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Book Reviews

GOVERNMENT CORPORATIONS AND STATE LAW. By Ruth G. Weintraub. New York: Columbia University Press, 1939. Pp. 200.

Although the device of the government corporation was introduced early in our history, it came to be widely used for the first time in the days of World War I, and since 1933 has been increasingly employed to the extent of occupying a highly important position in the work of our national government. Miss Weintraub undertakes, as the title of the volume indicates, to study the relationship between such corporate agencies and state government.

These corporations are found to have been created by three distinct methods: by direct incorporation at the hands of Congress, as in the case of the Tennessee Valley Authority; more frequently by Congressional authorization to federal officers to issue charters after compliance with statutory requirements, as in the case of the Federal Land Banks; and most commonly of all, by organization at the hands of federal officers availing themselves of the incorporation laws of the states. This last method has been subjected to much criticism, particularly the rather widely used practice of incorporating under the lax laws of Delaware. The conclusion of the writer is that probably much, if not most, of the criticism has been unjustified, yet the inference seems to be obvious that one of the other methods is to be preferred.

The author's discussion of state attempts to apply taxes of various types to the government corporation deals at some length with the problem of inter-government immunity, but points out that in a great majority of instances some arrangement for immunity from state taxes has been worked out with state attorneys general without resort to litigation. Despite some partially clarifying decisions, some of which were rendered subsequent to the publication of this volume, the whole problem of state taxation of the federal government's corporations is still in a highly confused state. The writer suggests that most promise for a satisfactory solution seems to lie along the line of Congressional authorization for payments in lieu of taxes developed in connection with the Tennessee Valley Authority, the Resettlement Administration, and the Public Works Administration. This suggestion recognizes that both the nation and the states must be permitted to maintain their sources of revenue, and that some fair method of sharing such sources should be worked out.

The chapter on state taxation of income from government-owned corporations reflects the tremendous confusion existing at the time due to hopelessly conflicting state decisions and rulings, and the highly doubtful state of the law based on decisions of the United States Supreme Court prior to the case of *Graves v. New York ex rel. O'Keefe*,¹ which apparently was not decided until after the material

1. 306 U. S. 466 (1939).

in this book had been written. Happily that decision, subjecting such income to state taxation, has done vastly more to clarify the situation than the author was able to anticipate at the time.

The author correctly pointed out that the confusion as to this problem was not restricted to employees of government agencies having corporate existence, as illustrated by the situation relative to employees of the non-corporate Federal Housing Administration.

Chapter IV, entitled "The State Regulates Government Corporations," is a very interesting and stimulating discussion, more for the problems it raises than for their suggested solutions, and because, perhaps, of the novelty of those problems to the mind of the average citizen who has not previously had occasion to become aware of them.

Questions of the extent of liability of the government corporation to suit in the state courts, attachment, garnishment, application of state laws regulatory of foreign corporations, state labor and compensation laws, all have arisen. In addition those corporations, such as Home Owners' Loan Corporation, Federal Subsistence Homesteads Corporation, *etc.*, which take title to real estate, have been confronted with the problem of application of and obedience to local zoning regulations, building regulations, and mortgage moratorium laws. In some instances, such as the Rural Rehabilitation Corporations, the issue arose as to whether children living on an area, title to which rests in the federal government, may attend public schools, and whether their elders may vote.

The author finds that in so far as these matters have given rise to court litigation, decisions have been largely by state rather than federal courts and that the results have been highly confusing. Her conclusion is that the principal hope lies in "clearly thought out Congressional legislation which will provide for a reasonable division of power and responsibility." This conforms to the rather general attitude of the federal courts, so far as cases have arisen therein, to allow the intention of Congress to control.

Much state legislation has been passed since 1933 designed to facilitate the activities of government corporations within the states and to make the states eligible to participate in the programs conducted under the direction of such corporations. Many of such state laws have been of the permissive or enabling type, such as authorizing various local agencies to borrow funds from federal authority, or to contract for electricity from the Tennessee Valley Authority. Other state legislation has assumed the form of exemptions for federal agencies from local taxation and regulation, and some has even attempted to amplify the powers of government corporations operating in the states.

