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MUNICIPAL CORPORATIONS—POWER TO LICENSE OR PROHIBIT POOL ROOMS.—Recent unsuccessful attempts of municipal corporations to regulate and prohibit the operation of pool rooms within their limits have raised the question of just what powers of that sort are conferred upon municipalities by general statutes, without regard to special charter provisions.

To operate a pool room within the state, it is necessary to obtain a license from the state.[1] This license is granted by the county courts,[2] and they are empowered to refuse a license to such an establishment in premises where the laws peculiar to pool rooms have been violated within the year next preceding the application.[3] Prior to the year 1919, there were two ways in which a municipal corporation could affect this grant of license for a pool room within its limits. First, it could require the payment of a license tax not greater than that exacted by the state.[4] Second, in certain instances it had concurrent powers with the county court to supervise the issuance of state licenses.[5] By Acts of 1919, c. 102, § 130, the latter provisions were repealed, leaving to the municipal corporations only the power to tax. In this state of the law it was held that a municipal council had no power to regulate the hours of opening and closing pool rooms;[6] and that it could not refuse a municipal license to one who tendered the proper fee.[7]

Within less than a year after these defects in municipal powers were exposed, the legislature enacted the following clause, amendatory of c. 47, § 28, Barnes' W. Va. Code:

> "The council of such city, town or village shall have plenary power and authority therein * * * * to license, or prohibit, the operation of pool and billiard rooms, and maintaining for hire of pool and billiard tables, and in event any such business is licensed in such town, to make and enforce reasonable ordinances regulating the same."[8]

On its face, this legislation would seem to grant municipal corporations at least a very broad discretion in the mat-

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[1] BARNES' W. VA. CODE, c. 32, §1.
[2] BARNES' W. VA. CODE, c. 32, §11.
[3] BARNES' W. VA. CODE, c. 32, §35a.
[4] BARNES' W. VA. CODE, 1918, c. 47, §33.
[5] BARNES' W. VA. CODE, 1918, c. 32, §15.
[6] Bissett *v.* Town of Littleton, 87 W. Va. 127, 104 S. E. 289 (1920).
[7] State *ex rel* Kelley *v.* City of Grafton, 87 W. Va. 191, 104 S. E. 487 (1920).
[8] ACTS 1921, c. 143.

ter of licensing pool rooms. Shortly after its passage, however, the court held that the council of such a municipality had no discretion to refuse a license to one who could not be charged with a violation of law in his establishment.[9] In the same volume of reports there is a case arising on a petition for a writ of mandamus to compel a county court and a town council to issue licenses to operate a pool room therein. The respondents were able to establish the fact that the applicant had violated the law in the conduct of his business within the past year, and the writ was denied.[10] This result was reached in reliance on § 35a of c. 32, which empowers the county court to refuse a license to such an aplicant. It is difficult to see how that section justified the town council which was not within its provisions. In neither of the cases last referred to did the court discuss the amendment of 1921 above quoted. The most recent case on the point is one where a city council refused a license to operate a pool room near a state school. The council was ordered to issue the license because it could not establish anything beyond the fact that a pool room in that particular place was undesirable.[11] In the consideration of that case, the court did discuss the amendment of 1921, but reached the same result obtaining before its enactment.

What could the legislature have meant in thus amending the statute conferring specific powers on municipal councils? It seems quite unreasonable to consider it as a fiscal measure, because ample powers of that sort had already been conferred on municipalities by another statute.[12] Indeed, the language of the amendment probably would not warrant a tax for revenue.[13] The only alternative, if the amendment means anything at all, is that it means what it says, and confers absolute and unqualified[14] powers to regulate the maintenance of such establishments upon the towns where they are located.

