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OVERLAPPING DISTRICTS VERSUS MUNICIPAL AUTHORITIES IN THE AREA OF URBAN REDEVELOPMENT

Walter A. Rafalko*

We cannot assume that the legislature will disobey the organic law of the state, or will ever attempt to create other corporations within existing incorporated towns or cities, for the redistribution of the powers or functions of such municipalities, in order to evade the restriction in respect to the debt limit in our constitution.

JORDAN, J., in Campbell v. City of Indianapolis, 155 Ind. 186, 57 N.E. 920, 929 (1900).

INTRODUCTION

The author of the above quote was not being very realistic on this subject and, as a matter of fact, the creation of devices by the legislature to subvert the organic law is more frequently employed by sanctioning evasion of the law than by enforcing the constitutional prohibition against the municipality. The application of the constitutional and statutory limitations which have been placed on the powers of municipalities to contract debts generally has created much confusion, chaos and conflict of decisions by the courts.¹ Today, the constitutions and statutes of every state have put a ceiling upon the total debt which a municipality may lawfully incur.² Any obligation beyond this limit is generally considered null and void, leaving the contractor who has supplied goods and services without any method of recovery.³ Evasion of the provisions has taken several forms, such as: creating overlapping districts as separate taxing entities, courts interpreting obligations as involuntary or ex delicto, rather than voluntary or ex contractu, incurring of obligations to be met by special assessment, the special fund or self-liquidating project, long-term

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¹ Note, Power of Municipality to Exceed Debt Limit, 40 COLUM. L. REV. 70 (1914).
² Bowers, Jr., Limitations on Municipal Indebtedness, 5 VAND. L. REV. 37 (1951).
³ Snyder, Computing Municipal Indebtedness under Pennsylvania Constitutional Limitations, 7 U. PITT. L. REV. 198 (1941).
contracts for services or the conditional sales contract device, issuance of tax anticipation notes, long-term leases by a city, to be financed by an annual rental to cover the bonded indebtedness, and the issuance of funding or refunding bonds by a municipality. This article will investigate two of the forms used to defeat the purposes of the statutory and constitutional limitations on the amount of municipal indebtedness—the overlapping district and the municipal authority. The salient fact which distinguishes the authority from the overlapping district is that the authority, which has also been given statutory power to issue its own bonds, also looks to the municipal corporation for annual payments primarily and these payments are designated as rental payments. The municipality enters into a long-term contract with the authority to make these payments, which are to be financed out of the municipality’s receipts.

Public corporations are usually divided into two classes, municipal corporations and public quasi-corporations. The municipal corporation is a subdivision of a state endowed with governmental powers and charged with local governmental functions and responsibilities. It includes cities, boroughs, villages and towns (except New England towns). The class of public quasi-corporations has been defined to include all bodies politic and corporate created for the sole purpose of performing one or more municipal functions. This class of public quasi-corporations includes all public corporations organized for governmental purposes and having for most purposes the status and power of municipal corporations (such as counties, townships, New England towns).
England towns, authorities, school districts, drainage districts, sanitary districts, irrigation districts, etc., but not municipal corporations proper, such as cities and incorporated towns). The characteristics of public quasi-corporations are: the population is less dense, the corporate powers are more limited, the functions are highly specialized, and they are primarily subdivisions of the state to carry out state functions. Thus, both the overlapping district and municipal authority qualify as public quasi-corporations.

How do they differ from each other? In Pennsylvania, municipal authorities came into existence as a form of a municipal corporation with the passage of the Municipality Authorities Act of 1945, or with a specific function it was to perform, such as under the "Urban Redevelopment Law of the Commonwealth of Pennsylvania." Municipal authorities are not like overlapping districts since they have no power to tax and are not responsible directly to the electorate. Neither did the authorities have a general police power conferred upon them as was conferred upon municipal corporations. Municipal authorities are corporate bodies organized to perform a specialized service. Once the authority is established under the general enabling statute, a Board is created consisting of not less than five members appointed by the governing body of the state, county or municipality establishing the authority for terms of five years. The Board of the authority is then free to organize its affairs to carry out the purposes for which it was created by being authorized (a) to borrow money by issuing bonds, (b) to exercise the right of eminent domain, (c) to appoint officers, agents and employees, (d) to charge rates for its facilities, (e) to contract for buildings, supplies and equipment, and (f) to do all acts and things necessary or convenient for the promotion of its business and the general welfare of the authority.

