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Municipal Corporations—Establishing Airport As Public and Municipal Purpose

The courts of Massachusetts and Wisconsin are required by statute to take judicial notice of the laws of other states and have applied the statute beneficially. *Holmes v. Dunning* (1927), 260 Mass. 250, 157 N. E. 358; *Owen v. Owen* (1922) 178 Wisc. 609, 190 N. W. 353. In *J. R. Watkins Medical Co. v. Johnson* (1917), 129 Ark. 384, 196 S. W. 465, the court recognized that it was required by statute to take judicial knowledge of the laws of other states and added, "It is our duty to pursue inquiries sufficient to make that knowledge real as far as possible." Possibly the Missouri statute would be more effective minus the requirement that the foreign law must be "pleaded." To avail himself of the public laws of Missouri, a plaintiff only need state the facts which bring his case within the statutory provisions. *Bowen v. The Missouri Pacific Railway Co.* (1893), 118 Mo. 541, 24 S. W. 436. Perhaps this is the apex toward which state legislatures are gradually tending. Since utter disregard for a state statute is hardly excusable, the decision in the principal case seems clearly to be erroneous, for it can be justified only according to the common law rule which the 1927 act certainly changed in part. J. J. C., '30.

MUNICIPAL CORPORATIONS — ESTABLISHING AIRPORT AS PUBLIC AND MUNICIPAL PURPOSE.—Plaintiff brought suit to restrain the City of St. Louis and its officials from issuing and delivering bonds for the purpose of utilizing proceeds in the acquisition and development of land for an airport. *Held*, that establishment of an airport was a public and municipal purpose and within the power of the city. *Dysart v. City of St. Louis* (Mo., 1928), 11 S. W. (2d) 1045.

It is a well-established principle of constitutional law that an attempt to raise money for private purposes is unconstitutional. Various tests for ascertainment of a public purpose have been advanced, but that generally used is: "The proceeds of the tax must be used for the support of the government or for some of the recognized objects of government or directly to promote the welfare of the community." *State v. Orear* (1919), 277 Mo. 303, 210 S. W. 392; *Halbruegger v. St. Louis* (1924), 302 Mo. 573, 262 S. W. 379. The application of this test or any appropriate test to the establishment of an airport is limited to a very few cases by the novelty of such action by cities. The decisions in these cases have consistently been to decide such action to be within the power of the municipality. *City of Wichita v. Clapp* (1928), 125 Kan. 100, 263 P. 12; *State ex rel City of Lincoln v. Johnson* (Neb., 1928), 220 N. W. 273; *State ex rel Hill v. City of Cleveland* (Ohio, 1927), 160 N. E. 241. These opinions have cited two principal reasons for their holdings: that they benefit the particular community through facilitating air commerce, and that they afford to every citizen an opportunity of direct utilization.

There can be little doubt that the acquisition of land for a public park is a public purpose, but the question of a proper park use has required a number of adjudications by the courts. A tourist camp has been held a proper park use. *State ex rel. Dodge City* (1927), 123 Kan. 316, 255 P.

387. A waiting room for street cars, *Dodge v. North End Improvement Ass'n.* (1915), 189 Mich. 16, 155 N. W. 438; a playground for children, tennis and croquet grounds, *Caulfield v. Berwick* (1915), 27 Cal. A. 493, 150 P. 646, as well as the granting of a license for holding short period race meets, *Neb. City v. Neb. City Speed and Fair Ass'n.* (1922), 107 Neb. 576, 186 N. W. 374. In view of these decisions and especially that concerning the tourist camp, to which an airport may be likened appropriately, the court in the case of *City of Wichita v. Clapp, supra,* was apparently correct in its decision that an airport was a proper park use and of course a public purpose.

Many states have authorized their cities, through statutory enactments, to procure and maintain land for an airport. Laws of Georgia 1927, P. 779; Public Acts, Conn. 1925, ch. 249; Laws of Mass. 1922, ch. 534, par. 57; Laws of Mont. 1927, ch. 20. A section of the Kansas aircraft act reads: "That whenever in the opinion of the governing body in any city in the state of Kansas, the public safety, service and welfare can be advanced thereby, such governing body of such a city may acquire by purchase or lease and maintain a municipal field for aviation purposes and pay the expense of such purchase, lease, or maintenance out of the general funds of the city. Such a field may be used for service of all aircraft and pilots desiring to use the same." R. S. Kan. 1923, 3-110.

The objection that the establishment of an airport may be a public purpose and yet not a municipal function has met with no success, and has given little difficulty to the courts in disposing of it. It may be said that generally local affairs are manageable by local authority and those not so localized in character by the state. *Dysart v. City of St. Louis, supra.* It has even been held that the building of a bridge between two cities was a municipal function. *People v. Kelley* (1879), 76 N. Y. 475; *Haunsler v. St. Louis* (1907), 205 Mo. 656, 103 S. W. 1034. In view of the general tendency to enlarge the scope of the municipality in its power to promote the public welfare and enjoyment, the statutes authorizing municipal airports, and the recent adjudications on the subject, little doubt can be entertained as to the correctness of the decision in *Dysart v. City of St. Louis, supra.* F. E. M., '30.

PUBLIC UTILITIES—REGULATION—POWER TO CONTROL PAYMENTS TO HOLDING COMPANIES.—In a proceeding in the nature of quo warranto, state telephone company *held* ousted of the right to have credit in computation of rates for payments to foreign company under license contract. The evidence showed that the state company, organized under Comp. Laws 1915, sec. 8788-8796, was controlled by, and was a mere instrumentality of, the foreign company. A general judgment of ouster was not required under sec. 13536 et seq. *People ex rel Potter, Atty.-Gen. v. Michigan Bell Telephone Co.,* (Mich., 1929), 224 N. W. 438.

On its face this action was brought to oust the Michigan Bell Telephone Company of its franchise. The main purpose was to oust the license con-