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Municipal Regulation and Taxation of Trailers and Trailer Camps under Pennsylvania Law

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MUNICIPAL REGULATION AND TAXATION OF TRAILERS AND TRAILER CAMPS UNDER PENNSYLVANIA LAW

INTRODUCTION

The Problem

The development of defense activities and the decentralization and shifting of industries are causing a readjustment of population which in turn results in a serious housing shortage in many areas. Permanent homes are not available and will not be available for some time. This is causing a renewed interest in the use of trailers.

The trailer industry today has developed into a $100,000,000 a year business with more than 100 manufacturers producing 100,000 trailers annually. Ambitious advertising campaigns are being conducted to increase the number of trailers in use beyond the estimated 550,000 which the Trailer Coach Manufacturers have reported.[1] Eighty per cent of these trailers are in year-round or permanent use. Many of them are housed in the more than 5000 trailer camps in the country.

This sudden expansion in a field which is scarcely fifteen years old, has created a great many complex problems both to trailer inhabitants and to the public at large. The problems involved are *first,* the protection of the health, safety and general welfare of the public and *second,* a valid means of collecting from trailer dwellers their fair share toward the tax burden of the community.

Recent surveys have shown that a new type of slum is developing in many trailer camps throughout the country. Thus far, civic officials have shown very little cognizance of this danger that a slum may suddenly spring up in their locale. The mobile nature of trailers is responsible for this threat of a swift transformation. It is extremely important that safeguards be set up in advance to remove any such possibility. For, it is a difficult situation to alleviate once it has gained a foothold because the law will generally not permit a retroactive effect to be given to legislative enactments.

It is self-evident that house trailers in a community add new burdens to municipal and school facilities and services. Although trailer folks are living in homes, mobile though they be, the tax burden, for the most part, falls only on owners of fixed houses.

The responsibility for the solutions to these problems is clearly a duty of local government. Former Governor Adlai Stevenson of Illinois in vetoing two bills which would have set up state licensing and regulation of trailer camps called the bills "an usurpation by the state of what should be a function of local government." Local machinery can better provide for the circumstances which are peculiar to their neighborhood.

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1 Trailer-Coach Manufacturers Association, 20 N. Wacker Drive, Chicago 6, Ill.

This article will discuss the extent to which municipalities in Pennsylvania may regulate trailers and trailer camps. It will further deal with the various methods by which the local units, including school districts, may extract revenue from trailer dwellers and trailer camp owners.

Regulation of Trailers and Trailer Camps

(a) *Police Power in General*

A local government is the mere political subdivision of the state which is set up for the purpose of exercising a part of the state's powers.[2] It may exercise only those powers which are expressly granted to it by the state or such as may be necessarily implied from those granted.[3] As a necessary corollary of this rule, before any particular power may be delegated to the municipality, the state must possess it. In addition, the power must be of such nature that the state is permitted to delegate it.

The regulatory powers of the municipality fall within what is known as the police power. Many attempts have been made to define this power. Some writers say it is always easier to determine whether a particular case comes within the general scope of the power than to give an abstract definition of the power itself, which will be accurate.[4] When outlining its scope, most courts say that municipal police power concerns immediate restrictions on the use of property or acts of individuals detrimental to the public health, morals, or safety.[5]

The state has police power because, say the courts, the power is institutional and inherent in government.[6] No federal or Pennsylvania constitutional provision expressly mentions the power and yet no state to which this right and power is denied has any real life. "It is much easier to perceive and realize the existence and source of this power than to mark its boundaries or prescribe limits to its existence."[7]

The police power may be delegated by the state to a municipal corporation as a public function to be exercised within proper limits for all appropriate municipal purposes.[8] The extent of this delegation of police power does not depend upon the size of the city, borough or township, but upon the charter grant of powers. Therefore, we must see what powers have been given to municipalities by the state.

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2 Atkin v. Kansas, 191 U.S. 207, 220 (1903); Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950).
3 Ibid.
4 Stone v. Mississippi, 101 U.S. 814, 25 L.Ed. 1079 (1879).
5 Philadelphia Electric Co. v. Phila., 301 Pa. 291, 152 A. 23 (1930).
6 Slaughter House Cases, 16 Wall. (U.S.) 36, 21 L.Ed. 394 (1872).
7 Chief Justice Shaw so remarked in Commonwealth v. Alger, 7 Cush. (Mass.) 53 (1851).
8 Ward's Appeal, 289 Pa. 458, 137 A. 630 (1927); Jenning's Appeal, 330 Pa. 154, 198 A. 621 (1938).