The author includes an interesting account of the relationship that has been developed between various government corporations and state authorities which has been responsible for such cooperative legislation on the part of the states. She finds that the states have been almost uniformly favorable to cooperation under federal statutes, which cooperation is not infrequently solicited by representatives of the various federal programs. Her conclusion is that continued cooperative endeavor between the states and the federal government under a more or less common program is both desirable and to be expected.

Administrative cooperation between representatives of government corporations and various state and local agencies is shown to be quite far-reaching. Some of it grows out of or is directly provided for in state and congressional legislation. Much more frequently it comes by way of mere informal arrangement worked out on a friendly basis between the officials concerned, without any specific statutory basis. Particularly good illustrations of such administrative cooperation is instanced from the activities of the Federal Deposit Insurance Corporation in cooperation with state banking authorities, and the Tennessee Valley Authority in working with state and local relief, educational, and land improvement schemes.

The author concludes that the device of the government corporation has not materially changed the situation from that involved in similar enterprises undertaken by non-corporate agencies, and suggests that further improvement in the relationship between state and federal enterprise is likely to depend largely upon the character of legislation in which provision for such enterprise is embodied.

For those who have not become familiar with the working of the government corporation and its variegated relationship to state authority, this little volume contains much useful information.

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THE LAW OF PUBLIC HOUSING. By William Ebenstein. Madison: University of Wisconsin Press, 1940. Pp. ix, 150.

This little book first contains a brief discussion of the elements that enter into the housing problem and the facts and conditions which have necessitated some sort of public attention to the problem in the United States. Following chapters contain surveys of government housing activities, state and federal, in this country, as well as a brief discussion of experience with similar housing problems abroad. Information taken largely from the Department of Commerce survey of 1934, "Real Property Inventory," and the "Finance Survey of Urban Housing" made by the Bureau of Foreign and Domestic Commerce in the same year, makes the reader startlingly aware of the tragic housing conditions endured by a large percentage of the low income groups in this country. Besides the relationship of bad housing to adult crime, juvenile delinquency, and danger to health, to which the author refers, his tabulation of the disproportionate cost in dollars and cents for police, fire, health, sanitary and other public services for inhabitants of the sub-standard housing areas is highly enlightening.

Brief reference is made to such early regulatory attempts as that of New York in 1867, its Tenement House Law of 1901 prescribing minimum requirements of sanitation, light, air, etc., culminating in its Multiple Housing Law of 1929, the work of the Building Code Committee of the Department of Commerce since 1921, various municipal demolition ordinances, and the development of zoning, most or all of which were negative in character and directed solely to new building or the relief of fire hazards, but not to the improvement of sanitary conditions in existing buildings. The New York Housing Law of 1926, providing

for limited-dividend housing corporations, is indicated as a sort of intermediary between the earlier negative regulations and the later positive Government programs for the construction of low-cost housing. The most serious aspect of the problem, the author recognizes, is the matter of bringing new housing within the reach of the low-income group most desperately in need of it.

The 1932 action of the Federal Government in authorizing the Reconstruction Finance Corporation to issue loans for limited dividend projects, while directly productive of only little new housing, and none within the reach of the slum-dwellers, served to make the country housing conscious and pave the way for the program to follow. Numerous state attempts to deal with the problem had a similar effect.

The first large scale effort came with the National Industrial Recovery Act of 1933, authorizing the construction, reconstruction, alteration, and repair, under public regulation and control, of low-cost housing and slum-clearance projects. The work of the Housing Division of the Public Works Administration set up under this statute and taken over in 1937 by the United States Housing Authority is discussed at some length, and its stimulating and unifying effect upon state legislation is noted. The various financial agencies participating in this activity, such as the Federal Home Loan Bank System, Federal Savings and Loan Associations, Federal Savings and Loan Insurance Corporation, Home Owners Loan Corporation, and Federal Housing Administration, are all discussed and their work surveyed. It is pointed out that the chief objective of the United States Housing Authority is to aid state and local housing authorities financially in providing decent, sanitary, and safe dwellings for families with incomes so low that they cannot be provided with adequate housing facilities through private enterprise alone. It is also pointed out that the present program is one of decentralization of authority among the states and localities, the federal legislation merely showing the way. As a result of this development the author finds that public opinion has come to recognize the work of public housing as a proper one for federal-state cooperation on a basis of an enlightened policy of social welfare.

