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OAK PARK FEDERAL SAVINGS AND LOAN ASSOCIATION
v. VILLAGE OF OAK PARK: THE FOUNDATION BEGINS
TO CRUMBLE ON HOME RULE IN ILLINOIS

INTRODUCTION

As urbanization has accelerated, the need for local self-government has become increasingly evident.¹ Home rule² is a viable means to obtain the local autonomy required to efficiently cope with problems peculiar to municipal and county government. Home rule eliminates, to some extent, the state legislature's control over municipal governments³ and gives the home rule unit full power of self-government regarding subjects

¹ See REC. OF PROC., SIXTH ILL. CONST. CONV., *Comm. of Loc. Gov't Maj. Prop.*, Vol. VII at 1605 (1969-70), where it was stated:

The fundamental reason for favoring home rule over the existing system of legislative supremacy is this: Local governments must be authorized to exercise broad powers and to undertake creative and extensive projects if they are to contribute effectively to solving the immense problems that have been created by the increasing urbanization of our society. (emphasis in original).

² Though home rule is a new concept in Illinois law, it originated well before the founding of our nation. This fact was noted in *People ex rel. Metropolitan St. Ry. v. St. Bd. of Tax Commissioners*, 174 N.Y. 417, 67 N.E. 69, 70-71 (1905), where the court stated:

The principle of home rule, or the right of self-government as to local affairs, existed before we had a constitution. Even prior to the Magna Charta, some cities, boroughs, and towns had various customs and liberties, which had been granted by the crown, or had subsisted through long user, [sic] and among them was the right to elect certain local officers from their own citizens, and, with some restrictions, to manage their own purely local affairs. These customs and liberties, with other rights, had been so often trampled upon by the King as to arouse deep hatred of centralization of power; and we find among the many grants of the Great Charter that 'the city of London shall have all its ancient liberties and its free customs as well by land as by water. Furthermore, we will and grant that all other cities and boroughs and towns . . . shall have all their liberties and free customs.'

The use of home rule in the United States dates from the Missouri Constitution of 1875 which provided for the separation of the City and County of St. Louis, allowing the city to adopt its own charter by popular vote. Similar provisions were made for all other cities in the state with populations of 100,000 or more.

³ Under the 1870 Illinois Constitution, local governments were regarded as creatures of the state, and thus, capable of exercising only those powers granted to them by the General Assembly. This dependent status has been defined by a passage from Judge Dillon's treatise on municipal corporations which has come to be known as "Dillon's Rule" and reads as follows:

It is a general and undisputed proposition of law that *a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, — not simply convenient but indispensable.*

1 DILLON, MUNICIPAL CORPORATIONS 448 (5th ed. 1911) (emphasis in original).

solely of municipal concern.⁴ With this in mind, the framers of the 1970 Illinois Constitution drafted article VII section 6,⁵ a provision intended to be one of the broadest home rule grants in the nation.⁶

A home rule unit derives its powers from either the state

⁴ See note 1 *supra* at 1605-06 where it was stated:

{L}ocal government should be strengthened because it is closer to the people it serves than are other forms of government and, as a result, on balance is likely to be more responsible to the citizenry, more sensitive to community needs and more efficient and effective in meeting those needs. In addition, broadening the powers of local governments will reduce the number of bills dealing with local matters which now overburden the General Assembly, will strengthen the role of local officials in determining local issues and diminish the power of state legislators who are less familiar with local conditions, and reduce the amount of state control over local affairs. (emphasis in original).

⁵ ILL. CONST. art. VII, § 6 (1970) reads as follows:

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this Section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

⁶ See note 1 *supra* at 1600 where the Committee on Local Government stated:

Paragraph 3.1(a) [now 6(a)] grants very broad powers of local self-government to specified counties and municipalities. . . . It should be understood that the system proposed by the committee differs in many respects from the various home rule systems adopted in other states. The differences have been suggested by the unique needs of Illinois government.

constitution⁷ or from home rule legislation enacted by the state's legislative body.⁸ Generally, constitutional provisions are considered self-executing,⁹ requiring no legislation to make them effective, however, those provisions which plainly indicate that the subject matter requires enabling legislation, are not so considered.¹⁰ The extent to which the Illinois home rule provision is self-executing came squarely before the Illinois Supreme Court in *Oak Park Federal Savings and Loan Association, et al. v. Village of Oak Park*.¹¹