On the other hand, in Pennsylvania overlapping districts, e.g., school and institutional districts, have very broad governing powers as compared to municipal authorities, but less than municipalities. The school districts are governed by "Boards of Public Education." The Board of School Directors is the exclusive governing body in school districts, with authority to tax, borrow, condemn property by

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7 See Snider v. City of St. Paul, 51 Minn. 466, 53 N.W. 763 (1892).
8 STASON AND KAUPER, op. cit. supra note 5, at 1.
12 Id. at 62.
eminent domain and engage in all activities necessary to sustain the educational program throughout the state.\textsuperscript{18} School districts are classified into five classes on the basis of population according to a legislative formula:\textsuperscript{14} First Class (Philadelphia)—population of 1,500,000 or more; First Class A (Pittsburgh)—population between 500,000 and 1,500,000; Second Class—population between 30,000 and 500,000; Third Class—population between 5,000 and 30,000; Fourth Class—population of less than 5,000.

In First Class and First Class A Districts (Philadelphia and Pittsburgh), the boards consist of a membership of fifteen Directors appointed for terms of six years by the Courts of Common Pleas of their respective counties. All of the other districts elect their School Directors for six-year terms. The school district is a legal political subdivision of the state and, in effect, is a special governmental unit designed to serve the educational needs of a particular area.\textsuperscript{15}

An institutional district is a special district since it is a body corporate created to take care of dependents not provided for in some manner by law. These dependents include the superannuated widows, orphans, physically handicapped and mental patients. Each county in Pennsylvania has one political subdivision designated the county institutional district. This governmental unit is under the control of the Board of County Commissioners and, therefore, is considered a county governmental unit. The County Commissioners are responsible for the preparation of the annual budget, the auditing of all the institutional funds by either the Auditors or Controller, and the filing of an annual report with the Secretary of Internal Affairs. To maintain the cost of carrying out their functions, the county institutional districts levy taxes on the assessed valuation of real property within the county.\textsuperscript{16}

However, the majority of the overlapping districts, e.g., highway\textsuperscript{17} and election\textsuperscript{18} districts, have very narrow governing powers as compared to municipal authorities. The highway districts are governed

\textsuperscript{13} Id. at 59.
\textsuperscript{15} HANCOCK, op. cit. supra note 11, at 59-60.
\textsuperscript{16} Id. at 53.
\textsuperscript{17} Act of April 9, 1929, P.L. 177, art. XX, § 2002; PA. STAT. ANN. tit. 71, § 514 (1962).
by the Department of Highways, which has the power and duty to
divide the State into suitable highway districts or divisions and place
in charge of each district or division such employee of the Depart-
ment as the Secretary of Highways deems advisable.\textsuperscript{10} The Department of Highways has the power and duty (a) to have general super-
vision over all township highways and bridges, (b) to approve plans
and specifications and estimates for the erection and repair of town-
ship highways and bridges, (c) to furnish, from time to time, bul-
ettins of instruction to the boards of township supervisors throughout
the state for the building and repair of township roads and bridges,
(d) to prescribe the method of keeping township accounts and
records of moneys received and expended for highways, machinery,
bridges, tools and implements, and for miscellaneous purposes.\textsuperscript{20} It
is well to note that highway districts are not vested as bodies cor-
porate as are school districts.\textsuperscript{21} Highway districts are merely geo-
graphical subdivisions or agencies of the state without authority to
tax, borrow or condemn property by eminent domain.

The same holds true for election districts. Each borough and town-
ship, not divided into wards, and each ward of every city, borough
and township now existing or hereafter created, constitutes a sepa-
rate election district, unless divided into two or more election
districts.\textsuperscript{22} Again, an election district is not a body corporate as com-
pared with an institutional or poor district.\textsuperscript{23}

Under the Pennsylvania "Statutory Construction Act,"\textsuperscript{24} the term
"district" is not defined, but a "municipality authority" or "municipal
authority" is defined as a body corporate and politic created pursuant
to the Municipality Authorities Act.\textsuperscript{25} Therefore, all municipal au-
thorities and some districts, such as school and institutional districts,
may be classified as public quasi-corporations by the legislature, but
the majority of districts are not so classified.

This article will consider why the overlapping district and munici-

\textsuperscript{10} Supra note 17.
\textsuperscript{20} Act of April 9, 1929, P.L. 177, art. XX, § 2006; PA. STAT. ANN. tit. 71, § 516
(1962).
\textsuperscript{21} Act of March 10, 1949, P.L. 30, art. II, § 211; PA. STAT. ANN. tit. 24, § 2-211
(1962).
\textsuperscript{22} Supra note 18.
(1959); cf. supra note 18.
\textsuperscript{24} Act of May 28, 1937, P.L. 1019, art. VIII, § 101; PA. STAT. ANN. tit. 46, § 601
\textsuperscript{25} Supra note 9.
pal authority came into existence and which type should be preferred in the expanding area of urban redevelopment.