One point made by the court in holding it an abuse of discretion to refuse such a license for any cause but violation of law, is that in every instance the applicant will be

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[9] State *ex rel* Hoffman *v.* Town of Clendennin, 92 W. Va. 618, 115 S. E. 583, 29 A. L. R. 37 (1922).
[10] State *ex rel* Hamrick *v.* County Court, *et al.*, 92 W. Va. 222, 114 S. E. 519 (1922).
[11] State *ex rel* Hardman *v.* Town of Glenville, 134 S. E. 467 (W. Va. 1926).
[12] BARNES' W. VA. CODE, c. 47, §33.
[13] DILLON, MUN. CORPS., §1408.
[14] WEBSTER'S NEW INT'L DICT., "Plenary: full, entire, complete, absolute, unqualified."

licensed by the state and will have paid money into its coffers for the privilege of operating the pool room. It is proper for the state to delegate powers of regulation over a matter already subject to state regulation.[15] And when such a statutory delegation is made, it is not necessarily inconsistent with the former statutes imposing state regulation. The two may therefore go concurrently.[16] A state license ordinarily confers no contractual or property rights, so that its subsequent abrogation by state law is constitutional.[17] It would seem that an abrogation by an "arm of the state" would stand on the same footing. And even if the grant of complete municipal power were wholly inconsistent with the earlier state license laws, would not the latter prevail over the former?[18]

In practically all our decisions on the question under consideration, the court has stressed the fact that a pool room is not a nuisance *per se*, and has compared it with a Y.M.C.A. because pool is played in both places.[19] The fact that such an institution is not a nuisance *per se* would be of importance if the municipal control were sought to be exercised under a grant of power to abate nuisances; but the powers conferred by the amendment of 1921 were not made contingent upon the existence of a common law nuisance.

It is a matter of common knowledge that in many instances pool rooms are positive agencies of harm in their communities.[20] They are generally considered sufficiently obnoxious to justify their prohibition under the police power.[21] One court has even gone so far as to brand them the successor to the saloon as a breeder of vice.[22] If it is true that

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[15] Fellows *v.* Charleston, 62 W. Va. 665, 59 S. E. 623 (1907); BARNES' W. VA. CODE, c. 32, §§18 and 20; *Idem*, c. 47 §33.

[16] Moore *v.* Minneapolis, 43 Minn. 418, 45 N. W. 719 (1890).

[17] St. Anthony *v.* Water Com'rs., 168 U. S. 349, 18 Sup. Ct. 157 (1897).

[18] 25 R. C. L. §170, and cases cited.

[19] "In Bissett *v.* Littleton, *supra*, we alluded to the uses made of pool and billiard tables in clubs, Y. M. C. A. buildings, churches, and in private homes, engaged in the moral uplift of the people, young and old, of their communities." State *ex rel* Hardman *v.* Town of Glenville, *supra*.

[20] Burlingame *v.* Thompson, 74 Kan. 393, 86 Pac. 449, 11 Ann. Cas. 604 (1906); Morgan *v.* State, 64 Neb. 369, 90 N. W. 108 (1902); Thomas *v.* Foster, 108 S. C. 98, 93 S. E. 397 (1917); State *ex rel* Hawkins *v.* Harris, 239 S. W. 564 (Mo. 1922).

[21] Murphy *v.* California, 225 U. S. 623, 56 L. ed. 1229, 32 Sup. Ct. 697, 41 L. R. A. (N. S.) 153 (1912); State *ex rel* Hamrick *v.* County Court, 92 W. Va. 222, 114 S. E. 519 (1922); Purvis *v.* Oscilla, 149 Ga. 771, 102 S. E. 241 (1920); Burlingame *v.* Thompson, *supra*; Cole *v.* Culbertson, 86 Neb. 160, 125 N. W. 287 (1910); DILLON, MUN. CORPS., §731; 6 R. C. L. 207.

[22] "Since the abolition of the saloon, the billiard halls * * * are the natural gathering places for the elements of society which prey off their fellow men." State *ex rel* Sayles *v.* Superior Court, 120 Wash. 183, 206 Pac. 966 (1922).

there are good pool rooms and bad ones, it seems that the power to determine which is which can best be exercised by the local authorities. Our statute in words confers such a power, with plenary authority to prohibit the bad ones. Great civic good could be done by giving effect to that statute.

—J. E. F. W.