In Pennsylvania, the various City, Borough and Township Codes include the police power in the corporate authority given to the municipality by the Commonwealth. So, the sole question now is one of determining what regulations fall within the police power.

(b) *Regulation of Trailers and Trailer Camps through Police Power*

A municipal ordinance which absolutely prohibits the parking of any trailer which can be used for living quarters or the maintenance of any trailer camp within the municipal limits is arbitrary and unreasonable and amounts to the deprivation of property without due process of law.[9] On the other hand, *regulation* under authorized exercise of police power is due process even though property or a business is taken or destroyed.[10]

(1) *Regulation through Building Codes and Zoning Ordinances.* Many municipalities consider house trailers, for the purpose of *regulation,* to be permanent single-famliy dwellings, i.e., realty, if parked for more than a stated length of time.[11] However, a *taxing* ordinance attempting to treat house trailers parked for more than a stated length of time as realty would apparently be unconstitutional.[12] When considered as permanent single-family dwellings, such units must comply with all municipal regulations for permanent houses as set out in the building code and zoning ordinance.[13] A trailer camp which had a greater density of population than allowed by a zoning ordinance was recognized as a non-conforming use and it was held that there was no right to replace trailers as the existing ones moved.[14] However, any attempt to apply such provisions retroactively may be unconstitutional.[15] The court also upheld a township ordinance requiring a certain amount of floor space downstairs and held it applied to trailers.[16] Any regulations found in such codes or ordinances that are considered reasonable as to conventional homes, i.e., within the police power, it seems would be upheld as valid if enforced against trailers and trailer camps.

(2) *Regulation through Licensing.* Probably the most effective means of regulation and the one generally used by municipalities to regulate trailer camps, is the licensing device. Ordinarily, items such as construction, alteration, sanitation, water supply, toilet facilities and drainage are included in licensing ordinances. In addition, they usually provide that before such license will be issued, sufficient

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9 Commonwealth v. Amos, 44 D. & C. 125 (Pa., 1942).
10 White's Appeal, 287 Pa. 259, 134 A. 409 (1926); Miller v. Quigg, 87 Fla. 462, 100 So. 270 (1924).
11 Lower Merion Twp. v. Gallup, 158 Pa. Super. 572, 46 A.2d 35 (1946).
12 Vail v. Weaver, 132 Pa. 363, 19 A. 138 (1890); In re Petition of Harry B. Mason, 75 D. & C. 1, 42 Munic. L. J. 65 (Pa., 1950). See Streyle v. Board of Property Assessment (Allegheny County), 100 P. L.J. 182 (Pa., 1952). An appeal to this decision is pending before the Pennsylvania Superior Court.
13 See n. 11, supra.
14 In the Matter of Commonwealth of Pa., ex rel. Township of Lawrence Park v. Charles Helmuth, Jr., 73 D. & C. 370, 41 Munic. L.J. 248 (Pa., 1949).
15 Commonwealth v. Briggs, 72 D. & C. 437, 42 Munic. L.J. 135 (Pa., 1949).
16 Commonwealth v. McLaughlin, Appellant, 168 Pa. Super. 442, 78 A. 80 (1951).

facilities must be provided to fulfill the requirements as to the matters listed in the preceding sentence. In *Crawford et al v. Wesleyville,*[17] the court upheld regulation of a trailer camp by the licensing device. The court reasoned that the hazards were created by a trailer camp owner for business purposes. In this same case, regulation of an individual who kept a trailer on his own land was *not* allowed on the theory that ownership of one's home is an absolute right. Note that the ordinance in each case was discriminatory to trailer dwellers since it applied to them alone and *not* to conventional house owners. The discrimination was considered reasonable, so to speak, when applied to a trailer camp owner but *not* when applied to the individual parking on his own land. Similar reasoning has been used to sustain regulation through license in the case where a home is taken out of the ordinary category, i.e. where it is used for such commercial enterprise as a boarding house or rooming house.[18]

Such an ordinance requiring the trailer camp owner to obtain a license is not in violation of Article I of the *Constitution of Pennsylvania,* nor in violation of the XIV amendment of the *Constitution of the United States.*[19] For when trailers are parked in trailer camps with no sanitary means of waste disposal, no water supply connection, no collection of and disposal of garbage and refuse, they are a menace to public health, unsightly and may detract from and depreciate surrounding property and buildings. What could be more within the police power than such exercise of authority by the municipality? The license is a convenient means of enforcing the regulations.

However, the court in *Palumbo's Appeal,*[20] based its decision on the theory that a reasonable license fee might be imposed if the trailer camp created municipal expense. This reasoning could apparently be used to sustain regulations by licensing as to individuals.