THE OAK PARK DECISION

Plaintiffs commenced an action in the Circuit Court of Cook County seeking a declaratory judgment that a series of ordinances creating a special service area,¹² adopted by the village pursuant to home rule powers, were unconstitutional and void. The circuit court found the ordinances to be constitutional and sustained the defendant's motion for judgment on the pleadings.¹³

Under the 1970 Illinois Constitution, "[A] home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power . . . to tax; and to incur debt."¹⁴ Further, "[T]he General Assembly may not deny or limit the power of home rule units . . . (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas"¹⁵ This latter provision furnished plaintiffs' principal contention on appeal: absent ena-

⁷ Constitutional home rule exists in thirty states, viz.: ALAS. CONST. art. X, §§ 9, 10; ARIZ. CONST. art. XIII, §§ 2, 3; CAL. CONST. art. XI, §§ 6 *et seq.*; COLO. CONST. art. XX, §§ 1-6; FLA. CONST. art. XIII, § 11; GA. CONST. art. XV; HAWAII CONST. art. VII, § 2; IDAHO CONST. art. XII, § 2; LA. CONST. art. XIV, § 3(a); MD. CONST. art. XIV; MICH. CONST. art. VIII, §§ 2 *et seq.*; MINN. CONST. art. IV, § 36; MO. CONST. art. VI, § 18; MONT. CONST. art. XI, § 6; NEB. CONST. art. XI, §§ 2-5; NEV. CONST. art. VIII, § 8; N.Y. CONST. art. IX, §§ 9, 11-13; OHIO CONST. art. XVIII; OKLA. CONST. art. XVIII, §§ 2-7; ORE. CONST. art. XI, §§ 2, 2a; PENN. CONST. art. XV, § 1; R.I. CONST. art. XVIII; TENN. CONST. art. XI, § 9; TEX. CONST. art. XI, § 5; UTAH CONST. art. XI, § 5; WASH. CONST. art. XI, §§ 10, 11; W. VA. CONST. art. VI, § 39(a); WIS. CONST. art. XI, § 3; WYO. CONST. art. XIII, § 1 and ILL. CONST. art. VII, § 6.

⁸ Statutory home rule exists in New Jersey by virtue of R.S. 40, 42, *et seq.* N.J.S.A.

⁹ *People v. Hoge*, 55 Cal. 612, 618 (1880); *State ex rel. Voss v. Davis*, 418 S.W.2d 163, 166 (S. Ct. Mo., 1967); and *Cassidy v. Ohio Public Service Co.*, 78 Ohio App. 221, 69 N.E.2d 648, 651 (1946). See also note 1 *supra* at 1616 where it was stated:

Paragraph 3.1 grants extensive powers directly to the specified counties and municipalities. The powers exist without further action of either the General Assembly or the local governments that receive the powers.

¹⁰ *People v. Hoge*, 55 Cal. 612, 618 (1880).

¹¹ 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

¹² *Id.* at 202, 296 N.E.2d at 346.

¹³ *Id.* at 201, 296 N.E.2d at 346.

¹⁴ ILL. CONST. art. VII, § 6(a) (1970).

¹⁵ ILL. CONST. art. VII, § 6(l) (1970) (emphasis added).

bling legislation adopted by the General Assembly, a home rule unit may not create a special service area or impose taxes or issue bonds to provide special services.¹⁶

Plaintiffs contended that the wording of subsection 6(l) was in the nature of a condition precedent and that until the General Assembly enacted legislation dealing with the special service concept, a home rule unit was without authority to create such an entity.¹⁷ In rebuttal, the defendant maintained that inasmuch as the "powers and functions of home rule units shall be construed liberally,"¹⁸ subsection 6(l) must be interpreted as being self-executing.¹⁹ It was also argued that compliance with the Revenue Act of 1939²⁰ satisfied the provision's mandate that all actions thereunder be "in the manner provided by law."²¹

