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THE PUBLIC-UTILITIES-CONTROL POWER: VALIDITY OF MUNICIPAL REGULATION OF RAILROAD CROSSINGS

The desire of the local community for control over situations which are of special interest to it often leads to conflicts in claims of authority between state and local governments. In California, one area of potential conflict, where there is a present assertion of local control, is the regulation of a railroad's use of tracks crossing a public street. Many California cities¹ have passed ordinances² regulating these crossings. The ordinances limit the time period for which a train may block a crossing. It is the purpose of this note to discuss the authority requisite to the enactment of these ordinances and to demonstrate that they are void because the area of control over railroad crossings has been preempted by the legislature.

The power of the municipality to enact such an ordinance, if such power exists at all, would be derived either from article XI, section 11 of the California constitution,³ as a general power, or from article XII, section 23 of the constitution⁴ as a "vested"⁵ public-utilities-control power of a chartered city.

The "Vested" Powers of Chartered Cities

If a chartered city is to enact such an ordinance under article XII, section 23, it must do so under the proviso that reserves to cities powers to make and enforce such "local, police, sanitary and other public utilities regulations, other than the fixing of rates, which are vested in any city."⁶ This proviso was adopted in order to immunize from legislative control whatever "vested" powers of control chartered cities have over public utilities.⁷ In interpreting the proviso, the courts have construed "vested" powers to include only those regulatory powers which

¹ Among the California cities that have passed such an ordinance are: BAKERSFIELD, CAL., MUNICIPAL CODE § 11.04.390 (1965); LOS ANGELES, CAL., MUNICIPAL CODE § 80.44 (1956); PALO ALTO, CAL., MUNICIPAL CODE § 2343 (1940); Redwood City, Cal., Ordinance 11 March 1, 1898; SALINAS, CAL., MUNICIPAL CODE Ordinance 22, § 17 (1933); San Diego, Cal., Ordinance 2423, art. VI, § 32, July, 1943.

² A typical ordinance provides: "No person shall operate any train or train of cars, or permit the same to remain standing, so as to block the movement of traffic upon any street for a period of time longer than five (5) minutes." LOS ANGELES, CAL., MUNICIPAL CODE § 80.44 (1956).

³ "Any county, city, town or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

⁴ "[A]ll powers respecting such public utilities vested in cities and town in this State shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city"

⁵ The word "vested" is used in CAL. CONST. art. XII, § 23 to refer to powers the municipalities derive from the State constitution, and which are beyond the power of the legislature to withdraw without the cities' consent. *City of San Mateo v. Railroad Comm'n*, 9 Cal. 2d 1, 7, 68 P.2d 713, 716 (1937).

⁶ CAL. CONST. art. XII, § 23. (Emphasis added.)

⁷ *City of San Mateo v. Railroad Comm'n*, 9 Cal. 2d 1, 7, 68 P.2d 713, 716 (1937).

apply solely to the regulation and control of "municipal affairs."⁸ Therefore, if the claimed municipal power to regulate a railroad's use of a crossing exists under this section, it must first be determined that the regulation of a railroad crossing is a "municipal affair."

There is no precise definition of a "municipal affair," for the meaning fluctuates with changing conditions.⁹ In each case the courts must determine whether or not the subject matter of concern is a "municipal affair."¹⁰ As yet the courts have not considered cases where it was necessary to determine whether or not these railroad-crossing ordinances involve a "municipal affair." To answer this question, therefore it is necessary to examine analogous cases and pertinent statutes.

Since a function of the ordinances in question is to protect the use of streets for travel,¹¹ cases concerning the control and regulation of the use of streets are relevant. It has been firmly established that all public highways belong to the people of the State, who have the right to use them subject to legislative control.¹² This rule has prevailed over contentions of municipalities that the regulation of traffic on their streets is of special interest to them, and should therefore be under municipal control.¹³ Such a contention, while persuasive on its face, does not mean, ipso facto, that the regulation of traffic is a "municipal affair," and "if there is a doubt as to whether or not such regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the state."¹⁴ With this guideline, and influenced by the growth of interurban traffic, the regulation of vehicular travel on streets has been found to be a matter of statewide concern and therefore not a "municipal affair."¹⁵

Another relevant area of case law is that concerning the construction of a street by a city when the street crosses a railroad track.¹⁶ In this situation the

⁸ *Ibid.* Under CAL. CONST. art. XI, §§ 6, 8 cities and towns organized under charters may make and enforce all laws and regulations respecting municipal affairs, limited only by the restrictions and limitations provided for in their charters.

⁹ *Butterworth v. Boyd*, 12 Cal. 2d 140, 147, 82 P.2d 434, 438 (1938); *Helmer v. Superior Court*, 48 Cal. App. 140, 141-42, 191 P. 1001 (1920), *petition for supreme court hearing denied*, 48 Cal. App. 147 (1920). But see generally Note, 16 HASTINGS L.J. 265 (1964) for a discussion of the nature of the municipal affairs concept, and see Note, 17 HASTINGS L.J. 635 (1966) for an example and analysis of one kind of problem apparently inherent in the municipal affairs concept.

