

A

Selection of Cases

ON THE

Law of

Municipal Corporations

BY
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TO

FRANK J. GOODNOW,

Teacher, Counsellor, Friend,

this work is

Respectfully Dedicated.

PREFACE

The publication of a new case-book on Municipal Corporations might call for an apology, were it not for the fact that during the past fifteen years such radical changes in their organization have been made both by legislative enactment and constitutional amendment that within this period our courts have had to pass upon many new problems which require consideration in any adequate review of the subject. When the writer first undertook to present the law of municipal corporations to university students, the only compilation of cases available was that of Professor Jeremiah Smith, designed for a course of ten semester hours. Later, in 1911, Professor Beale published his excellent work to meet the need of a course of thirty hours. Since that time, among others, the questions of Freeholders' Charters, Commission Form of Government, Zoning and Excess Condemnation have arisen, and the legal principles and doctrines relative to the powers and the liabilities of municipal corporations in this country have undergone a marked change; so that, in the opinion of the writer, an adequate presentation of the subject justifies a major course of sixty semester hours. This is undoubtedly true if the course is also to cover the related topics of local taxation, local administration, and extraordinary remedies, the fundamental principles of which are frequently involved in the cases. In order, however, to adapt the work to the curriculum which already covers these subjects in existing courses of instruction, the arrangement of the cases has been so planned that the chapters devoted to their treatment may be omitted without materially detracting from the proper consideration of the remaining topics.

This collection of cases has been selected primarily to meet the needs of law school students. There has been no attempt to present a complete analysis of the law of municipal corporations, nor to follow the stereotyped classification of the text books, but to present the topics and cases in such sequence as, in the judgment of the compiler, will best serve to develop the underlying principles of the subject. The arbitrary classification of specific powers has for that reason been abandoned, and the doctrine of implied powers as distinguished from express powers has been presented in the chapter on Powers and applied as each subsequent topic arises. For the same reason it has been deemed advisable to take up the questions of Legislative Control, Freeholders' Charters

and Commission Form of Government in connection with the major topics rather than to attempt a separate and isolated treatment for each. In some instances, the history as well as the analysis of the earlier forms has been found essential to an acceptable presentation of the development and interpretation of the modern statutory changes.

As the law of municipal corporations so largely involves questions of statutory construction, the writer believes that the student should be encouraged to familiarize himself with the constitutional provisions and general statutes, of his own state. He should also lay special emphasis upon the remedial questions involved in the cases. To this end, the form of action, the decision, and an adequate statement of the facts have been retained in each case. The chapter on remedies deals mainly with the application of the extraordinary remedies to municipal corporations, and the student should be required to note in the earlier cases the method by which the question in litigation has been brought before the courts. The instructor will find it helpful, as examples of the use of quo warranto, certiorari, mandamus and injunction arise, to assign collaterally cases from the concluding chapter which explain the application and limitations of these remedies.

The obligation of the compiler to those who have previously worked in this field is gratefully acknowledged. The case-books of Professors Smith, Beale, Macy, Abbot and Cooley have been of material service in the preparation of this work. If the collection of cases here presented shall stimulate a more extensive study of this subject in our law schools and aid the student in acquiring a broader knowledge of its underlying legal principles, the publication of this work will be amply justified.

CHARLES W. TOOKE.

Washington, D. C., Nov. 21, 1925.

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