In light of the reasoning used in the above decisions, what would the result be in the situation where the owner of a plot of ground subdivided it into small lots and sold them to trailer owners? Would the hazard *not* be as great as it is in the situation where the owner of the similar plot rents the same size space to trailer owners? Literal compliance with the rule of the *Crawford*[21] decision would apparently prevent a municipality from regulating the individual lot owners by the licensing device.

Special Methods of Revenue Raising

The discussion under this section will apply not only to Pennsylvania city, borough and township government powers but will also include the extent to

17 Crawford et al. v. Wesleyville, 68 D. & C. 215, 42 Munic. L.J. 15 (Pa., 1949).
18 Reduction Co. v. Sanitary Works, 199 U.S. 306, 318 (1905).
19 See n. 17, supra.
20 Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950).
21 See n. 17 supra.

which school districts may go in obtaining revenue from trailer inhabitants and trailer camp owners.

Revenue is needed for municipalities and school districts to carry out the corporate functions given to them. How is such money to be obtained? A local government can levy no taxes unless the power has been conferred by the state legislature upon municipal corporations for the purpose of obtaining means of enforcing all proper objects of government.[22]

Various methods of gaining revenue from these trailer folks have been attempted. They are:

(a) Assessing and taxing the trailer as realty.
(b) A tax based upon the so-called "tax anything" statute.
(c) Extracting license fees under the police power.

(a) *Assessing and Taxing the Trailer as Realty*

The state legislature has conferred the general power to tax realty upon municipalities and school districts. Therefore, the only question we need answer is whether a trailer ever becomes real property.

Obviously, before we are able to apply a real property tax, we must be able to determine just when a trailer loses its identity as personal property and becomes realty. The answer given to this question by the courts is "when such trailer becomes permanently affixed to the land so as to become a permanent place of abode or habitation."[23] But this does not help much. When does such trailer become permanently affixed to the land? Cases have held that the placing of blocks or jacks under the trailer and the connection of flexible tubing and rubber hoses to bring in water and permit sewage disposal, of itself, does not constitute a sufficient manifestation of intent to attach to the freehold.[24] Mere physical annexation therefore is not the test. A house trailer is a vehicle and as such remains personal property unless the owner by some act permanently attaches it to the land so as to justify the conclusion *that he intended* it to be considered real property.[25] It is a question of intention. One court went so far as to say whether attached to the realty or not, or in whatever manner attached, is immaterial where the parties agree to consider it personal property.[26] Purchasing registration plates for the trailer tends to rebut any intention to permanently affix.[27]

The cases have not permitted a municipal government or a school district to add the value of the trailer to the assessed valuation of the land on which the

22 Breitinger v. City of Philadelphia, 363 Pa. 512, 70 A.2d 640 (1950); Hillman Coal & Coke Co. v. Jenner Twp., Somerset County, 300 Pa. 108, 150 A. 293 (1930).
23 In re. the Petition of Harry B. Mason, 75 D. & C. 1, 42 Munic. L.J. 65 (Pa., 1950).
24 Streyle v. Board of Property Assessment (Allegheny Co.), 100 L.J. 182 (Pa., 1952). An appeal to this decision is pending before the Superior Court.
25 Vail v. Weaver, 132 Pa. 363, 19 A. 138 (1890).
26 See n. 23, supra.
27 Ibid.

trailer is parked if the owner of the trailer is a different person from the owner of the land.[28] No court has discussed whether such trailers could be assessed as real estate in the name of the owner of the trailer. However, the reasonable meaning to be taken from the holdings would seem to be that where there is a divided ownership, the court finds as a fact that there is no intention to permanently affix to the realty. Thus, the trailer cannot be considered as realty and an assessment of it as such would be invalid regardless of in whose name assessed. None of these statements preclude assessing a trailer as part of the realty if the same person owns both the trailer and the land and the requisite intent is present.

Thus, two elements must concur before a real property assessment can be placed on a trailer:

(1) the parking of the trailer on the land, and
(2) the intent to permanently affix.

(b) *Revenue Raising Based Upon "tax anything" Statute*

In 1947, the Pennsylvania legislature passed a statute, popularly known as the "tax anything" statute, which delegated extensive taxing powers to cities of the second class, second class A, and third class, boroughs, towns, townships of the first class and school districts of the second, third and fourth classes. The statute[29] provides:

> ". . .(that they) may in their discretion, by ordinance or resolution, *for general revenue purposes,* levy, assess and collect or provide for the levying, assessment and collection of such taxes on persons, transactions, occupations, *privileges,* subjects and personal property within the limits of such political subdivisions, as they shall determine."