¹⁰ *Butterworth v. Boyd*, *supra* note 8.

¹¹ The ordinances under consideration generally declare that the railroad cannot operate in such a manner as to prevent the use of any street for the purpose of travel for more than a stated period of time.

¹² *People v. County of Marin*, 103 Cal. 223, 232, 37 Pac. 203, 206 (1894); 10 McQUILLIN, MUNICIPAL CORPORATIONS § 30.39 (3d ed. 1950).

¹³ *Pipoly v. Benson*, 20 Cal. 2d 366, 369-70, 125 P.2d 482, 484 (1942); *Atlas Mixed Mortar Co. v. City of Burbank*, 202 Cal. 660, 663, 262 Pac. 334, 336 (1927); *Ex parte Daniels*, 183 Cal. 636, 639, 192 Pac. 442, 444 (1920).

¹⁴ *Ex parte Daniels*, *supra* note 13, at 639, 192 Pac. at 444.

¹⁵ *Atlas Mixed Mortar Co. v. City of Burbank*, 202 Cal. 660, 662-63, 262 Pac. 334, 335-36 (1927); *In re Murphy*, 190 Cal. 286, 288, 212 Pac. 30, 30-31 (1923); *Ex parte Daniels*, 183 Cal. 636, 639-41, 192 Pac. 442, 444-45 (1920).

¹⁶ *Northwestern Pac. R.R. v. Superior Court*, 34 Cal. 2d 454, 457-58, 211 P.2d 571, 574 (1949); *City of Los Angeles v. Central Trust Co.*, 173 Cal. 323, 327, 159 Pac. 1169, 1170 (1916).

power of the city to bring an action of condemnation to obtain the crossing is not disputed.¹⁷ However, if the street interferes with the railroad's use of its facilities then the entire matter becomes one of statewide concern rather than a "municipal affair."¹⁸

Finally, there is statutory authority to the effect that the control of a crossing is of statewide concern. The jurisdiction of the Public Utilities Commission over railroad crossings is established in sections 1201-05 of the Public Utilities Code. These sections give the Commission the authority to control the points at which streets will cross railroad tracks, and to prescribe the manner of operation and use of such crossings, as well as authority over their construction and financing. In 1933 the legislature declared that the authority vested in the commission by these sections involves matters of statewide concern.¹⁹

In light of the applicable cases and statutes, it would seem that control over a railroad crossing is of statewide concern and cannot be a "municipal affair." Consequently such control cannot be exercised by chartered cities if the purported basis is a "vested" power reserved in article XII, section 23 of the constitution.

Article XI, Section 11. Chartered and General Law Cities

There remains, however, the question of the general power to enact regulations under article XI, section 11 of the constitution. This power can be exercised by both general law cities and chartered cities to regulate both "municipal affairs" and matters of statewide concern.²⁰ It is expressly limited only by the qualification that the municipal regulation cannot conflict with a general law. This qualification requires a determination of whether or not laws regulating public utilities are general laws within the meaning of the section.²¹ If so, a conflict with a municipal regulation would invalidate the latter.

The Public Utilities Commission has complete authority over public utilities by virtue of article XII, section 23 of the constitution,²² except for the limitation

¹⁷ *Northwestern Pac. R.R. v. Superior Court*, *supra* note 14, at 458, 211 P.2d at 574; *City of Oakland v. Schenck*, 197 Cal. 456, 460, 241 Pac. 545, 546 (1925); *City of Los Angeles v. Central Trust Co.*, *supra* note 16, at 327, 159 Pac. at 1170.

¹⁸ *Northwestern Pac. R.R. v. Superior Court*, *supra* note 14, at 457-58, 211 P.2d at 574.

¹⁹ Cal. Stat. 1933, ch. 855, § 1, at 2234.

²⁰ *Chavez v. Sargent*, 52 Cal. 2d 162, 176, 339 P.2d 801, 809 (1959).

²¹ Not all laws passed by the legislature are general laws within the meaning of CAL. CONST. art. XI, § 11. For example, a law that does no more than declare that local bodies cannot enact police regulations in a given field is not such a general law. *Ex parte Daniels*, 183 Cal. 636, 641, 192 Pac. 442, 445 (1920).

²² "The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, and to fix rates as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of the Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in cities and towns in this State, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; *provided, however*, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city"

CAL. CONST. art. XII, § 23.

there included reserving certain powers of control to the cities. In so limiting the Commission's control, the constitution contains the same language previously used in the grant of power to municipalities in article XI, section 11.²³ This use of the same language appears at first glance to be an attempt to take away from both the Public Utilities Commission and from the legislature all authority to interfere with whatever public-utilities-control power section 11 had previously granted to cities. However, this preservation of public-utilities-control power in the cities has been severely limited by the supreme court. It has construed the amendment preserving local power as being limited to such regulatory powers as were "vested" in cities at the time of the amendment,²⁴ and which were beyond the control of the legislature because they dealt with "municipal affairs."²⁵ This could not include article XI, section 11 powers because they are not beyond the control of the legislature. By the very terms of section 11 they exist only until they come "in conflict with general laws." Therefore ordinances regulating public utilities, enacted under section 11, cannot be considered to fall within the preservation of "vested" powers in article XII, section 23, and these ordinances will be invalid if they conflict with the general laws which regulate public utilities. At present, however, neither the legislature nor the Public Utilities Commission has enacted laws or regulations controlling the time for which a train may block a railroad crossing. Consequently, there is no general law with which such ordinances could be in conflict, and they are, then, valid *unless* they are affected by the grant of power to the Public Utilities Commission in article XII, section 23.²⁶

By adopting article XII, section 23, the people granted to the legislature the "plenary" right to confer powers on the Public Utilities Commission, unlimited by any other provision of the constitution.²⁷ This clearly established the superiority of this grant of power over the grant of power to municipalities contained in article XI, section 11.

