PUBLIC CORPORATIONS

(Continued from the March Issue)

[§ 280] U. *Personal conduct and habits; disorderly houses.*— 1. *In general.* — a. *Generally.* "Within well-defined limits of their granted powers, either charter or statutory, and with careful observance of constitutional guaranties of personal liberty, municipal corporations may enact ordinances designed to prevent breaches of the peace, disorderly conduct, vagrancy, and similar offenses. Ordinances designed for such purposes, however, are frequently found to be much too broad in scope, hence unconstitutional or unreasonable. For instance, ordinances have been held invalid which make it a crime for anyone knowingly to associate with persons having the reputation of being thieves or gamblers, with intent to agree to commit any offense; which declare it unlawful for any minor to be upon the streets more than fifteen minutes after the ringing of a curfew at an early hour of the evening; and which make a private trespass a penal offense. An ordinance that no person shall 'permit drunkards, intoxicated persons, tipplers, gamblers, persons having the reputation or name of being prostitutes, or other disorderly persons to congregate, assemble, visit, or remain' in "his or her house, tavern, inn, saloon, cellar, shop, office, or other residence or place of business,' has likewise been declared to be unreasonable and beyond the power of a municipal council to enact, because it is not limited in its application to places of business which require police regulation, or to assemblages of immoral persons, and does not make knowledge of the reputation of the person visiting a house or place of business, or an unlawful purpose on the part of the visitor, an ingredient of the offense."[153]

Disorderly houses. "Disorderly houses may become the proper subjects of regulation by municipal corporatoin; sometimes under their general powers as to public safety, welfare, health, etc., and sometimes under an express or implied grant of power for the purpose. The regulation of such houses may involve the power to prohibit or suppress."[154]

[§ 281] b. *Statutory provisions as to Philippine municipal corporations.* — (1) *Municipalities in regular provinces.* "It shall be the duty of the municipal council, conformably with law:

"* * * *"

"(i) To restrain riots, disturbances, and disorderly assemblages.

"(j) To prohibit and penalize intoxication, fighting, gambling, mendicancy, prostitution, the keeping of disorderly houses, and other species of disorderly conduct or disturbance of the peace.

"(k) To provide for the punishment and suppression of vagrancy and the punishment of any person found within the town without legitimate business or visible means of support."

"* * * *"[155]

The section in which these provisions are to be found is entitled *"Certain legislative powers of mandatory character."*

[§282] (2) *Municipalities in specially organized provinces.* "The municipal council shall have power by ordinance or resolution:

"* * * *"

"(gg) *Disorderly houses, and so forth.* — To suppress or regulate houses of ill fame and other disorderly houses . . .

"(hh) *Gambling, riots, and breaches of the peace.* — To prevent and suppress riots, gambling, affrays, disturbances, and disorderly assemblies; to punish and prevent intoxication, fighting, quarreling, and all disordely conduct; to make and enforce all necessary police ordinances, with the view to the confinement and reformation of vagrants, gamblers, disorderly persons, mendicants, and prostitutes, and persons convicted of violating any municipal ordinance.

"* * * *"[156]

[§ 283] (3) *City of Manila.* "The Municipal board shall have the following legislative powers:

"* * * *"

"(f) To . . . make all necessary police ordinances with a view to the confinement and reformation of vagrants, disorderly persons, mendicants, and prostitutes, and persons convicted of violating any of the ordinances of the city.

"* * * *"

"(r) To provide for the prohibition and suppression of riots, affrays, disturbances, and disorderly assemblies; houses of ill fame and other disorderly houses; gaming houses, gambling and all fraudulent devices for the purposes of obtaining money or property; prostitution, vagrancy, intoxication, fighting, quarreling, and all disorderly conduct . . .