Municipal Debt Limitations

Municipal debt limitation provisions are found incorporated in state constitutions, statutes and municipal charters. They fall into three main categories: (1) provisions forbidding indebtedness in excess of a fixed percentage of the assessed value of the taxable property therein or other overlapping taxing district; (2) provisions limiting indebtedness not to exceed income and revenue provided for in any one year; and (3) provisions combining both of the above limitations. Such provisions are found in the constitutions of most of the states. Municipal indebtedness arising from the building or purchasing of specified public utilities is exempted from the constitutional debt limitations. Other constitutions merely exempt public utilities generally. This immediately raises problems as to what constitutes a public utility. Some constitutions exclude indebtedness incurred for necessary expenses. Most courts have held that the issuance of municipal refunding bonds is permissible even though the constitutional debt limitation has been exceeded. Today, constitutional provisions in some states expressly authorize the issuance of municipal refunding bonds, even though the debt limitation has been reached.

One would imagine that the constitutional and statutory limitations would be sufficient protection against municipal extravagance

26 STASON AND KAUER, op. cit. supra note 5, at 518.
27 ALA. CONST. art. 12, § 225; ARIZ. CONST. art. 9, § 8; CAL. CONST. art. 11, § 18; COLO. CONST. art. XI, § 8; GA. CONST. art. VII, § 7; HAWAII CONST. art. VI, § 3; IDAHO CONST. art. 8, § 3; ILL. CONST. art. 9, § 12; IND. CONST. art. 13, § 1; IOWA CONST. art. XI, § 3; KY. CONST. § 158; LA. CONST. art. 14, § 14(f); ME. CONST. art. IX, § 15; Md. CONST. art. XI-E § 5; Mich. CONST. art. VIII, § 10; MO. CONST. art. VI, § 26(b); MONT. CONST. art. XIII, §§ 5, 6; N.M. CONST. art. IX, § 13; N.Y. CONST. art. VIII, § 10; N.C. CONST. art. V, § 4; N.D. CONST. art. XII, § 183; OKLA. CONST. art. 10, § 26; ORE. CONST. art. XI, § 11; PA. CONST. art. 9, § 8; S.C. CONST. art. 10, § 3; S.D. CONST. art. XIII, § 4; TEX. CONST. art. 3, § 52; UTAH CONST. art. XIV, § 4; VA. CONST. art. VIII, § 127; WASH. CONST. art. 8, § 6; W. VA. CONST. art. X, § 8; WIS. CONST. art. XI, § 3; WYO. CONST. art. 16, § 5.
28 ALA. CONST. art. 12, § 225; ARK. CONST. amend. 13, § 1; IDAHO CONST. art. 8, § 3, as amended by H.J.R. No. 5 (S.L. 1963, p. 1149) ratified Nov. 3, 1964; PA. CONST. art. 9, § 15.
29 E.g., OHIO CONST. art. XVIII, § 12; OKLA. CONST. art. 10, § 27.
31 E.g., IDAHO CONST. art. 8, § 3; N.C. CONST. art. 7, § 7.
32 See, e.g., Veatch v. City of Moscow, 18 Idaho 313, 109 Pac. 722 (1910).
33 ALA. CONST. art. VII, § 225; KY. CONST. § 158; LA. CONST. art. 14, § 14(g); ME. CONST. art. IX, § 15; MO. CONST. art. VI, § 28; N.M. CONST. art. IX, § 15; S.C. CONST. art. 10, § 5.
and against the creation of excessive bonded indebtedness.\textsuperscript{34} However, many municipalities had reached their limits at the time of World War II and their borrowing power was exhausted; yet they were in need of capital expansion and renewal programs to replace worn-out capital facilities.\textsuperscript{35}

In Pennsylvania, for example, when a municipality desires to incur a debt or borrow money, there must be some antecedent legislative authority, either direct or implied from the necessity of performing a duty which must involve the spending of money.\textsuperscript{36}

This authority to incur a debt or borrow money by municipalities (the word does not include a city of the First Class, a county of the First Class or a city institution district),\textsuperscript{37} the procedures to be followed, and the restrictions upon their authority are itemized in the "Municipal Borrowing Law."\textsuperscript{38}

The Pennsylvania Constitution\textsuperscript{39} and a statute\textsuperscript{40} limit the debt which may be incurred by a municipality, allowing two per centum of the debt to be incurred by the municipal authorities without the assent of the voters, but requiring the assent of the voters before the balance of five per centum may be incurred. This normally means the net debt of any municipality may equal seven per centum.\textsuperscript{41}

