B.&S.P.R. Co., 60 NJL 224, 37 A 892; Waldwick Coal & Lumber Co. v. Waldwick, 6 NJ Misc 501, 141 A 789.

Ohio. Charls v. Cleveland, 72 NE2d 770 (Ohio App); State v. Woodmansee, 47 Ohio L Abst 513, 72 NE2d 789.

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Texas. Bolton v. Sparks, 362 SW2d 946 (Tex) (notice and hearing necessary to validity of ordinances, whether amendatory, temporary or emergency).

Washington. Wood v. Seattle, 23 Wash 1, 62 P 135.

[5] **Florida.** Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905.

Illinois. Indian Valley Golf Club, Inc. v. State Liquor Control Commission, 12 Ill App 3d 141, 297 NE2d 763.

[6] **Indiana.** Southport Board of Zoning Appeals v. Southside Ready Mix Concrete, Inc., 242 Ind 133, 176 NE2d 112.

[7] **Maryland.** Reed v. Preside Commissioners of Town of North 226 Md 229, 172 A2d 536.

[8] **Tennessee.** Statute requ publication of ordinance prior t effective date permits publicati proposed ordinance. Biddle v. To Farragut, 646 SW2d 925 (Tenn A

[9] **New Jersey.** Gilman v. Nev 73 NJ Super 562, 180 A2d 365.

[10] **Alabama.** Pitts v. District of lika, 79 Ala 527.

Massachusetts. Commonweal McCafferty, 145 Mass 384, 14 NE

[11] **Kansas.** Pittsburg v. Reyn 48 Kan 360, 29 P 757.

[12] See § 16.77.

[13] **Colorado.** Central v. Sea Colo 588.

Minnesota. State v. Darrow Minn 419, 67 NW 1012.

Oklahoma. Staley v. Park, Okla 233, 257 P 311.

[14] **California.** Napa v. Easterb Cal 222, 18 P 252.

Florida. Certain Lots Upon W Taxes Are Delinquent v. Town of M ticello, 159 Fla 134, 31 So 2d 905.

Minnesota. Fairchild v. St. Pau Minn 540, 49 NW 325.

New York. Elmendorf v. New Y 25 Wend 693.

Difference between ordinance resolution, § 15.02.

[15] **New Hampshire.** Dover H ing Board v. Colbath, 106 NH 481, A2d 923.

New Jersey. Samuel v. Boroug South Plainfield, 136 NJL 187, 54 717.

New Mexico. State v. Vigil, 74 766, 398 P2d 987.

[16] **New Jersey.** Samuel v. Boro of South Plainfield, 136 NJL 187, A2d 717.

Municipal action as to which publi-
tion required, § 16.77.
Proof of publication, ch 22.

[4] **Colorado.** Houston v. Kirschw-
g, 117 Colo 92, 184 P2d 487.

Illinois. Harvey v. Aurora, 186 Ill
3, 57 NE 857.

Iowa. Stanfield v. Polk County, 492
W2d 648 (Iowa 1993).

Kentucky. Hazard v. Collins, 304
y 379, 200 SW2d 933.

Missouri. Heman v. Allen, 156 Mo
4, 57 SW 559.

New Jersey. Byrnes v. Riverton, 64
JL 210, 44 A 857; Cape May v. Cape
lay, D.B.&S.P.R. Co., 60 NJL 224, 37
892; Waldwick Coal & Lumber Co. v.
Valdwick, 6 NJ Misc 501, 141 A 789.

Ohio. Charls v. Cleveland, 72 NE2d
70 (Ohio App); State v. Woodmansee,
7 Ohio L Abst 513, 72 NE2d 789.

Pennsylvania. City of Philadelphia
. Shanahan, 121 Pa Commw 602, 550
2d 1388 (1988) (newspaper strike
ot excusing compliance with notice
equirement).

Texas. Bolton v. Sparks, 362 SW2d
46 (Tex) (notice and hearing neces-
ary to validity of ordinances, whether
mendatory, temporary or
mergency).

Washington. Wood v. Seattle, 23
Vash 1, 62 P 135.

[5] **Florida.** Certain Lots Upon
Which Taxes Are Delinquent v. Town
of Monticello, 159 Fla 134, 31 So 2d
905.

Illinois. Indian Valley Golf Club,
Inc. v. State Liquor Control Commis-
sion, 12 Ill App 3d 141, 297 NE2d 763.

[6] **Indiana.** Southport Board of Zon-
ing Appeals v. Southside Ready Mix
Concrete, Inc., 242 Ind 133, 176 NE2d
112.

[7] **Maryland.** Reed v. President &
Commissioners of Town of North East,
226 Md 229, 172 A2d 536.

[8] **Tennessee.** Statute requiring
publication of ordinance prior to its
effective date permits publication of
proposed ordinance. Biddle v. Town of
Farragut, 646 SW2d 925 (Tenn App).

[9] **New Jersey.** Gilman v. Newark,
73 NJ Super 562, 180 A2d 365.

[10] **Alabama.** Pitts v. District of Ope-
lika, 79 Ala 527.

Massachusetts. Commonwealth v.
McCafferty, 145 Mass 384, 14 NE 451.

[11] **Kansas.** Pittsburg v. Reynolds,
48 Kan 360, 29 P 757.

[12] See § 16.77.

[13] **Colorado.** Central v. Sears, 2
Colo 588.

Minnesota. State v. Darrow, 65
Minn 419, 67 NW 1012.

Oklahoma. Staley v. Park, 125
Okla 233, 257 P 311.

[14] **California.** Napa v. Easterby, 76
Cal 222, 18 P 252.

Florida. Certain Lots Upon Which
Taxes Are Delinquent v. Town of Mon-
ticello, 159 Fla 134, 31 So 2d 905.

Minnesota. Fairchild v. St. Paul, 46
Minn 540, 49 NW 325.

New York. Elmendorf v. New York,
25 Wend 693.

Difference between ordinance and
resolution, § 15.02.

[15] **New Hampshire.** Dover Hous-
ing Board v. Colbath, 106 NH 481, 213
A2d 923.

New Jersey. Samuel v. Borough of
South Plainfield, 136 NJL 187, 54 A2d
717.

New Mexico. State v. Vigil, 74 NM
766, 398 P2d 987.

[16] **New Jersey.** Samuel v. Borough
of South Plainfield, 136 NJL 187, 54
A2d 717.

[17] **New Jersey.** Reisdorf v. Mayor &
Council of Borough of Mountainside,
114 NJ Super 562, 277 A2d 554 (oppor-
tunity for persons interested to be
heard).

New York. 41 Kew Gardens Road
Associates v. Tyburski, 124 AD2d 553,
507 NYS2d 698 (1986).

Wisconsin. Town of Blooming
Grove v. Madison, 253 Wis 215, 33
NW2d 312.

[18] **Indiana.** Southport Board of Zon-
ing Appeals v. Southside Ready Mix
Concrete, Inc., 242 Ind 133, 176 NE2d
112.

New Hampshire. Dover Housing
Board v. Colbath, 106 NH 481, 213
A2d 923.

[19] **Ohio.** State v. Waller, 44 Ohio L
Abst 591, 69 NE2d 438.

[20] **New Jersey.** Bruno v. Borough of
Shrewsbury, 2 NJ Super 550, 65 A2d
131.

[21] **Arkansas.** City of Fort Smith v.
O.K. Foods, Inc., 293 Ark 379, 738
SW2d 96 (1987); McClellan v. Stuckey,
196 Ark 816, 120 SW2d 155.

Colorado. Wolfe v. Abbott, 54 Colo
531, 131 P 386.

Florida. Davis v. Melbourne, 126
Fla 282, 170 So 836.

Illinois. People v. Read, 256 Ill 408,
100 NE 230.

Iowa. Stanfield v. Polk County, 492
NW2d 648 (Iowa 1993) (substantial
not strict compliance is the standard).

Massachusetts. West Springfield
v. Mayo, 265 Mass 41, 163 NE 653
(zoning ordinance and map).

Michigan. Morley Bros. v. Carroll-
ton Tp., 305 Mich 285, 9 NW2d 543.

Missouri. State v. St. Louis, 319 Mo
497, 5 SW2d 1080.

New York. Town of Almond v. Pen-
fold, 58 Misc 2d 780, 296 NYS2d 619;

Neils v. Yonkers, 38 Misc 2d 691, 237 NYS2d 245 (notice held sufficient).

Oklahoma. Berryhill v. Sapulpa, 97 Okla 65, 222 P 555.

Pennsylvania. Commonwealth v. Kelly, 250 Pa 18, 95 A 322; Carpenter v. Yeadon Borough, 208 Pa 396, 57 A 837; City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

[22] **Iowa.** Stanfield v. Polk County, 492 NW2d 648 (Iowa 1993).

Minnesota. Union Public Service Co. v. Village of Minneota, 212 Minn 92, 2 NW2d 555.

New York. Town of Clarendon v. Jary, 41 Misc 2d 662, 246 NYS2d 471.

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Texas. Wichita Falls v. L.J. & Frances Streetman, 607 SW2d 644 (Tex Civ App).

[23] **Mississippi.** Carthage v. Walters, 375 So 2d 228 (Miss).

[24] **Michigan.** People v. Poyma, 91 Mich App 238, 283 NW2d 707.

[25] **Illinois.** Village of Fox River Grove v. Aluminum Coil Anodizing Corp., 114 Ill App 2d 226, 252 NE2d 225.

New Jersey. Neumann v. Hoboken, 82 NJL 275, 82 A 511.

[26] **New Jersey.** Sands v. Inhabitants of Trenton, 70 NJL 457, 57 A 267; De Marmon v. Borough of Roselle, 8 NJ Misc 904, 152 A 656.

[27] **New Jersey.** La Rue v. East Brunswick Tp., 68 NJ Super 435, 172 A2d 691.

§ 16.77. —Ordinances requiring.

Quite commonly, the requirement of publication or notice of pendency of ordinances[1] is applicable to ordinances of a general and permanent nature, that is, those constituting municipal legislative acts,[2] except those designated as emergency ordinances.[3] Commonly also, the requirement is applicable to police ordinances or those providing penalties and forfeitures.[4] The rule sometimes is that where such an ordinance is of a general nature and highly penal in character, publication is required,[5] whether the measure is ordinary or one of emergency.[6] Publication of pendency of an ordinance is not required, it has been held, where a referendum is mandatory.[7]

Publication has been held to be required as to the following kinds of ordinances: a loan to a city;[8] appropriation ordinances or those involving the expenditure of public money;[9] an ordinance under which streets are laid out and dedicated according to plan;[10] charter amendments;[11] ordinances which directly affect the property rights of the citizen;[12] ordinances adopting a uniform traffic code;[13] and ordinances regulating public utilities.[14]

Sometimes provisions fo
are not applicable to ordinan
Publication often is not requi
administrative or ministerial
not penal in character.[17]

Thus, publication or not
tract ordinance;[18] an annexat
the term of an office;[20] a res
bonds;[21] and an ordinance p
issue.[22]

Courts have differed as
provisions to ordinances pro
for in whole or in part by spe
nary exercise of the power of
granting franchises.[24]

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[1] See § 16.76.

[2] **Alabama.** Newberry v. Andalu
257 Ala 49, 57 So 2d 629, quoting t
treatise; Roach v. Tuscumbia, 255
478, 52 So 2d 141.

Colorado. Wolfe v. Abbott, 54 C
531, 131 P 386.

Florida. McCall v. State, 156
437, 23 So 2d 492; Adams v. Isler,
Fla 457, 134 So 535.

Iowa. State v. Omaha & C.B. Ry
Bridge Co., 113 Iowa 30, 84 NW 98

Mississippi. Evans v. Jackson,
Miss 14, 30 So 2d 315.

Ohio. Dougherty v. Folk, 70 C
App 304, 46 NE2d 307.

Pennsylvania. In re Borough
Castle Shannon & Mount Leba
Tp., Allegheny County, 160 Pa Su
475, 51 A2d 526.

Mandatory or directory characte
provision for publication, § 16.78.

[3] See § 15.40.

[4] **Colorado.** Wolfe v. Abbott,
Colo 531, 131 P 386.

Florida. Morrison v. Farnell,
Fla 385, 171 So 528, quoting this t
tise; Gainesville Gas & Electric Po

exas. Wichita Falls v. L.J. & Fran-Streetman, 607 SW2d 644 (Tex Civ).

Mississippi. Carthage v. Wal-, 375 So 2d 228 (Miss).

Michigan. People v. Poyma, 91 h App 238, 283 NW2d 707.

Illinois. Village of Fox River ve v. Aluminum Coil Anodizing p., 114 Ill App 2d 226, 252 NE2d .

lew Jersey. Neumann v. Hoboken, NJL 275, 82 A 511.

New Jersey. Sands v. Inhabi-ts of Trenton, 70 NJL 457, 57 A ; De Marmon v. Borough of Roselle, IJ Misc 904, 152 A 656.

New Jersey. La Rue v. East nswick Tp., 68 NJ Super 435, 172 d 691.

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nt of publication or notice of le to ordinances of a general e constituting municipal leg-d as emergency ordinances.[3] is applicable to police ordi-s and forfeitures.[4] The rule linance is of a general nature ication is required,[5] whether emergency.[6] Publication of ired, it has been held, where

required as to the following appropriation ordinances or public money;[9] an ordinance and dedicated according to inances which directly affect ordinances adopting a uni-egulating public utilities.[14]

Sometimes provisions for publication or notice of ordinances are not applicable to ordinances or resolutions of certain boards.[15] Publication often is not required as to ordinances that are purely administrative or ministerial in character[16] or as to those that are not penal in character.[17]

Thus, publication or notice may not be required as to a contract ordinance;[18] an annexation ordinance;[19] an ordinance fixing the term of an office;[20] a resolution authorizing the issuance of bonds;[21] and an ordinance providing for an election on a bond issue.[22]

Courts have differed as to the applicability of publication provisions to ordinances providing for improvements to be paid for in whole or in part by special assessments or by the extraordinary exercise of the power of special taxation;[23] and to ordinances granting franchises.[24]

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[1] See § 16.76.

[2] **Alabama.** Newberry v. Andalusia, 257 Ala 49, 57 So 2d 629, quoting this treatise; Roach v. Tuscumbia, 255 Ala 478, 52 So 2d 141.

Colorado. Wolfe v. Abbott, 54 Colo 531, 131 P 386.

Florida. McCall v. State, 156 Fla 437, 23 So 2d 492; Adams v. Isler, 101 Fla 457, 134 So 535.

Iowa. State v. Omaha & C.B. Ry. & Bridge Co., 113 Iowa 30, 84 NW 983.

Mississippi. Evans v. Jackson, 201 Miss 14, 30 So 2d 315.

Ohio. Dougherty v. Folk, 70 Ohio App 304, 46 NE2d 307.

Pennsylvania. In re Borough of Castle Shannon & Mount Lebanon Tp., Allegheny County, 160 Pa Super 475, 51 A2d 526.

Mandatory or directory character of provision for publication, § 16.78.

[3] See § 15.40.

[4] **Colorado.** Wolfe v. Abbott, 54 Colo 531, 131 P 386.

Florida. Morrison v. Farnell, 126 Fla 385, 171 So 528, quoting this treatise; Gainesville Gas & Electric Power Co. v. Gainesville, 63 Fla 425, 58 So 785.

Indiana. State v. Meredith, 247 Ind 273, 215 NE2d 183 (town parking ordinance); State v. Noblesville, 157 Ind 31, 60 NE 704.

Louisiana. Winnfield v. Grigsby, 126 La 929, 53 So 53.

Nebraska. Union Pac. R. Co. v. McNally, 54 Neb 112, 74 NW 390; Union Pac. R. Co. v. Montgomery, 49 Neb 429, 68 NW 619.

New Jersey. Stuhr v. Hoboken, 47 NJL 147.

New York. Tilton v. Utica, 60 NYS2d 249 (Misc) (motor vehicle ordinance).

Texas. B&B Vending Co. v. El Paso, 408 SW2d 545 (Tex Civ App) (ordinance taxing billiard tables).

Utah. Salina City v. Lewis, 52 Utah 7, 172 P 286.

Wisconsin. Oak Grove v. Juneau, 66 Wis 534, 29 NW 644.

[5] **Florida.** Adams v. Isler, 101 Fla 457, 134 So 535.

[6] **Florida.** Adams v. Isler, 101 Fla 457, 134 So 535.

Ohio. State v. Campbell, 66 Ohio L Abst 300, 113 NE2d 601.

[7] **New York.** O'Flynn v. Village of East Rochester, 24 NYS2d 437.

[8] **United States.** National Bank of Commerce v. Grenada, 44 F 262, 48 F 278, 54 F 100.

[9] **Colorado.** Dumars v. Denver, 16 Colo App 375, 65 P 580.

Illinois. People v. Read, 256 Ill 408, 100 NE 230; Ricketts v. Hyde Park, 85 Ill 110.

Maine. State v. Bass, 97 Me 484, 54 A 1113.

New Jersey. Samuel v. Borough of South Plainfield, 136 NJL 187, 54 A2d 717; Barr v. New Brunswick, 58 NJL 255, 37 A 477.

New York. Tonawanda v. Price, 171 NY 415, 64 NE 191.

Appropriation ordinances, ch 39.

[10] **Alabama.** Roach v. Tuscumbia, 255 Ala 478, 52 So 2d 141.

[11] **New York.** Neils v. Yonkers, 38 Misc 2d 691, 237 NYS2d 245.

[12] **United States.** Woods v. Babcock, 88 DC App 37, 185 F2d 508 (rent control).

Ohio. Bruscino Development, Inc. v. Cummings, 118 Ohio App 199, 193 NE2d 736 (ordinances relating to plats); Messinger v. Cincinnati, 36 Ohio App 337, 173 NE 260 (vacation of street).

[13] **Michigan.** People v. Poyma, 91 Mich App 238, 283 NW2d 707.

[14] **Arkansas.** City of Fort Smith v. O.K. Foods, Inc., 293 Ark 379, 738 SW2d 96 (1987) (sewer user fee).

New York. Tilton v. Utica, 60 NYS2d 249 (Misc).

Virginia. Commonwealth v. Richmond & R. Ry. Co., 115 Va 756, 80 SE 796.

[15] **New Jersey.** Croker v. Board of Excise Com'rs of Camden, 73 NJL 460, 63 A 901.

New York. Yonkers Board of Health v. Copcutt, 140 NY 12, 35 NE 443 (board of health ordinance declaring nuisance).

[16] **Alabama.** Newberry v. Andalusia, 257 Ala 49, 57 So 2d 629.

Pennsylvania. Seitzinger v. Tamaqua, 187 Pa 539, 41 A 454.

[17] **Illinois.** Miller v. Chicago Transit Authority, 339 Ill App 398, 90 NE2d 262 (ordinance increasing transit fares); De Scheppers v. Chicago, Rock Island & P. Ry. Co., 179 Ill App 298.

Indiana. State v. Noblesville, 157 Ind 31, 60 NE 704 (removal of police officer).

Pennsylvania. Gilfillan v. Haven, 161 Pa Super 114, 53 A2d 901.

[18] **Ohio.** Dougherty v. Folk, 70 Ohio App 304, 46 NE2d 307.

Pennsylvania. Seitzinger v. Tamaqua, 187 Pa 539, 41 A 454.

[19] **Indiana.** Bradford v. Columbus, 118 Ind App 408, 78 NE2d 457.

Kentucky. Donovan v. Louisville, 299 SW2d 636 (Ky), citing this treatise.

Pennsylvania. In re Borough of Castle Shannon & Mount Lebanon Tp., Allegheny County, 160 Pa Super 475, 51 A2d 526.

[20] **New Jersey.** Schneider v. Atkinson, 86 NJL 392, 92 A 81.

[21] **Alabama.** Newberry v. Andalusia, 257 Ala 49, 57 So 2d 629, quoting this treatise.

[22] **Georgia.** Heilbron v. Cuthbert, 96 Ga 312, 23 SE 206.

Publication of ordinance for bon election not necessary unless require by charter or statute, see ch 40.

[23] **Arkansas.** Carpenter Paragould, 198 Ark 454, 128 SW2 980 (publication required).

Illinois. Geneseo v. Shearer, 326 I 82, 157 NE 28 (not required).

Oklahoma. Bonney v. Smith, 19 Okla 106, 147 P2d 771 (publicatio required).

Texas. West Texas Const. Co. Doss, 59 SW2d 866 (Tex Civ App).

§ 16.78. —Mandatory or d

Provisions respecting pu ordinances and resolutions ar or give notice, or to do so subs renders them void[1] even wher reported the pendency of the n Clearly, of course, where publi site to the ordinance tak mandatory.[3] The reason for pendency of an ordinance as is one of substance and not m

Charter or statutory pr nances or resolutions or notic construed to be merely direct absence of a provision that t until published.[6] Where provi ordinance is regarded as me failure to publish or give nc nance.[7] Thus, tardiness in postpones the effective date effective.[8]

An error in the printing ordinance will not affect its context what word was inte publication of the date of the passage not being a part of th

[5] **New Jersey.** Croker v. Board of cise Com'rs of Camden, 73 NJL 460, A 901.

New York. Yonkers Board of alth v. Copcutt, 140 NY 12, 35 NE 3 (board of health ordinance declar- nuisance).

[16] **Alabama.** Newberry v. Andalu-, 257 Ala 49, 57 So 2d 629.

Pennsylvania. Seitzinger v. Tama-a, 187 Pa 539, 41 A 454.

[17] **Illinois.** Miller v. Chicago ansit Authority, 339 Ill App 398, 90 E2d 262 (ordinance increasing ansit fares); De Scheppers v. Chi-go, Rock Island & P. Ry. Co., 179 Ill pp 298.

Indiana. State v. Noblesville, 157 d 31, 60 NE 704 (removal of police ficer).

Pennsylvania. Gilfillan v. Haven, 31 Pa Super 114, 53 A2d 901.

[18] **Ohio.** Dougherty v. Folk, 70 Ohio pp 304, 46 NE2d 307.

Pennsylvania. Seitzinger v. Tama-ua, 187 Pa 539, 41 A 454.

[19] **Indiana.** Bradford v. Columbus, 18 Ind App 408, 78 NE2d 457.

Kentucky. Donovan v. Louisville, 99 SW2d 636 (Ky), citing this reatise.

Pennsylvania. In re Borough of astle Shannon & Mount Lebanon p., Allegheny County, 160 Pa Super 75, 51 A2d 526.

[20] **New Jersey.** Schneider v. Atkin-on, 86 NJL 392, 92 A 81.

[21] **Alabama.** Newberry v. Andalu-ia, 257 Ala 49, 57 So 2d 629, quoting his treatise.

[22] **Georgia.** Heilbron v. Cuthbert, 96 Ga 312, 23 SE 206.

Publication of ordinance for bond election not necessary unless required by charter or statute, see ch 40.

[23] **Arkansas.** Carpenter v. Paragould, 198 Ark 454, 128 SW2d 980 (publication required).

Illinois. Geneseo v. Shearer, 326 Ill 82, 157 NE 28 (not required).

Oklahoma. Bonney v. Smith, 194 Okla 106, 147 P2d 771 (publication required).

Texas. West Texas Const. Co. v. Doss, 59 SW2d 866 (Tex Civ App).

[24] **Arkansas.** Barnett v. Mays, 153 Ark 1, 239 SW 379 (special franchise ordinance); Batesville v. Ball, 100 Ark 496, 140 SW 712 (special franchise ordinance).

Iowa. State v. Omaha & C.B. Ry. & Bridge Co., 113 Iowa 30, 84 NW 983 (publication required).

Minnesota. Union Public Service Co. v. Village of Minneota, 212 Minn 92, 2 NW2d 555 (publication required).