Article XII, section 23 further states that all powers of cities shall cease insofar as they conflict with powers *conferred* upon the Public Utilities Commission. However, the courts have interpreted this provision as requiring conflict with enactments of the Public Utilities Commission in the same way that article XI, section 11 requires a conflict with a general law before a city ordinance is invalidated. In *Switzler v. Atchison, T & S.F. R.R.*,²⁸ a Stockton ordinance which regulated the speed of trains within the city limits was held valid because there was no conflicting enactment of the Public Utilities Commission. Later, a Los Angeles speed ordinance regarding street railways was upheld as a police regulation within the power of the city to enact.²⁹ These ordinances were held to be valid not because of their subject matter but because there was no order of the

²³ In CAL. CONST. art. XI, § 11, municipalities were granted the right to make and enforce "all such *local, police, sanitary, and other regulations* as are not in conflict with general laws." CAL. CONST. art. XII, § 23 exempts those municipal powers of public utility control which are the subject of "*local, police, sanitary, and other regulations*" (Emphasis added.)

²⁴ *City of San Mateo v. Railroad Comm'n*, 9 Cal. 2d 1, 9, 68 P.2d 713, 717 (1937).

²⁵ *Id.* at 8, 68 P.2d at 717.

²⁶ See note 22 *supra*.

²⁷ See also CAL. CONST. art. XII, § 22.

²⁸ 104 Cal. App. 138, 156, 285 Pac. 918, 926 (1930).

²⁹ *Wright v. Los Angeles Ry.*, 14 Cal. 2d 168, 177, 93 P.2d 135, 139 (1939).

Public Utilities Commission which conflicted with the city ordinance,³⁰ the decisions thus clearly implying that article XII, section 23, like article XI, section 11, requires conflicting regulations before a local regulation gives way. But it does not. The language of article XII, section 23 is clear: Local powers cease insofar as such powers conflict with the powers *conferred* upon the Public Utilities Commission. Accordingly, it would seem that there need not have been an exercise of those powers. The fact that they have been conferred upon the Commission is apparently sufficient to give rise to the conflict required to nullify local power to enact ordinances in the same areas.

The legislature has twice conferred upon the Public Utilities Commission the power to enact regulations concerning the subject matter of the ordinances here in question. First, it gave the Commission very wide authority and responsibility over safety rules for all public utilities.³¹ Serving as a general grant of authority over all matters of safety, this section could be considered a source of authority for the Public Utilities Commission to regulate the time for which a train may block a railroad crossing. Later a second, more specific source of authority for such a Commission regulation was granted, again in the Public Utilities Code.³² This latter section enumerates powers of the Public Utilities Commission specifically concerning railroad crossings. The Commission is granted the *exclusive* power to fix the point of crossing and to determine and prescribe the manner and the use of such crossing.

It has been argued that, of the two grants of power to the commission, the general grant is controlling and that, since it is framed in permissive words, it was intended that this power would not be exclusive unless and until actually exercised.³³ This argument flies in the face of the wording of article XII, section 23. It seems clear that the Public Utilities Commission should look to the more specific enactment of the legislature for the conferring of its authority to regulate the time period for which a train may block a crossing. It is an exclusive grant of power and it is limited specifically to matters concerning railroad crossings, while the other statute merely confers a general authority over safety matters concerning all public utilities. Furthermore, as a special statute covering the same subject matter as the general statute, the special statute is an exception to³⁴ and is paramount to the general statute,³⁵ and must take precedence over it. Thus, any city ordinance regulating railroad crossings is an improper exercise of a power which has been exclusively conferred upon the Public Utilities Commission, and such an ordinance would be invalid as an improper exercise of the police power of a municipality under article XI, section 11.

Conclusion

The enactment of such exclusive authority is not beyond the power of the legislature. Another section of the constitution³⁶ vests in the legislature the au-

³⁰ *Bay Cities Transit Co. v. City of Los Angeles*, 16 Cal. 2d 772, 778, 108 P.2d 435, 439 (1940).

³¹ CAL. PUB. UTIL. CODE § 768.

³² CAL. PUB. UTIL. CODE § 1202.

³³ 18 OPS. CAL. ATT'Y GEN. 125 (1951).

³⁴ *In re Williamson*, 43 Cal. 2d 651, 654, 276 P.2d 593, 594 (1954).

³⁵ CAL. CODE CIV. PROC. § 1859.

³⁶ "No provision of this Constitution shall be construed as a limitation upon the