However, municipal indebtedness for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof, is not considered a debt of the municipality but is given special treatment. Thus, municipalities and counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum of the assessed valuation of the taxable property therein, if the increase in indebtedness for the construction or acquisition of public works shall have been assented to by three-fifths of the electors voting at a public election.\textsuperscript{42}

\begin{itemize}
\item \textsuperscript{34} SASON, \textit{State Administrative Supervision of Municipal Indebtedness}, 30 Mich. L. Rev. 833 (1932); Bowers, Jr., \textit{Limitations on Municipal Indebtedness}, 5 Vand. L. Rev. 37 (1951).
\item \textsuperscript{35} HANCOCk, \textit{op. cit. supra} note 11, at 61.
\item \textsuperscript{36} Georges Township v. Union Trust Co., 293 Pa. 364, 143 Atl. 10 (1928).
\item \textsuperscript{39} Pa. Const. art. 9, § 8.
\item \textsuperscript{41} \textit{Ibid.}
\end{itemize}
There is a proposed amendment to increase the debt limit of a municipality or incorporated district, except the City of Philadelphia, to fifteen per centum of the assessed value of the taxable property therein, with the consent of the voters at a public election; and any municipality or district may incur any debt or increase its indebtedness to an amount not exceeding five per centum of the taxable property therein without the consent of the voters at a public election.48

This proposed amendment is in keeping with the purpose of the constitutional restrictions on municipal debts, which is to check the rash expenditure on credit and borrowing and to prevent loading the future with results of present inconsiderate extravagance.44

The constitutional provisions limiting the power of municipalities to incur indebtedness supersede any prior statutory provisions, even though the legislature has not specifically repealed them.46 Should the proposed amendment be passed, it will prevail.

In determining the "assessed value" of taxable property, the constitutional language means the valuation fixed by the city authorities for city taxation, not that made by county officers for county purposes.46 This determination of value is conclusive, and no objection can be made in proceedings relating to indebtedness on the ground that non-taxable property was included by the taxing authorities.47

The reference to the term "debt" as it appears in the constitution is not used in any technical way, but rather in its broad sense.48 A debt is created when an obligation is undertaken to pay in the future for consideration in the present and includes a present and actual creditor as an incident to the transaction.49 The incurring of any liability to pay out money, in the present or future, is a debt for purposes of the limitations.50 In a word, a debt is created if there is an existing obligation presently enforceable against the property or funds of the municipality or an obligation presently existing but enforceable in the future.51 Unliquidated damages owed to land-

43 Amendment proposed by Joint Resolution No. 4, 1963, S.B. No. 37.
44 Addyston Pipe & Steel Co. v. City of Corry, 197 Pa. 41, 46 Atl. 1035 (1900).
45 In re Borough of Millvale, 162 Pa. 374, 29 Atl. 651 (1894).
46 DuPont v. City of Pittsburgh, 69 F. 13 (1895).
47 Brown's Appeal, 111 Pa. 72, 2 Atl. 77 (1886).
48 Appeal of the City of Erie, 91 Pa. 398 (1879).
49 Appeal of Luburg, 17 Atl. 245 (Pa. 1889).
51 Appeal of the City of Erie, 91 Pa. 398 (1879).
owners from a public improvement caused by a municipality under its right of eminent domain or damages from injuries to lands abutting those on which a public improvement is erected constitute a debt within the meaning of the constitutional provision.\textsuperscript{62}

The indebtedness limitations apply only to limit the power of a municipality to incur new debt and prescribes the details required to be observed in so doing. The provisions are not violated by a transfer of debts from one municipality or district to another municipality or district in connection with an annexation or consolidation proceeding.\textsuperscript{53} On the other hand, the amount of a municipality's debt which has been assumed by another municipality or district cannot be deducted from the municipality's gross indebtedness to determine its borrowing capacity.\textsuperscript{64}

Any contract made by a municipality pertaining to its ordinary expenses, such as the repaving of a street, which is, together with other like expenses, within the limit of its current revenues or the municipality has the means of acquiring the revenues otherwise than by loans, does not constitute an increasing of indebtedness within the meaning of the constitutional provision limiting the power of municipal corporations to contract debts.\textsuperscript{54}

Judgments obtained against a municipality are properly included in computing the amount of the municipality's indebtedness which cannot be made from current revenues. However, unliquidated claims, as to which a municipality denies liability, should not be included in computing the amount of the municipality's indebtedness.\textsuperscript{55}

Obligations accruing by Act of God or possible laws to be passed in the future are not considered debts within the constitutional definition.\textsuperscript{56}

When a municipality raises money by a bond issue for the construction of a public building, the subsequent making of a contract for the erection of the public building is not considered a further increase of municipal indebtedness in computing the amount of the

\textsuperscript{62} Keller v. City of Scranton, 200 Pa. 130, 49 Atl. 781 (1901).
\textsuperscript{63} Managers for Relief and Employment of Poor of Germantown Tp. v. Witkin, 329 Pa. 410, 196 Atl. 837 (1938).
\textsuperscript{64} McGuire v. City of Philadelphia, 245 Pa. 287, 91 Atl. 622 (1914).
\textsuperscript{65} Reuting v. City of Titusville, 175 Pa. 512, 34 Atl. 916 (1896).
\textsuperscript{66} Schuldice v. City of Pittsburgh, 251 Pa. 28, 95 Atl. 938 (1915).
\textsuperscript{67} Appeal of the City of Erie, 91 Pa. 398 (1879).
municipal indebtedness. This is to say, the amount of the liability under the contract and the amount of the bond issue are considered one.\textsuperscript{58}