Publication of improvement ordinance or resolution, ch 37.

§ 16.78. —Mandatory or directory.

Provisions respecting publication and sufficient notice of ordinances and resolutions are mandatory, and failure to publish or give notice, or to do so substantially in the manner prescribed, renders them void[1] even where, it has been declared, newspapers reported the pendency of the measure as an ordinary news story.[2] Clearly, of course, where publication or notice is made a prerequisite to the ordinance taking effect, the requirement is mandatory.[3] The reason for regarding publication or notice of pendency of an ordinance as mandatory is that the requirement is one of substance and not mere form.[4]

Charter or statutory provisions as to publication of ordinances or resolutions or notice of their pendency sometimes are construed to be merely directory.[5] This is usually the case in the absence of a provision that the ordinance shall not take effect until published.[6] Where provision for publication or notice of an ordinance is regarded as merely directory, it follows that mere failure to publish or give notice does not invalidate the ordinance.[7] Thus, tardiness in post-adoption publication merely postpones the effective date from which the ordinance becomes effective.[8]

An error in the printing of a word in the publication of an ordinance will not affect its validity where it is plain from the context what word was intended.[9] Likewise a mistake in the publication of the date of the passage will not affect it, the date of passage not being a part of the ordinance.[10]

[1] **United States.** National Bank of Commerce v. Grenada, 44 F 262, 48 F 278, 54 F 100.

Alabama. Hall v. Phenix City, 21 Ala App 247, 107 So 221.

Arizona. Phoenix v. Lockwood, 76 Ariz 46, 258 P2d 431.

Arkansas. McClellan v. Stuckey, 196 Ark 816, 120 SW2d 155; Crane v. Siloam Springs, 67 Ark 30, 55 SW 955.

California. San Francisco v. Buckman, 111 Cal 25, 43 P 396; Derby v. Modesto, 104 Cal 515, 38 P 900; People v. Cole, 70 Cal 59, 11 P 481.

Colorado. People v. Grant, 48 Colo 156, 111 P 69.

Connecticut. Higley v. Bunce, 10 Conn 436.

Florida. Davis v. Melbourne, 126 Fla 282, 170 So 836; Merrell v. St. Petersburg, 91 Fla 858, 109 So 315.

Georgia. Mid-Georgia Natural Gas Co. v. Covington, 211 Ga 163, 84 SE2d 451.

Illinois. People v. Read, 256 Ill 408, 100 NE 230; Illinois Cent. R. Co. v. People, 161 Ill 244, 43 NE 1107; Indian Valley Golf Club, Inc. v. State Liquor Control Commission, 12 Ill App 3d 141, 297 NE2d 763; Hutchinson v. Mount Vernon, 40 Ill App 19.

Indiana. State v. Meredith, 247 Ind 273, 215 NE2d 183 (town parking ordinance); Bills v. Goshen, 117 Ind 221, 20 NE 115; Bumgartner v. Hasty, 100 Ind 575; Loughridge v. Huntington, 56 Ind 253.

Iowa. Starr v. Burlington, 45 Iowa 87; Dubuque v. Wooton, 28 Iowa 571; Conboy v. Iowa City, 2 Iowa 90.

Louisiana. Soniat v. Krotz Springs, 161 La 1066, 109 So 840.

Maryland. Reed v. President & Commissioners of Town of North East, 226 Md 229, 172 A2d 536; Baltimore v. Johnson, 62 Md 225; Baltimore v. Little Sisters of the Poor, 56 Md 400.

Michigan. Richter v. Harper, 95 Mich 221, 54 NW 768; People v. Keir, 78 Mich 98, 43 NW 1039.

Minnesota. Warsop v. Hastings, 22 Minn 437.

Missouri. Rumsey Mfg. Co. v. Schell, 21 Mo App 175.

Nebraska. Blackburn v. Moores, 86 Neb 761, 126 NW 312; Union Pac. R. Co. v. McNally, 54 Neb 112, 74 NW 390; Union Pac. R. Co. v. Montgomery, 49 Neb 429, 68 NW 619.

New Jersey. Byrnes v. Riverton, 64 NJL 210, 44 A 857; North Baptist Church v. Orange, 54 NJL 111, 22 A 1004; Waldwick Coal & Lumber Co. v. Waldwick, 6 NJ Misc 501, 141 A 789.

New York. Long Beach v. Public Service Commission, 249 NY 480, 164 NE 553; Cybulski v. Eagan, 11 Misc 2d 251, 173 NYS2d 379, citing this treatise; Village of Williston Park v. Israel, 191 Misc 6, 76 NYS2d 605, affd 301 NY 713, 94 NYS2d 921, 95 NE2d 208; People v. Hall, 165 Misc 129, 2 NYS2d 237, quoting this treatise.

North Dakota. O'Hare v. Park River, 1 ND 279, 47 NW 380.

Ohio. State v. Cincinnati, 8 OCD 689, 8 Ohio Cir Ct R 523, affd 52 Ohio St 419, 40 NE 508; Smith v. Columbus, L.&S. Ry. Co., 8 Ohio NP 1.

Oklahoma. Stillwater v. Moor, 33 P 1024 (Okla).

Pennsylvania. Olds v. Erie City, 79 Pa 380; Marshall v. Commonwealth, 59 Pa 455; City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Texas. Wichita Falls v. L.J. & Frances Streetman, 607 SW2d 644 (Tex Ci App).

Vermont. Barre v. Perry Scribner, 82 Vt 301, 73 A 574.

Washington. Wood v. Seattle, 2 Wash 1, 62 P 135.

Wisconsin. Edelbeck v. Town Theresa, 57 Wis 2d 172, 203 NW2 694; Quint v. Merrill, 105 Wis 406, 8 NW 664; Janesville v. Dewey, 3 W 245; Gloudeman v. City of St. Franci 143 Wis 2d 780, 422 NW2d 864 ((App 1988), citing McQuillin Mun Co (3rd Ed).

[2] **Connecticut.** Gendron v. Bo ough of Naugatuck, 21 Conn Supp 7 144 A2d 818, citing this treatise.

[3] **Alabama.** Roach v. Tuscumbi 255 Ala 478, 52 So 2d 141.

Connecticut. Edward Balf Co. Town of East Granby, 152 Conn 31 207 A2d 58.

Kentucky. Kaelin v. Indian Hil 286 SW2d 898 (Ky) (annexation or nance); Newport v. Newport N Bank, 148 Ky 213, 146 SW 377; Mui Administrator v. Bardstown, 120 I 739, 87 SW 1096, 27 Ky L Rep 1150.

Michigan. Richter v. Harper, Mich 221, 54 NW 768; People v. Ke 78 Mich 98, 43 NW 1039; Van Alsti v. People, 37 Mich 523.

Minnesota. Town of Burnsville Bloomington, 268 Minn 84, 128 NW 97.

[4] **Colorado.** Houston v. Kirsch ing, 117 Colo 92, 184 P2d 487.

Connecticut. Akin v. Norwalk, 1 Conn 68, 301 A2d 258.

[5] **Arizona.** Burton v. Tucson, Ariz 320, 356 P2d 413, quoting t treatise.

3 Md 229, 172 A2d 536; Baltimore v. anson, 62 Md 225; Baltimore v. Lit- Sisters of the Poor, 56 Md 400.

Michigan. Richter v. Harper, 95 ich 221, 54 NW 768; People v. Keir, Mich 98, 43 NW 1039.

Minnesota. Warsop v. Hastings, 22 inn 437.

Missouri. Rumsey Mfg. Co. v. hell, 21 Mo App 175.

Nebraska. Blackburn v. Moores, 86 eb 761, 126 NW 312; Union Pac. R. o. v. McNally, 54 Neb 112, 74 NW 90; Union Pac. R. Co. v. Montgomery, 9 Neb 429, 68 NW 619.

New Jersey. Byrnes v. Riverton, 64 NJL 210, 44 A 857; North Baptist Church v. Orange, 54 NJL 111, 22 A 004; Waldwick Coal & Lumber Co. v. Waldwick, 6 NJ Misc 501, 141 A 789.

New York. Long Beach v. Public Service Commission, 249 NY 480, 164 NE 553; Cybulski v. Eagan, 11 Misc 2d 251, 173 NYS2d 379, citing this treatise; Village of Williston Park v. Israel, 191 Misc 6, 76 NYS2d 605, affd 301 NY 713, 94 NYS2d 921, 95 NE2d 208; People v. Hall, 165 Misc 129, 2 NYS2d 237, quoting this treatise.

North Dakota. O'Hare v. Park River, 1 ND 279, 47 NW 380.

Ohio. State v. Cincinnati, 8 OCD 689, 8 Ohio Cir Ct R 523, affd 52 Ohio St 419, 40 NE 508; Smith v. Columbus, L.&S. Ry. Co., 8 Ohio NP 1.

Oklahoma. Stillwater v. Moor, 33 P 1024 (Okla).

Pennsylvania. Olds v. Erie City, 79 Pa 380; Marshall v. Commonwealth, 59 Pa 455; City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Texas. Wichita Falls v. L.J. & Frances Streetman, 607 SW2d 644 (Tex Civ App).

Vermont. Barre v. Perry & Scribner, 82 Vt 301, 73 A 574.

Washington. Wood v. Seattle, 23 Wash 1, 62 P 135.

Wisconsin. Edelbeck v. Town of Theresa, 57 Wis 2d 172, 203 NW2d 694; Quint v. Merrill, 105 Wis 406, 81 NW 664; Janesville v. Dewey, 3 Wis 245; Gloudeman v. City of St. Francis, 143 Wis 2d 780, 422 NW2d 864 (Ct App 1988), citing McQuillin Mun Corp (3rd Ed).

[2] **Connecticut.** Gendron v. Borough of Naugatuck, 21 Conn Supp 78, 144 A2d 818, citing this treatise.

[3] **Alabama.** Roach v. Tuscumbia, 255 Ala 478, 52 So 2d 141.

Connecticut. Edward Balf Co. v. Town of East Granby, 152 Conn 319, 207 A2d 58.

Kentucky. Kaelin v. Indian Hills, 286 SW2d 898 (Ky) (annexation ordinance); Newport v. Newport Nat. Bank, 148 Ky 213, 146 SW 377; Muir's Administrator v. Bardstown, 120 Ky 739, 87 SW 1096, 27 Ky L Rep 1150.

Michigan. Richter v. Harper, 95 Mich 221, 54 NW 768; People v. Keir, 78 Mich 98, 43 NW 1039; Van Alstine v. People, 37 Mich 523.

Minnesota. Town of Burnsville v. Bloomington, 268 Minn 84, 128 NW2d 97.

[4] **Colorado.** Houston v. Kirschwing, 117 Colo 92, 184 P2d 487.

Connecticut. Akin v. Norwalk, 163 Conn 68, 301 A2d 258.

[5] **Arizona.** Burton v. Tucson, 88 Ariz 320, 356 P2d 413, quoting this treatise.

California. Sacramento v. Dillman, 102 Cal 107, 36 P 385; People v. Crittenden, 93 Cal App 2d 871, 209 P2d 161; Hollander v. Denton, 69 Cal App 2d 348, 159 P2d 86, citing this treatise.

Kentucky. Reed v. Louisville, 61 SW 11, 22 Ky L Rep 1636.

Louisiana. Crawford v. Kentwood, 6 La App 572.

Maryland. Baltimore & O.R. Co. v. Wright, 198 Md 555, 84 A2d 851.

Massachusetts. Commonwealth v. McCafferty, 145 Mass 384, 14 NE 451.

Michigan. Vernakes v. South Haven, 186 Mich 595, 152 NW 919.

New Hampshire. Dover Housing Board v. Colbath, 106 NH 481, 213 A2d 923; State v. Wimpfheimer, 69 NH 166, 38 A 786.

New York. In re New Rochelle, 46 NYS2d 645, citing this treatise.

[6] **Arizona.** Burton v. Tucson, 88 Ariz 320, 356 P2d 413, quoting this treatise.

Illinois. Haas v. Hines, 219 Ill App 524.

Nebraska. Johnson v. Finley, 54 Neb 733, 74 NW 1080.

[7] **California.** People v. Crittenden, 93 Cal App 2d 871, 209 P2d 161.

Kentucky. Reed v. Louisville, 61 SW 11, 22 Ky L Rep 1636.

Maryland. Baltimore & O.R. Co. v. Wright, 198 Md 555, 84 A2d 851.

New York. In re New Rochelle, 46 NYS2d 645, citing this treatise.

[8] **Pennsylvania.** Kurtiak v. Commonwealth, 96 Pa Commw 259, 507 A2d 897 (sewer connection).

[9] **Illinois.** Moss v. Oakland, 88 Ill 109.

[10] **California.** Vincent v. Pacific Grove, 102 Cal 405, 36 P 773.

§ 16.79. —Contents.

Generally speaking, where an ordinance must be published the whole ordinance must be published.[1] At least, ordinances of a general and permanent nature must be published in their entirety.[2] It may be insufficient merely to give notice that an ordinance concerning a certain matter has been enacted, leaving persons interested in, or possibly affected by it, to find out for themselves its precise terms.[3] However, it has been said that the omission of the title,[4] or of the clerk's certification,[5] does not invalidate the ordinance, where the body of the ordinance is published. It has also been held that in the absence of a charter requirement that agreements authorized by ordinance shall be published, an ordinance authorizing city officials to enter into an agreement with the state was not invalid because the agreement was not published in full, where the ordinance itself was published as required.[6] Furthermore, some statutes do not require that the notice contain a detailed description of the subject matter, but only a general description.[7] Also, publication by title only of an ordinance has been held sufficient in a particular case.[8] However, a statutory requirement that the publication of a codifying ordinance summarize new matters contained in it was not met by reference to new matters as "miscellaneous provisions."[9]

The name of the presiding officer of the council at the time of the passage of an ordinance is not a necessary part of the publication.[10]

Publication of the ordinance alone is sufficient to give it validity without a publication of the law authorizing it. All persons are charged with notice of a law upon which an ordinance is founded.[11] But an order for publication may be embraced in the ordinance,[12] and it has been ruled that an ordinance as published must show that it was published by the authority of the city.[13]

Where there is a discrepancy between the published notice and the amendments eventually adopted, the true test of its sufficiency is whether the notice as published fairly apprised the average citizen reading it with the general purpose of what is contemplated.[14]

An amendment concerning one subject cannot be predicated on a public notice concerning another.[15]

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[1] **California.** People v. Russell, 74 Cal 578, 16 P 395.

Connecticut. Katz v. Higson, 113 Conn 776, 155 A 507.

Ohio. State v. Waller, 143 Oh 409, 55 NE2d 654, quoting treatise.

Texas. Pasadena v. Texas, SW2d 388 (Tex Civ App) (ca insufficient).

[2] **Colorado.** Wolfe v. Abbott Colo 531, 131 P 386.

Ohio. State v. Waller, 44 Ol Abst 591, 69 NE2d 438.

[3] **Connecticut.** Katz v. Higson Conn 776, 155 A 507.

[4] **Arkansas.** McLeod v. Purnell Ark 596, 262 SW 682.

[5] **Mississippi.** In re Extensi Boundaries of Hazlehurst, 247 527, 153 So 2d 309.

[6] **Colorado.** Dallasta v. De ment of Highways of State of Colo 153 Colo 519, 387 P2d 25.

[7] **New York.** Garlen v. Glens 17 AD2d 777, 234 NYS2d 564; V

§ 16.80. ——Incorpora

It has been ruled that ordinance incorporating b ordinance provision.[1] How establishes grades of street or the like, such document nance; only that which is published.[2] Moreover, the nances referring to map sp public office related to the redistricting ordinances.[4] the ordinance may be such the failure to publish it w ordinance.[5] While there is ence in a published ordi complies with publication the validity on this ground escence by the public in, ordinance.[6]

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Connecticut. Katz v. Higson, 113 Conn 776, 155 A 507.

Ohio. State v. Waller, 143 Ohio St 409, 55 NE2d 654, quoting this treatise.

Texas. Pasadena v. Texas, 428 SW2d 388 (Tex Civ App) (caption insufficient).

[2] **Colorado.** Wolfe v. Abbott, 54 Colo 531, 131 P 386.

Ohio. State v. Waller, 44 Ohio L Abst 591, 69 NE2d 438.

[3] **Connecticut.** Katz v. Higson, 113 Conn 776, 155 A 507.

[4] **Arkansas.** McLeod v. Purnell, 164 Ark 596, 262 SW 682.

[5] **Mississippi.** In re Extension of Boundaries of Hazlehurst, 247 Miss 527, 153 So 2d 309.

[6] **Colorado.** Dallasta v. Department of Highways of State of Colorado, 153 Colo 519, 387 P2d 25.

[7] **New York.** Garlen v. Glens Falls, 17 AD2d 777, 234 NYS2d 564; Village of Larchmont v. Sutton, 30 Misc 2d 245, 217 NYS2d 929; Richardson v. Lockport, 2 Misc 2d 548, 153 NYS2d 946.

[8] **Florida.** State v. Key West, 153 Fla 226, 14 So 2d 707.

[9] **Ohio.** Columbus v. Baldasaro, 70 Ohio L Abst 411, 123 NE2d 290.

Incorporation by reference, § 16.80.

[10] **Indiana.** Bumb v. Evansville, 168 Ind 272, 80 NE 625.

[11] **California.** People v. San Francisco, 27 Cal 655.

[12] **California.** In re Guerrero, 69 Cal 88, 10 P 261.

[13] **Illinois.** Taylor v. Illinois Cent. R. Co., 154 Ill App 222.

[14] **New York.** Albini v. Stanco, 61 Misc 2d 813, 306 NYS2d 731.

[15] **New York.** Village of Larchmont v. Sutton, 30 Misc 2d 245, 217 NYS2d 929.

§ 16.80. ——Incorporation by reference.

It has been ruled that there must be publication in full of an ordinance incorporating by reference some other statutory or ordinance provision.[1] However, where an ordinance is one that establishes grades of streets and refers to maps and books on file, or the like, such documents need not be published with the ordinance; only that which is entered in the ordinance book need be published.[2] Moreover, the same might be said as to other ordinances referring to map specifications and other data on file in a public office related to the letting of contracts,[3] or with respect to redistricting ordinances.[4] Nevertheless, an exhibit referred to in the ordinance may be such an essential part of the ordinance that the failure to publish it with the ordinance will invalidate the ordinance.[5] While there is a conflict of authority whether a reference in a published ordinance to a zoning map sufficiently complies with publication requirements, estoppel to challenge the validity on this ground may arise after several years of acquiescence by the public in, and exercise of authority under, the ordinance.[6]

An omission to publish schedules prepared and submitted by a civil service commission does not make nugatory an ordinance expressly designed to effectuate the civil service law.[7]

[1] **Michigan.** L.A. Thompson Scenic Ry. Co. v. McCabe, 211 Mich 133, 178 NW 662 (reference to "Building Code" insufficient).

Ohio. State v. Waller, 44 Ohio L Abst 591, 69 NE2d 438.

Inclusion by reference in ordinance of provisions of existing statutes or ordinances, § 16.12.

[2] **California.** Napa v. Easterby, 76 Cal 222, 18 P 253.

[3] **Ohio.** State v. Waller, 143 Ohio St 409, 55 NE2d 654.

[4] **New Jersey.** Reisdorf v. Mayor & Council of Borough of Mountainside, 114 NJ Super 562, 277 A2d 554 (election districts).

[5] **Michigan.** Durand v. Love, 254 Mich 538, 236 NW 855.

New York. Village of Williston Park v. Israel, 191 Misc 6, 76 NYS2d 605, affd 276 App Div 968, 94 NYS2d 921, affd 301 NY 713, 95 NE2d 208.

[6] **Iowa.** Creston v. Center Milk Products Co., 243 Iowa 611, 51 NW2d 463, citing this treatise.

Zoning generally, ch 25.

[7] **New Jersey.** McKann v. Town of Irvington, 133 NJL 63, 42 A2d 391, affd 133 NJL 575, 45 A2d 494.

§ 16.81. —Method and manner.

Various modes of publication or notice of pendency of ordinances are provided by governing charter and statutory provisions.[1] Usually, and apart from their publication in compilations, which occurs subsequently, they are required to be published in newspapers.[2] But in some municipalities publication has been authorized by handbills[3] or posting in public places.[4]

Charter and statutory provisions governing the mode and manner of publication must be substantially followed.[5] The time, place, and manner of publication or notice of ordinances must be in substantial compliance with governing provisions.[6] But slight inaccuracies or departures from the prescribed mode and manner of publication or notice of ordinances, where the irregularities are not misleading, do not render the publication or notice or the ordinance void.[7] Of course, where every detail required by the law is followed with exactitude, no question can arise.[8] However, what suffices with respect to the mode of publication or notice depends on the jurisdiction involved, applicable charter or statutory provisions, and facts and circumstances of the particular case.[9] It has been observed that the matter of publishing city ordinances is a matter of purely municipal concern.[10]

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[1] **California.** Vincent v. Pa
Grove, 102 Cal 405, 36 P 773; Ex p
Christensen, 85 Cal 208, 24 P 74
re Guerrero, 69 Cal 88, 10 P 261;
ple v. Supervisors of San Francisc
Cal 655.

Illinois. Byars v. Mount Vernor
Ill 467; Raker v. Maquon, 9 Ill
155.

Iowa. Dubuque v. Wooton, 28 I
571.

Minnesota. State v. Smith
Minn 218.

New Jersey. State v. Hoboker
NJL 131; Chamberlain v. Hoboke
NJL 110.

New York. In re Phillips, 60 N
In re Little, 60 NY 343; In re Ar
son,60 NY 457; In re New York P
School, 47 NY 556; Rathbun v. A
18 Barb 393.

Ohio. Wasem v. Cincinnati, 13
Dec 783, 2 Cin R 84.

Utah. Naples City v. Meacham
P2d 359 (Utah).

Washington. Medina v. Ros
Wash 2d 448, 418 P2d 462.

[2] **Colorado.** Wolfe v. Abbot
Colo 531, 131 P 386.

Florida. Certain Lots Upon W
Taxes Are Delinquent v. Town of
ticello, 159 Fla 134, 31 So 2d 905.

Georgia. Hamilton v. North
gia Elec. Membership Corp., 20
689, 40 SE2d 750.

s prepared and submitted by
make nugatory an ordinance
civil service law.[7]

1 NJ Super 562, 277 A2d 554 (elec-
n districts).
Michigan. Durand v. Love, 254
ch 538, 236 NW 855.
New York. Village of Williston
rk v. Israel, 191 Misc 6, 76 NYS2d
5, affd 276 App Div 968, 94 NYS2d
1, affd 301 NY 713, 95 NE2d 208.
Iowa. Creston v. Center Milk
oducts Co., 243 Iowa 611, 51 NW2d
3, citing this treatise.
Zoning generally, ch 25.
New Jersey. McKann v. Town of
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d 133 NJL 575, 45 A2d 494.

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cumstances of the particular
the matter of publishing city
nicipal concern.[10]

In some instances different modes of publication and notice of ordinances are provided for in the conjunctive.[11] Where various modes of publication or notice of ordinances are provided for in the alternative,[12] following any such method obviously suffices.[13] Thus, if the publication may be by posting or in a newspaper, either mode will be sufficient.[14] In some instances there is provision for posting if there is no newspaper in a city.[15] Publication of an ordinance with council proceedings may suffice.[16]

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[1] **California.** Vincent v. Pacific Grove, 102 Cal 405, 36 P 773; Ex parte Christensen, 85 Cal 208, 24 P 747; In re Guerrero, 69 Cal 88, 10 P 261; People v. Supervisors of San Francisco, 27 Cal 655.

