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N. J. Court of Errors and Appeals

The State of New Jersey, *ex rel.* Robert Bumsted, ads. Patrick Govern.	Error to Supreme Court.

Brief of GILBERT COLLINS and R. B. SEYMOUR for the Defendant in Error.

The laws affecting the office of Director of the Board of Chosen Freeholders of Hudson county, are as follows:

Law of 1846—Revision, p. 128, sec. 7.
Law of 1875—p. 324, sections 1, 2, 3, 4.
Law of 1885—p. 137

The law of 1885 is as follows:

An Act concerning the constitution of the Boards of Chosen Freeholders of this State and to make uniform the selection and duties of directors of such boards.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That hereafter only those persons elected by the various townships,

or other political divisions from which chosen freeholders are authorized to be elected by the laws of this State, shall constitute the Boards of Chosen Freeholders in the respective counties of this State and no member or director of any Board of Chosen Freeholders shall be elected by the vote of the electors of a county-at-large, any law to the contrary hereof notwithstanding.

2. And be it enacted, That the Boards of Chosen Freeholders in the several counties of this State shall elect their own Director from among their own number in accordance with the provisions of the act entitled "An Act to incorporate the Chosen Freeholders in the respective counties of the State," approved March sixteenth, eighteen hundred and forty-six; and such Director shall have the powers and perform the duties prescribed by said Act and no other powers and duties.

3. And be it enacted, That any office of Director of a Board of Chosen Freeholders created by any law of this State other than said Act shall be and the same is hereby abolished, and in any county where there has hitherto been such an office the board of chosen freeholders shall immediately elect a director from their own number.

4. And be it enacted, That all acts and parts of acts, general or special, public or private, inconsistent with the provisions of this act, be and the same hereby are repealed.

5. And be it enacted, That this act shall be deemed a public act and take effect immediately.

It is too plain to admit of question that this last statute, if constitutional, abolished the office of Director at Large.

The Act of 1885 is Constitutional.

The objection made to the act is that it is a "spe-

"cial and local law regulating the internal affairs of" Hudson county, the only county in the State which has a director chosen by the county at large.

A. If the situation of Hudson county is peculiar then even a special and local law is constitutional if a general law will not reach the evil sought to be remedied, namely, to remove the peculiarity; and that such special and local law is general in form is no objection to it.

Van Riper v. Parsons, 11 Vroom, p. 1.
State. Sutterly, Pros., vs. Camden Common Pleas, 12 Vroom 495.

The information does not aver want of notice of the application to the Legislature for the law, and even if it did that could not be enquired into in this proceeding. Though the principal opinion of Van Syckel, J., in the Court of Errors and Appeals, in the case of the Freeholders of Passaic County vs. Stevenson, 17th Vroom, p. 173, holds that under our present constitution the fact of notice is open to inquiry, the opinion of Dixon, J., in the same case presents strong reason for the opposite view, and an analysis of the vote in the case shows that the Court is not committed on the question. There is no evidence before this Court as to whether or not due notice of the application was given. The fact of notice or no notice cannot be determined on the admission of parties.

Freeholders, &c., v. Stevenson, supra.

It is not important, however, to discuss this view of the case, for

B. The act before the Court is not special or local. It is of the most general character, and operative upon the whole subject involved. It tends to greater

uniformity in the government of the several counties of the State and is in direct line with the spirit of the constitutional amendments. The weakness of the position of the plaitinff is that it assumes that the classification made by the act is that of "Directors-at-Large," of which there is but one in this State. Even such a classification might be good for the purpose of abolition, but the act is much broader. It deals with the constitution of the Boards and the functions and manner of selection of their presiding officers. Hereafter *all* Boards of Chosen Freeholders of this State must consist of the members elected from the political divisions of the respective counties authorized to elect representatives, and no other members. No member can be elected by the votes of any county at large. The presiding officer—recognized by general law as Director—must be chosen by the members from their own number, and he will have the powers given by general law to Directors of Chosen Freeholders. The fact that a general law may operate only in one locality does not deprive it of its quality or character of generality. [Van Riper v. Parsons, *ubi supra.*]

To illustrate. In early municipal charters the Mayor was a member of the Council, presided at its meetings, and had a voice in its action. By gradual changes the office of Mayor came to assume its present separate character, with veto power only. Now, suppose the case of a single survival of the old form in some New Jersey City, would an act that in all cities of the State the Mayor should thenceforth be severed from the Council, and have only a veto power, be unconstitutional because it would have actual effect only in that one city. Assuredly not. Must every anomaly in our hundreds of local governments, the outgrowth of hasty experiment, be "fixed and frozen to permanence?" The idea seems to have got abroad that there is something morally wrong in attempting to effect local changes under our present constitution. If these changes tend to ho-

mogeneousness and uniformity, the constitution encourages them. It only requires that they be made by general law, if possible. The following cases support the constitutionality of this act:

State, Sutterly, Pros., v. Camden Common Pleas, *ubi supra.*

State, Tiger, Pros., vs. Morris Common Pleas, 13th Vroom 631.

Hines vs. Freeholders of Essex County, 16th Vroom 505.