Bond issues to fund a circulating debt or refund a funded existing indebtedness are not new indebtedness within the meaning of the constitutional prohibition.\textsuperscript{59} It may be possible to obtain funds at a lower rate of interest to pay off the existing debt. The fact that the new indebtedness combined with the old indebtedness may exceed the constitutional limit is immaterial so long as the new indebtedness after the refunding is within the prescribed limit.\textsuperscript{60}

As the above situations indicate, the Commonwealth of Pennsylvania has not been able to check municipal extravagance and to guard against the creation of excessive municipal bonded indebtedness by constitutional or statutory methods.

**Municipal Overlapping Districts**

A municipal overlapping district may be defined as a separate and independent political subdivision, the boundaries of which are identical with or overlap the territory of the municipality itself and perform the function which a municipality normally performs.\textsuperscript{61} The general rule is that in determining the constitutional debt limit of a municipality the indebtedness of an overlapping district is not to be taken into consideration.\textsuperscript{62} As the court pointed out in *Kelley v. Brunswick School District*,\textsuperscript{63} an injunction proceeding, where some independent board or commission, which, though technically a separate corporation, is only an agency of the town or city, incurs or seeks to incur a debt, the courts ought to look behind the fiction to see what the real fact is. But the courts may not, absent express constitutional limitations, entirely deny the power of the legislature to create wholly or partly, in town or city limits, different public corporate bodies, and to make clear that their debts are to be regarded as those of independent corporations.

In arriving at the general rule, some of the courts, in interpreting the statutes establishing school districts or units as corporate bodies

\textsuperscript{58} Stratton v. Allegheny County, 245 Pa. 519, 91 Atl. 894 (1914).
\textsuperscript{59} Hirt v. City of Erie, 200 Pa. 223, 49 Atl. 796 (1901).
\textsuperscript{60} Roye v. Borough of Columbia, 192 Pa. 146, 43 Atl. 597 (1899).
\textsuperscript{61} Annot., 171 A.L.R. 729 (1947).
\textsuperscript{62} See Annot., 94 A.L.R. 818 (1935).
\textsuperscript{63} 134 Me. 414, 187 Atl. 703 (1936).
with separate powers and liabilities, have held that the statute requires a school district to be considered as a separate and distinct political unit for the purpose of determining the constitutional debt limit of the school district or municipality, the boundaries of which are coterminous or overlapping with the school district.\(^64\)

The same conclusion has been reached without reference to an express statute but rather on the basis of general statutory interpretation or judicial reasoning alone.\(^65\)

A minority of the courts, apparently influenced by special statutory language involved, have reached a contrary view.\(^66\)

While a separate school district may be created within the boundaries coterminous with a municipality, it was held in the classic case of Cerajewski v. McVey,\(^67\) that the constitutional prohibition may not be evaded by creating a separate vocational high school district within the boundaries of an existing school district for the purpose of borrowing money with which to build a technical vocational high school which the existing school district had the full power to build at any time.

Cities, villages, towns and townships have been held to be separate governmental units independent from the territorial subdivisions of counties within the meaning of the constitutional debt limitations.\(^68\)

In the area of urban renewal or redevelopment, where has the district type of device been used to perform designated public functions which are coextensive or overlapping with that of the municipality? In Kennebec Water Dist. v. City of Waterville,\(^69\) the court concluded that the debts created by the water district were not the

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\(^64\) Lyon v. Strock, 274 Pa. 541, 118 Atl. 432 (1922).


\(^68\) Stamford v. Stamford, 107 Conn. 596, 141 Atl. 891 (1928); Irwin v. Lowe, 49 Ind. 540 (1883).

\(^69\) 96 Me. 234, 52 Atl. 774 (1902).
debts of the city within the meaning of the constitutional debt limit. The court stated that:

In the case at bar the power to take private property for public use is granted to the water district, and not to the city of Waterville. Compensation for the property so taken is to be paid by the water district. The title to the property which may be acquired by voluntary or enforced purchase is to vest in the district. To provide funds for the payment of property purchased or taken, the district is authorized to issue bonds, which, by the express terms of its charter, shall be legal obligations of the water district.70