"* * * *"[157]

[§ 284] 2. *Use of tobacco.* "A municipal corporation has no power to prohibit the smoking of tobacco upon the streets or other public places within its limits. Even when such a broad, attempted restriction is confined to the smoking of cigarettes, it is nonetheless invalid. Smoking in itself is not to be condemned for any reason of public policy. It is agreeable and pleasant, almost indispensable to those who have acquired the habit, although it is distasteful, and sometimes hurtful, to those who are compelled to breathe the air impregnated with tobacco in close and confined places, such as street cars, may be prohibited by ordinance; likewise, regulations may be adopted to prevent smoking in the neighborhood of large quantities of combustible materials, in order to limit the danger of fire."[158]

[§ 285] V. *Private property; keeping and use.*[159] — 1. *In general.*—"No definite rule can, with accuracy, be set forth, as to the extent to which municipal corporations may regulate the use of private property. While there is little difference in the enunciation of the applicable principles, the difficulty and the differences grow out of the application of these principles to the facts of particular cases. The police power of municipal corporations must be responsive, in the interest of common welfare, to the changing conditions and developing needs of growing communities. Such power authorizes various restrictions upon the use of private property as social and economic changes come. The validity of the exercise of the power may depend upon the circumstances of the particular case. A restriction which may have been considered unreasonable and invalid in prior years may subsequently be considered otherwise. Also a restriction while reasonable and valid in regard to a particular district of the corporation may be unreasonable and invalid toward a different district of the municipality. And again a restriction while reasonable within a particular municipal corporation may be unreasonable in another. The tendency is in the direction of sustaining the power. While it is fundamental that the owner of private property, located within the municipal boundaries, may use it for any lawful purpose or in any lawful manner that he may see fit, and a municipal corporation cannot interfere with such right, such property may be subject to such restrictions and regulations as the corporation may, in the exercise of the police power, by proper enactment, reasonably impose. So long as municipal bodies confine their enactments, providing for the regulation and control of property privately owned, within the proper limits of their police powers, they do not violate the property rights of the individual.[160] The limit imposed is that the regulations or requirements, whatever they may be, must be reasonable, and not arbitrary, and have for their object the preservation of the public health, safety, morals, or general welfare. A limitation upon an owner's use of his property cannot be imposed for the benefit of other property owners. It is held that an authority materially to curtail the uses of property under the general police power, when health, safety, morals, peace, and comfort are not involved, will not ordinarily be inferred from the general welfare powers conferred upon municipal corporations, particularly when kindred or similar powers are not expressly conferred, and have not been customarily exercised pursuant to the general powers relating to the public welfare."[161]

Illustration. On September 7, 1935, the municipal council of Iriga, Camarines Sur, approved Ordinance No. 5, series of 1925, article 1 of which provides as follows:

153 37 Am. Jur 972.
154 43 C. J. 364.
155 Sec. 2242, Rev. Adm. Code.
156 Sec. 2625, Rev. Adm. Code.
157 Sec. 18, Rep. Act No. 409.
158 37 Am. Jur. 973.
159 Building regulation, see supra, §
Fire regulations, see supra, §
Zoning regulations, see infra, § S
160 Case v. Board of Health: 24 Phil. 250: Fabie v. Manila, 21 Phil. 486.
161 43 C. J. 413-416.

"ARTICULO 1. Se prohibe terminantemente a cualquiera persona, associacion o corporacion, dueño del terreno que colinda con las orillas fe cualquier camino, vereda, rio y riachuelo dentro de la jurisdiccion del municipio de Iriga, Camarines Sur, acorralar dicho parte del terreno sin pedir permiso en forma al Presidente Municipal, especificado en ella el sitio y el nombre donde radica."

The herein appellant, Pedro Malazarte, was fined ₱10, with subsidiary imprisonment in case of insolvency and to pay the costs, for violation of the aforesaid ordinance. On appeal to the Court of First Instance of the province, defendant presented no evidence and moved for the dismissal of the case on the ground that the ordinance unduly interferred with individual liberty and property and therefore unconstitutional.

The Supreme Court held that this contention of the appellant is without merit. The permit is required where the private property to be fenced borders on public properties or properties affected with public interest, and the requirement is a legitimate exercise of the police power of the municipality. Chief Justice Shaw, one hundred years ago, observed that every holder of title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the rights of the community. (*Commonwealth v. Alger*, 7 *Cush.* 53.) The permit in the present case is required by the ordinance to safeguard these rights. *People v. Malazarte*, 70 *Phil.* 236-237.