Chapter III of this little book contains an interesting discussion of the federal cases that have dealt with the matter of public housing. Chief among these are *United States v. Certain Lands in Louisville*¹ and *Oklahoma City v. Sanders*,² which come to opposite conclusions on the important question of whether slum-clearance and low-cost housing are proper public uses for which the National Government's power of eminent domain may be employed. This issue has not been determined by the United States Supreme Court, and the United States Housing Act of 1937 renders such a determination both unnecessary and unlikely. The present act provides not for direct federal projects as undertaken under the National Industrial Recovery Act, but for loans and grants by the United States Housing Authority to local government agencies which undertake the

1. 9 F. Supp. 137 (W. D. Ky. 1935), *aff'd*, 78 F. (2d) 684 (C. C. A. 6th, 1935), *dismissed*, 294 U. S. 735 (1935).

2. 94 F. (2d) 323 (C. C. A. 10th, 1938).

work of slum-clearance and low-cost housing projects and which assume the task of securing the land upon which the projects are to be carried out. The author recognizes the desirability of the present program of cooperative endeavor with federal subsidization and local administration and management, and finds that such cases as the Social Security cases³ and the PWA Power cases⁴ lend much support to the belief that the present scheme is fully within the constitutional power of Congress.

Chapter IV comprises a very valuable discussion of court decisions dealing with state attempts at public housing, ranging from *Green v. Frazier*⁵ of 1920, in which the Supreme Court of the United States upheld as a public purpose for taxation the Home Building Act involved in North Dakota's elaborate scheme for state control of agriculture, industry, banking, and housing, to the very recent cases upholding slum-clearance and low-cost housing as proper public purposes for which the state's power of eminent domain, as well as the police power and the power of taxation, may be employed. Chief among the latter are *In re New York City Housing Authority v. Muller*⁶ and *Spahn v. Stewart*,⁷ in which the highest courts of New York and Kentucky found ample ground for sustaining exercise of the power by the states which the federal courts in *United States v. Certain Lands in Louisville*, had denied to the National Government. It is pointed out that the decision of the *Muller* case probably greatly influenced the federal authorities to withdraw the *Louisville* case from consideration by the United States Supreme Court, and to encourage the development of the present program of decentralization of public housing in this country.

More than a score of state courts have followed the pattern of the New York and Kentucky courts, and public housing appears to have taken its place definitely as one of the accepted public purposes for state and local government enterprise, assisted by the National Government under the United States Housing Act of 1937.

In his brief discussion of foreign experience in public housing, the author finds, of course, that not only England but also such continental countries as Austria, Belgium, Holland, France, the Scandinavian countries, and others, developed the work of slum-clearance and low-cost housing far beyond anything yet undertaken in this country several years before we made our first attempts. These developments, while dating as far back as 1890 for their initial activity in England, have come largely since, and in some respects as the result of, the first World War. The City of Vienna, for instance, rehoused approximately twenty per cent of her population in this manner within a rather short period after 1919. The success of slum-clearance and low-cost housing is recognized to be dependent economically to a large extent upon adequate insurance against unemployment and

3. *Steward Machine Co. v. Davis*, 301 U. S. 548 (1937); *Helvering v. Davis*, 301 U. S. 619, 672 (1937).

4. *Alabama Power Co. v. Ickes*, 302 U. S. 464 (1938); *Duke Power Co. v. Greenwood County*, 302 U. S. 485 (1938).

5. 253 U. S. 233 (1920).

6. 155 Misc. 681, 279 N. Y. Supp. 299 (1935); 270 N. Y. 333, 1 N. E. (2d) 153 (1936).

7. 268 Ky. 97, 103 S. W. (2d) 651 (1937).

disability of the prospective tenant which, until recent years, has been lacking in this country. The social and economic advantages of a public housing program have been fully recognized by all political parties in England, including the Conservative as well as the Liberal and Labor Parties. That situation, the author believes, has helped measurably to create a sympathetic atmosphere for its development in this country.

The author of this little book includes, somewhat by way of appendix, a copy of the United States Housing Act of 1937 as amended, and a copy of the opinion in two important cases sustaining the validity of state public housing statutes, which furnish the material for a fairly accurate picture of the public housing situation in this country as presently being developed under state and national cooperation.

The book as a whole, though quite short and sprinkled here and there with typographical errors, presents in readily understandable form the fundamentals of a highly important subject with which all students of law and government should become familiar.

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