It is well settled by a long line of decisions that the legislature is empowered to carve out a district from a territory of the state for the accomplishment of some public purpose. The creation by the legislature of a special-purpose district for the purpose of establishing and maintaining a public airport is a lawful exercise by the legislature of its plenary power to create special-purpose districts, and the only constitutional limitation controlling the debt limit of such an airport district was the limitation found in the constitution.71 A statute authorizing the creation of what was known as an airport authority district was not unconstitutional on the grounds that the general bonds issued by the board would, when added to the existing indebtedness of a municipality, exceed the constitutional debt limitations of both the municipality and the county, notwithstanding contention that creation of the airport authority district was simply a device to avoid the constitutional debt limitation imposed upon municipalities.72

It has been held that a bond issue of a municipal recreation district, a body corporate and politic constituted of the inhabitants of and territory within the municipality, for the purpose of financing the construction of an auditorium, would not be a debt of the municipality and hence would not be in any way affected by the constitutional debt limit applicable to the municipality.73 If a statute authorizes the establishment of a public park district within the territorial limits, which is not, however, a new or distinct municipal corporation, the indebtedness of the public park district would not be included in computing the debt limitation of the municipality.74

70 Id. at 255, 52 Atl. at 783.
73 Carlisle v. Bangor Recreation Center, 103 A.2d 339 (Me. 1954).
74 Orvis v. Park Commissioners, 88 Iowa 674, 56 N.W. 294 (1893).
The statutes authorizing the establishment of a sanitary district, the area of which was coextensive with that of a municipality, to sell bonds for the construction of additional sewers, pumps, and buildings, did not create a debt within the constitutional provisions restricting municipal debt limitations. These statutes delegating power to the municipal board to establish municipal sanitary districts, the boundaries of which are coterminous with the municipality, are permissive delegations of legislative police power and are not unconstitutional as affording a sanitary district the opportunity to evade the constitutional debt limitation. A drainage district has been accepted as valid and the fact that a drainage district was within a municipality which was already indebted to the constitutional limit did not prevent the levy of special assessments by the drainage district.

A statute creating an incorporated pier district was not invalid upon the basis that the proposed bond issue by the pier district would operate to increase the indebtedness of one of the municipalities lying within the boundaries of the pier district beyond the constitutional debt limitation, even though the legislature gave this pier district the power to tax.

In the area of slum clearance, renewal and redevelopment of urban housing, many statutes have been passed providing for the creation of housing authorities. This was necessary because municipal zoning ordinances and building codes were inadequate to cope with the overall problem. The authority device thus became very popular in this area because it was not subject to the constitutional debt limitation provision. As the court stated in Lloyd v. Twin Falls Housing Authority:

The legislative act [relating to housing authorities] does not provide for electors or elections. It cannot make provision for the collection of an annual tax sufficient to pay the interest of its indebtedness as it falls due, for the law does not authorize or permit it to levy or collect a tax. It is not a county, city, town, township,

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75 Department of Public Sanitation v. Sloan, 97 N.E.2d 495 (Ind. 1951).
76 Fort Howard Paper Co. v. Town Board of Ashwaubenon, 266 Wis. 191, 63 N.W.2d 122 (1954); Wilson v. Sanitary Dist., 133 Ill. 443, 27 N.E. 203 (1890).
78 Hamilton v. Portland State Pier Site Dist., 120 Me. 15, 112 Atl. 836 (1921). See also Straw v. Harris, 54 Ore. 424, 103 Pac. 777 (1909).  
board of education, or school district, or other subdivision of the state, within the meaning of ... the constitution, and the prohibition expressed in that section does not apply to it.81

Pennsylvania Urban Redevelopment

The "Pennsylvania Urban Redevelopment Law"82 spells out in great detail the legislative findings on urban renewal:

(a) That there exists in urban communities in this Commonwealth areas which have become blighted because of the unsafe, un-sanitary, inadequate or over-crowded conditions of the dwellings therein.

(b) That such conditions ... will continue to result in making such areas economic or social liabilities, harmful to the social and economic well-being of the entire communities in which they exist.

(c) That the foregoing conditions are beyond remedy or control by regulatory processes in certain blighted areas ... and cannot be effectively dealt with by private enterprise under existing laws ... replanning and redevelopment is difficult and impossible without the effective public power of eminent domain.

(c.1) That certain blighted areas ... may require total acquisition, clearance and disposition ... that the conditions and evils hereinbefore enumerated may be eliminated or remedied.