[§ 286] 2. *Aesthetic considerations.* "Since the police power of a municipal corporation cannot properly be exercised for merely an aesthetic purpose, it is generally held that building regulations or regulations in regard to the use of private property, which are in use solely induced by aesthetic considerations and have no relation to the proper objects of police powers, cannot be sustained."[162]

"Of recent years, in response to a growing demand for the preservation of natural beauty and the conservation of the amenities of the neighborhood resulting from the manner in which it has been laid out and built upon, legislatures and municipalities have sought, by statute and by ordinance, to prevent the encroaching of undesirable features, unsightly erections, and obnoxious trades. This legislation, induced mainly by aesthetic considerations, has given rise to a series of novel questions affecting the legislative power of both the State and its governmental agent, the city. It has been held that, for aesthetic considerations and to promote the popular enjoyment and advantages derived from the maintenance of a public park, the legislature may, by virtue of the power of eminent domain and upon making just compensation, impose restrictions upon the manner in which property abutting on the park may be improved and used. But it is apparent that restrictions founded, not upon the power of eminent domain, but upon the exercise of the police power, stand upon another basis, and several cases have laid down the rule that by virtue of the police power merely, neither the legislature, nor the city council exercising delegated power to legislate by ordinance, can impose restrictions upon the use of private property which are induced solely by aesthetic considerations, and have no other relation to the health, safety, convenience, comfort, or welfare of the city and its inhabitants. The law on this point is undergoing development, and perhaps cannot be said to be conclusively settled as to the extent of the police power."[163]

This rule has been applied to regulations establishing building lines and inhibiting abutting owners from encroaching thereon, and regulations in regard to the height of buildings. But when it is determined that the regulation has a reasonable reference to the safety, health, morals, or general welfare of the municipality, considerations of an aesthetic nature may enter in as an auxiliary; and such fact will not invalidate the regulation. And from the language used by some decisions it may be inferred that such regulations may rest upon aesthetic considerations."[164]

"If by the term 'aesthetic considerations' is meant a regard merely for outward appearances, for good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for saying that such a consideration is not a matter of general welfare. The beauty of a fashionable residence neighborhood in a city is for the comfort and happiness of the residents, and it sustains in a general way the value of property in the neighborhood. It is therefore as much a matter of general welfare as is any either condition that fosters comfort or happiness, and consequent values generally of the property in the neighborhood. Why should not the police power avail, as well to suppress or prevent a nuisance committed by offending the sense of hearing, or the olfactory nerves? An eyesore in a neighborhood of residences might be as much a public nuisance, and as ruinous to property values in the neighborhood generally, as a disagreeable noise, or odor, or a menace to safety or health. The difference is not in principle, but only in degree. In fact, we believe that the billboard case . . . might have rested as logically upon the so-called aesthetic considerations as upon the supposed other considerations of general welfare."[165]

[§ 287] W. *Public calamities; statutory provisions as to Philippine municipal corporations.* — 1. *Municipalities in regular provinces.* "[The mayor] shall have the following duties:

"* * * *"

"(c) He shall issue orders relating to the police or to public safety and orders for the purpose of avoiding conflagrations, floods and the effects of storms or other public calamities.

"* * * *"[166]

[§ 288] 2. *Municipalities in specially organized provinces.* "The

"* * * *"

municipal council shall have power by ordinance or resolution:

"(1) *Storms and calamities.* — To make suitable provisions to insure the public safety from conflagrations, the effects of storms, and other public calamities, and to provide relief for persons suffering from the same.

"* * * *"[167]

[§ 289] 3. *City of Manila.* "The general duties and powers of the mayor shall be:

"* * * *"

"(o) To take such emergency measures as may be necessary to avoid fires, floods, and the effects of storms and other public calamities.

"* * * *"[168]

The Municipal Board shall have the following legislative powers:

"* * * *"

"(k) To make regulations to protect the public from conflagrations and to prevent and mitigate the effects of famine, flood, storms, and other public calamities, and to provide relief for persons suffering from the same.