The Illinois Supreme Court rejected the defendant's argument by noting there is an inherent conflict between the introductory phrase of subsection 6(l) and the specific language of subsection 6(l)(2). In order to resolve the conflict Mr. Justice Ryan observed:

[I]t is incumbent upon the court to give meaning to every section and clause of the instrument. If different parts of the constitution appear to be in conflict, the court must harmonize them, if practicable, and must favor a construction which will render every word operative rather than one which will make some words idle and nugatory. . . . One clause will not be allowed to defeat another if by any reasonable construction the two can be made to stand together.²²

The majority of the court was of the opinion that to construe subsection 6(l)(2) as self-executing would render the words "in the manner provided by law" meaningless.²³

It was the court's impression that the words "in the manner provided by law" did not refer to the Revenue Act of 1939 as the defendant had contended, but rather, envisioned specific enabling legislation.²⁴ The majority noted that inasmuch as the Revenue Act of 1939 was enacted pursuant to the mandate of

¹⁶ 54 Ill. 2d at 203, 296 N.E.2d at 346-47.

¹⁷ Brief for appellant OAK PARK FEDERAL SAVINGS AND LOAN ASSOCIATION at 18-19, Oak Park Federal Savings and Loan Association v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

¹⁸ ILL. CONST. art. VII, § 6(m) (1970).

¹⁹ Brief for appellee VILLAGE OF OAK PARK at 18, Oak Park Federal Savings and Loan Association v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

²⁰ ILL. REV. STAT. ch. 120, § 482 *et seq.* (1971).

²¹ Note 19 *supra* at 12.

²² 54 Ill. 2d at 203; 296 N.E.2d at 347.

Mr. Justice Ryan supported his observation by citing 1 COOLEY'S CONSTITUTIONAL LIMITATIONS 128-29, and 2 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, § 4705 (3d ed. 1943).

²³ 54 Ill. 2d at 203-04, 296 N.E.2d at 347.

²⁴ *Id.* at 204, 296 N.E.2d at 347.

the 1870 Illinois Constitution,²⁵ it required a uniform tax rate for each taxing district.²⁶ Thus, the court was of the opinion that:

[W]ithout further enabling legislation, the taxes levied by these ordinances are required to be extended against all the property of the taxing district, which in this instance is the Village of Oak Park. The provisions of the Revenue Act of 1939 do not attempt to establish the statutory framework within which section 6 (l) (2) can be implemented.²⁷

THE PROBLEM OF CONSTITUTIONAL CONSTRUCTION

The majority in *Oak Park Federal Savings and Loan* invited not only a severe chastisement by the three justices who chose to dissent from the court's decision,²⁸ but the majority also appears to have disregarded several other principles of constitutional construction, *viz.*, to give effect to the intent of the people adopting the constitution and to view the whole instrument with the purpose of arriving at the true intention of each part.²⁹ The question is why.

Intent of the People Governs

Of the many arguments propounded by those who favor literal construction of constitutional provisions, the most frequently resorted to may be summarized as follows:

[T]he constitution does not derive its force from the convention which framed it, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.³⁰

This principle was discussed in *Hills v. City of Chicago*³¹ and *Beardstown v. Virginia*,³² the leading Illinois cases on this subject.

In *Hills* the appellant challenged an order of the Superior Court of Cook County directing the sale of certain parcels of his property for the non-payment of special assessment taxes. He maintained that inasmuch as the city collector had no constitutional right to receive state and county taxes, the collector lacked

²⁵ ILL. CONST. art. IX, § 10 (1870).

²⁶ 54 Ill. 2d at 204, 296 N.E.2d at 347.

²⁷ *Id.* at 205, 296 N.E.2d at 347.

²⁸ *Id.* at 205-09, 296 N.E.2d at 348-50.

²⁹ See 1 COOLEY, CONSTITUTIONAL LIMITATIONS 123-33 (8th ed. 1927).

³⁰ *Id.* at 143. See also *People ex rel. Watseka Telephone v. Emmerson*, 302 Ill. 300 at 303-04, 134 N.E. 707 at 709 (1922).

³¹ 60 Ill. 86 (1871).

