Implied Powers of Corporations in Kentucky

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Available at: https://uknowledge.uky.edu/klj/vol14/iss1/5

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The rule that the powers of a corporation must be measured by the provisions of its charter or of the statute under which it was organized and that it may not exercise any power not expressly granted in the special or general statute or necessarily implied and that these statutes must be narrowly construed is relied on by our courts in every decision involving the subject, but opinions may be divided on the question what powers are implied in those expressly granted and in most cases the individual disposition of the judge or court writing the opinion is found to tinge the decision. Some decisions are surprisingly strict, while others are surprisingly liberal in finding acts done by the corporation justified by a power implied. The practical result of the decision, and whether in the given case that result will appear desirable to the writer of the opinion often seems to have had its influence.

The cases concerning the powers of banks are more numerous than those concerning other corporations and some of them have surprised the bar of the state when they were rendered. The charter of the bank which empowered it to take security for the payment of money loaned and to dispose thereof as may be agreed on in all respects "as natural persons may do under the common law" was held in *Hahn v. Pindele*¹ to authorize the bank to sell real property mortgaged to it in execution of the power to do so given in the mortgage contrary to the act of 1820 which required a judicial sale. In *Blitz & Co. v. Bank of Kentucky*² banks as creditors had agreed that the insolvent debtor should continue the manufacture of glass as agent for the creditors and he had made a contract for the manufacture and sale of a large number of boxes of glass, of which he could only deliver a part. The buyer brought suit against the banks for breach of contract, but a demurrer to the petition was sustained on the ground that the banks had no power to manufacture and sell glass. This was decided though to keep the business a running concern was the only chance to get a dividend. In *Thweatt v. Bank of Hopkinsville*³ it was

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¹ 3 Bush 189 (1867).
² 21 Ky. L. Rep. 1554 (1900).
³ 81 Ky. 1 (1883).
held that the bank had no implied power to buy and sell real estate except a building in which to conduct the banking business and that therefore a deed from another bank to it conveying property not used for such building was void. Considering that the Bank of Hopkinsville was a branch of the Bank of Kentucky, which had obtained the property in payment of a debt, the decision seems strict. In *Fawcetts Assignee v. Mitchell Finch & Co.* the assignee for the benefit of creditors of an insolvent resident of Ohio brought suit against Mitchell Finch & Co., a banking corporation of Kentucky, to have a transfer of it by the insolvent declared a preference and an assignment for the benefit of creditors. In the suit the power of the Kentucky banking corporation to loan money to non-residents of the state was denied; but the court held that to make such loans was "within the scope of the authority granted by its charter." In *Commercial Bank & Trust Company v. Citizens Trust & Guaranty Co.* the statute on banks enumerates in detail the powers of banks and provides that they shall also have such powers "as may be necessary to carry on the business of banking." It was held that the bank did not in absence of an express power have power to pledge bills receivable to secure the payment of future deposits to a prospective depositor and that a pledge of such bills receivable was void and may not be regarded in the winding up of the bank's estate.

In the case of railroad companies the court was more liberal, if not generous, in the construction of its powers. In *Louisville Property Co. v. Commonwealth* the state attempted to escheat property which had been held for more than five years by the L. & N. R. R. under the name of Louisville Property Co. The claim was that the property had not been used by the company in its business but for a railroad hotel and park. The court held that to establish and operate hotels near the intersection of the main line of the road with a branch line to accommodate and furnish meals to employees and passengers and a small park to give them an agreeable resting and breathing place for their pleasure and recreation belonged to the

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*133 Ky. 361.
153 Ky. 566 (1913).
146 Ky. 827.*
business of a railroad and the power to do so was incident to the powers expressly granted. It is significant that the court justifies this liberal view by the fact that "it is the custom of railroads generally and particularly the great continental lines to convert the small unoccupied tracts of land lying adjacent to and near their depots into miniature parks and to beautify them and frequently, as in the present case, building pools and putting fountains therein. The very fact that this custom has so universally obtained is suggestive that it has not been regarded as violative of the rights of the company so to do."

This is a recognition of the influence which the usage of corporations and of the public patronizing them must have upon the development of the law. The demands of the public on corporations conducting public or semi-public business for accommodation and comfort change from year to year and customers require of them today services which they would not have dreamed of ten or twenty years ago. What has become usual, customary must—unless morally reprehensible—be held as proper by the courts, and they must consider acts of the corporation in yielding to such custom as within the implied powers of the corporation. How will this principle be applied in the future? Banks e. g. today conduct agencies in parts of large cities distant from the main office; they build safety vaults and rent out safety boxes to their customers; sell to them ocean passage; enable them to invest their deposits in the bonds of the bank, secured by real estate notes, executed to them by parties borrowing money from the bank, because the customer demands such service and would seek another bank if such service were refused. In this way a custom is established. Must the courts take notice of such custom or may they fall behind the times? The same is true with other corporations. If this opinion were adhered to it might lead to the rule that powers that have been exercised habitually by corporations of the same kind may be considered implied.

In Rogers v. Ramey, Insurance Commissioner,¹ the Insurance Commissioner was ordered by mandamus to issue a license as insurance agent to an agent of a guaranty and brokerage company whose charter empowered it "to act as agent or attorney

¹ 198 Ky. 138 (1923).
for the transaction of any business . . . and also to act as agent and trustee for persons or corporations in any and all matters which can be solicited, negotiated, operated and carried on by any agent or trustee."

Where the statute authorizing the organization of indemnity fire insurance companies provides that no corporation should insure any buildings out of the limits of the territory comprised in its certificate of incorporation, a contract insuring a building in another county than those mentioned in the company’s certificate is void. In *Hind, Rec. v. Cook & Co.*, 8 though the corporation might have enumerated that other county in its original articles or might have amended them so as to embrace that county.

In some of the decisions it seems to the reader surprising that the plea of *ultra vires* should have been interposed and quite natural that the court should have treated it as of no merit. So in *Muir v. Louisville & Portland Canal Co.*, 9 it was held that the canal company, which had the express power to open a canal with locks, dams and basins and to demand tolls for the passage of vessels and boats through the canal, has the implied power to contract for the passage of boats in a reasonable time.

In *National Deposit Bank v. Louisville City National Bank*, 10 it was held that a distillery warehouse company which had the right to charge the depositors storage and taxes had also the implied power to waive the payment of storage and taxes at a sale of whiskey in its warehouse. In *L. & N. R. R. Co. v. Literary Society of St. Rose* it was held that the society organized for educational purposes and owning a large tract of land at a considerable distance from the railroad had the implied power to subscribe money for the purpose of extending the railroad to a point near its institution and thus getting facilities for getting supplies and shipping produce. But the society was held to be released from its obligation by misrepresentation so that it may be doubtful whether the decision has much force as a precedent.

It was, of course, held in *Farmers & Traders Bank v. Thixton Millet & Co.*, 11 that a private corporation organized for

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*202 Ky. 526.*

*8 Dana 161 (1839).*

*23 Ky. L. Rep. 87.*

*199 Ky. 69 (1923).*
the manufacture of whiskey "and to do any other thing, which is usually done by persons engaged in the like business" has no power to endorse notes for the accommodation of others and that such endorsement is not valid.

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