(d) That the replanning and redevelopment of such areas ... will promote the public health, safety, convenience and welfare.83

To implement the foregoing findings and policy, the Pennsylvania General Assembly established redevelopment authorities which exist and operate for the public purposes of eliminating blighted areas through economically and socially sound redevelopment of these areas, in conformity with the comprehensive general plans of their respective municipalities for residential, recreational, commercial, industrial or other purposes, and otherwise encouraging the providing of healthful homes, a decent living environment and adequate places for employment of the people of the state.84

The Act provides for the formation of these redevelopment authorities and created them as separate corporate bodies which are in

81 113 P.2d 1102 (Idaho 1941).
84 Ibid.
no way to be deemed as an instrumentality of the city or county in which they are to operate. No authority shall transact any business or become operative unless there is a finding by the proper governing body of the city or county involved that there is a need for an authority and that the finding by ordinance be filed with the Department of State and a duplicate thereof with the State Planning Board. The five members of the authority are to be appointed by the Mayor or Board of County Commissioners of the city or county. It is well to note that only the cities and counties may create a redevelopment authority and that boroughs, towns and townships are not authorized to establish their own redevelopment authority.

An authority is to exercise the public powers of the Commonwealth, being an agency thereof, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes of the Act. Among the powers granted are the powers to "assemble, purchase, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property . . .", "to acquire by eminent domain any real property . . . for the public purposes set forth in this act . . .", "to own, hold, clear, improve and manage real property", "to sell, lease or otherwise transfer any real property located outside of a redevelopment area and . . . any real property in a redevelopment area . . .", and to "make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Authority . . .".

The Act provides that the title to the property acquired by an authority through eminent domain proceedings shall be an absolute or fee simple title, unless a lesser title shall be designated in the eminent domain proceedings. Under the Act, the authority has the power to issue bonds for any of its corporate purposes. Further,
under the "Pennsylvania Redevelopment Cooperation Law," the Act provides that either the city council or the county commissioners may make advances to a redevelopment authority to assist an authority to carry out its public purposes. As a result of the powers granted under the Act, many cities, e.g., the City of Pittsburgh, in 1946 created the "Urban Redevelopment Authority." Needless to say, this agency, more than any other, has given Pittsburgh an international image in the area of urban redevelopment. So much so, that Pittsburgh is frequently referred to as the "Renaissance City."

The constitutionality of the "Urban Redevelopment Law" was challenged in Belovsky v. Redevelopment Authority of the City of Philadelphia. The Supreme Court of Pennsylvania upheld the constitutionality of this Act. At the outset, the court was faced with the issue of whether the elimination and rehabilitation of slum and blighted areas is a taking for a "public use" within the constitutional provision respecting eminent domain. The court stated:

In the case of the Urban Redevelopment Law, therefore, the justification of the grant of the power of eminent domain is even clearer than in the case of the Housing Authorities Law, there being in the present act only the one major purpose of the elimination and rehabilitation of the blighted sections of our municipalities, and that purpose certainly falls within any conception of 'public use' for nothing can be more beneficial to the community as a whole than the clearance and reconstruction of those sub-standard areas which are characterized by the evils described in the Urban Redevelopment Law. It has long been clear that those evils cannot be eradicated merely by such measures, however admirable in themselves, as tenement-house laws, zoning laws and building codes and regulations; these deal only with future construction, not with presently existing conditions. Nor, as experience has shown, is private enterprise adequate for the purpose. The legislature has therefore concluded—and the wisdom of its conclusion is for it alone—that public aid must accompany private initiative if the desired results are to be obtained.

The appellant then claimed that the final result of the operation was to take property from one individual and transfer it to another. It is well settled that property cannot be taken by the government without the owner's consent for the mere purpose of devoting it to the private use of another, even though there be involved in the


\[97\] Id. at 329, 54 A.2d at 282.
transaction an incidental benefit to the public.\footnote{Pennsylvania Mutual Life Ins. Co. v. Philadelphia, 242 Pa. 47, 88 Atl. 904 (1913).} The court carefully pointed out that the Urban Redevelopment Law is not one requiring a continuing ownership of the property, as is the case of the Housing Authorities Law\footnote{Act of May 28, 1937, P.L. 955, § 1; Pa. Stat. Ann. tit. 35, § 1541 et seq. (1964).} to carry out the full purpose of that law. Rather, this Act is directed solely to the purpose of clearance, reconstruction and rehabilitation of the blighted area, and, after that is accomplished, the need for public ownership has terminated. It is then proper that the land be retransferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the aforementioned purposes. It is not the object of the statute to transfer property from one individual to another and, if the public good is enhanced, it is immaterial that a private interest also may be benefited.

The appellant also raised the unlawful delegation of authority and insufficient standards arguments. The court disposed of these arguments by stating:

> The planning necessary to accomplish the purposes of the act must necessarily vary from place to place within the same city or county and from city to city and county to county. All that the legislature could do, therefore, was to prescribe general rules and reasonably definite standards, leaving to the local authorities the preparation of the plans and specifications best adapted to accomplish in each instance the desired result, a function which obviously can be performed only by administrative bodies. While the legislature cannot delegate the power to make a law, it may, where necessary, confer authority and discretion in connection with the execution of the law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the act.\footnote{357 Pa. at 342, 54 A.2d at 283-84.}

In holding the Urban Redevelopment Law constitutional, the Pennsylvania Supreme Court paved the way for tremendous redevelopment to take effect in Pennsylvania. This decision leaves no doubt that the redevelopment authorities may take private property by condemnation and resell it to private individuals for development according to a redevelopment plan to effectuate the purposes of the Act.