³² 76 Ill. 34 (1875).

authority to seek the challenged order.³³ To make a final determination of this issue, the court found it necessary to interpret the constitutional provision relied upon by the appellant. In doing so, the court noted:

[T]he doctrine is firmly established, that where the words employed, when taken in their ordinary, natural signification, and the order of their grammatical arrangement given them by the framers, embody a definite meaning which involves no conflict with other parts of the same instrument, then that meaning which is apparent upon the face of the instrument is the only one we are at liberty to say was intended to be conveyed, and there is no room for construction.³⁴

Beardstown was a suit in chancery to contest the outcome of an election on the question of the removal of the county seat to the City of Virginia. The appellant contended that the franchise had unconstitutionally been denied to a certain class of voters, namely, persons of foreign birth who were not naturalized citizens but were, on April 1, 1848, minors and inhabitants of the state.³⁵ The court held that inasmuch as these individuals were not qualified voters under the Constitution of 1848,³⁶ it was clear no interpretation of the 1870 Constitution would entitle them to that right.³⁷ Discussing interpretation of the latter document, the court stated:

It is not allowable to interpret what has no need of interpre-

³³ 60 Ill. at 89. Appellant relied on ILL. CONST. art. IX, § 4 (1870) which read as follows:

The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for State, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive State and county taxes, and there shall be no sale of the said property for any of said taxes or assessments but by said officer, upon the order or judgment of some court of record.

³⁴ *Id.* at 90. See *Hamer v. Board of Education*, 47 Ill. 2d 480, 265 N.E.2d 666 (1970); *Graham v. Dye*, 308 Ill. 283, 139 N.E. 390 (1923); *Chicago Home for Girls v. Carr*, 300 Ill. 478, 133 N.E. 344 (1921); *Downs v. Curry*, 296 Ill. 277, 129 N.E. 761 (1921); *Colton v. Trustees of Pension Fund*, 287 Ill. 56, 122 N.E. 73 (1919); *People v. Stevenson*, 281 Ill. 17, 117 N.E. 747 (1917); *Gar Creek Drainage Dist. v. Wagner*, 256 Ill. 338, 100 N.E. 190 (1912); *Crane v. C.&W.I.R.R.*, 233 Ill. 259, 84 N.E. 222 (1908) (Dunn J., dissenting); *Chudnovsky v. Eckles*, 232 Ill. 312, 83 N.E. 846 (1908); *Miller v. People*, 230 Ill. 65, 82 N.E. 521 (1907); *City of Chicago v. Fishburn*, 189 Ill. 367, 59 N.E. 791 (1901); and *O'Connor v. Leddy*, 64 Ill. 299 (1872).

³⁵ 76 Ill. at 39-40.

³⁶ ILL. CONST. art. VI, § 1 (1848) provided:

In all elections, every white male citizen above the age of 21 years, having resided in the state one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of the state at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election.

³⁷ 76 Ill. at 43.

tation, and when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning.³⁸

The Supreme Court of the United States cited both *Hills* and *Beardstown* as precedent for its determination of the constructional issue presented in *Lake County v. Rollins*.³⁹ The case involved the construction of a debt limitation provision of the Colorado Constitution of 1876;⁴⁰ the Supreme Court being asked to determine whether a county could issue warrants for its ordinary expenses such as "witnesses' and jurors' fees, election costs, charges for the board of prisoners, and county treasurers' commissions, etc."⁴¹ The appellee, Rollins, asserted that the challenged provision prohibited counties from contracting debt by loan in any manner except for the purposes therein provided, viz., erection of necessary public buildings and making or repairing public roads and bridges. Further, he contended that the challenged tax warrants were void for the reason that they exceeded the limitation placed upon the county's power to contract debt.⁴²

Holding the provision in question applied to indebtedness for all purposes and not just those enumerated and that the county had not yet exceeded its debt limit, the Court remarked:

Why not assume that the framers of the constitution and the people who voted it into existence, meant exactly what it says? At the first glance, its reading produces no impression of doubt as to the meaning. It seems all sufficiently plain; and in such case there is a well-settled rule which we must observe. The object of construction, applied to a constitution, is to give effect to the intent

³⁸ *Id.* at 40.

³⁹ 130 U.S. 662 (1888).

