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## City Law in a New World

## CITY LAW IN A NEW WORLD

By CHARLES S. RHYNE

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*(This article was written by Mr. Rhyne as an introduction to our special municipal law issue of DICTA. We are most grateful to Mr. Rhyne and the other authors contributing to this symposium issue. —The Editors)*

### THE ERA OF CHANGE

Are developments in the field of municipal law keeping pace with developments in the fields of science, technology, medicine and other dynamic fields of endeavor? Is there dynamic progress in any field of law that is keeping pace with a man-made satellite that is capable of beaming back radio messages from 30 million miles out in space, or another capable of returning photographic pictures of weather conditions around the world?

If there is the slightest hesitation in answering these questions affirmatively, then it is time for lawyers to pause in the head-long rush of events and evaluate the legal situation. If law is to be effective it must be advanced and respected at the grass roots — the municipal and county level. The city, town and county lawyer is in a strategic position to direct the cooperative efforts necessary to bring about a revolution in the acceptance and respect for law in the new world. The enormity of the field of municipal activity today gives a vastness and complexity to the field of municipal law which was unknown a few years ago. Law in the modern city is indeed an ever changing, ever developing and rapidly expanding subject. New law to meet new problems and needs is being made almost daily.

Law governing the modern city is difficult to find and define. In order to render an informed opinion on important legal questions the city attorney must often analyze hundreds of reported and unreported cases. In addition, he must give attention to federal and state constitutional provisions, to federal and state statutes, to developments in the Congress and the state legislature, to rulings, regulations, orders and decisions by state and federal agencies and com-

missions, to opinions by other city attorneys and state and federal attorneys general, to ordinances enacted in his and other cities, and to countless other sources of information. Lately, with the great increase in international treaties and agreements, the city attorney must in some instances also investigate this rapidly growing field of law and its effect on his municipal law problem.

Municipal government in its every action touches the people in their daily lives more intimately than any other governmental form. And every action by the municipality must be justified under its legal powers. The modern municipal attorney cannot be content with knowing and being able to find answers to existing legal problems. He must look to the future. One authority has stated the problem in this way:

The awareness among the American people of the need for new ideas in science, in education, in engineering, and in architecture is a fact of life in the 20th century. But few people are as aware of the need for new law, or the importance of new law so that ours will continue to be a government of law, not men. Lost sight of is the fact that where the march of man in any field outraces the existing rules of law there is trouble under the American governmental system.<sup>1</sup>

#### A CRITICAL REAPPRAISAL NEEDED

First the lawyer needs a reappraisal of himself. The legal profession as a whole has a tendency to be "stuffy" and egotistical. The average lawyer has a feeling that law is a mysterious art that can be practiced and expounded only by the initiated. This attitude permeates the local public and creates an aura of disesteem. That which is mysterious and not understood is not effective. It is adhered to by force and not respect.

It follows that lawyers must awaken to the need for cooperation. Drafting a complicated ordinance is no longer a task to be performed by the attorney in the confines of his library or with his feet elevated to the top of his desk with microphone in hand. It has become a team proposition. Satellites are transmitting advanced knowledge of the universe from new frontiers of space only because of the teamwork of scientists, physicists, mathematicians, technologists and others. It is much easier for a municipal attorney to sit at his desk and copy a proposed law from the better parts of ordinances of several other cities, hand it to the city legislative body and have it passed. This procedure, however, perpetuates a mode of action antagonistic to the public. How much more acceptable the new law would be if produced on a cooperative basis.

A housing ordinance can serve as an example. The American Public Health Association developed a minimum housing standards ordinance over a period of nine years. A tremendous amount of research and work went into this effort. It is an excellent ordinance, and adequate to do the job. An attorney need look no further for a technically correct ordinance. Adopted, however, in accordance with the usual procedure it has little chance of success. It fails because it is not understood by the person designated to enforce it; the

<sup>1</sup> 23 NIMLO Municipal Law Rev. 18 (1960).

builder does not see the necessity for it, and the public is not aware of the need for it.

The jet age approach to this particular problem would be one of cooperation, and could assume the following procedure: The attorney could form a team composed of a representative from the building department, one from the department of public health and one from the public relations department. This group would carefully organize an advisory committee composed of representatives of the building industry, business, the home owners, the medical profession, civic and service organizations, news media, labor, and the other representatives peculiar to the particular locality. At the first meeting, spokesmen would explain the need for a housing ordinance, pointing out the health hazards involved in sub-standard housing, the unequal tax burden created by this type of structure, the blight on the city, and all other reasons necessitating the legislation. Thus, as the ordinance takes shape each representative has had a chance to contribute, and, more importantly, to explain the contents and the need to the people whom he represents. It may well be that the ordinance is word for word as it would have been without this procedure. On the other hand, it may be a watered down version, but it is better to have a milder one that is enforceable than a strong one that is ignored. Many public-relations-conscious-attorneys recognize this technique and take full advantage of it.

One municipal attorney stated the problem this way: "This . . . is a very emotional problem . . . . If you don't create the proper emotional and psychlogical climate, you might as well go home

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and forget this whole subject of conflicts of interest."<sup>2</sup> He points out that an attorney working with a difficult point of law may feel that it is ridiculous that members of the city council do not understand the problem. "But the facts of life are that they do not understand."<sup>3</sup> If the council does not understand a problem, it is much more likely that the public as a whole will not understand.