Illinois. Byars v. Mount Vernon, 77 Ill 467; Raker v. Maquon, 9 Ill App 155.

Iowa. Dubuque v. Wooton, 28 Iowa 571.

Minnesota. State v. Smith, 22 Minn 218.

New Jersey. State v. Hoboken, 44 NJL 131; Chamberlain v. Hoboken, 38 NJL 110.

New York. In re Phillips, 60 NY 16; In re Little, 60 NY 343; In re Anderson,60 NY 457; In re New York Public School, 47 NY 556; Rathbun v. Acker, 18 Barb 393.

Ohio. Wasem v. Cincinnati, 13 Ohio Dec 783, 2 Cin R 84.

Utah. Naples City v. Meacham, 709 P2d 359 (Utah).

Washington. Medina v. Rose, 69 Wash 2d 448, 418 P2d 462.

[2] **Colorado.** Wolfe v. Abbott, 54 Colo 531, 131 P 386.

Florida. Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905.

Georgia. Hamilton v. North Georgia Elec. Membership Corp., 201 Ga 689, 40 SE2d 750.

Kentucky. Hazard v. Collins, 304 Ky 379, 200 SW2d 933.

Michigan. Morley Bros. v. Carrollton Tp., 305 Mich 285, 9 NW2d 543.

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

South Carolina. Keckely v. Road Com'rs, 4 McCord 463.

Publication in book form, § 16.86 and ch 22.

[3] **Kentucky.** Hazard v. Collins, 304 Ky 379, 200 SW2d 933.

Ohio. Elmwood Place v. Schanzle, 91 Ohio St 354, 110 NE 922.

[4] **Florida.** Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905.

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

Washington. Medina v. Rose, 422 P2d 822 (Wash) (posting proper where no newspaper); Medina v. Rose, 69 Wash 2d 448, 418 P2d 462 (posting permitted if no newspaper published).

[5] **Colorado.** People v. Grant, 48 Colo 156, 111 P 69.

Kentucky. Kaelin v. Indian Hills, 286 SW2d 898 (Ky).

New Jersey. State v. Hoboken, 38 NJL 110, 113; Hoboken v. Gear, 27 NJL 265.

New York. Glens Falls v. Standard Oil Co., 127 Misc 104, 215 NYS 354; People v. Chapman, 88 Misc 469, 152 NYS 204.

Ohio. State v. Waller, 44 Ohio L Abst 591, 69 NE2d 438.

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

Oklahoma. Hays v. Muskogee, 117 Okla 158, 245 P 842.

Texas. Doss v. West Texas Const. Co., 96 SW2d 1116 (Tex Com App).

[6] **Arkansas.** McClellan v. Stuckey, 196 Ark 816, 120 SW2d 155.

Georgia. Jennings v. Suggs, 180 Ga 141, 178 SE 282.

Michigan. L.A. Thompson Scenic Ry. Co. v. McCabe, 211 Mich 133, 178 NW 662.

New York. People v. Chapman, 88 Misc 469, 152 NYS 204.

Oklahoma. Chickasha Cotton Oil Co. v. Rogers, 160 Okla 164, 16 P2d 112, quoting this treatise.

Pennsylvania. Bothwell v. York, 291 Pa 363, 140 A 130.

Utah. Naples City v. Meacham, 709 P2d 359 (Utah) (posting on two telephone poles and at city offices).

Publication requirements as mandatory or directory, § 16.78.

[7] **California.** Vincent v. Pacific Grove, 102 Cal 405, 36 P 773.

Illinois. Kimble v. Peoria, 140 Ill 157, 29 NE 723; Moss v. Oakland, 88 Ill 109.

New York. Martin v. Flynn, 19 AD2d 653, 241 NYS2d 883, citing this treatise.

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[8] **Pennsylvania.** Bothwell v. York, 291 Pa 363, 140 A 130; In re Annexation Ordinance No. 242 of Borough of Le Moyne, 176 Pa Super 38, 107 A2d 149.

[9] **United States.** Jones v. District of Columbia, 323 F2d 306 (personal notice of hearings not necessary).

New Jersey. Jackson v. Gloucester City, 6 NJ Misc 451, 141 A 743.

Washington. Medina v. Rose, 422 P2d 822 (Wash) (holding posting proper where no newspaper); Medina v. Rose, 69 Wash 2d 448, 418 P2d 462 (holding posting sufficient where no newspaper).

[10] **Oklahoma.** Goodall v. Clinton, 196 Okla 10, 161 P2d 1011; Oklahoma Journal Pub. Co. v. Oklahoma City, 620 P2d 452 (Okla App).

[11] **Florida.** Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905.

[12] **Georgia.** Hamilton v. North Georgia Elec. Membership Corp., 201 Ga 689, 40 SE2d 750 (posting or newspaper publication).

Kentucky. Hazard v. Collins, 304 Ky 379, 200 SW2d 933 (handbills or newspaper publication).

Louisiana. Slidell v. Levy, 128 La 809, 55 So 413 (posting or newspaper publication).

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[13] **Illinois.** Chicago v. McCoy, 136 Ill 344, 26 NE 363; Moss v. Oakland, 88 Ill 109; Standard v. Industry, 55 Ill App 523 (pamphlet or newspaper); Raker v. Maquon, 9 Ill App 155.

Iowa. Des Moines v. Meredith, 2 Iowa 344, 294 NW 574.

Kansas. Simmonds v. Meyn, 1 Kan 419, 7 P2d 506.

Utah. Naples City v. Mecham, 7 P2d 359 (Utah) (alternative to new paper publication).

[14] **Alabama.** Guntersville Wright, 223 Ala 349, 135 So 634.

Kentucky. Gesser v. McLane, 1 Ky 743, 161 SW 1118; Bardwell Tegethoff, 148 Ky 545, 146 SW 1093.

Massachusetts. West Springfie v. Mayo, 265 Mass 41, 163 NE 653.

Michigan. Red Star Motor Drive Ass'n v. Detroit, 244 Mich 480, 2

§ 16.82. ——Newspaper p

The selection of a newspa tion for the municipality,[1] t which publication of an ordin publishing an ordinance in a course, to governing charter a and practice determine whic selection.[4] A provision for desi to be directory merely.[5]

It is not appropriate in th of newspapers for legal public that pertinent statutory provi cations before a newspaper r legal advertising.[6] The questi what constitutes a newspape tion or notice of pendency of a ordinance is published in a pr the publication is valid.[7] Ord newspaper in which ordinan cient.[8] A newspaper published and holidays was deemed to l meaning of a publication re where containing current new local happenings, although of

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[8] **Pennsylvania.** Bothwell v. York, 291 Pa 363, 140 A 130; In re Annexation Ordinance No. 242 of Borough of Le Moyne, 176 Pa Super 38, 107 A2d 149.

[9] **United States.** Jones v. District of Columbia, 323 F2d 306 (personal notice of hearings not necessary).

New Jersey. Jackson v. Gloucester City, 6 NJ Misc 451, 141 A 743.

Washington. Medina v. Rose, 422 P2d 822 (Wash) (holding posting proper where no newspaper); Medina v. Rose, 69 Wash 2d 448, 418 P2d 462 (holding posting sufficient where no newspaper).

[10] **Oklahoma.** Goodall v. Clinton, 196 Okla 10, 161 P2d 1011; Oklahoma Journal Pub. Co. v. Oklahoma City, 620 P2d 452 (Okla App).

[11] **Florida.** Certain Lots Upon Which Taxes Are Delinquent v. Town of Monticello, 159 Fla 134, 31 So 2d 905.

[12] **Georgia.** Hamilton v. North Georgia Elec. Membership Corp., 201 Ga 689, 40 SE2d 750 (posting or newspaper publication).

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Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[13] **Illinois.** Chicago v. McCoy, 136 Ill 344, 26 NE 363; Moss v. Oakland, 88 Ill 109; Standard v. Industry, 55 Ill App 523 (pamphlet or newspaper); Raker v. Maquon, 9 Ill App 155.

Iowa. Des Moines v. Meredith, 229 Iowa 344, 294 NW 574.

Kansas. Simmonds v. Meyn, 134 Kan 419, 7 P2d 506.

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[14] **Alabama.** Guntersville v. Wright, 223 Ala 349, 135 So 634.

Kentucky. Gesser v. McLane, 156 Ky 743, 161 SW 1118; Bardwell v. Tegethoff, 148 Ky 545, 146 SW 1093.

Massachusetts. West Springfield v. Mayo, 265 Mass 41, 163 NE 653.

Michigan. Red Star Motor Drivers' Ass'n v. Detroit, 244 Mich 480, 221 NW 622; Detroit v. Webster, 224 Mich 503, 221 NW 629.

Pennsylvania. Bothwell v. York, 291 Pa 363, 140 A 130.

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

[15] **Illinois.** People v. Irwin, 325 Ill 497, 156 NE 292.

Ohio. Elmwood Place v. Schanzle, 91 Ohio St 354, 110 NE 922.

Utah. Naples City v. Mecham, 709 P2d 359 (Utah) (alternative to newspaper publication).

Washington. Medina v. Rose, 69 Wash 2d 448, 418 P2d 462.

[16] **Illinois.** Law v. People, 87 Ill 385.

§ 16.82. ——Newspaper publication.

The selection of a newspaper as the official organ of publication for the municipality,[1] the designation of a newspaper in which publication of an ordinance is to be made,[2] and the act of publishing an ordinance in a newspaper[3] are matters subject, of course, to governing charter and statutory provisions. Local law and practice determine which person or body shall make the selection.[4] A provision for designating newspapers has been held to be directory merely.[5]

It is not appropriate in this work to go into the qualifications of newspapers for legal publications, but it well may be observed that pertinent statutory provisions govern the minimum qualifications before a newspaper may become eligible for municipal legal advertising.[6] The question has arisen in some cases as to what constitutes a newspaper within a requirement of publication or notice of pendency of an ordinance. Naturally, where an ordinance is published in a proper newspaper and as prescribed, the publication is valid.[7] Ordinarily, of course, publication in a newspaper in which ordinances are usually published is sufficient.[8] A newspaper published daily except Saturdays, Sundays, and holidays was deemed to be a "daily newspaper" within the meaning of a publication requirement.[9] Weekly publications, where containing current news, matters of general interest and local happenings, although of very limited circulation, constitute

a newspaper within such a requirement,[10] even where their distribution is free.[11] Publication in a newspaper's tabloid section and its circulation with the official newspaper as a part of it has been deemed to meet legal requirements,[12] but an extra edition of a newspaper and the distribution of 50 or 100 copies has been held not to constitute a newspaper of general circulation.[13] With respect to a requirement that a newspaper in which an ordinance is published shall have been published for a specified period prior to the date of the publication of the ordinance, publication in a newspaper that has not been published for the requisite length of time is invalid.[14]

Under a statute providing that all resolutions and ordinances requiring publication be published in newspapers of "opposite politics," a lexicographer's definition of the term cannot control, and an independent newspaper does not satisfy the requirement, distinct party allegiance to opposing parties being the test.[15] A newspaper designated on the basis of its political faith was deemed not to have lost its status merely because of a departure from adherence to the political policies it had originally espoused.[16] In the case of a municipality with one newspaper, publication in that one was held to suffice.[17]

A typical provision is that an ordinance or notice of its pendency shall be published within the municipality enacting the ordinance.[18] In this connection, the place of publication of a newspaper is to be carefully distinguished from the place where it is printed.[19] The proper rule would seem to be that publication occurs where the ordinance is made known to the public in the prescribed mode.[20] Accordingly, where there is no paper published in a municipality enacting an ordinance, the publication ordinarily can be in a newspaper printed elsewhere and published in the enacting municipality in the sense that it is circulated there.[21] Another rule is that a newspaper is considered to be published at the location where it has its principal office and where its form and content is determined.[22]

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[1] **Illinois.** Melton v. Paris, 333 Ill 190, 164 NE 218.

Iowa. Van der Burg v. Bailey, 209 Iowa 991, 229 NW 253.

Louisiana. Addison v. Amite City, 161 So 364 (La App).

Michigan. Swanson v. Southfield, 365 Mich 131, 112 NW2d 63 (designation of "official" newspaper).

New York. Martinelli v. City Clerk of City of Yonkers, 36 AD2d 242, 319 NYS2d 908 (construing and applying

statute providing for method of nation); Hollins v. Lackawann AD2d 1000, 211 NYS2d 889.

Oklahoma. Oklahoma Jo Pub. Co. v. Oklahoma City, 62 452 (Okla App).

Wisconsin. Madigan v. Ona 256 Wis 398, 41 NW2d 206; St Page, 201 Wis 262, 229 NW 40.

[2] **California.** San Luis Obis Hendricks, 71 Cal 242, 11 P 682; kill v. Bartlett, 34 Cal 281.

Illinois. Kerr v. Hitt, 75 Ill 51 dale v. Minonk, 46 Ill 9.

Iowa. Larkin v. Burlington C.I Ry. Co., 85 Iowa 492, 52 NW 480; ard v. Baker, 76 Iowa 220, 40 NW

Kansas. Pittsburg v. Reynolc Kan 360, 29 P 757.

Minnesota. McKusick v. Stillv 44 Minn 372, 46 NW 769.

Missouri. Kellogg v. Carrico, 4 157.

New Jersey. State v. Hoboke NJL 131.

New York. In re Astor, 50 NY

Wisconsin. Wright v. Forrest Wis 341, 27 NW 52.

[3] **Iowa.** State v. Omaha & C.B. way & Bridge Co., 113 Iowa 30, 8 983.

Kentucky. Paducah Autom Trades Ass'n v. Paducah, 307 Ky 211 SW2d 660

Pennsylvania. City of Philade v. Shanahan, 121 Pa Commw 602 A2d 1388 (1988) (newspaper strik excusing compliance with n requirement).

[4] **Connecticut.** Higley v. Bunc Conn 436 (void publication mad clerk's order).

New York. In re Durkin, 10 269 (clerk where council fails to d

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Michigan. Swanson v. Southfield, 365 Mich 131, 112 NW2d 63 (designation of "official" newspaper).

New York. Martinelli v. City Clerk of City of Yonkers, 36 AD2d 242, 319 NYS2d 908 (construing and applying

statute providing for method of designation); Hollins v. Lackawanna, 12 AD2d 1000, 211 NYS2d 889.

Oklahoma. Oklahoma Journal Pub. Co. v. Oklahoma City, 620 P2d 452 (Okla App).

Wisconsin. Madigan v. Onalaska, 256 Wis 398, 41 NW2d 206; State v. Page, 201 Wis 262, 229 NW 40.

[2] **California.** San Luis Obispo v. Hendricks, 71 Cal 242, 11 P 682; Haskill v. Bartlett, 34 Cal 281.

Illinois. Kerr v. Hitt, 75 Ill 51; Tisdale v. Minonk, 46 Ill 9.

Iowa. Larkin v. Burlington C.R.&N. Ry. Co., 85 Iowa 492, 52 NW 480; Bayard v. Baker, 76 Iowa 220, 40 NW 818.

Kansas. Pittsburg v. Reynolds, 48 Kan 360, 29 P 757.

Minnesota. McKusick v. Stillwater, 44 Minn 372, 46 NW 769.

Missouri. Kellogg v. Carrico, 47 Mo 157.

New Jersey. State v. Hoboken, 44 NJL 131.

New York. In re Astor, 50 NY 363.

Wisconsin. Wright v. Forrestal, 65 Wis 341, 27 NW 52.

[3] **Iowa.** State v. Omaha & C.B. Railway & Bridge Co., 113 Iowa 30, 84 NW 983.

Kentucky. Paducah Automotive Trades Ass'n v. Paducah, 307 Ky 524, 211 SW2d 660

Pennsylvania. City of Philadelphia v. Shanahan, 121 Pa Commw 602, 550 A2d 1388 (1988) (newspaper strike not excusing compliance with notice requirement).

[4] **Connecticut.** Higley v. Bunce, 10 Conn 436 (void publication made by clerk's order).

New York. In re Durkin, 10 Hun 269 (clerk where council fails to do so).

Pennsylvania. In re Annexation Ordinance No. 242 of Borough of Le Moyne, 176 Pa Super 38, 107 A2d 149.

[5] **New York.** Cowan v. Burns, 110 NYS2d 671 (Misc).

[6] **New Jersey.** In re Bond Printing Co., Inc., 135 NJ 478, 52 A2d 762.

[7] **Pennsylvania.** Bothwell v. York, 291 Pa 363, 140 A 130.

[8] **South Carolina.** Truchelut v. City Council, 1 Nott & McCord 227.

[9] **Texas.** State v. San Antonio, 259 SW2d 248 (Tex Civ App).

[10] **Arkansas.** Lewis v. Tate, 210 Ark 594, 197 SW2d 23.

Kansas. Kansas City v. Overton, 68 Kan 560, 75 P 549.

Kentucky. Phillips v. Florence, 314 SW2d 938 (Ky).

[11] **Ohio.** State v. Herman, 70 Ohio App 103, 42 NE2d 703.

[12] **Kentucky.** Paducah Automotive Trades Ass'n v. Paducah, 307 Ky 524, 211 SW2d 660.

[13] **Iowa.** State v. Omaha & C.B. Railway & Bridge Co., 113 Iowa 30, 84 NW 983.

[14] **New Jersey.** In re Bond Printing Co., Inc., 135 NJL 478, 52 A2d 762; Lewis v. Newark, 74 NJL 308, 65 A 1039.

[15] **Ohio.** Columbus v. Barr, 27 Ohio Cir Ct 264; Riddle v. Harrison, 36 Ohio Misc 50, 301 NE2d 925.

[16] **New York.** Martinelli v. City Clerk of Yonkers, 39 Misc 2d 602, 241 NYS2d 727.

[17] **Ohio.** Elmwood Place v. Schanzle, 91 Ohio St 354, 110 NE 922 (construction of statute which omitted provision as to municipality with single newspaper).

[18] **Kentucky.** Hazard v. Collins, 304 Ky 379, 200 SW2d 933.

[19] **Illinois.** People v. Read, 256 Ill 408, 100 NE 230; Ricketts v. Hyde Park, 85 Ill 110.

Maine. State v. Bass, 97 Me 484, 54 A 1113.

Missouri. State v. Holman, 275 SW2d 280 (Mo).

New Mexico. State v. Vigil, 74 NM 766, 398 P2d 987 ("published" not synonymous with "printed").

New York. Tonawanda v. Price, 171 NY 415, 64 NE 191.

[20] **Arkansas.** Lewis v. Tate, 210 Ark 594, 197 SW2d 23.

[21] **Missouri.** Ex parte Bedell, 20 Mo App 125.

Nebraska. Hadlock v. Tucker, 93 Neb 510, 141 NW 192.

New Mexico. State v. Vigil, 74 NM 766, 398 P2d 987 (denying mandamus to compel village to publish in another paper printed in village).

Wisconsin. State v. Pagels, 212 Wis 475, 250 NW 430.

[22] **Idaho.** Express Pub., Inc. v. City of Ketchum, 114 Idaho 114, 753 P2d 1260 (1988) (maintaining branch office insufficient).

Oklahoma. Oklahoma Journal Pub. Co. v. Oklahoma City, 620 P2d 452 (Okla App).

§ 16.83. English language requirement.

Usually the publication or notice of pendency of an ordinance is required in express terms to be in the English language.[1] An ordinance or notice published in a newspaper in a foreign language, it has been held, is not good, even though the ordinance or notice is printed in the English language in such newspaper.[2] Where no language is specified in the law, English is meant[3] both as to the notice and as to the newspaper.[4] Although a charter or statute specifies that all ordinances shall be published in a German newspaper, they must, in the absence of legal direction to the contrary, be printed in English, for an ordinance has no legal existence except in the language in which it is passed.[5] A charter may require publication in more than one newspaper, one of them German.[6]

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[1] **Illinois.** Chicago v. McCoy, 136 Ill 344, 26 NE 363.

Louisiana. Breaux's Bridge v. Dupuis, 30 La Ann 1105, distg Loze v. New Orleans, 2 La 427 (holding publication in French only sufficient).

New Jersey. City Pub. Co. v. Jersey City, 54 NJL 437, 24 A 571.

Necessity that English be used in ordinance, § 16.11.

[2] **Illinois.** Perkins v. Cook County Com'rs, 271 Ill 449, 111 NE 580.

[3] **Missouri.** Graham v. King, 50 Mo 22.

New Jersey. Wilson v. Trenton, 56 NJL 469, 29 A 183.

Ohio. Cincinnati v. Bickett, 26 Ohio St 49; State v. Cincinnati, 8 Ohio Cir Ct 523.

[4] **Maryland.** Bennett v. Baltimore, 106 Md 484, 68 A 14.

[5] **Maryland.** See also Bouis v. Baltimore, 138 Md 284, 113 A 852.

New York. Kernitz v. Long Isl City, 50 Hun 428.

Ohio. Wasem v. Cincinnati, 13 (Dec 783, 2 Cin R 84.

[6] **Illinois.** German Printing & I lishing Co. v. Illinois Staats Zeit Co., 55 Ill 127.

§ 16.84. —Duration and

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22 Idaho. Express Pub., Inc. v. City Ketchum, 114 Idaho 114, 753 P2d 260 (1988) (maintaining branch office sufficient).
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[3] Missouri. Graham v. King, 50 Mo 22.
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[4] Maryland. Bennett v. Baltimore, 106 Md 484, 68 A 14.
[5] Maryland. See also Bouis v. Baltimore, 138 Md 284, 113 A 852.

New York. Kernitz v. Long Island City, 50 Hun 428.
Ohio. Wasem v. Cincinnati, 13 Ohio Dec 783, 2 Cin R 84.
[6] Illinois. German Printing & Publishing Co. v. Illinois Staats Zeitung Co., 55 Ill 127.
New Jersey. See also State v. Orange, 54 NJL 111, 22 A 1004.
Pennsylvania. In re North Whitehall Tp., 47 Pa 156.

§ 16.84. —Duration and frequency.

The duration and frequency of publication or notice of an ordinance usually are controlled by provisions of charter or statute, which must be reasonably construed in view of the particular facts.[1] The matter of duration is a legislative one, and in the absence of charter or statutory specification, it must be fixed by the legislative body; it cannot be designated by a mere ministerial officer.[2]

Requirements as to duration and frequency of publication or notice may be mandatory, and substantial compliance with the requirement may be essential to the validity of the ordinance.[3] On the other hand, provisions as to duration and frequency may be directory only.[4] Where an ordinance is published at the times and in the paper prescribed, it is valid.[5]

Generally, where publication must be or is in a daily publication, a requirement of publication for a specified number of weeks means daily publication for the number of weeks specified.[6] A publication for fourteen consecutive days complies with a provision requiring publication for "at least two weeks."[7] Where publication may be or is in a newspaper published once each week, a requirement of publication for a specified number of weeks means a weekly publication for the number of weeks specified.[8] Under a charter requiring publication for twenty days, publication once each week for three weeks successively has been held to be a sufficient compliance.[9] But three successive insertions within less than three weeks before the meeting has been held not to comply with a three-week requirement.[10] It has been ruled that a 30-day publication could be made in a weekly instead of an available daily newspaper.[11]

Under a statute providing that an ordinance shall take effect from the time of its first publication, only one publication is required.[12] A statute requiring publication at least ten days before passage of an ordinance requires only one publication prior to its passage.[13] Similarly, under a charter provision requiring

notice of the introduction of an ordinance to be published at least ten days before its adoption, one insertion at least ten days prior to the adoption of the ordinance is sufficient.[14]

Where multiple publications of a notice are required by statute, it has been held that it is not mandatory that all of the notices appear in the same newspaper.[15]

A requirement for immediate publication of an ordinance is satisfied by publication within a reasonable time after its passage.[16] Where the charter prescribes no time, it has been held that publication five days after the passage of the ordinance is sufficient.[17]

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[1] **California.** San Luis Obispo v. Hendricks, 71 Cal 242, 11 P 682; Hollander v. Denton, 69 Cal App 2d 348, 159 P2d 86 (applying San Diego city ordinance).