"* * * *"[169]

[§ 290] X. *Public meetings.* "Public meetings or assemblies in public places may be subject to reasonable regulations by municipal corporations. Such regulations are a valid exercise of the police power; and they have been upheld as against constitutional objections, as for instance, that they curtailed or restricted the liberty of speech and that they made arbitrary discrimination in favor of some persons against others. But the regulations must be reasonable, and not arbitrary. It is only when public meetings create public disturbances, become nuisances, or create or threaten some tangible public or private mischief that the power to regulate such meeting should be exercised. Under express or implied powers municipal corporations may prohibit public meetings in public places on the Sabbath day. Municipal corporations may prohibit the display of banners, placards, etc., on the streets or sidewalks except in public processions."[170]

"*Permits.* In the exercise of the power municipal corporations may require permits to be obtained, for the holding of public meetings, from designated public officials or boards. Such requirement is a valid exercise of the police powers. The grant or refusal of such permit cannot be left to arbitrary discretion. Where applicant for a permit for a public meeting complies with all the requirements, and the permit is refused, he may invoke the aid of the court to prevent the unreasonable refusal and to compel the granting of the necessary permit."[171]

162 43 C. J. 416.
163 2 Dillon Municipal Corporations § 695 (quot Fruth v. Charleston Bd. of Affairs, 75 W. Va. 456, 464, LRA1915C 981.
164 43 C. J. 416-417.
165 State v. New Orleans, 154 La 271, 33 ALR 260.
166 Sec. 2194, Rev. Adm. Code.
167 Sec. 2625, Rev. Adm. Code.
168 Sec. 11, Rep. Act No. 409.
169 Sec. 18, Rep. Act No. 409.
170–171 43 C. J. 419; Primicias v. Fugoso, 45 Off. Gaz. 3284, for facts and ruling see § 151, supra

[§ 291] Y. *Public utilities of private ownership.* — 1. *In general.* — a. *Generally.* "The term 'public utility' implies a public use, carrying with it the duty to serve the public and treat all persons alike, and it precludes the idea of service which is private in its nature and is not to be obtained by the public."[172]

"As a general rule municipal corporations have power to regulate reasonably the conduct of public utilities conducted under private ownership. And the state may delegate to such corporation its right to do so. Such power may be derived from express, constitutional, or statutory grant, or it may be implied when, and only when, necessary to provide for the health, safety, or welfare of the corporation, unless such power has been exclusively conferred upon some other public body. Such regulations are incidents of police power, and must be so restricted. This power is a continuing one and cannot be bargained away or otherwise parted with. The regulations imposed must be reasonable, and certain, and such as not to violate any charter rights of the public utility company, or infringe on constitutional rights. The power to regulate does not include the power to prohibit. A municipal corporation cannot impose upon a public utility essential to the welfare of the people conditions of operation or maintenance which will confiscate its property or destroy its power to serve the public; this the corporation cannot do either by ordinance or by contract. The language of a statute granting such power is strictly construed. Where the means by which the power granted shall be exercised are specified, no other or different means for the exercise of such power can be implied. The exercise of the power of regulation is subject to judicial review, but the court will not interfere in the absence of evidence establishing abuse of discretion or a violation of constitutional rights."[173]

[§ 292] b. *Statutory provisions as to Philippine municipal corporation.* — (1) *Municipalities in specially organized provinces.* "The municipal council shall have power by ordinance or resolution:

"* * * *"

"(p) *Gas, electricity, telephones, and so forth.* — To provide for the inspection of all gas, electric and telephone wires, conduits, meters, and other apparatus and the condemnation and correction or removal of the same when dangerous or defective.

"* * * *"[174]

[§ 293] (2) *City of Manila.* "The Municipal Board shall have the following legislative powers:

"* * * *"

"(dd) . . . to regulate and provide for the inspection of all gas, electric, telephone, and street-railway conduits, mains, meters, and other apparatus, and provide for the condemnation, substitution or removal of the same when defective or dangerous.