⁴⁰ COLO. CONST. art. XI, § 6 (1876) provided:

No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof; counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof; and the aggregate amount of indebtedness of any county, for all purposes, exclusive of debts contracted before the adoption of the constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of increasing such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of increasing the debt: but the bonds, if any be issued therefor, shall not run less than ten years; and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned: *Provided*, That this section shall not apply to counties having a valuation of less than one million of dollars.

⁴¹ 139 U.S. at 662.

⁴² *Id.* at 665.

of the framers, and of the people in adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument.⁴³

Accordingly, when "construing constitutional provisions the true inquiry should be, what was the understanding of the meaning of the words used by the voters who adopted it?"⁴⁴ Clearly, a court may best achieve such an "understanding of meaning" if it does not look for dark or abstrusive meanings in the words employed, but applies the words in their ordinary, natural signification and in the order of their grammatical arrangement. Further, the court must not interpret that which has no need of interpretation or otherwise alter or restrict what is a definite and precise meaning of the words employed.

Construction of the phrase "in the manner provided by law" in accordance with the above principles raises doubt as to the correctness of the court's decision in *Oak Park Federal Savings and Loan*. The generally accepted meaning of the word "manner" is "a way or method of doing something; way in which something is done or happens, mode or fashion of procedure."⁴⁵ "Provided" is the past participle of the verb "provide" which is defined as "to make available; supply; afford."⁴⁶ "Law" is defined as "all the rules of conduct established and enforced by the authority, legislation, or custom of a given community or other group. . . ." ⁴⁷ Hence, it must be inferred that the voters who ratified the 1970 Illinois Constitution understood "in the manner provided by law" to mean "in a mode made available by the General Assembly," or something very similar.

Thus, the court appears to have erred when it determined that the framers' inclusion of the phrase in question was a visualization of enabling legislation. Further, it is inescapable that by its holding, the court has, in effect, amended the phrase to read "in the manner *to be* provided by law."

⁴³ *Id.* at 670. See the Court's statement on page 671 to the effect that:

There is even stronger reason for adhering to this rule in the case of a constitution than in that of a statute, since the latter is passed by a deliberative body of small numbers, a large proportion of whose members are more or less conversant with the niceties of construction and discrimination and fuller opportunity exists for attention and revision of such a character, while constitutions, although framed by conventions, are yet created by the votes of the entire body of electors in a state, the most of whom are little disposed, even if they were able, to engage in such refinements. The simplest and most obvious interpretation of a constitution, if in itself sensible, is the most likely to be that meant by the people in its adoption.

⁴⁴ *Burke v. Snively*, 208 Ill. 328, 344, 70 N.E. 327, 331 (1904).

⁴⁵ *Webster's New World Dictionary* 893 (College ed. 1966).

⁴⁶ *Id.* at 1172.

⁴⁷ *Id.* at 828.

The Whole Instrument To Be Examined

In *Oak Park Federal Savings and Loan*, the supreme court correctly noted that:

[I]t is incumbent upon the court to give meaning to every section and clause of the instrument. If different parts of the constitution appear to be in conflict, the court must harmonize them, if practicable, and must favor a construction which will render every word operative rather than one which will make some words idle and nugatory.⁴⁸

However, the court's application of the rule to the facts before it in *Oak Park* is subject to question.

Professor Cooley has stated, "[A] clause which, standing by itself, might seem of doubtful import, may yet be made plain by comparison with other clauses or portions of the same law."⁴⁹ For that reason he concluded, "[T]he whole instrument is to be examined with a view to arriving at the true intention of each part."⁵⁰ The Illinois Supreme Court applied this canon of construction in *People ex rel. McDavid v. Barrett*,⁵¹ *Wulff v. Aldrich*⁵² and *Hirschfeld v. Barrett*.⁵³

In *People ex rel. McDavid v. Barrett*⁵⁴ the Auditor of Public Accounts and the State Treasurer appealed from judgments of the Circuit Court of Cook County awarding a writ of mandamus compelling the Auditor to issue warrants for, and the Treasurer to pay, the amounts legislatively appropriated to the relators — all widows of deceased circuit court judges.⁵⁵ The appellants contended that the appropriations were unconstitutional because they violated the constitutional prohibition against granting extra compensation to any public officer, agent, servant or contractor, after service has been rendered or contract made.⁵⁶ Holding that the challenged appropriation did not fall within the confines of the prohibition upon which the appellants relied, the court stated:

