

February 1928

Municipal Corporations--City Officials--Other Employment

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Recommended Citation

Mose E. Boirsky, *Municipal Corporations--City Officials--Other Employment*, 34 W. Va. L. Rev. (1928).
Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss2/10>

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STUDENT NOTES AND RECENT CASES

MUNICIPAL CORPORATIONS—CITY OFFICIALS—OTHER EMPLOYMENT.—The charter of the city of Fairmont, after vesting all corporate powers in directors, provided that no appointive officers of the city shall become the employee of the city in any other capacity, except by consent of the Directors shown by resolution. (Charter, City of Fairmont, Sec. 23, 29, 30). By resolution, the Directors appointed the chief of police as jailor and the city engineer as chief mechanic at the city pumping station. *Held*, that an appointive official may also become an employee of the city and receive compensation for such employment in addition to his official salary. *State v. Amos*, 140 S. E. 544 (W. Va. 1927).

There is no doubt, upon a careful reading of the case, that what the City is attempting to do is to raise the salaries of the appointive officials by giving them other employment which one might suspect was included in the work to be done by them under their appointive offices. What the court is doing is permitting the salaries to be raised by virtue of something which, on its face, clearly appears a subterfuge. Nevertheless, there is no fault to find with the case, for the Board of Directors clearly acted within the limits of the city charter. The court is here interpreting an old and burdensome statute in such a way as to meet changed conditions. Presumably at the time that the legislature placed the maximum salaries to be paid city officials, they were sufficient. But, with a change of economic conditions, the individual is no longer willing to permit prestige to be more predominant than the pecuniary worth to be yielded from public offices. Various forms of commercial enterprise are attracting persons of ability, so that political organizations are being saturated with the incompetent. If governmental agencies are to secure persons of competency, it is imperative that adequate salaries be supplied and paid. If the legislature fails in its duty, the courts should, when functioning within its constitutional limitations, attempt to harmonize the social and economic conditions with the rules laid down by the legislature. This

is a privilege in which courts often indulge, and where the equity and justice are obvious, as in this case, no exception should be taken. The discretion given to the Board of Directors by the legislature provided the very lobb hole through which it was possible to meet the exigencies of a changed society, and thus to permit the government in this instance to function.

—MOSE EDWIN BOIARSKY.

REAL PROPERTY—DEEDS—DELIVERY TO GRANTEE ON CONDITION.—It is disconcerting to the ordinary man unlearned in law to discover that a transaction which seems to him natural and reasonable has been construed by the courts into something quite different from what he had intended. Such is the case where one executed a deed to land and gives it to his grantee with the understanding that it is to take effect only upon the happening of some condition. The courts to his astonishment refuse to recognize his intention, but attribute an utterly foreign meaning to his act, a meaning drawn from an old and technical rule of the common law the reason for which, if any ever existed, has long since vanished. He finds little consolation for his unjust treatment in being informed that it is the law that though he intended a conditional delivery, his act nevertheless amounts to an absolute delivery. A good example of such an injustice based on this ancient legal formula is found in the case of *Rouss v. Rouss*.¹ Defendant, in that case, a devisee under her husband's will of a life estate on condition that she did not remarry, persuaded plaintiff—who was remainderman in fee following said widow's life estate under the will, contingent upon his paying six \$2,000 legacies to nephews and a niece of testator on termination of said life estate—to execute a quitclaim deed of a life estate in her favor free from the condition as to remarriage. She secured the deed upon her promise not to use it until she should

¹ 90 W. Va. 646, 111 S. E. 586 (1922).