Georgia. Hamilton v. North Georgia Elec. Membership Corp., 201 Ga 689, 40 SE2d 750; Seaboard Air Line Ry. Co. v. Greenfield, 160 Ga 407, 128 SE 430.

Illinois. Standard v. Industry, 55 Ill App 523.

Michigan. Morley Bros. v. Carrollton Tp., 305 Mich 285, 9 NW2d 543; Red Star Motor Drivers' Ass'n v. Detroit, 244 Mich 480, 221 NW 622; Detroit v. Webster, 224 Mich 503, 221 NW 629.

Missouri. Schweitzer v. Liberty, 82 Mo 309; Cape Girardeau v. Fougeu, 30 Mo App 551.

Nebraska. Union Pac. Ry. Co. v. McNally, 54 Neb 112, 74 NW 390; Union Pac. Ry. Co. v. Montgomery, 49 Neb 429, 68 NW 619; Hull v. Chicago, B.&Q.R. Co., 21 Neb 371, 32 NW 162; Lawson v. Gibson, 18 Neb 137, 24 NW 447.

New Jersey. Hoboken v. Gear, 27 NJL 265.

South Carolina. Truchelut v. City Council, 1 Nott & McCord 227.

Publication of improvement ordinance or resolution, ch 37.

[2] **Michigan.** Thornton v. Sturgis, 38 Mich 639.

[3] **Georgia.** Morris v. City Council of Augusta, 201 Ga 666, 40 SE2d 710.

Kentucky. Central Const. Co. v. Lexington, 162 Ky 286, 172 SW 648.

Michigan. Van Alstine v. People, 37 Mich 523.

New York. People v. Chapman, 83 Misc 469, 152 NYS 204.

Wisconsin. Gloudeman v. City of St. Francis, 143 Wis 2d 780, 422 NW2d 864 (Ct App 1988).

Directory or mandatory character or provisions for publication or notice of ordinances, § 16.78.

[4] **New Jersey.** Logan v. Boonton, 87 NJL 449, 95 A 141.

Washington. State v. Superior Court, 77 Wash 593, 138 P 277.

[5] **Pennsylvania.** Bothwell v. York, 291 Pa 363, 140 A 130.

[6] **Indiana.** Loughridge v. Huntington, 56 Ind 253 (three weeks means twenty-one days and not simply three insertions).

[7] **California.** Derby & Co. v. Modesto, 104 Cal 515, 38 P 900.

[8] **Massachusetts.** Commonwealth v. Matthews, 122 Mass 60.

Nebraska. State v. Hardy, 7 377.

[9] **New Jersey.** Hoboken v. Gea NJL 265.

West Virginia. Benwood v. Wh ing Ry. Co., 53 W Va 465, 44 SE 27

[10] **Pennsylvania.** In re N Whitehall Tp., 47 Pa 156.

[11] **Kentucky.** Phillips v. Flore 314 SW2d 938 (Ky).

[12] **Alabama.** Davis v. Tuscum 236 Ala 552, 183 So 657.

[13] **Colorado.** Jackson v. Glenv Springs, 122 Colo 323, 221 P2d 10

§ 16.85. ——Sundays, h

Generally a provision fc fied number of "weeks" or a with by publication for the published only six days each Sunday or holiday falling v Sunday or holiday publicat legal publication,[2] although invalidate the ordinance.[3] (holiday publication is valid.[4]

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[1] **California.** Ex parte Fiske, 72 125, 13 P 310; Taylor v. Palmer, 31 240 (Sundays and holidays counted

Michigan. Richter v. Harper, Mich 221, 54 NW 968 (no Mon issue).

Missouri. Barber Asphalt Pav Co. v. Muchenberger, 105 Mo App 51, 78 SW 280.

[2] **Kentucky.** Central Const. Co Lexington, 162 Ky 286, 172 SW 648

Pennsylvania. Commonwealth Kelly, 250 Pa 18, 95 A 322; Knigh Press Co., 227 Pa 185, 75 A 1083; Co monwealth v. Matthews, 152 Pa 1 25 A 548.

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[7] **California.** Derby & Co. v. Modesto, 104 Cal 515, 38 P 900.

[8] **Massachusetts.** Commonwealth v. Matthews, 122 Mass 60.

Nebraska. State v. Hardy, 7 Neb 377.

[9] **New Jersey.** Hoboken v. Gear, 27 NJL 265.

West Virginia. Benwood v. Wheeling Ry. Co., 53 W Va 465, 44 SE 271.

[10] **Pennsylvania.** In re North Whitehall Tp., 47 Pa 156.

[11] **Kentucky.** Phillips v. Florence, 314 SW2d 938 (Ky).

[12] **Alabama.** Davis v. Tuscumbia, 236 Ala 552, 183 So 657.

[13] **Colorado.** Jackson v. Glenwood Springs, 122 Colo 323, 221 P2d 1083.

[14] **Georgia.** Smith v. Atlanta, 123 Ga 877, 51 SE 741.

[15] **Connecticut.** Jarvis Acres, Inc. v. Zoning Commission of East Hartford, 163 Conn 41, 301 A2d 244.

[16] **Michigan.** Red Star Motor Drivers' Ass'n v. Detroit, 244 Mich 480, 221 NW 622; Detroit v. Webster, 224 Mich 503, 221 NW 629.

[17] **Minnesota.** St. Paul v. Coulter, 12 Minn 41.

§ 16.85. ——Sundays, holidays, and omitted days.

Generally a provision for publication for a "week" or a specified number of "weeks" or a specified number of days is complied with by publication for the requisite period in a paper that is published only six days each week, or that omits publication on a Sunday or holiday falling within the requisite period.[1] Indeed, Sunday or holiday publication has been considered not to be a legal publication,[2] although publication on such days does not invalidate the ordinance.[3] Other decisions hold that Sunday or holiday publication is valid.[4]

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[1] **California.** Ex parte Fiske, 72 Cal 125, 13 P 310; Taylor v. Palmer, 31 Cal 240 (Sundays and holidays counted).

Michigan. Richter v. Harper, 95 Mich 221, 54 NW 968 (no Monday issue).

Missouri. Barber Asphalt Paving Co. v. Muchenberger, 105 Mo App 47, 51, 78 SW 280.

[2] **Kentucky.** Central Const. Co. v. Lexington, 162 Ky 286, 172 SW 648.

Pennsylvania. Commonwealth v. Kelly, 250 Pa 18, 95 A 322; Knight v. Press Co., 227 Pa 185, 75 A 1083; Commonwealth v. Matthews, 152 Pa 166, 25 A 548.

Texas. Nunn v. New, 222 SW2d 261 (Tex Civ App).

[3] **Colorado.** Hallett v. United States Security & Bond Co., 40 Colo 281, 90 P 683.

[4] **Colorado.** Dumars v. Denver, 16 Colo App 375, 65 P 580.

Minnesota. St. Paul v. Robinson, 129 Minn 383, 152 NW 777 (Memorial Day).

Ohio. Hastings v. Columbus, 42 Ohio St 585.

Tennessee. Knoxville v. Knoxville Water Co., 107 Tenn 647, 64 SW 1075.

§ 16.86. Books, codifications, revisions, and reenactments.

Sometimes ordinances are promulgated in book or pamphlet form,[1] and publication in a volume of revised ordinances may constitute sufficient publication.[2] Moreover, the publication of an ordinance adopting a municipal code of ordinances may be sufficient notice of the existence of the code,[3] or the publication of a notice that ordinances have been revised and that a copy of the revision is on file in the clerk's office for public inspection may suffice.[4] It is generally true that republication of ordinances already in existence and that continue in force at the date of adoption of a municipal code of ordinances is not required where they are included in the codification, revision, or reenactment.[5] Other ordinances affected by a new enactment need not be published.[6] The publication of an original ordinance with a later and void addition does not invalidate the original.[7]

Charters or statutes often require or direct a revision of the general ordinances at stated intervals. The purpose is to secure revision, compilation, codification, publication, etc. The revision generally is done by ordinance or by other appropriate action of the legislative body.[8] Frequently, provisions for publication of digests or codifications of ordinances are merely directory, and a failure of compliance does not invalidate an ordinance.[9]

Power to adopt a codification containing minor nonsubstantive changes has been held not to include power, by means of such codification, to create new ordinances nor to revive and reenact ordinances originally unauthorized and improperly enacted.[10] A codification may not have the effect of curing defects in ordinances or in their enactment.[11] However, a reenactment may constitute a new enactment and not merely a continuance of an old law, where the old law has wholly accomplished its purpose and exhausted its force.[12] A conviction under an ordinance may be precluded by failure to include it in a publication.[13]

It is generally held that, in the absence of statutory prohibition, a municipal legislative body may declare by a single ordinance a compilation of ordinances or proposed ordinances to be in force,[14] provided the title of the ordinance is broad enough.[15]

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[1] **Illinois.** Moss v. Oakland, 88 Ill 109; Baker v. Maquon, 9 Ill App 155.

Iowa. Des Moines v. Meredith, 2 Iowa 344, 294 NW 574; Allen v. Dave port, 170 Iowa 90, 77 NW 532.

Nebraska. Union Pac. Ry. Co. McNally, 54 Neb 112, 74 NW 3 Union Pac. Ry. Co. v. Montgomery, Neb 429, 68 NW 619.

Wisconsin. Lake Geneva v. Smuc 75 Wis 2d 532, 249 NW2d 783 (quoti statutes).

[2] **Kansas.** Topeka v. Crawford, Kan 583, 96 P 862.

Oklahoma. Goodall v. Clinton, 1 Okla 10, 161 P2d 1011.

Proof of ordinance book, pamphl or other collection, ch 22.

[3] **Alabama.** Albany v. Nix, 213 A 371, 106 So 200.

Arizona. Tucson v. Stewart, 45 A 36, 40 P2d 72.

Insufficiency of reference to n matters in code as "miscellaneous p visions," § 16.79.

[4] **Iowa.** Town of Grundy Center Marion, 231 Iowa 425, 1 NW2d 677.

[5] **Massachusetts.** Commonweal v. Davis, 140 Mass 485, 4 NE 577.

Mississippi. Chrisman v. Jacks 84 Miss 787, 37 So 1015..

Missouri. Tipton v. Norman, 72 M 380; Ex parte Bedell, 20 Mo App 125

Oklahoma. Goodall v. Clinton, 1 Okla 10, 161 P2d 1011.

Texas. Magnolia Petroleum Co. Beck, 41 SW2d 488 (Tex Civ App).

[6] **California.** Ex parte Christense 85 Cal 208, 27 P 747.

[7] **Illinois.** Depue v. Banschbac 273 Ill 574, 113 NE 156.

[8] **Illinois.** Whalin v. Macomb, 76 49.

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effect of curing defects in ordi-
[11] However, a reenactment may
d not merely a continuance of an
wholly accomplished its purpose
nviction under an ordinance may
de it in a publication.[13]
the absence of statutory prohibi-
body may declare by a single
inances or proposed ordinances to
of the ordinance is broad enough.[15]

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Iowa. Des Moines v. Meredith, 229 Iowa 344, 294 NW 574; Allen v. Davenport, 170 Iowa 90, 77 NW 532.

Nebraska. Union Pac. Ry. Co. v. McNally, 54 Neb 112, 74 NW 390; Union Pac. Ry. Co. v. Montgomery, 49 Neb 429, 68 NW 619.

Wisconsin. Lake Geneva v. Smuda, 75 Wis 2d 532, 249 NW2d 783 (quoting statutes).

[2] **Kansas.** Topeka v. Crawford, 78 Kan 583, 96 P 862.

Oklahoma. Goodall v. Clinton, 196 Okla 10, 161 P2d 1011.

Proof of ordinance book, pamphlet, or other collection, ch 22.

[3] **Alabama.** Albany v. Nix, 213 Ala 371, 106 So 200.

Arizona. Tucson v. Stewart, 45 Ariz 36, 40 P2d 72.

Insufficiency of reference to new matters in code as "miscellaneous provisions," § 16.79.

[4] **Iowa.** Town of Grundy Center v. Marion, 231 Iowa 425, 1 NW2d 677.

[5] **Massachusetts.** Commonwealth v. Davis, 140 Mass 485, 4 NE 577.

Mississippi. Chrisman v. Jackson, 84 Miss 787, 37 So 1015..

Missouri. Tipton v. Norman, 72 Mo 380; Ex parte Bedell, 20 Mo App 125.

Oklahoma. Goodall v. Clinton, 196 Okla 10, 161 P2d 1011.

Texas. Magnolia Petroleum Co. v. Beck, 41 SW2d 488 (Tex Civ App).

[6] **California.** Ex parte Christensen, 85 Cal 208, 27 P 747.

[7] **Illinois.** Depue v. Banschbach, 273 Ill 574, 113 NE 156.

[8] **Illinois.** Whalin v. Macomb, 76 Ill 49.

Kentucky. Lowry v. Lexington, 113 Ky 763, 68 SW 1109, 24 Ky L Rep 516.

Louisiana. Chandler & Chandler v. Shreveport, 162 So 437 (La App).

[9] **California.** Hollander v. Denton, 69 Cal App 2d 348, 159 P2d 86.

[10] **Pennsylvania.** Chester v. Elam, 408 Pa 350, 184 A2d 257.

[11] **Washington.** State v. Town of Tumwater, 66 Wash 2d 33, 400 P2d 789.

[12] **Kansas.** Emporia v. Norton, 16 Kan 236..

[13] **Georgia.** Sirota v. Kay Homes, Inc., 208 Ga 113, 65 SE2d 597.

Indiana. Wabash Ry. Co. v. Gretzinger, 182 Ind 155, 104 NE 69; Bowers v. Indianapolis, 169 Ind 105, 81 NE 1097.

Iowa. Des Moines v. Miller, 219 Iowa 632, 259 NW 205.

Maryland. Garrett v. Janes, 65 Md 260, 3 A 597.

Texas. Magnolia Petroleum Co. v. Beck, 41 SW2d 488 (Tex Civ App) (building code).

Building Codes, ch 24.

[14] **Colorado.** Coppersmith v. Denver, 156 Colo 469, 399 P2d 943.

[15] **Missouri.** St. Louis v. Kellmann, 295 Mo 71, 243 SW 134 ("milk" ordinance); St. Louis v. Bouckaert, 185 SW2d 886 (Mo App) (title sufficient); St. Louis v. Rother, 185 SW2d 889 (Mo App) (title sufficient).

Nebraska. Village of Deshler v. Southern Nebraska Power Co., 133 Neb 778, 277 NW 77 (title not broad enough).

One subject expressed in title, § 16.17 et seq.

§ 4.101. —Method of enacting ordinances.

The procedures and methods for the enactment of ordinances[1] by municipal corporations may be prescribed in detail by statutes, or by provisions of charters adopted under general laws, and to the extent of such prescriptions they are state affairs, subject to legislative control.[2] However, by virtue of constitutional provisions, the method and manner of enacting ordinances may be made a municipal matter, as to which a home rule charter controls.[3]

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[1] See generally ch 16.

[2] **Oklahoma.** Oklahoma Journal Pub. Co. v. Oklahoma City, 620 P2d 452 (Okla App).

See §§ 16.01–16.10.

[3] **United States.** Inland Development Co. v. Oklahoma City, 9 F Supp 96 (WD Okla), app dismd 82 F2d 1011 (CA10) (applying Oklahoma law).

California. Adler v. City Council of Culver City, 184 Cal App 2d 805, 7 Cal Rptr 805.

Oklahoma. In Oklahoma method and manner of enacting ordinance is municipal matter and controlled by municipal charter. Inland Development Co. v. Oklahoma City, 9 F Supp 96, app dismd 82 F2d 1011.

See §§ 16.48–16.70.

§ 4.102. —Method of publishing ordinances.

The publication of municipal ordinances is ordinarily regulated in greater or less degree by statutory and charter provisions, or by constitutional provisions.[1] The manner of publishing city ordinances is a question of purely municipal concern.[2]

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[1] See §§ 16.76–16.86.

[2] **Oklahoma.** Goodall v. Clinton, 196 Okla 10, 161 P2d 1011.

§ 4.103. —Municipal bonds.

Municipal bonds are the subject of a separate chapter of this work.[1] Where the procedure and manner of issuing municipal bonds are not deemed municipal affairs, home rule charter provisions regarding the matter are controlled by state statutes in case of conflict, according to some authorities,[2] although a contrary position has been taken.[3] In some jurisdictions, both the power to issue bonds as well as the method of issuing them is a municipal affair.[4] However, even though bond issues for municipal purposes may clearly be municipal affairs[5] a municipality's issuance and sale of bonds may still be considered state concerns when the

bond proceeds are to be use
health protection.[6] Further,
issuance of bonds.[7]

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[1] See ch 43.

[2] **Florida.** Boca Raton v. State, So 2d 793 (Fla) (10-year limit in
charter supplemental to statutory
year limit and not substitutional).

Oklahoma. Tulsa v. Dabney, Okla 54, 270 P 1112.

[3] **Florida.** Charter clause proh
ing application to city debt of proc
of city's utility services tax superse
earlier general statute allowing
application by municipalities. Sta
Fort Pierce, 88 So 2d 135 (Fla).

[4] **Colorado.** The state debt lim
tion provision was not applicabl

§ 4.104. —Municipal ele

Generally speaking, un
wise provides, municipal el
the legislature has control
governed by express cons
restrict legislative powers,
effect, municipal elections
affairs rather than state af
tution expressly authorizes
certain provisions as to m
voters for a municipal ele
affair.[4] However, county ar
municipal concern that ma
ter.[5] State laws will control
involved or where state la
conducted by home rule u
election of a municipal offi
cern so as to make a relev
action taken by a home r
constitutional prohibition,
advisory questions on the
may also empower subordi

§ 4.49. —Law to take effect only when adopted by municipality.

Generally speaking, within the meaning of a prohibitory clause in a state constitution, a statute is not a local or special law merely because it provides that it shall take effect only in such municipalities as may adopt it,[1] or only in municipalities which adopt it by vote,[2] or unless otherwise provided by local law,[3] provided the statute applies to the whole state[4] and is complete in itself.[5] A contrary rule has been announced in some cases upon the ground that the legislation is necessarily incomplete,[6] or upon the ground that such legislation may take effect in a special or local manner and is not inherently general in its operation,[7] a view that may be unreasonable.[8]

In application of the general rule, it has been declared that while the legislature may not delegate the power to make a charter for a city or village it may itself do that and then permit the electors to determine whether they will adopt that charter or not, and if the charter is adopted it becomes the charter with the same force and effect as if the legislature had created it by an act for that specific purpose.[9] Laws authorizing a choice of form of municipal government, as the commission, city manager, or aldermanic plan, to be determined by vote of the electors of the municipalities throughout the state have been regarded as valid general laws.[10] The acceptance or adoption of a municipal charter by popular vote under constitutional and statutory provisions is considered generally in a previous chapter of this work.[11] As applied to the sale of intoxicating liquors, judicial decisions generally support the doctrine that the legislature may by law allow local communities to determine by vote the question of the sale within those limits.[12]

Statutes of the type under discussion have sometimes been divided into two classes. First, a statute that is a complete legislative enactment requiring only acceptance to incorporate its provisions in the scheme of local government. Second, a statute that delegates legislative powers to be exercised (or not) by the local government. The former have been characterized as "referendum statutes"[13] and the latter as "statutes delegating legislative powers."[14] In other words, a distinction is drawn by some courts between adoption by the inhabitants by vote and adoption by the common council, it being held that in the former

case the statute is not special while in the latter case it is special.[15] In most of the states this distinction is not recognized and it is held that such a statute is not special not only when its operation is required to be adopted by the people but also when required to be adopted by the common council.[16] In New Jersey, a statute providing that it should become effective in cities of certain population that shall by resolution of the common council adopt the statute within three months from the date of its passage was invalid because of the time limitation.[17] In such cases, a classification by population must be sufficiently prospective to be general. Thus, the issue is whether by the statute's terms, it is possible for other cities to come under the operation of the statute at a later time by a change in their populations.[18] Thus, in New Jersey, if the act is directory with respect to the time of its submission for adoption or rejection it will be sustained.[19]

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[1] **Arizona.** State v. Christi, 149 Ariz 323, 718 P2d 487.

Idaho. Sun Valley Co. v. City of Sun Valley, 109 Idaho 424, 708 P2d 147.

Illinois. People v. Hoffman, 116 Ill 587, 5 NE 596, 8 NE 788.

A statute denying referendum on ordinance for construction of waterworks to be partly paid for with federal money and allowing referendum where federal money was not to be used was not local or special law. Mt. Olive v. Braje, 366 Ill 132, 7 NE2d 851.

Massachusetts. Where matters are of purely local concern, the legislature may require acceptance by the municipality before the legislation shall become effective. In re Opinion of the Justices, 303 Mass 631, 22 NE2d 49.

Missouri. Collector of Revenue v. Parcels of Land Encumbered with Delinquent Tax Liens, 517 SW2d 49 (Mo); State v. Pond, 93 Mo 606, 6 SW 469.

New Jersey. In re Cleveland, 52 NJL 188, 19 A 17, affg 51 NJL 311, 17 A 772; Paul v. Gloucester Co., 50 NJL 585, 15 A 272.

Texas. Reynolds v. Dallas County, 203 SW2d 320 (Tex Civ App) (discussing legislative delegation of powers).

Washington. State v. Tausick, 64 Wash 69, 116 P 651.

Wyoming. State v. McInerney, 63 Wyo 280, 182 P2d 28 (contrary Pennsylvania rule does not prevail in Wyoming), citing this treatise.

Constitutionality of statute to become effective only when adopted by municipality, see § 4.10.

[2] **Alabama.** Opinion of the Justices, 249 Ala 509, 31 So 2d 717 (creation of municipal utility board effective on ratification by inhabitants).

Florida. Town of San Mateo City v. State, 117 Fla 546, 158 So 112 (statute abolishing municipality effective on approval of property owners as valid); Olds v. State, 101 Fla 218, 133 So 641 (statute granting power and jurisdiction to municipality validly made dependent on contingency); Gill v. Wilder, 95 Fla 901, 116 So 870.

Georgia. Wheat v. Bainbridge, 168 Ga 479, 148 SE 332.

Illinois. People v. Kipley, 171 49 NE 229; People v. Hoffman, 1 587, 5 NE 596, 8 NE 788; Hom Co. v. Swigert, 104 Ill 653.

Missouri. State v. Missouri men's Compensation Commissio Mo 1004, 2 SW2d 796 (operation validly made dependent on vote)

New Jersey. In re Clevela NJL 319, 18 A 67 (statute empo mayors to appoint municipal o effective on acceptance at popul tion as valid general law).

See also § 4.10.

[3] **Alabama.** Baldwin County kins, 494 So 2d 584 (Ala).

[4] **Missouri.** State v. Cl B.&Q.R. Co., 195 Mo 228, 245, SW 784 (local option law auth people of limited portion of sta every portion of state except sp parts to avail themselves of it a lid); State v. Wilcox, 45 Mo 45 option school law as general wh "coextensive with the state").

[5] **Florida.** Olds v. State, 1 218, 133 So 641.

Iowa. Eckerson v. Des Moin Iowa 452, 478, 115 NW 177.

Kansas. Cole v. Dorr, 80 K 101 P 1016.