"* * * *"[175]

[§ 294] 2. *Where state has acted.* "The power to regulate public utilities may be, and often times is, delegated by the state to boards or commissions. Then the question arises whether the power of such body is exclusive or concurrent with that of the municipal corporations. If the power conferred on the board or commission may be exercised without being interfered with by the regulation of the municipal corporation, the power may be exercised concurrently to the extent that the municipal regulation does not conflict with the exercise of the power conferred upon the state board or commission. Following the general rule municipal regulations dealing with public utilities cannot conflict with statutory enactments on the subject. Ordinarily power conferred on public service boards or commissions over public utilities excludes the corporation from acting in the premises. The power of the municipal corporation ceases when the authority is exclusively vested by the state in a public service commission or board. And it ceases immediately when the law conferring the power on the commission becomes effective."[176]

Application of rules. The above rules have been applied, among other public utilities, to gas companies, electric companies, railroads, street railroads, telegraphs and telephones, and water companies."[177]

172 Vehicles and other means of Transportation, see infra.
173 43 C. J. 421-422.
174 Sec. 2625, Rev. Adm. Code.
175 Sec. 18, Rep. Act No. 409.
176 43 C. J. 422-423.
177 Id. 423.

[§ 295] Z. *Race segregation.* — 1. *In general.* "The earliest decisions of the highest courts of appeal of several of the states upheld the validity of regulations segregating races, whereby separate residential sections were provided for particular races. They held that the power arose by implication under the incidental powers of municipal corporations; also under a general grant of power; and they regarded such ordinances as a proper exercise of the police power of the corporation. The validity of such ordinances was upheld that the power arose by implication under the incidental powers due process of law, that they were discriminatory, and that they denied the equal protection of the law."[178]

"No intelligent observer in communities where there are many colored people can fail to notice that there are sometimes exhibitions of feelings between members of the two races which are likely to, and occasionally do, result in outbreaks of violence and disorder. It is not for us to say what this is attributable to, but the fact remains — however much it is to be regretted — and if a segregation of the races to such extent as may be permissible under the Constitution and laws of the land will have a tendency not only to avoid disorder and violence, but to make a better feeling between the races, every one having the interests of the colored people as well as of the white people at heart ought to encourage rather than oppose it."[179]

"The avowed object of the ordinance is to preserve peace, prevent conflict and ill feeling between the two races and thereby promote the welfare of Baltimore. The means employed are that blocks which were occupied by colored people exclusively should continue to be occupied by them exclusively, and that blocks occupied exclusively by white people should so continue to be occupied by them. The ordinance does not legislate on what were 'mixed blocks' — those occupied by members of the two races — at the time it was passed, and whatever other objections may be urged against it, it cannot be truly said that there is any discrimination in the ordinance against the colored race. Indeed in its practical operation it would be more burdensome on white people than on colored people, for it is well known that white people own the great bulk of property in Baltimore City, and hence where the property of one colored person would be affected by such an ordinance those of many more white people would be. What is denied one class is denied the other, what is allowed one class is allowed the other. There is therefore no such discrimination as is prohibited by the Constitution or statutes securing civil rights, and it is not necessary to discuss that question further."[180]

"But even some of the early decisions held that the power conferred upon a municipal corporation to enact ordinances for the general welfare of the community did not authorize such segregating regulations."[181]

"We do not think that the authority conferred . . . to enact ordinances for the 'general welfare of the city' can justly be construed as intended by the Legislature to authorize an ordinance of this kind which establishes a public policy which has hitherto been unknown in the legislation of our State. To do so would give to the words 'general welfare' an extended and wholly unrestricted scope, which we do not think the Legislature could have contemplated in using those words. If the board of aldermen is thereby authorized to make this restriction, a bare majority of the board could, if they may 'deem it wise and proper,' require Republicans to live on certain streets and Democrats on others; or that Protestants shall reside only in certain parts of the town and Catholics in another; or that Germans or people of German descent should reside only where they are in majority, and that Irish and those of Irish descent should dwell only in certain localities, designated for them by the arbitrary judgment and permission of a majority of the aldermen. They could apply the restriction as well to business occupations as to residences, and could also prescribe the localities allotted to each class of people without reference to whether the majority already therein is of the prescribed race, nationality, or political or religious faith . . . . In Ireland there were years ago limits prescribed beyond which the native Irish or Celtic population could not reside. This was called the 'Irish Pale,' and one of the results was continued disorder and unrest in that unhappy island, which had as one of its consequences that more

178 43 C. J. 429.
179 State v. Gurray, 121 Md. 534, 546, 47 LRANS 1087.
180 State v. Gurray, supra.
181 43 C. J. 429.

