
Coates' Canons Blog: Do Local Governments have Federal Constitutional Rights?

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The United States Constitution includes many provisions that protect persons and entities from government action. For example, the Due Process Clause (**Fifth** and **Fourteenth** Amendments) safeguards against arbitrary denial of life, liberty, or property by the government. The Equal Protection Clause (**Fourteenth** Amendment), prohibits the state from denying any person within its jurisdiction the equal protection of the laws. And the Contract Clause (**Article I, section 10, clause 1**) prohibits the state from enacting any law that retroactively impairs contract rights.

But do these Constitutional protections extend to local governments? Does the Due Process Clause, for example, require that a state legislature provide notice and an opportunity to be heard to a local government before deannexing property within the local unit's territorial jurisdiction? Or does the Contracts Clause prohibit the state from requiring that a local government utility cease providing service in a particular area, over the objection of local officials? As my colleague, David Lawrence, explains in a recent Local Government Law Bulletin, *Judicial Doctrines that Differentiate Local Governments and Private Persons or Entities*, the answer is no.

The following is an excerpt from that bulletin. In this section, David explains that in recognition of the broad authority of states to control local governments, the United States Supreme Court has held that certain US Constitutional provisions, specifically the Contracts Clause, Due Process Clause, and Equal Protection Clause, do not protect local governments against state legislative action. David states that:

"The United States Supreme Court has been well aware of the traditional authority of state legislatures over local government and has held that various provisions of the U.S. Constitution that protect individuals and private entities from certain governmental actions were not intended to override that basic state–local relationship and so do not protect local governments.

Contract Clause. The Supreme Court has on numerous occasions held that the Contract Clause does not protect local governments from legislative actions changing charters or statutes applicable to the governments. Probably the most famous example is *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), in which the Court upheld legislation that permitted Pittsburgh to annex the neighboring city of Allegheny over the opposition of a majority of voters in the latter city. Speaking of local governments, the Court wrote:

Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

The Supreme Court has also held that a state legislature may interfere in a contract between a local government and a third party, relieving the third party of some burden imposed by the contract. In *City of Worcester v. Worcester Consolidated Street Railway Company*, 196 U.S. 539 (1905), the city had granted a franchise to the company, one of the conditions of which was that the company make certain repairs to the city streets in and around its tracks. When the Massachusetts legislature relieved street railways of this burden, the company refused to comply with the franchise, and

the city brought suit to force it to do so. The Massachusetts court held for the company, and the U.S. Supreme Court affirmed. The Contract Clause did not protect the city in these circumstances.

There is a suggestion in the Hunter case that the Contract Clause might apply to protect a local government in its private or proprietary activities. The Court closed the door on that possibility in 1923, however, in the case of *City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923). In that case the city was the successor to a private company that held a perpetual legislative charter to withdraw water from the Delaware River without payment of any taxes or fees. When the state attempted to impose such fees on the city, the U.S. Supreme Court held that the city was not protected by the Contract Clause. The Court stated:

The distinction between the municipality as an agent of the state for governmental purposes and as an organization to care for local needs in a private or proprietary capacity has been applied in various branches of the law of municipal corporations. . . . But such distinction furnishes no ground for the application of constitutional restraints here sought to be invoked by the city of Trenton against the state of New Jersey. They do not apply as against the state in favor of its own municipalities.

Due Process. In the Trenton case just discussed, the city also argued that its asserted right to withdraw water free from fees and taxes was a property right, protected by the Due Process Clause from legislative interference. The Supreme Court rejected the argument, holding that the same considerations that made the Contract Clause protections inapplicable to local governments also made Due Process Clause protections inapplicable.

Equal Protection. In a case from Newark, New Jersey, involving the same legislation as the Trenton case and decided the same day, the Supreme Court held that the Equal Protection Clause does not protect local governments, citing the usual considerations of state–local power. *City of Newark v. State of New Jersey*, 262 U.S. 192 (1923). A final note was struck by the Court in the case of *Williams v. Mayor and City Council of Baltimore*, 298 U.S. 36 (1933), in which the cities of Baltimore and Annapolis challenged a tax exemption granted a street railway by special legislation of the Maryland legislature. The cities argued that the exemption was in some fashion a violation of equal protection, and the Court's response summarizes all of the cases in this section:

A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.”

The bulletin also discusses other judicial doctrines that distinguish between private persons or entities and local governments. Click **here** to read it in its entirety.

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