Wisconsin. The only thir may be left to the people to de is whether they will avail the of its provisions." Holt Lumbe Oconto, 145 Wis 500, 506, 130 N State v. Sawyer County, 140 W 123 NW 248.

See also § 4.10.

[6] **Missouri.** A legislative ac ulate the licensing of plumbe cities of the state having a po of more than 50,000 inhabita providing that it shall be ino until adopted by proper ordin

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Reynolds v. Dallas County, 320 (Tex Civ App) (discussive delegation of powers).

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. Wheat v. Bainbridge, 168 3 SE 332.

Illinois. People v. Kipley, 171 Ill 44, 49 NE 229; People v. Hoffman, 116 Ill 587, 5 NE 596, 8 NE 788; Home Ins. Co. v. Swigert, 104 Ill 653.

Missouri. State v. Missouri Workmen's Compensation Commission, 318 Mo 1004, 2 SW2d 796 (operation of law validly made dependent on vote).

New Jersey. In re Cleveland, 51 NJL 319, 18 A 67 (statute empowering mayors to appoint municipal officers effective on acceptance at popular election as valid general law).

See also § 4.10.

[3] **Alabama.** Baldwin County v. Jenkins, 494 So 2d 584 (Ala).

[4] **Missouri.** State v. Chicago, B.&Q.R. Co., 195 Mo 228, 245, 246, 93 SW 784 (local option law authorizing people of limited portion of state or of every portion of state except specified parts to avail themselves of it as invalid); State v. Wilcox, 45 Mo 458 (local option school law as general where it is "coextensive with the state").

[5] **Florida.** Olds v. State, 101 Fla 218, 133 So 641.

Iowa. Eckerson v. Des Moines, 137 Iowa 452, 478, 115 NW 177.

Kansas. Cole v. Dorr, 80 Kan 251, 101 P 1016.

Wisconsin. The only thing that may be left to the people to determine is whether they will avail themselves of its provisions." Holt Lumber Co. v. Oconto, 145 Wis 500, 506, 130 NW 709; State v. Sawyer County, 140 Wis 634, 123 NW 248.

See also § 4.10.

[6] **Missouri.** A legislative act to regulate the licensing of plumbers in all cities of the state having a population of more than 50,000 inhabitants, and providing that it shall be inoperative until adopted by proper ordinance by the city to which it relates, is unconstitutional since it depends upon an outside authority to make it law. Ex parte Smith, 231 Mo 111, 117, 118, 132 SW 607.

See § 4.10.

See Sands & Libonati, Loc Govt Law § 3.35.

[7] **Pennsylvania.** Commonwealth v. Denworth, 145 Pa 172, 178, 22 A 820; Frost v. Cherry, 122 Pa 417, 427, 15 A 782; Appeal of Scranton School Dist., 113 Pa 176, 190, 6 A 158.

See In re Addison, 385 Pa 48, 122 A2d 272 (home rule charter of Philadelphia).

Cf. Reading v. Savage, 124 Pa 328, 16 A 788.

[8] **New Jersey.** "A general law may, under some circumstances, produce a result local or special, but we find no constitutional inhibition against such legislation." In re Cleveland, 51 NJL 319, 18 A 67.

See also § 4.10.

See Sands & Libonati, Loc Govt Law § 3.35.

[9] **New York.** Cleveland v. Watertown, 222 NY 159, 163, 118 NE 500, affg 179 App Div 954, 166 NYS 286 (act offering different forms of government and allowing electors to vote to adopt one desired).

See also § 3.16.

[10] **Georgia.** Marbut v. Hollingshead, 172 Ga 531, 158 SE 28.

New Jersey. Bucino v. Malone, 12 NJ 330, 96 A2d 669 (optional municipal charter law available to all municipalities in general upon adoption by voters of a municipality as not special and local).

Legislative changes in form of municipal government, see § 4.03.10.

Optional charter plans generally, see § 9.14.

[11] See §§ 3.16, 3.18 et seq.

[12] **Arkansas.** Johnston v. Bramlett, 193 Ark 71, 97 SW2d 631.

Iowa. State v. Forkner, 94 Iowa 733, 62 NW 683; State v. Weir, 33 Iowa 134; Geebrick v. State, 5 Iowa 491, 492.

Kentucky. Booth v. McKenzie, 302 Ky 215, 194 SW2d 63; Dance v. Anderson, 288 Ky 431, 156 SW2d 463 (local option election valid).

Louisiana. State v. Thurston, 210 La 797, 28 So 2d 274.

[13] **New Jersey.** Doherty v. Spitznagle, 104 NJL 38, 139 A 424 (statute requiring referendum or statute making act applicable to consolidated municipalities without a direct referendum); Allison v. Corker, 67 NJL 596, 52 A 362; Kennedy v. Belmar, 61 NJL 20, 38 A 756; Warner v. Hoagland, 51 NJL 62, 63, 16 A 166; In re Cleveland, 51 NJL 319, 18 A 67, same case on error 52 NJL 188, 19 A 17.

[14] **New Jersey.** Noonan v. Hudson County, 51 NJL 454, 18 A 117, affd 52 NJL 398, 20 A 255; Paul v. Gloucester Co., 50 NJL 585, 15 A 272; State v. Court of Common Pleas of Morris County, 36 NJL 72.

See also § 4.10.

[15] **New Jersey.** Booth v. McGuinness, 78 NJL 346, 75 A 455, 464–467.

[16] **Georgia.** Marbut v. Hollingshead, 172 Ga 531, 158 SE 28.

Maryland. Carr v. Hyattsville, 115 Md 545, 81 A 8.

Massachusetts. Cunningham v. Cambridge, 222 Mass 574, 111 NE 409; Barnes v. Chicopee, 213 Mass 1, 4, 99 NE 464; Graham v. Roberts, 200 Mass 152, 85 NE 1009; Prince v. Crocker, 166 Mass 347, 360, 44 NE 446; Cole v. Tucker, 164 Mass 486, 489, 41 NE 681.

Missouri. State v. St. Louis, 318 Mo 870, 2 SW2d 713.

New Hampshire. Goodrich Falls Elec. Co. v. Howard, 86 NH 512, 171 A 761.

Ohio. Thompson v. Marion, 134 Ohio St 122, 16 NE2d 208 (police pension system effective in any municipality in state upon declaration by municipality of necessity as constitutional).

See also § 4.10.

[17] **New Jersey.** De Hart v. Atlantic City, 63 NJL 223, 227, 43 A 742, revg 62 NJL 586, 41 A 687.

The laws were condemned because the classification attempted was defeated by a limitation in time that excluded from the operation of the laws objects which possessed, or, in the natural course of things, would possess, all the substantial elements of a constitutional classification. Albright v. Sussex County Lake & Park Commission, 68 NJL 523, 53 A 612, reviewing prior New Jersey cases fully.

[18] See Sutherland Stat Const § 40.09 (4th Ed).

[19] **New Jersey.** Albright v. Sussex County Lake & Park Commission, 68 NJL 523, 53 A 612.

§ 4.50. Tests to dete special.

Whether a statute stance and practical o phraseology.[1] In other its mere form, or wor character as a public, special if by some inhe ily separates some per but for the separation, it applies to any divisi whole.[4]

The nature of the ber of things within t law may be general alt special in character, o matter that may be ma statute is a special a determined by its pu what in the ordinary operation and effect.[7] ness of its provisions i A court should first d the court should deter the law's classificatio poses.[10] Some court difference in betwee matter that is general and local.[12] The propr not be conclusive as t fact that the law may in some of its provisio In deciding whether a a local or special law, mentally on whet classification, and ea The test is whether state upon all person so, the law is general. to which the act in q and concerns.[16] For e

§ 4.50. Tests to determine whether the law is general or special.

Whether a statute is general or special depends on its substance and practical operation, rather than on its title, form or phraseology.[1] In other words, the effect of a statute,[2] more than its mere form, or wording, or phraseology, must determine its character as a public, general, special or local law.[3] An act is special if by some inherent limitation or classification it arbitrarily separates some person, place, or thing from those upon which, but for the separation, it would operate. The legislation is local if it applies to any division or subdivision of the state less than the whole.[4]

The nature of the enactment does not depend upon the number of things within the scope of its operation.[5] Furthermore, a law may be general although it concerns matters purely local and special in character, or it may be local or special and relate to a matter that may be made the subject of a general law.[6] Whether a statute is a special act prohibited by the constitution is to be determined by its purpose as disclosed by its language and by what in the ordinary course of things must necessarily be its operation and effect.[7] The test of a special law is the appropriateness of its provisions in regard to the class of objects it excludes.[8] A court should first discern the law's possible purposes.[9] Next, the court should determine, in light of the facts before it, whether the law's classification bears a rational relation to the law's purposes.[10] Some courts are stricter, requiring a substantial difference in between classes.[11] A law may relate to a subject matter that is general while the purpose of the act may be special and local.[12] The propriety of a legislative classification alone may not be conclusive as to the special or local nature of an act. [13] The fact that the law may be or seem to be arbitrary and unreasonable in some of its provisions does not render it a local or a special law. In deciding whether an act is a general law as distinguished from a local or special law, the answer to the problem depends fundamentally on whether there is a proper and legitimate classification, and each case must be decided on its own merits.[14] The test is whether the law operates uniformly throughout the state upon all persons and localities under like circumstances. If so, the law is general.[15] Other courts focus attention on the extent to which the act in question affects the general public interests and concerns.[16] For example, a statute regulating the fixing and

collecting of municipal license fees has been regarded as a general law.[17] A revenue law regulating license fees for auctioneers affecting the interests of the people of the whole state is not a local law, even though it is designated and treated as such by the legislature.[18] An act establishing a particular public beach access facility in order to promote the general public welfare of the state is not a local act.[19]

Although a classification based on population does not necessarily violate the rule against special laws,[20] classes defined by criteria which can never admit new or expel old members—such as population figures based on a particular census—are highly suspect.[21]

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[1] **Arkansas.** Bollinger v. Watson, 187 Ark 1044, 63 SW2d 642 (operation and effect and not form as determining); Webb v. Adams, 180 Ark 713, 23 SW2d 617.

New Jersey. In re Freygang, 46 NJ Super 14, 133 A2d 672.

South Carolina. Thomas v. Macklen, 186 SC 290, 195 SE 539 (spirit and practical operation of act as determinative).

Wyoming. May v. Laramie, 58 Wyo 240, 131 P2d 300, quoting this treatise.

See Sutherland Stat Const § 40.05 (4th Ed).

[2] **Alabama.** Baldwin County v. Jenkins, 494 So 2d 584 (Ala).

Missouri. State v. Southern, 265 Mo 275, 177 SW 640.

Wyoming. May v. Laramie, 58 Wyo 240, 131 P2d 300, quoting this treatise.

[3] **Idaho.** Mix v. Board of Com'rs of Nez Perce County, 18 Idaho 695, 112 P 215.

New York. Shoup v. Town of Islip, 78 Misc 2d 366, 356 NYS2d 742.

Wisconsin. Village of Whitefish Bay v. Milwaukee County, 224 Wis 373, 271 NW 416.

Wyoming. May v. Laramie, 58 Wyo 240, 131 P2d 300, quoting this treatise.

[4] **Arkansas.** Swanberg v. Tart, 300 Ark 304, 778 SW2d 931 (1989).

[5] **Illinois.** People v. Chicago, 349 Ill 304, 182 NE 419.

Maryland. Beauchamp v. Somerset County Sanitary Comr's, 256 Md 541, 261 A2d 461 (taxing statute applicable in effect to property of single taxpayer as unconstitutional special act).

[6] **Ohio.** McGill v. State, 34 Ohio St 228.

Oregon. Portland v. Welch, 154 Or 286, 59 P2d 228.

[7] **New Jersey.** In re Freygang, 46 NJ Super 14, 133 A2d 672 (municipal rent control enabling act).

North Carolina. Webb v. Port Commission of Morehead City, 205 NC 633, 172 SE 377.

[8] **New Jersey.** Town of Secaucus v. Hudson County Board of Taxation, 133 NJ 482, 628 A2d 288 (1993).

[9] **New Jersey.** In determining the law's purpose, the court is not limited to the stated purpose of the law. Town of Secaucus v. Hudson County Board of Taxation, 133 NJ 482, 628 A2d 288 (1993).

[10] **Arkansas.** Board of Tr City of Little Rock, 295 Ark SW2d 950 (1988).

Illinois. County of Bu Thompson, 139 Ill 2d 323, 5 1170 (1990) (applying equal p standard).

Missouri. State v. Gilley, 7 538 (Mo 1990).

New Jersey. Where law taxation by counties to fund v schools allowed counties of size, of which there was bu exclude cities with existing v programs at least 20 yea: which there was but one, th not accomplish goal of lighte of towns that already prov: tional schools since most st did not qualify. Town of Se Hudson County Board of 133 NJ 482, 628 A2d 288 (19

[11] **Nebraska.** Haman v. M Neb 699, 467 NW2d 836 (19

Wisconsin. City of Bro Milwaukee Metropolitan Dist., 144 Wis 2d 896, 426 (1988).

[12] **Alabama.** See Baldwi Jenkins, 494 So 2d 584 (Al providing "unless otherwis by local law").

New Jersey. Sherma Branch, 9 NJ Misc 75, 153 112, affd 108 NJL 548, 158

[13] **New Jersey.** Wanser NJL 482, 38 A 449.

[14] **Oklahoma.** Elias v. P2d 517 (Okla).

[15] **United States.** F Anchorage, 159 F Supp 73 treatise.

Alabama. See Baldwi Jenkins, 494 So 2d 584 (A

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and. Beauchamp v. Somerset
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Jersey. In re Freygang, 46
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Carolina. Webb v. Port
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Jersey. Town of Secaucus v.
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on, 133 NJ 482, 628 A2d 288

[10] **Arkansas.** Board of Trustees v. City of Little Rock, 295 Ark 585, 750 SW2d 950 (1988).

Illinois. County of Bureau v. Thompson, 139 Ill 2d 323, 564 NE2d 1170 (1990) (applying equal protection standard).

Missouri. State v. Gilley, 785 SW2d 538 (Mo 1990).

New Jersey. Where law enabling taxation by counties to fund vocational schools allowed counties of a certain size, of which there was but one, to exclude cities with existing vocational programs at least 20 years old, of which there was but one, the law did not accomplish goal of lightening load of towns that already provided vocational schools since most such towns did not qualify. Town of Secaucus v. Hudson County Board of Taxation, 133 NJ 482, 628 A2d 288 (1993).

[11] **Nebraska.** Haman v. Marsh, 237 Neb 699, 467 NW2d 836 (1991).

Wisconsin. City of Brookfield v. Milwaukee Metropolitan Sewerage Dist., 144 Wis 2d 896, 426 NW2d 591 (1988).

[12] **Alabama.** See Baldwin County v. Jenkins, 494 So 2d 584 (Ala) (statute providing "unless otherwise provided by local law").

New Jersey. Sherman v. Long Branch, 9 NJ Misc 75, 153 A 109, 111, 112, affd 108 NJL 548, 158 A 544.

[13] **New Jersey.** Wanser v. Hoos, 60 NJL 482, 38 A 449.

[14] **Oklahoma.** Elias v. Tulsa, 408 P2d 517 (Okla).

[15] **United States.** Kissane v. Anchorage, 159 F Supp 733, citing this treatise.

Alabama. See Baldwin County v. Jenkins, 494 So 2d 584 (Ala) (statute providing "unless otherwise provided by local law").

Arizona. State v. Christi, 149 Ariz 323, 718 P2d 487 (Ariz App).

Idaho. Sun Valley Co. v. City of Sun Valley, 109 Idaho 424, 708 P2d 147.

Illinois. People v. Burris, 408 Ill 68, 95 NE2d 882; Perkins v. Cook County Com'rs, 271 Ill 449, 262, 463, Ill NE 580, distg People v. Rinaker, 252 Ill 266, 96 NE 897.

Kentucky. Connors v. Jefferson County Fiscal Court, 277 Ky 23, 125 SW2d 206.

Utah. Patterick v. Carbon Water Conservancy Dist., 106 Utah 55, 145 P2d 508, 510 (Water Conservancy Act as general because intended to apply to all portions of state); Lehi City v. Meiling, 87 Utah 237, 48 P2d 530.

Virginia. Newport News v. Elizabeth City County, 189 Va 825, 55 SE2d 56.

Wyoming. State v. McInerney, 63 Wyo 280, 182 P2d 28, citing this treatise.

See § 4.44.

[16] **North Carolina.** Town of Emerald Isle v. State, 320 NC 640, 360 SE2d 756 (1987) (establishing pedestrian beach access facilities general law).

[17] **Alabama.** Trailway Oil Co. v. Mobile, 271 Ala 218, 122 So 2d 757.

[18] **Maryland.** Gaither v. Jackson, 147 Md 655, 128 A 769, 773; Bradshaw v. Lankford, 73 Md 428, 21 A 66.

Effect of form on classification, see Sutherland Stat Const § 40.05 (4th Ed).

[19] **North Carolina.** Town of Emerald Isle v. State, 320 NC 640, 360 SE2d 756 (1987).

[20] **New Jersey.** Town of Secaucus v. Hudson County Board of Taxation, 133 NJ 482, 628 A2d 288 (1993).

[21] **Arizona.** Republic Inv. Fund I v. Town of Surprise, 166 Ariz 143, 800 P2d 1251 (1990).

Nebraska. Haman v. Marsh, 237 Neb 699, 467 NW2d 836 (1991).

New Jersey. Town of Secaucus v. Hudson County Board of Taxation, 133 NJ 482, 628 A2d 288 (1993).

§ 4.51. Curative acts as special or local laws.

Particular curative acts relating to municipal corporations have in some cases been deemed not special acts, within the meaning of a constitutional prohibition,[1] while in other cases such acts have been regarded as special laws and invalid,[2] the rulings being largely dependent on the general rules stated here, including those relating to classification.[3] Such acts are generally held not statutes as to which a general law can be made applicable.[4] For instance, a special law is valid that legalizes official acts done without authority since in that case a general law can not be made applicable.[5] Where a curative act includes all existing local ordinances (as those of a village) and contracts similarly situated with respect to the subject and object of the act, it has been held not special legislation.[6] Furthermore, an act is not special because it provides that a municipal corporation that succeeds to rights, franchises and property of a former provisional city or town government, without legal authority to contract, etc., should pay the debts and liabilities of that provisional government.[7]

If a curative act applies to all cases in the same situation, it is not subject to the objection that it is a special law because it applies only to existing conditions,[8] since the object of such legislation is to effect a remedy for present conditions.[9] In other words, courts generally sustain the validity of curative acts because there is a presumption of validity that attaches to curative acts.[10]

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[1] **United States.** Read v. Plattsmouth, 107 US 568, 27 L Ed 514, 2 S Ct 208 (act validating bonds of particular city as not special act conferring corporate powers).

Alabama. See Baldwin County v. Jenkins, 494 So 2d 584 (Ala) (amended statute providing unless otherwise provided by local law).

California. Redlands v. Brook, 151 Cal 474, 91 P 150.

Connecticut. Moran v. Bens, 144 Conn 27, 127 A2d 42.

Iowa. Windsor v. Des Moines, 101 Iowa 343, 70 NW 214; Iowa R. Land Co. v. Soper, 39 Iowa 112 (municipal tax levies in excess of legal limit to pay judgments as validated by statute).

Kansas. Leavenworth v. Le worth City & Ft. Leavenworth Co., 69 Kan 82, 76 P 451; Ma Spencer, 35 Kan 512, 11 P 402.

See also Cole v. Dorr, 80 Ka 101 P 1016.

Minnesota. State v. Thief Falls, 76 Minn 15, 78 NW 867; S Spaude, 37 Minn 322, 34 NW 16

Montana. Weber v. Helei Mont 109, 297 P 455.

New York. Davidge v. Co Council of City of Binghamton, Div 525, 71 NYS 282.

Ohio. Kumler v. Silsbee, 38 (445.

Oregon. State v. James, 1 268, 219 P2d 756.

Washington. See Baker v. S 2 Wash St 576, 27 P 462.

Wisconsin. State v. Prudis Wis 59, 4 NW2d 144.

[2] **Arkansas.** Huxtable v. Sta Ark 533, 26 SW2d 577.

Iowa. Stange v. Dubuque, 6 303, 17 NW 518 (statute purpo validate void municipal ordin special).

Kansas. State v. Holcomb, 660, 149 P 684 (curative acts applicable to all cities of same same situation).

Minnesota. Szroka v. Nor ern Bell Tel. Co., 171 Minn 57, 557.

Nebraska. Anderson v. Lel 119 Neb 451, 229 NW 773.

Wisconsin. Federal Paving Prudisch, 235 Wis 527, 293 N Cawker v. Central Bitulithic Co., 140 Wis 25, 121 NW 883; v. Town of Rosendale, 42 Wis 4

Georgia. Hoover v. Brown, 186 Ga 519, 198 SE 231.

Texas. Fort Worth v. Bobbitt, 121 Tex 14, 36 SW2d 470, 41 SW2d 228.

[7] **Missouri.** State v. Jackson County Court, 89 Mo 237, 1 SW 307.

Texas. Irving v. Bull, 369 SW2d 60 (Tex Civ App) (increase in population of particular city).

[8] **United States.** Greeson v. Imperial Irr. Dist., 59 F2d 529, affg 55 F2d 321.

Indiana. Porter v. State, 208 Ind 410, 196 NE 238; Lebanon v. Walker, 88 Ind App 498, 164 NE 637.

Iowa. Miehls v. Independence, 249 Iowa 1022, 88 NW2d 50; Hatter v. Incenbice, 207 Iowa 702, 233 NW 527.

Kansas. State v. Downs, 60 Kan 788, 57 P 962; Topeka v. Gillette, 32 Kan 431, 437, 4 P 800.

Missouri. State v. County Court of Marion County, 128 Mo 427, 30 SW 103, 31 SW 23; State v. Wofford, 121 Mo 61, 71, 25 SW 851.

Washington. State v. Smith, 149 Wash 173, 270 P 306.

[9] **Missouri.** State v. Herrmann, 75 Mo 340 (only city having such population at time of act passage or which by usual increase of population could be expected to have that number by time act takes effect).

Wisconsin. Lamasco Realty Co. v. Milwaukee, 242 Wis 357, 8 NW2d 372, 865.

III. CONTROL OF LEGISLATURE AS DEPENDENT ON SUBJECT MATTER OF LEGISLATION

§ 4.77. General considerations.

The question considered in this subdivision is the extent of legislative control of municipal corporations as dependent on the subject matter sought to be controlled. We have already noticed in this chapter the general rules governing the legislative control of municipal corporations,[1] together with limitations imposed on the legislature by the federal and state constitutions.[2] Also, the subject matter of legislation may, in effect, operate as an additional limitation upon the power of legislative control either because of an inherent right that is recognized in some states, of local self-government by municipalities,[3] of the existence of a provision in the state constitution conferring the right of local self-government to a limited extent without regard to the existence of a home rule charter,[4] of constitutional authorization of home rule charters,[5] or because of other laws embodied either in statutes or in judicial decisions.[6] Whether or not a municipal ordinance controls as against a conflicting statute by reason of the ordinance's subject matter is further considered in following chapters.[7]

[1] See §§ 4.03–4.15.

[2] See §§ 4.16–4.76.

[3] See § 4.82.

[4] **Ohio.** See Fremont v. Keatin Ohio 468, 118 NE 114 (state law] ing speed of motor vehicles as] regulation).

The constitution in some s authorizes municipalities to adop enforce within their limits such police, sanitary and other simila ulations, as are not in conflict general laws. Youngstown v. Pa Recreation Commission, 68 Ohi 104, 39 NE2d 214.