A general restriction has been placed on the exercise of this power which is as follows:

> "(A) That such local authorities shall not have authority by virtue of this act (1) to levy, assess and collect or provide for the levying, assessment and collection of any tax on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee;."

An amendment passed in 1951 sets forth specific situations where second class townships may levy a tax; a limitation was also placed on the exercise of this power in addition to the general restriction above. The amendment is as follows:

> "Subject to the limitations of this act, the duly constituted authorities of *townships of the second class* may, in their discretion, by ordinance or resolution, for *general revenue purposes,* levy, assess and collect, or provide for the levying, assessment and collection of, any one or more of the following taxes, within the limits of said townships. . . (4) *A tax on the use or occupancy of house trailers suitable for living quarters.*"

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28 Ibid.
29 Act of 1947, June 25, P.L. 1145, 53 P.S. 2015.1 as amended.

(B) "No taxes shall be levied by any political subdivision on the following subjects exceeding the rates specified in this subsection:. . . (g) On use or occupany of house trailers suitable for living quarters, in townships of the second class, $10."

Clearly, this statute permits a tax on the privilege to use or occupy house trailers suitable for living quarters.[30] A township of the second class, which has not been delegated any powers under the general provisions of this statute, has, by an amendment in 1951 been expressly permitted to so do. Certainly this indicates a legislative intent favorable to such action. A lower court case[31] decided in Delaware County is an indication that the courts will go along with such an interpretation of the statute. There a school district placed a flat levy of $3 per month on all trailers used for dwelling purposes after the said trailer has remained in the school district for a period of more than 29 days. This ordinance was held as being within the statute.

Two other issues were raised in the Delaware County case. The first questioned the right to place a flat levy. The defendant contended such action violated the constitutional provision requiring uniformity of taxation. Secondly, it was contended that the tax was invalid because the Commonwealth of Pennsylvania had already imposed a license fee upon each of the trailers in question under the provisions of the *Motor Vehicle Code of* 1929,[32] thus falling under one of the restrictions of their power to tax which have been previously set out.

In answer to the first contention, the court conceded that a tax imposed on personal property as such would have to be imposed on an *ad valorem* (according to the value) basis; but since this was a tax imposed on a privilege to use property in a certain manner, a flat levy would be valid.

The second question was answered by merely examining the *Motor Vehicle Code*. By express words, the court said in quoting from the statute, "The license fee exacted under the provisions is for 'the use of highways and the operation of vehicles upon the highways of this Commonwealth.' " The resolution in question only taxed the use of a trailer for dwelling purposes. Therefore, the tax was not in conflict with the Commonwealth's license fee and was valid.

Suppose a borough and school district, which are geographically identical, both place a tax on this privilege to use or occupy a trailer? Would this be "double taxation"? In a similar case decided in 1949 in which a wage tax was imposed under this tax statute by both a borough and a school district, it was held that there was no double taxation.[33] The reaon given was that the same tax was not imposed by the same taxing power upon the same subject matter. Therefore, it would seem that both units could tax the same privilege.

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30 In re William Akers, Jr. Co., 121 F.2d 846, 135 A.L.R. 1503 (1941).
31 Appeal from Tax on Trailers, 37 Del. 284, 42 Munic. L.J. 12 (Pa., 1950).
32 Act of 1929, May 1, P.L. 1005, 75 P.S. 861 and the following sections.
33 Glen Alden Coal Co. v. Thomas, 165 Pa. Super. 199, 67 A.2d 754 (1949).

The maximum amount of tax which would be considered valid and reasonable is a matter of speculation except in the instances where the statute expressly sets the limit. The limitation on trailer taxation refers only to second class townships. It limits them to a $10 maximum. A *school tax* of $3 per month on all trailers used for dwelling purposes was held valid and reasonable in the one decision handed down on a trailer tax based on this statute.[34]

(c) *License fees under the Police Power*

A substantial amount of revenue can be raised by municipalities through the imposition of license fees upon owners of trailer camps as a necessary incident of the police power. School districts do not have police power; therefore, this method of revenue raising is not open to them. A trailer camp, it would seem, can safely be defined as, any site, lot, field, or tract of ground upon which are placed two or more trailer coaches at least one of which belongs to a person other than the owner of the realty.[34a] An individual trailer owner clearly is not included in this definition. The short-comings of attempting to place the requirement of a license upon such individuals were set out under the discussion of trailer regulation in this article.[35]

There is nothing improper about the requirement of a license fee.[36] However, lack of regulatory provisions or an excessive fee would unquestionably invalidate the ordinance as an improper exercise of the police power and stamp it as a mere revenue raising measure.[37]

A license fee differs from a tax in that the latter is imposed solely for the raising of revenue.[38] Determination of whether it is one or the other, must be made by looking at its incidents and from the natural and legal effect of the language employed in the ordinance and not by the name by which it is described or by the mode adopted in fixing the amount.[39] If it is clearly a tax, it will be so regarded, even though in form it is a license fee.