 (*Continued from page* 198)

for the payment of his salary.

Hence, opinion is requested on whether or not the money value of the leaves earned by Justice de la Rosa may be paid out of savings in the appropriations for the inferior courts, pursuant to Section 6(8) of Republic Act No. 906 which reads:

"Sec. 6. Authority to use savings for other purposes -- The President of the Philippines is authorized to use any savings in the appropriations authorized in this Act for the Executive Departments x x x; (8) for the payment of commuted sick and vacation leaves of employees who may be retired under the provisions of Republic Act Numbered Six hundred sixty; x x x."

The Auditor General interposes no objection to the transfer of the savings in question to the Court of Appeals and justifies his stand in the following manner:

"If the provisions of section 6(8) above-quoted were to be strictly adhered to, the savings of ₱8,000.00 mentioned above could not be transferred to the Court of Appeals under this section. Considering, however, the circumstances of the case as stated above and the fact that Republic Acts Nos. 906 and 910 were approved simultaneously so that Congress could not include the payment of terminal leave of Justices of the Court of Appeals and the Supreme Court who may be retired under Republic Act No. 910 out of the savings that may be realized, and considering further that Justices of the Court of Appeals are entitled to retire under Republic Act No. 660 (Justice de la Rosa could have availed of the benefits of Republic Act No. 660, instead of Republic Act No. 910 had he chosen to do so in which case his terminal leave could be paid out of salary savings pursuant to section 6(8) supra), this Office, in line with section 6(8) of Republic Act No. 906, will interpose no objection to the transfer to the Court of Appeals of the savings of ₱8,000.00 realized for the Inferior Courts for the purpose of covering a portion of the accumulated leave of former Justice de la Rosa, if approved by the President of the Philippines."

The undersigned concurs in the above-stated view of the the Auditor General and agrees with the reasons advanced in support thereof. The query should therefore be answered in the affirmative.

Sgd. PEDRO TUASON
Secretary of Justice

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than half its population came to this country. That policy has since been reversed. But in Russia, to this day, there are certain districts to which the Jews are restricted, with the result that vast numbers of them are emigrating to this country. We can hardly believe that the Legislature by the ordinary words in a charter authorizing the aldermen to 'provide for the public welfare' intended to initiate so revolutionary a public policy."[182]

And they also held that such regulations could not interfere unreasonably with vested rights. When the question first arose in the supreme court of the United States, several municipal corporations, from the states wherein the ordinances under consideration were upheld, were permitted through amici curiae to file briefs in the case. That court settled the question and held that segregation ordinances or regulations whereby separate residential sections are provided for particular races are not within the police power of municipal corporations, and that such ordinances or regulations were unconstitutional in violation of the Fourteenth Amendment of the federal constitution."[183]

[§ 296] 2. *Statutory provision as to City of Manila.* "The Municipal Board shall have the following legislative powers:

"* * * * *"

"(dd) To regulate, inspect and provide measures preventing any discrimination or the exclusion of any race or races in or from any institution, establishments, or service open to the public within the city limits, or in the sale and supply of gas or electricity, or in the telephone and street-railway service; to fix and regulate charges therefor where the same have not been fixed by national law . . .

"* * * * *"[184]

182 State v. Darnell, 166 N. C. 300, 302, 303, 51 LRANS 332.
183 Buchanan v. Warley, 245 U. S. 60, 38 Sup. Ct. 12, 62 L. ed. 149.
184 Sec. 18, Rep. Act No. 409.

 (*Continued from page* 168)

in its entirety? How many are familiar with Article 191 of that code? Of the legal requirement of executing a testament before a notary public? How many have a copy of the new code? And how many of my colleagues know that about sixty per cent of this code is *new*; and when I say new I mean brand new?

There is therefore need, great need in our country, for regular refresher courses for practising attorneys and for *other* members of the bar. The medics have it. The question, then, is, Which of our law schools will initiate the movement for refresher classes for Ll. B.'s? It's a fertile field!

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