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§ 4.78. "State affairs" a

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[1] **Colorado.** Mountain States Tel. Co. v. City & County of I 725 P2d 52 (Colo App), citir treatise.

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§§ 4.16–4.76.

[3] See § 4.82.

[4] **Ohio.** See Fremont v. Keating, 96 Ohio 468, 118 NE 114 (state law limiting speed of motor vehicles as police regulation).

The constitution in some states authorizes municipalities to adopt and enforce within their limits such local, police, sanitary and other similar regulations, as are not in conflict with general laws. Youngstown v. Park & Recreation Commission, 68 Ohio App 104, 39 NE2d 214.

The constitutional grant to municipalities "to exercise all powers of local self-government" has been held to include power to enact all such measures as pertain exclusively to it, in which the people of the state at large have no interest or concern, and which they have not expressly withheld by constitutional provision. Mansfield v. Endly, 38 Ohio App 528, 176 NE 462.

For an exhaustive review of the conflicting decisions in California under this constitutional provision, see article by Prof. John C. Peppin in 32 Calif L Rev 345–393.

[5] See § 4.83.

[6] See §§ 4.84–4.88.

[7] See §§ 15.15, 15.19, 21.32 et seq.

§ 4.78. "State affairs" and "municipal affairs."

So far as legislative control is concerned, state constitutions, state statutes, municipal charters, and decisions of the courts often employ, without definition, various terms to distinguish between (1) matters principally pertaining to the state at large, and (2) matters of purely local concern.[1]

In the first class, the words often used are "state affairs," "general concerns," "governmental matters," or similar phrases. In the second class, the term most often used is "municipal affairs," but such terms as "municipal concerns," "municipal purposes," "local affairs," "local municipal functions," "internal municipal regulations," "internal business affairs of the municipality," "powers of local self-government," are often used as meaning the same or practically the same. To avoid confusion, the first class in this subdivision is referred to as "state affairs" and the second class as "municipal affairs."

The meanings and effects[2] and also some of the differentiating characteristics[3] that have been attached to these terms are considered in the following sections. The use of the terms in particular contexts and relations is also subsequently noticed.[4]

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[1] **Colorado.** Mountain States Tel. & Tel. Co. v. City & County of Denver, 725 P2d 52 (Colo App), citing this treatise.

Missouri. Yellow Freight Systems, Inc. v. Mayor's Commission on Human Rights of City of Springfield, 791 SW2d 382 (Mo 1990).

[2] See §§ 4.79–4.84.
[3] See §§ 4.85–4.88.
[4] See § 4.89 et seq.

§ 4.79. "Public" and "private" municipal powers distinguished.

Powers and functions of municipal corporations are divided into two general classes, i.e., (1) public and governmental powers and functions and (2) private or local powers and functions.[1] This classification of powers and functions is based upon the distinction between state affairs and municipal affairs, referred to above.[2] In other words, powers of a municipal corporation that are governmental or public are ordinarily those that relate to state affairs. Powers of a municipal corporation that are proprietary or private are ordinarily those relating to municipal affairs.

[1] **Colorado.** Mountain States Tel. & Tel. Co. v. City & County of Denver, 725 P2d 52 (Colo App), citing this treatise

See §§ 2.09.
[2] See § 4.78.

§ 4.80. Control as dependent on "state" or "municipal" character of subject matter.

Notwithstanding the broad rule often stated by the courts as to unlimited power of the legislature over municipal corporations,[1] this power is limited in some states either because of recognition in the state of an inherent right of self-government,[2] or because of provisions in the state constitution other than those authorizing the adoption of home rule charters,[3] or, as affecting home rule charters, because of provisions in the state constitution authorizing such charters,[4] or because of other reasons.[5] In short, legislative control over municipalities often depends on whether the subject matter involved relates to something of purely local concern, here generally referred to as a municipal affair or to something in which the public at large outside the municipality are concerned, here generally referred to as a state affair.[6] However, it is not necessary that each and every legislative subject be classified and fitted into either a statewide or local and municipal category with the result that either the city or the state, but not both, is empowered to exercise exclusive authority with respect to those subjects.[7] Indeed, the cases have not recognized exclusive spheres of activity where the authority of the

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[1] **New York.** Kamhi v.
Yorktown, 74 NY2d 423, 5
144, 547 NE2d 346 (1989)
having no inherent power
zoning conditions).
See § 4.03.
[2] See § 4.82.
[3] **New York.** Kamhi v.
Yorktown, 74 NY2d 423, 5
144, 547 NE2d 346 (1989)
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See § 4.77.
[4] See § 4.83.
[5] See § 4.81.
[6] **Colorado.** Voss v. Lun
Inc., 830 P2d 1061 (Colo 19
[7] **Colorado.** Woolverton
146 Colo 247, 361 P2d 982.

state and the city must be meticulously separated and the respective powers isolated so as to invalidate any ordinance which strays into state affairs.[8] On the contrary, the practical impossibility of such divisions has prompted the courts to declare the mutual exclusion doctrine inapplicable to such intermediate subjects. Consequently, acting with the consent of the state, a city can legislate on a subject within the legitimate sphere of both its interest and that of the state. That is to say, a city may exercise legislative authority even assuming that the subject has a statewide aspect, at least until such time as the state preempts the field by expressly asserting its right to legislate to the exclusion of the city.[9]

A home rule city's ordinance will supersede a conflicting state statute on the same subject matter in areas of strictly local concern.[10] Conversely, a state statute will supersede a conflicting municipal charter or ordinance on a matter of statewide concern.[11] In areas of both local and state-wide interest, a home rule city may legislate in a supplemental fashion that does not conflict with state legislation.[12] When the legislature enacts a law affecting municipal affairs but of statewide concern, that law takes precedence over any municipal action taken under a home rule charter.[13]

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[1] **New York.** Kamhi v. Town of Yorktown, 74 NY2d 423, 548 NYS2d 144, 547 NE2d 346 (1989) (towns as having no inherent power to impose zoning conditions).

See § 4.03.

[2] See § 4.82.

[3] **New York.** Kamhi v. Town of Yorktown, 74 NY2d 423, 548 NYS2d 144, 547 NE2d 346 (1989) (home rule municipalities' local laws inconsistent with Town Law may be valid).

See § 4.77.

[4] See § 4.83.

[5] See § 4.81.

[6] **Colorado.** Voss v. Lundvall Bros., Inc., 830 P2d 1061 (Colo 1992).

[7] **Colorado.** Woolverton v. Denver, 146 Colo 247, 361 P2d 982.

[8] **Colorado.** Woolverton v. Denver, 146 Colo 247, 361 P2d 982.

[9] **Colorado.** Voss v. Lundvall Bros., Inc., 830 P2d 1061 (Colo 1992); Woolverton v. Denver, 146 Colo 247, 361 P2d 982 (gambling ordinance as not preempted by statutory scheme).

New York. Kamhi v. Town of Yorktown, 74 NY2d 423, 548 NYS2d 144, 547 NE2d 346 (1989) (home rule municipalities' local laws inconsistent with Town Law may be valid); Albany Area Builders Ass'n v. Town of Guilderland, 74 NY2d 372, 547 NYS2d 627, 546 NE2d 920 (1989) (town's transportation impact fee law as preempted by state law).

Oregon. City of Portland v. Lodi, 308 Or 468, 782 P2d 415 (1989).

[10] **Colorado.** Greenwood Village on Behalf of State v. Fleming, 643 P2d 511 (Colo).

New Mexico. State ex rel. Haynes v. Bonem, 114 NM 627, 845 P2d 150 (1992), quoting this treatise.

[11] **Colorado.** Voss v. Lundvall Bros., Inc., 830 P2d 1061 (Colo 1992); Greenwood Village on Behalf of State v. Fleming, 643 P2d 511 (Colo).

New Mexico. State ex rel. Haynes v. Bonem, 114 NM 627, 845 P2d 150 (1992), quoting this treatise.

[12] **Colorado.** Greenwood Village on Behalf of State v. Fleming, 643 P2d 511 (Colo).

Nebraska. Thompson v. City of Omaha, 235 Neb 346, 455 NW2d 538 (1990) (state wage payment and collection act as inapplicable to claims against city).

[13] **Nebraska.** Thompson v. City of Omaha, 235 Neb 346, 455 NW2d 538 (1990) (state wage payment and collection act as inapplicable to claims against city).

§ 4.81. Control over municipal affairs.

Conceding that the subject matter involved relates to a municipal affair, and not to a state affair,[1] while legislative control is often, if not generally, recognized,[2] where exclusive power to act in relation to the matter has not been delegated by the constitution or the legislature to the municipality,[3] subject to the same constitutional restraints that are placed on the legislature in respect to private corporations,[4] such control does not exist in those few states where an inherent right of self-government by municipalities is recognized[5] nor where the constitution of the state otherwise provides,[6] nor generally where the constitution authorizes home rule charters and such a charter has been adopted.[7] Furthermore, in many instances, denial of control of the legislature over municipal affairs is based upon a general policy of giving effect to ordinary powers customarily conferred on municipal corporations.[8]

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[1] **New York.** Albany Area Builders Ass'n v. Town of Guilderland, 74 NY2d 372, 547 NYS2d 627, 546 NE2d 920 (1989); Perales v. Heimbach, 166 AD2d 707, 561 NYS2d 290 (1991) (term of county commissioner of social services as state affair).

North Carolina. City of New Bern v. New Bern—Craven County Board of Education, 338 NC 430, 450 SE2d 735 (1994).

Municipal and state affairs, distinguished, see § 4.85 et seq.

[2] **United States.** Trenton v. New Jersey, 262 US 182, 67 L Ed 937, 43 S Ct 534; Independent Paving Co. v. Bay St. Louis, 74 F2d 961; South Carolina Power Co. v. South Carolina Tax Commission, 52 F2d 515.

Arkansas. Little Rock v. Black Motor Lines, Inc., 208 Ark 498, 186 SW2d 665.

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Connecticut. Con Bridgeport, 104 Conn 238,

Delaware. Boyer v. Liquor Commission, 36 Harr) 224, 173 A 522.

Illinois. The Aberde Coal Co. v. Chicago, 315 Il 613.

Iowa. Johnson County Creston, 212 Iowa 929, 2 (municipality acting in pr porate capacity as limite creating it and statutes i it).

Kentucky. Nourse v. 257 Ky 525, 78 SW2d Pineville v. Meeks, 254 SW2d 33, 35.

Maryland. Denhard v 167 Md 416, 173 A 267.

Massachusetts. Comr Plaisted, 148 Mass 375, (legislative act valid abridges exercise of priv self-government where s not guaranteed by c provision).

Missouri. Flinn v. Gi 1047, 10 SW2d 923 (re utes as controlling ministerial and propriet municipalities).

Nebraska. Thompso Omaha, 235 Neb 346, 4 (1990) (state wage paym tion act as inapplicab against city).

North Carolina. City v. New Bern—Craven Co Education, 338 NC 430, (1994).

Oklahoma. Cla Oklahoma Tax Commis 223, 169 P2d 299.

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ansas. Little Rock v. Black Lines, Inc., 208 Ark 498, 186 365.

Connecticut. Connelly v. Bridgeport, 104 Conn 238, 132 A 690.

Delaware. Boyer v. Delaware Liquor Commission, 36 Del (6 WW Harr) 224, 173 A 522.

Illinois. The Aberdeen-Franklin Coal Co. v. Chicago, 315 Ill 99, 145 NE 613.

Iowa. Johnson County Sav. Bank v. Creston, 212 Iowa 929, 237 NW 507 (municipality acting in private or corporate capacity as limited by statute creating it and statutes applicable to it).

Kentucky. Nourse v. Russellville, 257 Ky 525, 78 SW2d 761, 763; Pineville v. Meeks, 254 Ky 167, 71 SW2d 33, 35.

Maryland. Denhard v. Baltimore, 167 Md 416, 173 A 267.

Massachusetts. Commonwealth v. Plaisted, 148 Mass 375, 19 NE 224 (legislative act valid though it abridges exercise of privilege of local self-government where such privilege not guaranteed by constitutional provision).

Missouri. Flinn v. Gillen, 320 Mo 1047, 10 SW2d 923 (restrictive statutes as controlling exercise of ministerial and proprietary powers of municipalities).

Nebraska. Thompson v. City of Omaha, 235 Neb 346, 455 NW2d 538 (1990) (state wage payment and collection act as inapplicable to claims against city).

North Carolina. City of New Bern v. New Bern—Craven County Board of Education, 338 NC 430, 450 SE2d 735 (1994).

Oklahoma. Claremore v. Oklahoma Tax Commission, 197 Okla 223, 169 P2d 299.

Oregon. Twohy Bros. Co. v. Ochoco Irr. Dist. of Crook County, 108 Or 1, 216 P 189, 193 (recognizing plenary authority of legislature).

Wisconsin. In re Application of Racine, 196 Wis 604, 220 NW 398, 221 NW 109.

Wyoming. Stewart v. Cheyenne, 60 Wyo 497, 154 P2d 355, 360.

[3] **Missouri.** State v. Binswanger, 122 Mo App 78, 98 SW 103 (general state law as superseded by municipal regulation of matters within exclusive power of municipalities).

Nevada. State v. Doxey, 55 Nev 186, 28 P2d 122, 125 (municipal legislation superseding inconsistent state legislation on same subject matter where constitutionally authorized).

Ohio. Ohio Ass'n of Public School Employees v. City of Twinsburg, 36 Ohio St 3d 180, 522 NE2d 532 (1988) (jurisdiction of local civil service commission as having no extraterritorial effect necessary for application of statewide concern doctrine).

Ordinances superseding statutes, see § 21.32.

[4] **United States.** New Orleans v. New Orleans Water Co., 142 US 79, 91, 35 L Ed 943, 12 S Ct 142, dismissing writ of error in 41 La Ann 910, 7 So 8 (discussing impairment of contract and due process clauses of federal Constitution).

Iowa. State v. Barker, 116 Iowa 96, 89 NW 204.

Kentucky. Covington Bridge Commission v. Covington, 257 Ky 813, 79 SW2d 216.

North Carolina. Asbury v. Town of Albemarle, 162 NC 247, 78 SE 146, 150.

Texas. Ex parte Lewis, 45 Tex Crim 1, 73 SW 811.

[5] See § 4.82.

[6] **Arkansas.** Rooker v. Little Rock, 234 Ark 372, 352 SW2d 172.

Nevada. State v. Doxey, 55 Nev 186, 28 P2d 122.

Ohio. Ohio Ass'n of Public School Employees v. City of Twinsburg, 36 Ohio St 3d 180, 522 NE2d 532 (1988) (jurisdiction of local civil service commission as having no extraterritorial effect necessary for application of statewide concern doctrine); Simmons v. Cleveland Heights 81 Ohio L Abst 129, 160 NE2d 677.

Utah. Under a constitutional prohibition of legislative delegation to any special commission of power to make, supervise or interfere with a municipal improvement, a state agency authorized to control and abate water pollution in the state could not have jurisdiction to direct in detail the sewage disposal operations of a city. State Water Pollution Control Board v. Salt Lake City, 6 Utah 2d 247, 311 P2d 370.

See § 4.77.

[7] See § 4.83.

[8] **Ohio.** See Ohio Ass'n of Public School Employees v. City of Twinsburg, 36 Ohio St 3d 180, 522 NE2d 532 (1988) (jurisdiction of local civil service commission as having no extraterritorial effect necessary for application of statewide concern doctrine).

See ch 10.

§ 4.82. Inherent right of local self-government.

In most of the states the doctrine of an inherent right of local self-government by municipal corporations has been expressly rejected.[1] Thus, unless granted by the state constitution, the general rule is that a municipal corporation has no inherent right of self-government that is independent of legislative control.[2] The reason upon which this general rule is based is that the municipal corporation is a creature of the legislature,[3] from which, within constitutional limits, it derives all its rights and powers.[4] The minority view that local government units have an inherent right to exercise certain powers of local self-government that is independent of legislative control has been criticized as lacking historical foundation considering the extensive central control exercised by states over local government units from the beginning of the Republic. It is also jurisprudentially unsound insofar as the right is asserted to exist without a specific constitutional provision guaranteeing to the people the right of local self-government or prohibiting the legislator from exercising powers of local government and is unsupported by any case law prior to People v. Hurlburt[5] and by the great majority of cases decided after the Hurlburt case.[6] Some cases contain a point by point refutation of People v. Hurlburt.[7] It should also be noted that the United States Supreme Court has held that there is no place in

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at there is no place in

the federal system for sovereign cities, largely on federalism grounds.[8]

A distinction should be made between the right of local self-government as inherent in the people, and the right as inherent in a municipal corporation.[9] While as to the people, the right has quite commonly been assumed to exist,[10] as to the municipal corporation the right must be derived either from the people through the constitution or from the legislature.[11] The history and importance of the principle of local self-government has been considered in a preceding chapter of this work.[12] It has engaged the attention of the courts since the formation of the Union.[13] The intention to preserve and perpetuate the ancient right of local self-government is apparent throughout the scope of most of the state constitutions,[14] and laws relating to municipal corporations are generally construed in harmony with the principle of local self-government.[15] Furthermore, local self-government has prevailed in practice from the earliest colonial period,[16] and sometimes self-government is held to be protected by the state constitution by implication.[17] However, the implication doctrine has also been expressly repudiated.[18]

The doctrine of an inherent municipal right of local self-government has been said to be in effect in Indiana,[19] Michigan,[20] and Montana,[21] but in at least some of the decisions of the courts of those states the distinction noted above between the right of local self-government as inhering in the people, or as inhering in the municipal corporation, has not been clearly made.[22] Accordingly, as also noted above, the decisions recognizing the inherent right of local self-government "are unquestionably against the great weight of judicial decision in this country and are unsound in principle."[23] Thus, in Indiana, although decisions recognizing the inherent right of local self-government have not been specifically overruled, the bulk of later decisions has eroded the local autonomy theory into a state of practical nonexistence.[24] Although this inherent right was stated to exist in certain early decisions in Kentucky,[25] it has been rejected in later decisions.[26] In Texas there is a conflict in the decisions of the courts as to the existence of an inherent right of local self-government. The civil courts of appeal have denied it[27] but the court of criminal appeals has asserted the existence of the right.[28] Closely allied to this question of local self-government as inherent is the question of

inherent powers of a municipal corporation which is considered in a following chapter.[29]

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[1] See § 1.42.

[2] **United States.** Despite home rule provisions of the state constitution, municipalities remain creatures of the state legislature, and do not derive their powers directly from the constitution. Village of Arlington Heights v. Regional Transp. Authority, 653 F2d 1149 (CA7).

Alabama. Alabama. Yeilding v. State, 232 Ala 292, 167 So 580.

Alaska. See Libby v. Dillingham, 612 P2d 33 (Alaska) (general law municipalities as having only those legislative powers conferred by law).

California. Golden Gate Bridge & Highway Dist. v. Felt, 214 Cal 308, 5 P2d 585.

Connecticut. New Haven Commission on Equal Opportunity v. Yale University, 183 Conn 495, 439 A2d 404 (municipal corporation as having no inherent power but only powers necessary to discharge duties and carry into effect objects and purposes of municipalities' creation); City Council of City of West Haven v. Hall, 180 Conn 243, 429 A2d 481; Waterbury v. Macken, 100 Conn 407, 124 A 5; State v. Williams, 68 Conn 131, 35 A 24, 421, affd 170 US 304, 42 L Ed 1047, 18 S Ct 617; Booth v. Danbury, 32 Conn 118; Webster v. Harwinton, 32 Conn 131.

Florida. Cobo v. O'Bryant, 116 So 2d 233 (Fla), citing this treatise; Asbell v. Green, 159 Fla 702, 32 So 2d 593 (municipal liberty to be exercised consistently with power of legislature to control municipal powers and jurisdiction); Orlando v. Evans, 132 Fla 609, 182 So 264; Kaufman v. Tallahassee, 84 Fla 634, 94 So 697.

Georgia. Americus v. Perry, 114 Ga 871, 878, 40 SE 1004.

Hawaii. See McKenzie v. Wilson, 31 Hawaii 216, 233.

Illinois. A municipality which is not a home rule unit is subject to the rule that the "powers of a municipal corporation are derived by it from the general assembly," i.e., it has no inherent power. Ross v. Geneva, 71 Ill 2d 27, 373 NE2d 1342; Village of River Forest v. Midwest Bank & Trust Co., 12 Ill App 3d 136, 297 NE2d 775.

Massachusetts. Commonwealth v. Plaisted, 148 Mass 375, 19 NE 224.

Minnesota. Guaranteed Concrete Co. v. Garrick Bros., 185 Minn 454, 241 NW 588.

Nebraska. Redell v. Moores, 63 Neb 219, 88 NW 243, overruling State v. Moores, 55 Neb 480, 76 NW 175.

New Hampshire. Amyot v. Caron, 88 NH 394, 190 A 134.

New Jersey. Booth v. McGuinness, 78 NJL 346, 75 A 455; Sussex Woodlands, Inc. v. Mayor & Council of Tp. of West Milford, 109 NJ Super 432, 263 A2d 502; Grogan v. De Sapio, 19 NJ Super 469, 88 A2d 666,citing this treatise.

New York. MacMullen v. Middletown, 187 NY 37, 79 NE 863; Procaccino v. Board of Elections of City of New York, 73 Misc 2d 462, 341 NYS2d 810.

North Carolina. Town of Highlands v. Hickory, 202 NC 167, 162 SE 471. Compare State v. Bass, 171 NC 780, 87 SE 972; Asbury v. Town of Albemarle, 162 NC 247, 78 SE 146.

"Municipalities have no inherent powers; they have only such powers as

are delegated to them by enactment." In re Ordinanc ation, 296 NC 1, 249 SE2d

Oklahoma. Cf. Ardmor Board of Carter County, 15 8 P2d 2.

Oregon. Straw v. Harris 103 P 777.

Pennsylvania. In r Township's Annexation, 1(106, 158 A 316, affd 305 P 272.

Rhode Island. Charil High School Dist. v. Town Town of Hopkinton, 109 A2d 312; Marro v. Gener of City of Cranston, 108 A2d 660; Providence v. M 236, 160 A 75, 78, 79, citi tise; In re Opinion of the RI 191, 83 A 3. Compare Horton, 22 RI 196, 204, 4

South Carolina. Rees 187 SC 474, 198 SE 40 Camden Water, Light & I 284, 64 SE 151.

Tennessee. Smiddy 140 Tenn 97, 203 SW 512

Vermont. "Absent a h stitutional provision, a has only those powers specifically authorized b ture, and such additiona may be incident, subord essary to the exerci Hinesburg Sand & Grav of Hinesburg, 135 Vt 484

Washington. State Wash 524, 118 P 639.

See Seattle v. Auto Workers Local 387, 27 V 620 P2d 119.

West Virginia. Boote W Va 412, 89 SE 985.

are delegated to them by legislative enactment." In re Ordinance of Annexation, 296 NC 1, 249 SE2d 698.

Oklahoma. Cf. Ardmore v. Excise Board of Carter County, 155 Okla 126, 8 P2d 2.

Oregon. Straw v. Harris, 54 Or 424, 103 P 777.

Pennsylvania. In re Baldwin Township's Annexation, 103 Pa Super 106, 158 A 316, affd 305 Pa 490, 158 A 272.

Rhode Island. Chariho Regional High School Dist. v. Town Treasurer of Town of Hopkinton, 109 RI 30, 280 A2d 312; Marro v. General Treasurer of City of Cranston, 108 RI 192, 273 A2d 660; Providence v. Moulton, 52 RI 236, 160 A 75, 78, 79, citing this treatise; In re Opinion of the Justices, 34 RI 191, 83 A 3. Compare Newport v. Horton, 22 RI 196, 204, 47 A 312.