While a *revenue tax* cannot be imposed under the guise of a police regulation, where unusual demands are made on a municipality's facilities by reason of the conducting of a trailer camp, a reasonable charge, i.e., a licensee fee, may be made to cover the expenses in providing such services.[40] Such items as additional police and fire protection, installation of new playgrounds, increased sewage and

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34 See n. 31, supra.
34a Such definition should avoid the constitutional objection found by the court in Crawford et al. v. Wesleyville, see n. 17, supra.
35 See n. 17, supra.
36 See n. 17, supra; See n. 20, supra.
37 Olan Mills, Inc. v. City of Sharon, 371 Pa. 609, 92 A.2d 222 (1952).
38 Pittsburgh Milk Co. v. City of Pittsburgh, 360 Pa. 360, 62 A.2d 49 (1948).
39 Flynn v. Horst, 356 Pa. 20, 51 A.2d 54 (1947).
40 Pa. Liquor Control Board v. Publicker, 347 Pa. 555, 32 A.2d 914 (1943); Wm. Laubach & Sons v. Easton, 347 Pa. 542, 32 A.2d 881 (1943); Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950).

garbage removal plus administrative expenses in carrying out the ordinance have been upheld as services necessitated under proper exercise of police power.[41]

The measure of the reasonableness of the charge is not the amount actually expended by the municipality in a particular year. A reasonable latitude must be given in fixing charges to cover anticipated expenses. Any doubts should be resolved in favor of the municipality.[42]

For it to be considered a police measure, provisions must be included in the ordinance for supervision and regulation. Provision for fine and imprisonment for those without a license or who otherwise violate any provisions of the ordinance is additional proof that the ordinance is a license act and not a mere tax on business or property.[43]

A municipality should avoid permitting the enforcement of the license fee to be exercised by the agency which is used to collect taxes. Thus, it would *not* be feasible to provide that the tax collector should collect the license fee. The building inspector would be the logical person in this case to collect such fees. The enforcement of the license fee by such official would strengthen the municipalities' argument that this is primarily a regulatory measure rather than a method of raising revenue.[44]

In the broad sense, every ordinance which requires the payment of money is a revenue-producing measure and commonly is looked upon as a tax; but the primary purpose for ordinances such as this, is the reimbursement of the municipality for providing special services required by the licensees. There is nothing improper about requiring the payment of a license fee in this instance.[45]

CONCLUSIONS

When then is the extent to which a Pennsylvania municipality may regulate and raise revenue from trailers and trailer camps within its boundaries?

It would seem that municipalities may *regulate* trailers through:

(1) Building Codes and Zoning Ordinances

  (a) The trailer must be considered realty, however, for such an ordinance to be applicable to it.

  (b) These would apply to trailers and trailer camps alike.

(2) Ordinances imposing license fees

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41 See n. 17, supra.

42 Pa. Liquor Control Board v. Publicker, 347 Pa. 555, 32 A.2d 914 (1943); Kittanning Borough v. American Natural Gas Co., 239 Pa. 210, 86 A. 717 (1913).

43 See n. 40, supra.

44 Judge Cardozo in International Text-Book Co. v. Tone, 220 N.Y. 313, 115 N.E. 914 (1917). Quoted favorably in 356 Pa. 20.

45 Pa. Liquor Control Board v. Publicker, 347 Pa. 555, 32 A.2d 914 (1943); Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950).

(a) This type of regulation would seem to be applicable to trailer camps only.

Methods of raising revenue that municipalities and school districts can use in trailer cases are as follows:

(1) Real property tax

(a) The trailer must be permanently "annexed" to the land.

(b) Only individuals who affix their own trailer to their own land, it would seem, can be taxed in this way.

(c) Municipalities and school districts can assess this tax.

(2) Ordinances and resolutions passed under authority of "tax anything" statute.

(a) No need for trailer to be considered realty here.

(b) Municipalities and school districts can assess this tax.

(3) License fees extracted under the police power

(a) Municipalities alone can use this method.

(b) The fee must be reasonable in that it must be commensurate with the cost burden placed upon the municipality.

(c) It would seem that only trailer camp owners can be required to submit to this licensing.

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