And a close precedent to the case in hand is found in the case of

Van Riper v. Parsons, 11th Vroom, page 123,

where this Court, speaking through Mr. Justice Dixon, upheld a general law abolishing all legislative commissions regulating municipal affairs, although but one city in the State was governed by such commissions.

There was a general law enacted under which all the Boards of Chosen Freeholders of all the counties in this State were constituted. Upon this general law special provisions have been ingrafted applicable to particular counties. A law to extend to one or more counties, a special provision now applicable to a single county, or to amend or change a special provision governing a single county in such a way that its special character must necessarily be limited in its application to such single county,

would be unconstitutional, while an act which cuts off a special provision applicable to a single county, and thereby conforms the government of such county more nearly to the general law governing all counties is in conformity with the letter, spirit and intent of the organic law, and is constitutional. The office of "Director-at-Large" is one of the excresences upon the general law applicable to Hudson county only. The act of 1885 brings the County of Hudson in this particular matter under the protection of the general law governing all the counties in the State.

The act in question "does not exclude from its sway or effect any place or subject belonging to the class to which it relates; it is, upon its face, a general and not a local or special law, within the clause of the constitution now under consideration."

Van Riper v. Parsons, 11 Vr. 9.

The law in all its provisions is general; abating Directors-at-Large wherever they exist. Governments under Directors-at-Large are distinguished from governments by Board of Freeholders under the general law, by characteristics which make them clearly a class by themselves, and *upon the whole of this class*, this law operates equally, by force of terms which are restricted to no locality. A law so framed is a general law, without regard to the consideration that there happens to be but one individual of the class.

Van Riper v. Parsons, 11 Vr. 125.

On the argument below, counsel contended that the act of March 25th, 1885, is not a general law, because it does not produce *complete and entire* uniformity in Boards of Chosen Freeholders. Even he does not seriously contend that because its beneficial effect will be felt in only one county, that therefore it is special and local. He seems to think that for a law to be general it must remove *all* differences. This is clearly unsound. In the Hines case above cited, (16 Vr. 505), this Court held that a law providing that wherever a poll tax was authorized by any law it should be for $1, was constitutional. It was not thought necessary to provide a complete system of poll tax. So in the case before us. The Legislature attempts to deal with "the constitution of the Boards of Chosen Freeholders of this State," and provides that such boards shall hereafter consist of persons chosen from the various political divisions authorized to elect, whatever they may be, and that the county at large shall not have a representative. That is surely general, and in a very important particular tends to produce uniformity. That the geographical lines of representation for the subdivisions of the counties and the number of representatives for each, are left in existing diversity, is entirely unimportant in considering whether or not a county is to have a representative at large. The two subjects have no relation.

The act further proceeds to deal with "and to make uniform the selection and duties of directors of such boards," and restores the normal status in that regard prescribed in the general law of 1846.

All aggregate corporations necessarily have presiding officers. The act makes the power and duties of all presiding officers of all the boards uniform.

In two important respects, therefore, this act makes all Boards of Chosen Freeholders in the State uniform and alike. That it fails to produce like uniformity in every other respect, makes it none the less a

general law. There may be many reasons why it would not be desirable or politic to do so. The Assembly District is a very convenient unit of representation. If good for the purposes of general State legislation, it is surely good for the purposes of county government. It cannot be seriously contended that a member or director chosen by the county at large is a necessary complement to the constitution of Boards of Chosen Freeholders by representatives from Assembly Districts.

In counties having only one Assembly District, the district would not be a proper unit of representation. In counties having twenty or thirty wards and townships, a representation consisting of three members (as required by some special acts) from each of said divisions, would be impracticable. The act in question deals principally with the organization of the boards. It brings all the boards into uniformity in this respect, and does away with all existing differences.

Mr. McDermott says that should the act of March 25, 1885, be repealed, the pre-existing condition of things would revive. The same would be true of any law however general; but the argument shows confusion of thought. Its only force is to support the position that such a *repeal* would itself be unconstitutional, which is very likely true.

The Boards of Chosen Freeholders of the several counties are composed of the members elected in the respective counties. Every Board has a presiding officer, whether he be denominated Chairman, President, Director-at-Large, or Director. Every presiding officer has certain duties to perform, and as the Legislature, prior to the adoption of the amendment to the constitution, had ample authority to regulate the duties to be performed by the presiding officer of the Board of Freeholders of any county, it is possible that the powers and duties of the

presiding officers of the several Boards of Freeholders varied in each county in the State. In how many counties of the State are members elected to the Boards of Freeholders by the electors of the whole county?

The act of 1885 not only applies to Directors-at-Large, but with equal effect cuts off members-at-large. It regulates the method of election and qualification, and prescribes the duties of the presiding officers of every Board of Chosen Freeholders in this State. It brings *all* the presiding officers of *all* the Boards of Freeholders of *all* the counties in this State under one uniform rule.

The law took effect immediately and at once removed the plaintiff from the office which he previously held.

Bumsted v. Govern, 18 Vr. 368.

No officer in an office created by the Legislature has a vested interest which the Legislature cannot abrogate or destroy.

State, Deguenther vs. Douglas, 26 Wis. 428.