South Carolina. Reese v. Hinnant, 187 SC 474, 198 SE 403; Ancrum v. Camden Water, Light & Ice Co., 82 SC 284, 64 SE 151.

Tennessee. Smiddy v. Memphis, 140 Tenn 97, 203 SW 512.

Vermont. "Absent a home rule constitutional provision, a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate, or necessary to the exercise thereof." Hinesburg Sand & Gravel Co. v. Town of Hinesburg, 135 Vt 484, 380 A2d 64.

Washington. State v. Burr, 65 Wash 524, 118 P 639.

See Seattle v. Auto Sheet Metal Workers Local 387, 27 Wash App 669, 620 P2d 119.

West Virginia. Booten v. Pinson, 77 W Va 412, 89 SE 985.

Wisconsin. Van Gilder v. Madison, 222 Wis 58, 267 NW 25, 268 NW 108; State v. Thompson, 149 Wis 488, 137 NW 20.

Wyoming. See Stewart v. Cheyenne, 60 Wyo 497, 154 P2d 355, 359, reviewing authorities and citing this treatise.

[3] **Utah.** State v. Eldredge, 27 Utah 477, 76 P 337.

See State v. Hutchinson, 624 P2d 1116 (Utah).

See § 4.03.

[4] **Connecticut.** City Council of City of West Haven v. Hall, 180 Conn 243, 429 A2d 481.

Indiana. South Bend v. Krovitch, 149 Ind App 438, 273 NE2d 288 (decisions having eroded local autonomy theory into practical nonexistence).

Washington. State v. Burr, 65 Wash 524, 526, 118 P 639.

West Virginia. "To say that municipalities have inherent political rights and at the same time admit that all their powers are delegated by the legislature is a contradiction of terms. The principle seems both illogical and paradoxical." Booten v. Pinson, 77 W Va 412, 89 SE 985, 990.

Frug, The City as a Legal Concept, 93 Harv L Rev 1059.

Plenary power of state legislature to create municipal corporations, see § 3.02.

[5] People v. Hurlburt, 24 Mich 44.

[6] McBain, The Doctrine of and Independent Right of Local Self-Government, 16 Colum L Rev 190 (1916).

[7] **New Jersey.** Booth v. McGuinness, 78 NJL 346, 75 A 455.

[8] See § 4.03, 10.09.

[9] See § 1.40.

[10] See § 1.37, 1.42.

[11] **United States.** Trenton v. New Jersey, 262 US 182, 187, 67 L Ed 937, 43 S Ct 534.

Wisconsin. Local Union No. 487, IAFF AFL–CIO v. City of Eau Claire, 141 Wis 2d 437, 415 NW2d 543 (Ct App 1987) (statutory provisions).

[12] See §§ 1.35–1.38, 1.42.

[13] **Washington.** State v. Burr, 65 Wash 524, 526, 118 P 639.

See § 1.42.

[14] **United States.** Wolff v. New Orleans, 103 US 358, 26 L Ed 395.

Alabama. Yeilding v. State, 232 Ala 292, 167 So 580, 589, citing this treatise; State v. Lane, 181 Ala 646, 62 So 31.

California. Graham v. Fresno, 151 Cal 465, 472, 91 P 147; People v. Lynch, 51 Cal 15; People v. Burr, 13 Cal 343, 351.

Colorado. Town of Holyoke v. Smith, 75 Colo 286, 226 P 158.

Florida. Kaufman v. Tallahassee, 84 Fla 634, 94 So 697; Wilton Manors v. Starling, 121 So 2d 172 (Fla App).

Maryland. Talbot v. Queen Ann Co., 50 Md 245, 259.

Michigan. Simpson v. Gage, 195 Mich 581, 161 NW 898, 900; Grobbel v. Board of Water Com'rs of City of Detroit, 181 Mich 364, 370, 149 NW 675; People v. Hurlbut, 24 Mich 44, 89.

Montana. State v. Edwards, 42 Mont 135, 111 P 734; Helena Consol. Water Co. v. Steele, 20 Mont 1, 49 P 382.

New York. Scott v. Saratoga Springs, 199 NY 178, 92 NE 393, affg 131 App Div 347, 921, 115 NYS 796; People v. Houghton, 182 NY 301, 305, 74 NE 830; Rathbone v. Wirth, 150 NY 459, 45 NE 15.

"The whole trend of modern through and recent legislation is towards vesting in each municipality the management of its local affairs." Cleveland v. Watertown, 222 NY 159, 177, 118 NE 500.

North Carolina. Asbury v. Town of Albemarle, 162 NC 247, 78 SE 146, 150.

Oklahoma. Dowell v. Board of Education of Oklahoma City, 185 Okla 342, 91 P2d 771; Ardmore v. Excise Board of Carter County, 155 Okla 126, 8 P2d 2, 11, quoting this treatise.

Oregon. Branch v. Albee, 71 Or 188, 142 P 598; Portland v. Nottingham & Co., 58 Or 1, 113 P 28.

Utah. State v. Eldredge, 27 Utah 477, 76 P 337; State v. Strandford, 24 Utah 148, 156–159, 66 P 1061.

Washington. Bussell v. Gill, 58 Wash 468, 108 P 1080.

Wyoming. Stewart v. Cheyenne, 60 Wyo 497, 154 P2d 355.

[15] **Colorado.** In re Senate Bill Providing for a Board of Public Works, 12 Colo 188, 21 P 481.

Kentucky. Hatcher, v. Meredith, 295 Ky 194, 173 SW2d 665; Warley v. Board of Park Com'rs, 233 Ky 688, 26 SW2d 554.

Montana. Public Service Commission v. Helena, 52 Mont 527, 159 P 24.

[16] **Connecticut.** Hackett v. New Haven, 103 Conn 157, 130 A 121, 125.

See § 1.37.

[17] **Iowa.** State v. Barker, 116 Iowa 96, 89 NW 204.

Michigan. See People v. Common Council of Detroit, 28 Mich 228; People v. Hurlbut, 24 Mich 44.

Montana. See People v. Edwards, 42 Mont 135, 111 P 734.

New York. Rathbone v. Wir
NY 459, 45 NE 15.

Utah. State v. Eldredge, 2
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See State v. Hutchinson, 6
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[18] **Georgia.** Americus v. Pe
Ga 871, 440 SE 1004.

New Jersey. Booth v. Mc
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Court to Governor, 34 RI 191

[19] **Indiana.** State v. Denn
382, 395, 21 NE 252; State
118 Ind 449, 21 NE 274.

[20] **Michigan.** Attorney
Board of Education of City
225 Mich 237, 196
Kalamazoo v. Titus, 208
261, 175 NW 480; Hawkins
Council of City of Grand R
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135, 111 P 734.

New York. Rathbone v. Wirth, 150 NY 459, 45 NE 15.

Utah. State v. Eldredge, 27 Utah 477, 76 P 337; State v. Stanford, 24 Utah 148, 66 P 1061 (constitution as implying right of local self-government to each county).

See State v. Hutchinson, 624 P2d 1116 (Utah), quoting this treatise.

West Virginia. Booten v. Pinson, 77 W Va 412, 89 SE 985 (dissent).

[18] **Georgia.** Americus v. Perry, 114 Ga 871, 440 SE 1004.

New Jersey. Booth v. McGuinnes, 78 NJL 346, 75 A 455.

Rhode Island. Cf. Newport v. Horton, 22 RI 196, 47 A 312.

The constitution of Rhode Island "contains no reference to local government, and nowhere attempts to restrain the power of the legislator over the various cities and towns." In re Opinion of Justices of Supreme Court to Governor, 34 RI 191, 83 A 3.

[19] **Indiana.** State v. Denny, 118 Ind 382, 395, 21 NE 252; State v. Denny, 118 Ind 449, 21 NE 274.

[20] **Michigan.** Attorney General v. Board of Education of City of Detroit, 225 Mich 237, 196 NW 417; Kalamazoo v. Titus, 208 Mich 252, 261, 175 NW 480; Hawkins v. Common Council of City of Grand Rapids, 192 Mich 276, 158 NW 953; People v. Detroit, 29 Mich 108; People v. Hurlbut, 24 Mich 44.

Wyoming. The Michigan cases are not among themselves in conflict. Stewart v. Cheyenne, 60 Wyo 497, 154 P2d 355, 363.

Inherent right to local self-government in Michigan, see also 2 Detroit L Rev 31–50.

[21] **Montana.** State v. Holmes, 100 Mont 256, 47 P2d 624 (municipal corporations in proprietary capacity as having same rights and duties as other property owners); State v. Arnold, 100 Mont 346, 49 P2d 976; Hersey v. Neilson, 47 Mont 132, 131 P 30 (respecting proprietary functions); State v. Edwards, 42 Mont 135, 111 P 734; Helena Consolidated Water Co. v. Steele, 20 Mont 1, 49 P 382.

See Lindeen v. Montana Liquor Control Board, 122 Mont 549, 207 P2d 977 (act authorizing state liquor control board to collect sales tax on all liquor sold as violating constitutional provisions against levying taxes on local government for municipal purposes).

[22] **Indiana.** See Datisman v. Gary Public Library, 241 Ind 83, 170 NE2d 55.

Michigan. See Davidson v. Hine, 151 Mich 294, 298, 115 NW 246; People v. Hurlbut, 24 Mich 44, 108.

[23] **West Virginia.** Booten v. Pinson, 77 W Va 412, 89 SE 985.

[24] **Indiana.** South Bend v. Krovitch, 149 Ind App 438, 273 NE2d 288.

[25] **Kentucky.** Hatcher v. Meredith, 295 Ky 194, 173 SW2d 665; Lexington v. Thompson, 113 Ky 540, 24 Ky L Rep 384, 68 SW 477.

[26] **Kentucky.** Warley v. Board of Park Com'rs, 233 Ky 688, 26 SW2d 554; Board of Trustees of Policemen's Pension Fund v. Schupp, 223 Ky 269, 3 SW2d 608, 609.

[27] **Texas.** Brown v. Galveston, 97 Tex 1, 14–16, 75 SW 488; Callaghan v. Tobin, 40 Tex Civ App 441, 450, 90 SW 328, 332; Kettle v. Dallas, 35 Tex Civ App 632, 640, 80 SW 874.

See Commissioner's Court of Nolan County v. Beal, 98 Tex 104, 81 SW 526; Trent v. Randolph, 130 SW 737 (Tex Civ App).

[28] **Texas.** Ex parte Levine, 46 Tex Crim 364, 81 SW 1206; Ex parte Anderson, 46 Tex Crim 372, 81 SW 973; Ex parte Lewis, 45 Tex Crim 1, 73 SW 811.

[29] See § 10.11.

§ 4.83. —Home rule charters.

In most of the states in which the constitution authorizes the adoption of home rule charters,[1] legislative control over matters of local concern in home rule municipalities ordinarily is curtailed to some extent or completely excluded.[2] Thus, the provisions of such a charter and the ordinances adopted in accordance with it may prevail over conflicting statutes treating the same subject matter so far as it is of local or municipal concern.[3] This is generally true even though, as already noticed, the constitution makes the provisions of a home rule charter subject to the "laws" or "general laws" of the state.[4] Contrary views have been expressed in some cases.[5] Elsewhere in this work is a discussion of the controlling or superseding effect of ordinances, charters and statutes upon one another,[6] and also of the effects of amendments of charters.[7] Frequently, however, these considerations are not discussed in the decisions of the courts. The issue involved is usually whether the subject matter as to which there is a conflict concerns a matter purely local or a state affair,[8] together with particular matters that have been held state affairs and those that have been held of purely local concern.[9]

In California the constitution authorizes cities that have adopted a home rule charter, by amendment of the charter or otherwise, "to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to general laws."[10] In that state, a home rule city has full control over its municipal affairs unaffected by general laws in regard to such affairs, whether or not its charter specifically provides for the particular power sought to be exercised, so long as the power is exercised within the limitations or restrictions placed in the charter,[11] and the mere enumeration in the charter of powers conferred does not constitute a limitation or restriction of other powers.[12] Prior to amendment of the constitution, the California decisions held to the contrary.[13] Furthermore, in California, the constitution

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Richards, Sybil

From: Cassone, Thomas
Sent: Wednesday, March 12, 2003 11:33 AM
To: Povodator, Ken; Rosenberg, Burt; Minor, James; Mullin, John; Toma, Michael; Richards, Sybil
Subject: RE: significant supreme court decision

Otherwise they couldn't fashion the result they want.

Thomas M. Cassone, Esq.
Director of Legal Affairs
City of Stamford
888 Washington Blvd.
Stamford, CT 06904
(203)977-4081 Voice
(203)977-5560 Fax

-----Original Message-----
From: Povodator, Ken
Sent: Wednesday, March 12, 2003 11:21 AM
To: Burt Rosenberg; James Minor; John Mullin; Michael Toma; Sybil Richards; Thomas Cassone
Subject: significant supreme court decision

In State v. Courchesne, 262 Conn. 537, the Supreme Court announced that it is effectively renouncing the "plain meaning" rule of statutory interpretation (whereby if the meaning of a statute is unambiguous on its face and does not lead to absurd results, there is no need for interpretation beyond reading the statute as written). Instead, the Court will consider the seemingly unambiguous language as a significant factor, but will nonetheless consider itself obligated or free to consider legislative history, perceived purpose, other relevant statutes, and/or other aids, in determining the "intended" meaning.

Not Reported in A.2d
2 Conn. L. Rptr. 453
(Cite as: 1990 WL 290190 (Conn.Super.))

Superior Court of Connecticut, Judicial District of Fairfield, at Bridgeport.

Arnold KAYE
v.
TOWN OF WESTPORT, et al.

No. 26 87 58.

Aug. 21, 1990.

MEMORANDUM OF DECISION

LEVINE, Trial Referee.

***1** The plaintiff has brought suit in four counts against the Town of Westport (Town), the Representative Town Meeting of the Town of Westport (RTM) and the Planning ans Zoning Commission of the Town of Westport (PZC). The first, second and third counts seek declaratory judgments; the first that the RTM lacked jurisdiction to review and reverse the action of the PZC (Amendment 389) which excluded restaurants with only service bars from the 1500 foot restriction of the zoning regulations; the second, that the action of the RTM of February 6, 1990 voiding the action, of the PZC enacting the exemption of service bars was ineffective, and that the action of the PZC was an effective part of the zoning regulations on March 7, 1990; the third, that Sections C5- 1F and C26-4. A-D of the town charter are invalid, null and void and unconstitutional generally and specifically. The fourth count is a mandamus action to request the PZC to execute the "Certificate of Zoning Authority" required by the State Liquor Control Commission for the issuance of a liquor license for the plaintiff's restaurant.

The parties have submitted a Stipulation of Facts for the court in lieu of presenting evidence and that stipulation is appended hereto as Exhibit A. What occurred herein, in short, is that the RTM adopted, on its own application, a zoning amendment which exempted restaurants with service bars only from the 1500 foot radius from other liquor outlets and which prevents them from securing liquor permits. Thereafter, the RTM under its power of review, in Westport's charter, adopted a resolution reversing the action of the PZC, which made the PZC action void, under the provisions of C26-4.B of the charter. The plaintiff who operates a restaurant within 1500 feet of five other restaurants with liquor permits thereafter was refused a "Certificate of Zoning Authority" by the PZC, that certificate as previously stated being a requirement of the state liquor commission for the issuance of a license. His simultaneous request for a variance of the 1500 foot radius was also denied by the PZC. His claim is that without the RTM action voiding the amendment by the PZC he would have been able to secure a liquor license for a service bar at his restaurant with all its resulting increments.

The plaintiff claims under the first count that the PZC enacted the **ordinance**, Amendment 389 in its legislative capacity and that § C26-4.A of the Charter provides that "within 7 days after the **publication** of notice of such action, any person or group of persons ... may request ... review by the Representative Town Meeting of such action by the Planning and Zoning Commission ..." and that Charter § C5-6C requires that said request be in writing and be filed in accordance with the time limitation provided and hereinbefore noted. The notice of the PZC amendment was published on January 17, 1990 at or before 9:00 a.m. the written request to review was filed in the Town Clerk's office at 11:19 a.m. the same day and the plaintiff claims that the time limitation was not complied with and that the request was premature in that the first date on which such a request could be made was January 18, 1990. The second count raises the issue that the Town Clerk's failure to publish the RTM action in accordance with Chapter §C5-9.A was fatal to its action. Count three claims that charter sections C5-1F and C26-4-D are invalid null and void and unconstitutional in that they are in derogation of the plaintiff's right to due process in violation of the Federal and State Constitutions, by reason of the failure of those charter sections to establish primary standards, declare legislative policy or lay down an intelligible principle as reasonably precise as is required. The fourth count requests the court to issue a writ of mandamus requiring the PZC to issue a "Certificate of Zoning Authority," since the action of the RTM is a nullity

under the claims filed under counts one two and three and therefore Amendment 389 is in force and that the plaintiff complies with the zoning requirements.

***2** The first issue raised by the plaintiff is that the RTM lacked jurisdiction to review the PZC's action on the distance required for liquor permits for service bars, by reason of the failure of the petitioners to comply with section C26-4-A of the Charter, the relevant portion of which reads: "any action by the Planning and Zoning Commission adopting, amending or repealing any zoning regulation ... shall be subject to review by the Representative Town Meeting as follows: "A. Within 7 days after the publication of notice of said action any person or group of persons authorized by § C5-6C of Chapter 5 of this Charter to request the placing of matters on the agenda of the Representative Town Meeting, may request as provided in such § C5-6C a review by the Representative Town Meeting of such action by the Planning and Zoning Commission." B. of that section states that an affirmative vote of 2/3 of the total number of the RTM adopting a resolution reversing the action of the PZC shall make such action void. The action of the PZC was published at 9:00 a.m. January 17, 1990. At 11:19 a.m. the same day a written request " ... to reverse the action taken by the Planning and Zoning Commission on January 8, 1990 relative to the following matter: Zoning Amendment 389 (text) amending Section 31-7 "Liquor Establishments". The plaintiff claims that the request to the RTM did not comply with the requirement that it be made "within 7 days after" the publication of the PZC action." "The word 'within' ... is, of controlling importance. It means 'not longer in time than ...' not later ... The word 'within' is almost universally used as a word of limitation, unless there are other controlling words in the context showing that a different meaning was intended." *Lamberti v. Stamford,* 131 Conn. 396, 398. *See Schwarzschield v. Binsse,* 170 Conn. 212,217. The plaintiff claims that January 17 should be excluded in counting 7 days and that the time to file a request began on January 18th at 9:00 a.m. The plaintiff's reliance on *Austin Nichols & Co., Inc. v. Gilman,* 100 Conn. 81, 84 is misplaced since it does not use the word "after" as the plaintiffs brief states, and the case interpreted the phrases "not less then fourteen days" and "at least fourteen days." The statement in that case "unless settled practice or established custom, of the intention of the parties, or the terms of a statute have included in the computation the date or act of accrual, it is to be excluded from the computation" is interpreted as not counting the date of accrual, in this case January 17, 1990 for the purpose of computing seven full days. It is used only to insure a seven day period. the case does not decide that the date of accrual is excluded for filing requests and nowhere does such an exclusion appear. In *Bielan v. Bielan,* 135 Conn. 163, 164n. the court determined that the phrase "within two weeks after the record is distributed" as "the purport of the rule is that a request to correct the appeal must be made to a trial court not later than two weeks after the record is distributed. Indeed every practical consideration favors the making of such a request at the earliest possible time." That court did not exclude the day the records were distributed. Again in *State v. Griffin,* 171 Conn. 333, 342 the Supreme Court in interpreting the statute limiting the time for presenting claims against estates interpreted the phrase "within such time more than twelve months nor less than three months" as the limits, held "we are compelled to hold that the word "within" as used in § 45-205 means not later than the termination date of the limitation order." Section 1-1(g) C.G.S. entitled "words and phrases" reads as follows: "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; ..." The word "after" means subsequently, later than, following the time when, later, subsequent in time to. The Merriam-Webster Dictionary 31 (1974), Blacks Law Dictionary 83 (4th ed 1951). "Day is defined as "that spece of time in which the earth makes one revolution on its axis ... In the sense of the law a day includes in it the whole twenty- four hours ..." *Miner v. Goodyear Glove Mfg Co.,* 62 Conn. 410, 411. January 17th 1990 was not excluded as a day for filing a request with the RTM to review the action of the PZC, a fair reading of the phrase "within 7 days after" permits a request be made within seven days after the PZC action is published which was 9:00 a.m. January 17th and the request in issue herein was filed within the seven day period.

***3** The issue raised in the second count is that the RTM action was ineffective for failure of the Town Clerk to **publish** the action of the RTM in accordance with Section C5-9.A. That section

requires any action, adopting, amending or repealing an **ordinance** by the RTM to be **published**, within 10 days after the adjournment of the meeting, in a newspaper. In the instant case the RTM action was not **published**. Section C5-1A of the Charter provides that all legislative power of the Town, including power to enact **ordinances** shall be vested in the RTM, § 1-1(n) C.G.S. reads: **"Ordinance** shall **mean** an enactment under the provisions of section 7-157." Section 7-157 entitled **Publication**, Referendum. **Publication** of Summary "empowers the legislative body of any town or city to enact **ordinances**. It further provides that municipalities whose charter provide for the manner in which they may enact **ordinances** , may follow their charters as is the case in Westport. "An **ordinance** is a municipal legislative enactment." *Great Atlantic and Pacific Tea Co. v. Schevy,* 148 Conn. 721, 723. Under section C5-1(A) the power to enact **ordinances** is given solely to the RTM. Under section C26-2 entitled "powers and Duties" the PZC is given the powers and duties conferred or imposed by law on Planning and Zoning Commissions. Section 8-2 entitled "Regulations" provide for the zoning commission of a municipality to regulate zoning, and in every instance refers to regulating not the enactment of ordinances. Section 1 of the Zoning Regulations entitled "Legislative Intent" defines its intent and states ... hereby adopts and promulgates the following rules and regulations in accordance with the authority vested in it the said commission by Chapter 242 of the Public Acts of the State of Connecticut and Chapter 124 of Title 8 of the Connecticut General Statutes ..." Section C5-1(F) provides the RTM with the power to review any action of the PZC adopting, amending or repealing any zoning regulation and section C26-4 subdivision B states that in the event of the RTM reversing the action of the PZC such action shall be void. Of significnce is that nowhere in the charter is there a provision for publishing the action of the RTM and of even more significance is the statement that the PZC action is null and void as of the reversal of the PZC action, in this case Amendment 389. Regulation is defined as "... meaning to "govern or direct according to rule ... to bring under the control of law or constituted authority." "Regulation connotes ... the power to permit and control as well as to prohibit." *Greenwich v. Connecticut Transportation Authority,* 166 Conn 337, 342. The plaintiff's claim that the Westport Zoning Regulations were amended on January 8th by Amendment 389 has no basis in law. It was not effective before March 7th and the RTM voided it before that date on February 7th. The plaintiff reliance on *Morris v. Town of Newington,* 36 Conn.Sup. 74 is misplaced since it contains no legal proposition to sustain his position. Since the Westport Charter contains no requirement of publication of its action when it acts on a regulation of the PZC, no publication is required. The statement in § C4-6 that the rejected regulation is void indicates an intent to have an immediate effect, without a resort to a municipal referendum which is provided for in other similar actions of the RTM. This review is different from the RTM adopting, amending or repealing an **ordinance** which provides for a week to elapse after **publication** for any of those actions to be effective. The failure of the Town Clerk to **publish** the action of the RTM reversing the action of the PZC in enacting Amendment 389 did not affect its action in voiding it.