It is a well-recognized canon of constitutional construction that the chief purpose sought to be attained is the intention of its framers. In seeking such an intention courts are to consider the language used, the object to be attained or the evil to be remedied. . . . In the construction of the constitution courts should not indulge in speculation apart from the spirit of the document, or apply so strict a construction as to exclude its real object and intent.⁵⁷

⁴⁸ 54 Ill. 2d at 203, 296 N.E.2d at 347.

⁴⁹ 1 COOLEY, CONSTITUTIONAL LIMITATIONS 127 (8th ed. 1927).

⁵⁰ *Id.*

⁵¹ 370 Ill. 478, 19 N.E.2d 356 (1939).

⁵² 124 Ill. 591, 16 N.E. 886 (1888).

⁵³ 40 Ill. 2d 224, 239 N.E.2d 831 (1968).

⁵⁴ 370 Ill. 478, 19 N.E.2d 356 (1939).

⁵⁵ *Id.* at 479, 19 N.E.2d at 358.

⁵⁶ *Id.* at 480, 19 N.E.2d at 358.

⁵⁷ *Id.* See also *Scott v. Freeport Motor Casualty Co.*, 379 Ill. 155, 39 N.E.2d 999 (1943); *Elgin Storage and Transfer Co. v. Pirrine*, 2 Ill. 2d 28,

The appellee in *Wulff v. Aldrich*⁵⁸ obtained a writ of mandamus compelling the defendant, Wulff, to draw a warrant on the County Treasurer of Cook County for the amount of an allowance made to him by the Board of County Commissioners.⁵⁹ The appellant Wulff's refusal to draw the warrant in question was based upon his understanding that the appellee's compensation was fixed by statute.⁶⁰ However, the appellee maintained that the statute in question was in direct conflict with the 1870 Illinois Constitution inasmuch as the constitution provided that the "county board . . . shall fix the compensation of all county officers."⁶¹

The Illinois Supreme Court, adopting the opinion of the circuit court in full, was of the belief that reference to the proceedings of a constitutional convention may be beneficial to a reviewing court. This was evidenced by its statement that:

References to the proceedings of a constitutional convention are sometimes resorted to by the courts in order to find reasons for a particular action of the convention. They are not resorted to for the purpose of construing away any express language of the constitution, or even for the purpose of construing what may be doubtful. 'When the inquiry is directed,' says Judge COOLEY, 'to ascertaining the mischief designed to be remedied or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument. Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory.'⁶²

The appellants in *Hirschfield v. Barrett*⁶³ sought an injunction to compel the defendant to count and report the write-in votes received by Michael M. Phillips, also a plaintiff, for the office of associate judge of Cook County, allegedly vacated by the death of Associate Judge H.R. Stoffels.⁶⁴ The defendants maintained that they were precluded from holding a formal election to fill the alleged vacancy by the Attrition Statute.⁶⁵ However, the appellants contended that the statute relied upon by the appellee was repugnant to the mandate of the Judicial Article of the 1870 Illinois Constitution.⁶⁶ Affirming the lower court's denial of the injunction, the supreme court remarked:

116 N.E.2d 868 (1954); and *People ex rel. Cason v. Ring*, 41 Ill. 2d 305, 242 N.E.2d 267 (1968).

⁵⁸ 124 Ill. 591, 16 N.E. 886 (1888).

⁵⁹ *Id.* at 592-93, 16 N.E. at 886-87.

⁶⁰ *Id.* at 592, 16 N.E. at 886.

⁶¹ *Id.* at 593, 16 N.E. at 887.

⁶² *Id.* at 598, 16 N.E. at 891. See also, *Carpenter v. Pennsylvania*, 58 U.S. (17 How.) 456 (1854); *Legal Tender Case*, 110 U.S. 421 (1884); *McPherson v. Blacker*, 146 U.S. 1 (1892); and *Kentucky Union Co. v. Kentucky*, 219 U.S. 140 (1911).