In a subsequent case, \textit{Schenck v. City of Pittsburgh},\footnote{364 Pa. 1, 70 A.2d 612 (1950).} the plaintiff...
contended that redevelopment under the Urban Redevelopment Law was limited primarily to the relieving of undesirable living conditions and that any land which is commercial may not be redeveloped unless it is ancillary and incidental to the redevelopment of a residential area. However, the court did not accept this argument and stated:

If the Urban Redevelopment Law were to be held to apply only to the clearing of blighted residential areas and the reconstruction of dwelling houses thereon there would have been no reason for its enactment since it would have added nothing to the Housing Authorities Law already in force. On the contrary, the Urban Redevelopment Law was obviously intended to give wide scope to municipalities in redesigning and rebuilding such areas within their limits as, by reason of the passage of years and the enormous changes in traffic conditions and types of building construction, no longer meet the economic and social needs of modern city life and progress. Such needs exist, even if from a different angle, as well in the case of industrial and commercial as of residential areas.\(^{102}\)

In *Oliver v. City of Clairton*,\(^ {103}\) the court was concerned with the question whether or not, under the Urban Redevelopment Law, vacant or unimproved land could be taken by the Redevelopment Authority’s right of condemnation. The court stated:

The Urban Redevelopment Law does not limit the certification of blighted areas to improved property; on the contrary, section 3(n) defines the term “Redevelopment Area” as “Any area, whether improved or unimproved, which a planning commission may find to be blighted because of the existence of the conditions enumerated in section two of this act so as to require redevelopment under the provisions of this act.” And section 3(m) defines the term “Redevelopment” as the acquisition, replanning, etc. of an area, “including the provision of streets, parks, recreational areas and other open spaces.”\(^ {104}\)

Urban redevelopment authorities, therefore, may exercise their right of eminent domain pursuant to a redevelopment proposal even though the area may be preponderantly open, vacant or unimproved.

As the aforementioned decisions indicate, the constitutionality of the Urban Redevelopment Law in Pennsylvania has been resolved and redevelopment authorities have been created in cities and counties throughout the state. They operate in conjunction with the

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\(^{102}\) Id. at 37, 70 A.2d at 615.
\(^{103}\) 374 Pa. 333, 98 A.2d 47 (1953).
\(^{104}\) Id. at 342, 98 A.2d at 52.
Housing and Home Finance Agency, a federal agency, in order to obtain maximum federal funds to carry out their redevelopment projects. In addition to the redevelopment authorities, many other types of authorities now exist throughout the state, such as: port authorities, auditorium authorities, parking authorities, county authorities, industrial development authorities and housing authorities. Therefore, urban redevelopment authorities, like school districts, have become permanent institutions and will be with us for a long time.

**CONCLUSION**

In the area of redevelopment, whatever view one advocates, it will prove to be provocative, emotional and controversial. Since urban redevelopment, like education, has become a perennial problem, the form of legal device to be used becomes extremely important in the light of the constitutional debt limitation provisions. The two devices used are districts and authorities, with the latter most frequently employed. Districts come within the constitutional prohibitions, but authorities do not. In the long run, however, perhaps the district device may emerge as the best form to be used to solve the relocation and redevelopment problems. At least, it merits a closer investigation than has been given to it heretofore. The district device provides for residents of the community affected to serve on the board and for local elections to be held to fill that office. The device permits the levy and collection of taxes by the district, and the incorporated district falls within the meaning of the constitutional provisions limiting indebtedness incurred by political subdivisions to seven (7) per centum upon the assessed value of the taxable property therein, and the provisions that no municipality or district shall incur any new debt or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof obtained at a public

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election in a manner provided by law. Therefore, the district device is in keeping with the constitutional provision to check municipal extravagance and to guard against the creation of excessive municipal bonded indebtedness by constitutional and statutory methods.

Historically, the citizens have rebelled against "taxation without representation." With the authority as a subterfuge, the citizen has no control over who will represent him and how his money will be spent through the nefarious schemes that have since been perfected. In the end, it is the taxpayer who ultimately bears the burdens which have been created by the authority. Would it not be more desirable, if more money is required to finance the necessary urban redevelopment undertakings, to raise the constitutional debt limitation provisions to more realistic figures, as has been advanced in Pennsylvania by proposed amendments to the constitution? This would be in keeping with both the letter and the spirit of the law. If school and institutional districts function satisfactorily a fortiori, wouldn't urban redevelopment districts function equally as well? This approach would be true democracy in action.