***4** The third issue raised by the plaintiff is that the charter sections C5- 1F and C26-4 A-D are invalid null and void and unconstitutional in that they are in derogation of the plaintiff's due process rights as guaranteed by the constitution of the State of Connecticut, and Amendments V and XIV of the United States constitutions in that they do not establish primary standards, declare legislative policy or lay down an intelligible principle as reasonably precise as is legally required. Essentially the plaintiff's claim is that no standards are laid down for the actions of the RTM in acting or reviewing the regulations of the PZC. A denial of due process involves the deprivation of a protected right which this plaintiff does not have. His claim that he cannot obtain a liquor permit from the State as a result of the actions of the RTM does not involve the loss of a property right. The defendant's claim that the plaintiff has not lost the right to apply for a liquor permit while technically correct does not help the plaintiff. He would be foolish to apply for such a permit without the "Certificate of Zoning Authority" necessary for his application and his application could not possible succeed without out it. What is important is that a liquor license is not a property right protected by the constitution. "[A] license to engage in the liquor traffic is not a grant and confers no irrevocable vested or property rights upon the

licensee which cannot be revoked or terminated by the licensing authorities. It is a mere personal and temporary permit a privilege and not a natural right, to be enjoyed only so long as the conditions and restrictions governing its continuance are complied with, and allowing the licensee to do what could not be lawfully done without it, and it is not property in any constitutional sense." 45 AmJur2d § 115 p. 568. In ruling on the Liquor Control Commission's suspension of a liquor permit the Supreme Court held, "Such a permit is merely a personal privilege and does not constitute property. General Statutes § 4236. The plaintiff has not been deprived of any property right." *Bechanstin v. Liquor Control Commission,* 140 Conn. 183, 192. See *Riley v. Liquor Control Commission,* 153 Conn. 242, 247. "One who has not been harmed by a statute cannot challenge its constitutionality *Salgrean Realty Co. v. Ives,* 149 Conn. 208, 215.... The question of the validity of the statute must be tested by its effect on its attacker under the particular facts of his case. *Karen v. East Haddam,* 146 Conn. 720, 727 ".... Here we have no showing of any effects of the enforcement of this statute of these plaintiffs except that they are denied the purely personal privilege of a permit." *Riley v. Liquor Control Commission,* supra 247. That principle is applicable to the instant case, the effect of the enforcement of the challenged sections of the charter is the loss of the purely personal privilege of a liquor permit and the plaintiff therefore may not attack their constitutionality. See *Scott v. Village of Kewasham,* 786 F.2d 338. The plaintiff's reliance on *State v. Stoddard,* 126 Conn. 623 does not help his case. That decision involved the constitutionality of a delegation of power by the legislature to the milk commissioner and decided that in transferring the power the statute must declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the adminsitrative officer or body must conform. *State v. Stoddard,* supra 628. However that standard of law is not applicable to delegations of authority by the legislature to a municipality. "The rule pronounced in *State v. Stoddard,* supra involved the delegation of powers from the legislature to an administrator in the executive department who was appointed by the governor and thus the *Stoddard* rule clearly is applicable to delegations of authority from the legislature to the executive department. Application of the rule, however, to the delegation from the state legislature to a municipality, as in the present, case is not appropriate. The bases for the non delegation doctrine between the legislative and executive branches of the state government are not coextensive with the bases for nondelegation as between the state legislature and a municipality and, therefore the rules governing such delegations are not the same." *Bottone v. Westport,* 209 Conn. 652, 660. "[I]n delegating power to municipal corporations none the limitations imposed on administrations or executive agencies applies. Thus the delegation may be of the most general nature and it will not be invalid for a failure to create an adequate standard." *Bottone v. Westport,* supra 668. The last sentence of that quotation is of great significance and provides the answer to the issue raised by the plaintiff. The delegation in the charter of the power of review to the RTM was in general terms which is permissible and is not constitutionally invalid for failure to provide an adequate standard for the RTM's review of the PZC regulation.

***5** The fourth count seeks a Writ of Mandamus ordering the defendant PZC chairman or zoning director to issue a "Certificate of Zoning Authority" which is required for his application for a liquor permit. "The prerequisite that the plaintiff must establish for the extraordinary remedy of mandamus to issue are well settled. First, there must be no other adequate remedy; second the law must impose a mandatory duty on the defendant; and third the plaintiff must have a clear legal right to have that duty performed.... The issuance of the writ is discretionary ..." *Riley v. Bridgeport,* 22 Conn.App. 402, 405. Since the rulings of this court on counts one, two and three are adverse to the plaintiff's claims there is no mandatory duty on the defendant and no clear right to have the duty performed as the plaintiff requests.

On the first count for a declaratory judgment that the petitioners did not timely request the RTM for a review of the regulation enacted by the PZC the court finds that the request was made within the meaning and time limits of the charter.

On the second count for a declaratory judgment that the town clerk failed to publish the action of the RTM, the courtt finds that there was no requirement for such publication.

On the third count for a declaratory judgment that the sections of the Westport charter C26-4A-D and C5-lF are unconstitutional the court finds that this plaintiff has no constitutional rights to be protected and that the sections of the charter, in question, pass constitutional muster.

On the fourth count for a writ of mandamus the court finds that the plaintiff is not entitled to the relief requested.

Judgment may enter for the defendant to recover costs.

EXHIBIT A
No. CV 90-0268758 S.
July 5, 1990.
STIPULATION OF FACTS

1. Arnold J. Kaye a/k/a Arnold Kaye, the Plaintiff, is the record owner of real property located in the Town of Westport, Connecticut shown as Lot No. 100 on Assessor's Map No. 5453-1, and being commonly known as 1341--1399 Post Road East. The property (or "premises') consists of 3.47 acres with buildings and improvements thereon, and has 753.26 feet of frontage on the Post Road East, Town of Westport. [Copies of a map and deeds from Westport Land Records certified by Town Clerk will be offered collectively as Plaintiff's Exhibit A.]

2. Plaintiff conducts a delicatessen business, a restaurant business and a banquet and catering business, among other businesses, on said real property.

3. The Town of Westport Zoning Regulations Section 31-7 prohibits the sale of alcoholic liquor at a restaurant located within 1500 feet of any other building or structure where any alcoholic liquor is sold for on-premises consumption. [Copies of the Regulation will be offered as Plaintiff's Exhibit B.]

4. Zoning Regulation Section 31-7 prohibits the sale of alcoholic liquor for on-premises consumption at the Plaintiff's premises in that the following five (5) restaurants serve liquor within 1500 feet of the premises: Beansprout Restaurant, Panda Pavilion, Rocco's, Pompano Grille and Fuddruckers Restaurant.

***6** 5. When Plaintiff began operating said restaurant, delicatessen and catering business at the said premises, he knew that the sale of alcoholic liquor for on-premises consumption at the premises was prohibited by the Town of Westport Zoning Regulations, Section 31-7.

6. The Town of Westport Zoning Regulations is an ordinance of the Town of Westport.

7. Defendant, Town of Westport, (hereinafter referred to as "Town"), is a municipal corporation being a political subdivision of the State of Connecticut in the County of Fairfield.

8. The Charter for the Town of Westport was promulgated by the Connecticut General Assembly as Special Act No. 348 of 1957, 28 Spec.Laws 445. At a Special Town Meeting held on July 19, 1957, the citizens of the Town of Westport adopted said Special Act as its Charter.

9. Defendant, Representative Town Meeting, (hereinafter referred to as "RTM"), is the legislative body of said Town.

10. Defendant, Planning and Zoning Commission, (hereinafter referred to as "P & Z"), is (a) the zoning authority in said Town pursuant to Chapter 124 of the Connecticut General Statutes, and (b) the merged planning and zoning commission in said Town pursuant to Section 8-4a of the Connecticut General Statutes.

11. Said P & Z, acting within the scope of its authority granted to it by virtue of the Zoning Regulations of said Town, and pursuant to the provisions of said Chapter 124 of the Connecticut General Statutes, adopted Zoning Amendment # 389 on its own application by resolution dated January 8, 1990, after a public hearing on said application on December 18, 1989. Zoning Amendment # 389 was given an effective date of March 7, 1990 by said P & Z at a work session on January 8, 1990. Zoning Amendment # 389, *inter alia,* exempts restaurants with service bars only from the 1550 foot radius restriction. [A copy of said Amendment # 389 will be offered as Plaintiff's Exhibit C.]

12. Sections C5-1.F. and C26-4.A.-D. of the Charter of said Town provide for the review of

certain zoning actions of said P & Z by said RTM. The power of the RTM to review certain zoning actions is authorized by the aforesaid Special Act of the General Assembly and is valid. The power to regulate land use in the Town of Westport rests exclusively with the Westport P & Z except to the extent that the RTM is authorized to review certain P & Z actions under Sections C5-1.F. and C26-4. of the Westport Charter. [Copies of said sections C5-1.F. and C26-4.A.--D. of said Charter certified by the Westport Town Clerk will be offered as Plaintiff's Exhibits D and E, respectively.]

13. The Westport Charter, Section C26-4.A., provides that "[w]ithin 7 days after the publication of notice of such action, any person or group of persons authorized by Section C5-6C of Chapter 5 of this Charter to request the placing of matters on the agenda of the Representative Town Meeting may request, as provided in such Section C5-6C, a review by the Representative Town Meeting of such action by the Planning and Zoning Commission. Such Representative Town Meeting shall be held within 30 days after the delivery of such request to the Moderator or the Town Clerk. [A copy of said section C5-6C of said Charter certified by the Westport Town Clerk will be offered as Plaintiff's Exhibit F.)

*7 14. Notice of the action of the P & Z adopting Zoning Amendment # 389 was published and circulated in The Westport News, a newspaper having a substantial circulation in the Town of Westport, at or before 9:00 A.M., on January 17, 1990. [A copy of said notice as published in said newspaper certified by the secretary to the Westport Planning and Zoning Commission will be offered as Plaintiff's Exhibit G.)

15. On January 17, 1990 at 11:19 A.M., RTM member Lawrence Aasen filed with the Town Clerk's office for the Town of Westport a written request for a review of the action of the P & Z adopting Zoning Amendment # 389 under Section C26-4. of said Charter. [A copy of said request certified by the Westport Town Clerk will be offered as Plaintiff's Exhibit H.)

16. On February 6, 1990, said RTM, exercising its power to review under said Sections C5-1.F. and C26-4.A.-D. of said Charter, adopted a resolution "revers [ing] the action of the Planning and Zoning Commission in adopting Zoning Amendment # 389". [A copy of the minutes of said RTM concerning said RTM resolution certified by the Westport Town Clerk will be offered as Plaintiff's Exhibit I.]

17. Upon the adoption of such resolution, the action of said P & Z adopting Zoning Amendment # 389 is "void" under the specific provisions of Section C26- 4.B. of said Charter.

18. Following the meeting of the RTM of February 6, 1990, the Westport Town Clerk did not **publish** notice of the action of the RTM adopting a resolution reversing the action of the P & Z adopting Zoning Amendment # 389.

19. The power of the RTM to enact **ordinances** is conferred by Section C5-1.A. of the Charter, subject to the referendum provided by Section C5-9 of the Charter. Section C5-9 provides that the Town Clerk shall cause any action by the RTM adopting, amending, or repealing an **ordinance** to be **published**, and that no such action or **ordinance** shall be effective until one week after such **publication**. [A copy of said section C5-9 of said Charter certified by the Westport Town Clerk will be offered as Plaintiff's Exhibit J.)

20. Neither Section C5-1.F. nor Section C26-4 of the Charter, which confer upon the RTM the power to review certain zoning actions, makes any reference to Section C5-9.

21. General Statutes Section 30-44 provides that "[t]he Department of Liquor Control shall refuse permits for the sale of alcoholic liquor ... where prohibited by the zoning ordinance of any city or town."

22. On March 7, 1990, Plaintiff presented an application form furnished by the State of Connecticut Department of Liquor Control to Katherine Barnard, Westport's Director of Planning and Zoning, for her to complete and sign the part therein entitled "Certificate of Zoning Authority", which form said Katherine Barnard refused to complete and sign based upon the aforesaid resolution action of said RTM and Section 31-7 of said Zoning Regulations.

23. Thereafter, upon application to the Zoning

Board of Appeals ("ZBA") for the Town of Westport, the Plaintiff appealed the action of said Director of Planning and Zoning, and, in the alternative, sought a variance from the effect of the application of Section 31-7 of the Zoning Regulations. Both requests were denied on or about May 3, 1990. [A copy of the denial of said application by said ZBA certified by the secretary to the Westport Planning and Zoning Commission (in the absence of the secretary to said ZBA who is injured and absent from work) will be offered as Plaintiff's Exhibit K.)

***8** 24. Thereafter, the Plaintiff filed an application with the Liquor Control Commission for a restaurant/liquor permit to be located at the subject premises. The Commission denied the application. [The original of the Decision of said Liquor Control Commission will be offered as Plaintiff's Exhibit L.)

25. If said action of the RTM on February 6, 1990 had not voided the action of the P & Z adopting Amendment # 389, and said Amendment # 389 had been effective on said March 7, 1990,then in such event the Plaintiff would have been entitled to have had said "Certificate of Zoning Authority" part of said application completed, signed and delivered to him by said Katherine Barnard on March 7, 1990, since Plaintiff's said premises at 1385 Post Road East in said Westport referred to in paragraph 1 above was a premises qualified for the proposed use pursuant to, and permitted by, said Zoning Regulations as amended by said Amendment # 389.

Dated at Westport and Bridgeport, Connecticut this 5th day of July, 1990.
The Plaintiff, Arnold Kaye
/s/by Joseph F. McKeon, Jr.
The Defendants, Town of Westport, *et al*
/s/by G. Kenneth Bernhard

1990 WL 290190 (Conn.Super.), 2 Conn. L. Rptr. 453

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Not Reported in A.2d
10 Conn. L. Rptr. 194
(Cite as: 1993 WL 427342 (Conn.Super.))

H

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Litchfield.

O & G INDUSTRIES, INC.
v.
TOWN OF BEACON FALLS.

No. 054039.

Oct. 13, 1993.

MEMORANDUM OF DECISION

PICKETT, Judge.

***1** On September 17, 1990, the plaintiff, O & G Industries, Inc. commenced this action for declaratory judgment against the defendant, Town of Beacon Falls, seeking to disclose invalid an ordinance adopted October 24, 1988. The ordinance provided in pertinent part as follows:

> ... all screening, washing, crushing and other processing of stone gravel, sand and other materials excavated from the earth which have not been extracted from within the Town of Beacon Falls, and all importation of such earth products excavated elsewhere into the Town of Beacon Falls for such screening, washing, crushing or other processing, are prohibited; provided, that stockpiles of earth products excavated outside the Town of Beacon Falls which are in existence at legal processing facilities in industrial or industrial park zones in the Town of Beacon Falls as of September 1, 1990 must be **entirely** processed as of September 1, 1990.

The defendant has filed a counterclaim seeking an injuction based upon the **ordinance**. The plaintiff has raised many issues in support of its claim and in defense of the counterclaim. Only one concerning the validity of the enactment need be addressed however. O & G claims that the **ordinance** has never become effective because there has been no compliance with the post- adoption **publication** requirement of Section 7-157 of the General Statutes .

The exercise of the powers granted to a **municipality** by Section 7-148 of the Connecticut General Statutes, except to the extent a **municipality** may wish to exercise those powers on an ad hoc basis, is to be by **ordinance**. C.G.S. Sec. 7-148(b). An **ordinance** is an enactment under the provisions of Section 7-157 of the General Statutes. Conn.Gen.Stat. Section 1-1(n). Section 7-157(a) of the General Statutes provides that an **ordinance** may be enacted by the legislative body of any town and that any "... **ordinance** enacted at a town or district meeting shall become effective fifteen (15) days after **publication** thereof in some newspaper having a circulation in such town or in such district, as the case may be ...". Thus, Section 7-157 of the Gen.Stat. has established by whom an **ordinance** may be enacted and the procedure and notice necessary to have such enactment become effective. " 'The fundamental rule relating to **municipal** legislation is that an **ordinance** must be enacted in the manner provided by law ... the rule applicable to corporate authorities of **municipal** bodies is that when the mode in which their power is to be exercised is prescribed ... that mode must be followed'. *Glensfalls v. Standard Oil Company.". Jack v. Torrant,* 136 Conn. 414, 419 (1950).

With respect to non-compliance with the pre-adoption requirement of Conn.Gen.Stat. § 7-3, the plaintiff relies upon a silent record, the absence of evidence of compliance. Upon the issue of non-compliance with the post- enactment provisions of Section 7-157, the evidence affirmatively demonstrates non-compliance. Through Mr. D'Amico, its first selectman since 1977, the Town of Beacon Falls has confessed that neither the **text** of that **ordinance** nor any notice of the action of the town meeting purporting to adopt same was ever thereafter **published** in a newspaper having a circulation in the Town of Beacon Falls. At trial the Town failed to offer evidence of compliance.

***2** The Town seeks to remedy the failure to comply with the statute by its request to reopen the trial to offer evidence of **publication** in the Naugatuck Daily News on August 13, 1993 and August 17, 1993. The court has granted the motion to reopen for the limited purpose of reviewing the evidence of late **publication**. The defendant concedes in its

motion that "through error of the town either the **ordinance** had not been **published** prior hereto, or no record was kept of such **publication**."

General Statute § 7-157 does not set forth any definite time after a vote to adopt an **ordinance** but only that it "shall become effective thirty days after **publication** ..." Since the statute does not provide for a time of **publication**, the court must infer that the legislature intended that **publication** be done within a reasonable time. In interpreting a statute, a court must assume a reasonable and rational result was intended by the legislature, *Norwich Land Co. v. Public Utilities Commission,* 170 Conn. 1, 4 and has a duty to carry out the legislative intent. *Royce v. Heneage,* 170 Conn. 387, 391. Likewise, the general purpose of the act must be considered in construing it. *United Aircraft Corporation v. Fusari,* 163 Conn. 401, 417. **Publication** about five years after adoption is not in compliance with the statute.

The obvious purpose of section 7-157 is to give notice to the public of the terms of any **ordinance**. It would be a totally unreasonable construction to construe the statute so that an **ordinance** could be voted but not **published** until someone threatened action contrary to its provisions at some date in the future.

Finally, in this case, by the time of **publication** the exception "that stockpiles of earth products excavated outside of the Town of Beacon Falls which are in existence at legal processing facilities in industrial or industrial park zones in the Town of Beacon Falls as of September 1, 1990 must be **entirely** processed as of September 1, 1990...." would have become a nullity. The court finds any **publication** in August 1993 to be a nullity.

For the reasons stated, the court declares the ordinance adopted on October 24, 1988 null and void. In view of that finding, judgment may enter for the plaintiff on the defendants' counterclaim.

1993 WL 427342 (Conn.Super.), 10 Conn. L. Rptr. 194

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C

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 1. PROVISIONS OF GENERAL APPLICATION
CHAPTER 1. CONSTRUCTION OF STATUTES

Current through Gen. St., Rev. to 1-1-03,
including the January 6, 2003 Special Session

§ 1-1. Words and phrases

(a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

(b) The phrase "railroad company" shall be construed to mean and include all corporations, trustees, receivers or other persons, that lay out, construct, maintain or operate a railroad, unless such meaning would be repugnant to the context or to the manifest intention of the General Assembly.

(c) The term "banks" shall include all incorporated banks.

(d) The term "savings banks" shall include savings banks, societies for savings and savings societies.

(e) The term "public buildings" shall include a statehouse, courthouse, townhouse, arsenal, magazine, prison, community correctional center, almshouse, market or other building belonging to the state, or to any town, city or borough in the state, and any church, chapel, meetinghouse or other building generally used for religious worship, and any college, academy, schoolhouse or other building generally used for literary instruction.

(f) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(g) Words importing the masculine gender may be applied to females and words importing the feminine gender may be applied to males.

(h) Words purporting to give a joint authority to several persons shall be construed as giving authority to a majority of them.

(i) The word "month" shall mean a calendar month, and the word "year" a calendar year, unless otherwise expressed.

(j) The word "oath" shall include affirmations in cases where by law an affirmation may be used for an oath, and, in like cases, the word "swear" shall include the word "affirm."

(k) The words "person" and "another" may extend and be applied to communities, companies, corporations, public or private, limited liability companies, societies and associations.

(l) The words "preceding," "following" and "succeeding," when used by way of reference to any section or sections, shall mean the section or sections next preceding, next following or next succeeding, unless some other section is expressly designated in such reference.

Richards, Sybil

From: Cassone, Thomas
Sent: Thursday, May 22, 2003 10:06 AM
To: 'Mnakian@aol.com'
Cc: Richards, Sybil
Subject: RE: Opinion on Publishing Ordinances

Sybil is researching the subject. I must admit, that I think it odd to pass an ordinance to prescribe the manner of publication of an ordinance, feeling instead that the statute Sybil showed you should be considered self-effectuating. Still, as I said, Sybil will do a little more research and we will furnish you with a proper opinion.

Thomas M. Cassone, Esq.
Director of Legal Affairs
City of Stamford
888 Washington Blvd.
Stamford, CT 06904
(203)977-4081 Voice
(203)977-5560 Fax

-----Original Message-----
From: Mnakian@aol.com [mailto:Mnakian@aol.com]
Sent: Thursday, May 22, 2003 8:10 AM
To: TCassone@ci.stamford.ct.us
Subject: Opinion on Publishing Ordinances

May 21, 2003

Thomas Cassone, Corporation Counsel
City of Stamford
888 Washington
Boulevard
Stamford, Connecticut 06901

Dear Tom:

At the request of Annie Summerville, Clerk of the Board of Representatives, the Legislative and Rules Committee is reviewing the requirement that all ordinances be published in full in an official newspaper prior to passage (Charter Section C2-10-12). This section says only that an ordinance must be published--it does not specify that the ordinance be published in its entirely. The Rules of the Board require that there be a vote on publication and it be approved by a majority vote. Neither the Charter, the Code, nor the Rules of the Board mention a Public Hearing. In addition, it is current practice to post ordinances in the Office of the Town Clerk and the Library, and on the Board of Representatives web site, in addition to publication in The Advocate.

At our May committee meeting, Sybil Richards supplied the committee with the State Statute (§7-157(b)) which provides that only the subject of an ordinance may be published along with mandated language stating where the ordinance in its entirely may be obtained. She also suggested that I request an Opinion from Corporation Counsel as to whether, given the language of Charter sec. C2-10-12, the Board can pass an ordinance adopting the provisions of CGS §7-157 (b). If such an ordinance, in the absence of limiting language in the Charter, can be adopted, I would appreciate the Law Department drafting one in time for the Steering Committee meeting.

The Charter Revision Commission can also be requested to include this in its proposed changes, but such a change will not be voted upon until November 2004. In the meantime, the Board is spending a great deal of money

publishing ordinances--the "Massage Parlor ordinance" alone was $2,000.

Thank you for your assistance in this matter.

Sincerely,

Maria Nakian
Chair, Legislative and Rules Committee
Board of Representatives

Richards, Sybil

From: Cassone, Thomas
Sent: Thursday, May 22, 2003 10:06 AM
To: 'Mnakian@aol.com'
Cc: Richards, Sybil
Subject: RE: Opinion on Publishing Ordinances

Sybil is researching the subject. I must admit, that I think it odd to pass an ordinance to prescribe the manner of publication of an ordinance, feeling instead that the statute Sybil showed you should be considered self-effectuating. Still, as I said, Sybil will do a little more research and we will furnish you with a proper opinion.

Thomas M. Cassone, Esq.
Director of Legal Affairs
City of Stamford
888 Washington Blvd.
Stamford, CT 06904
(203)977-4081 Voice
(203)977-5560 Fax

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