⁶³ 40 Ill. 2d 224, 239 N.E.2d 831 (1968).

⁶⁴ *Id.* at 225, 239 N.E.2d at 832.

⁶⁵ *Id.* at 226, 239 N.E.2d at 833.

⁶⁶ *Id.* at 227, 239 N.E.2d at 833.

In *People ex rel. Chicago Bar Ass'n v. Feinberg*, 348 Ill. 549, 566, we stated: "The meaning of the constitution is not to be ascertained by giving too great weight to a single phrase, sentence or section. Its several provisions are all parts of one instrument and must be construed together, giving each its proper consideration." And in construing the same Judicial Article now at issue we have said: "We must read the amendment as a whole and attribute to each part a meaning that is consistent and harmonious with the amendment's overall intendment and purpose" ⁶⁷

It is clear that where a constitutional provision is of doubtful import, any ambiguity therein may be construed away by the court's examination of the whole document with a design to arriving at the intention of its framers in drafting each of its parts. The court is not limited to a consideration of the language employed; but may also consider the object to be attained or the evil to be remedied by the provision in question. To aid in this task, references to the proceedings of the constitutional convention may be beneficial to the extent that they enable the court to familiarize itself with reasons for a particular action by the convention. Finally, the provision must be read as a whole and a meaning must be attributed to each part that is consistent and harmonious with its overall intendment and purpose; not giving too great weight to any single phrase, sentence or section.

A cursory perusal of the convention proceedings reveals the primary purpose of the Home Rule Article — to give units of local government the autonomy which they require to effectively cope with the problems peculiar to municipal and county government.⁶⁸ Furthermore, the object the delegates to the Constitutional Convention sought to attain by inclusion of the special service concept appears to be "to halt or at least reduce the proliferation of new units of local special government in Illinois."⁶⁹

Equally noteworthy is that the majority proposal as related to differential taxation and special assessment taxation was originally submitted to the convention as a limitation on the self-executing powers of home rule units,⁷⁰ clearly requiring enabling legislation. However, as was pointed out by Mr. Justice Ward in his dissenting opinion:

When it became obvious that 6(e)(3) did not fulfill the drafters' intent that enabling legislation was not to be required it was rejected, . . . Section 6 (l) was drafted.⁷¹

Thus, it appears that the court has incorrectly applied the

⁶⁷ *Id.* at 228, 239 N.E.2d at 834.

⁶⁸ See notes 1 and 4 *supra*.

⁶⁹ Note 1 *supra* at 1664.

⁷⁰ Note 1 *supra*, *Comm. on Style, Drafting and Submission, Proposal No. 15*, vol. VII at 2560-61.

⁷¹ 54 Ill. 2d at 209, 296 N.E.2d at 349.

canon of constitutional construction upon which it relied. It has not only disregarded the objects the framers of the 1970 Constitution sought to attain, but has also rendered part of the document inoperative. By concluding that "in the manner provided by law" requires enabling legislation before there can be differential taxation, the court has rendered the phrase "the General Assembly may not deny or limit" nugatory. For unless and until the General Assembly passes enabling legislation establishing a system of real property classification, home rule units are powerless to create special service areas within their boundaries.

CONCLUSION

The Illinois Supreme Court's decision in *Oak Park Federal Savings and Loan Association, et al. v. Village of Oak Park* will adversely effect home rule units in several ways. It reimposes upon municipalities and counties in Illinois a somewhat dependent status which has come to be known as "Dillon's Rule." To that extent, the decision curtails the framers' attempt to make units of local government autonomous bodies. Unfortunately, it appears that the decision will promulgate the proliferation of new units of local special government in Illinois, rather than halt or slow their development. In effect, *Oak Park* will spawn a new era of mosquito abatement districts.

Finally, it seems that the court has taken a backdoor approach to the construction of the Home Rule Article, for it has allowed the General Assembly to do by inaction that which it may not do by direct action; namely, deny or limit a home rule unit's power to create special service areas and impose taxes for their maintenance. There appears to be a single reason for the court's adoption of this construction of the Home Rule Article: the supreme court is apprehensive about the growth of home rule in Illinois.

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