Secondly, a complete, critical reappraisal of law and government in America is needed without waiting for a crisis. Most informed people will concede that law has been outdistanced. It is generally known that state governments still operate largely on law designed for the agrarian society of the horse and buggy rather than the urban society of the space age. On the national level an ever burgeoning bureaucracy is not giving a governmental performance attuned to current-day needs. As the spenders of tax funds get further from the watchful eyes of taxpayers, waste and extravagance become easier to hide. In order to shift to local performance those governmental functions that can best be performed locally, new law is needed as a cure for the problems of "bigness" and remoteness.

It is true throughout the nation, the state, and each grass root's community that the absence of law, or the existence of weak or inadequate, antiquated laws, retards progress. For example, few cities have truly up-to-date codes of ordinances. In the vast majority of cities, those ordinances that do exist are buried in the minutes of the council along with all other business transacted by the council, and in most instances there is no index through which the ordinance may be found when needed. Recently, a municipal judge was red-faced when it was pointed out to him that an ordinance under which he had fined dozens of people during the preceding year had been repealed just before he took office. This fact was buried in the minute books of the council and known only to the city records. Small wonder then that the public has an uncertain confidence in local government. If they have little confidence in local law, it is difficult to expect respect for state, federal and international law.

A local movement to improve the legal situation can be started by anyone with a little imagination and drive; but the logical person to initiate the movement, and the one whose opinions will be most respected, is the municipal attorney.

#### MUCH PROGRESS HAS BEEN MADE

Many dynamic changes have been brought about and many new laws developed in recent years. Hundreds of cities in all parts of the nation have cleared away slums and wiped out blight. Visitors returning to some of these rejuvenated municipalities are unable to believe their eyes. Behind each of these changes is a carefully thought out and diligently executed group of laws, made possible in each instance through the cooperation of a group of assiduous and dedicated people.

However, urgent problems remain which need immediate solution. Today, one can travel half the distance across the nation in a powerful jet in the time it takes to cross some of our metropolitan

<sup>2</sup> 23 NIMLO Municipal Law Rev. 474 (1960).  
<sup>3</sup> *Id.* at 475.

cities by land transportation. Mass transit has become one of the most pressing problems facing large cities and many of the smaller ones. The leadership that can be expressed in this vital field is exemplified in the tremendous strides made in the city of Philadelphia and in the relatively small city of Ann Arbor, Michigan. In Philadelphia the City Solicitor was one of three men appointed by the mayor to a committee to propose a plan for rejuvenating the mass transit system of that metropolitan area. A unique plan was devised.<sup>4</sup> In Ann Arbor the city purchased new buses to be paid for on a monthly income basis. It then leased the entire equipment, and employed the lessors as its manager-agent to have complete charge of operations. Control was thus retained in the city. Through the use of this system various state taxes were saved. It is anticipated that this plan will soon operate at a profit.

These are but a few of the many examples of modern thinking and action meeting the necessities of the electronic, push button age. The difficulty lies in the fact that each move has come after a great deal of damage has been done.

#### MODERN CHALLENGE

There is a definite need for more attorneys to accept the modern challenge and be first with new ideas and new legal means of solving complex problems. There is a great demand that more municipal and community-conscious attorneys initiate solutions without waiting for city managers, city planners, scientists and others to create legal problems that defy solution because they have not been timely recognized. Local law must become and ever remain as modern and up-to-date as rockets, satellites and jets.

There are examples of this forward thinking, advanced action. In a few notable instances attorneys have become interested in

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<sup>4</sup> See the article "Metropolitan Transportation Problems" by David Berger, City Solicitor of Philadelphia, p. 224, *infra*.

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## COMPLIMENTS

of

## SYMES BUILDING

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developing laws for the future. Notable strides have been made in a few counties and municipalities in the field of zoning. Such laws can only be developed in cooperation with people representing varied professions. Early zoning laws regulated location of industries designated by name, types of industry that would be permitted and those that would be prohibited. The modern trend is to designate the amount of noise in decibels, and the emission of odors in intensity. This is jet age thinking, taking care of future technological advances before they occur.

Several progressive thinking attorneys have developed ordinances governing the establishment of heliports and setting flight patterns for helicopters before their use is started in a particular city.

In a majority of municipalities the city attorney of necessity knows more of detail, policy, program and function than any other city official. In almost every instance the municipal attorney is a community leader or certainly a potential one. No greater service could be rendered by him than to see that a standing advisory committee of representative citizens is organized and remains ever active in seeing that the city has a modernistic code of ordinances constantly kept up to date. Far too many municipalities are reluctant to spend the necessary funds to arrange their ordinances into a modern code. The city officials have not been brought to realize the great importance of this vital tool. There certainly are few things for which city funds could be spent that would be of more benefit.

Once the municipal code has received modernization, every attorney should take the necessary steps to make every citizen aware that the local laws are the most modern, most practical and least stifling that coordinated efforts of all groups can produce. This can be accomplished with a public relations program actively administered for the purpose—with a planned program patterned on that of Law Day U. S. A., or on any well organized project adapted to the local situation.

The instinct for law runs deep in America. No matter what the city problem, someone will sooner or later say, "There ought to be a law," and well there should be. The great challenge of the lawyer's job is that it is endless, becoming more complex and more exciting day by day, year after year. For every problem solved, there are scores yet unsolved.

#### CONCLUSION

Law is the most important ingredient in our way of life, but laws must be created and administered in a manner inspiring respect for law. There can be no esteem for antiquated, unreasonable and inadequate law.

Countless local problems cry out and the members of the legal profession have the responsibility of finding solutions. To the municipal attorney in particular is afforded the privilege and opportunity to conceive and formulate local law that is attune with our modern world.