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Constitutional Law - Constitutionality of Second Municipal Bankruptcy Act - Exercise of Sovereignty

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CONSTITUTIONAL LAW — CONSTITUTIONALITY OF SECOND MUNICIPAL BANKRUPTCY ACT — EXERCISE OF SOVEREIGNTY

The Summers Act, Chap. IX of the Bankruptcy Act, 11 U. S. C. A., Sec. 301-303, commonly known as the First Municipal Bankruptcy Law, was held unconstitutional, in that inasmuch as it applied to political subdivisions of the state, it violated state sovereignty, and that the state might not voluntarily surrender its sovereignty to the Federal Government, citing United States v. Constantine, 296 U. S. 287 (1935), and also held that the state might not pass an act impairing the obligation of a contract, U. S. Const., Art. 1, Sec. X, "nor do we think she can accomplish the same end by granting any permission necessary to enable Congress to do so." Ashton v. Cameron County etc., 298 U. S. 513 (1936). In that case the court drew a parallel to the taxing power.

The need for relief of debt-ridden municipalities, and creditors of such municipalities, however, as appears from the briefs of counsel set out in United States v. Bekins, 304 U. S. 27 (1938), was so great that Congress determined to attempt once again to secure the desired result without encountering the same constitutional objection. Consequently, Chap. X of the Bankruptcy Act, 11 U. S. C. A., Sec. 401-404, more popularly known as the Second Municipal Bankruptcy Act, was enacted but after much deliberation.

The two Acts are quite similar, at least as regards the powers of the court, filing of petitions, plans for readjustment, consent of creditors, and other matters of procedure, as well as the effects of adjudication. The first Act, Sec. 303, cl. K, provides for consent of the state, or of a state agency. This condition is not present in the second Act, but it, Sec. 403, cl. E, subd. 6, provides that a petitioning tax district must be authorized by law to proceed. Both Acts, Sec. 303, cl. K, and Sec. 403, cl. I, provide that nothing in the Act shall be construed to limit the power of the state to control its political subdivisions, or to limit the state in its governmental and political powers. Both Acts, Sec. 303, cl. C, and Sec. 403 cl. C, provide that the operation of the law shall not interfere with the political or governmental power of the petitioner; property or revenue necessary to government purposes; and income producing property unless the plan so provides. Both Acts are based upon the bankruptcy powers of Congress, Sec. 301 and Sec. 401. The second Act seems to be intended, as far as constitutional, to extend and include the first. Sec. 403, cl. H, provides that prior laws as to readjustments of the indebtedness of political subdivisions are not modified or repealed, but expressly provides that commencement of proceedings under Sec. 303, shall not bar filing of a new petition under Sec. 401. Sec. 403, cl. J, provides that partial completion of any plan of composition, before or after filing the petition, shall not be construed as "limiting or prohibiting the effect of this title," and consenting creditors under such previous plan are, by the same clause, included as consenting creditors under the plan in connection with

such petition. The first Act was to be in force until January 1st, 1940, and the second Act is to expire June 30th, 1940, Sec. 301 and Sec. 404.

Said Chap. X was declared to be a constitutional exercise of the bankruptcy power in United States v. Bekins, et al, 304 U. S. 27 (1938). The court there held that the California Legislature in the Extra Session of 1934 gave consent to the application to "taxing districts" of the Bankruptcy Act and amendments, including Chap. X, added to the Bankruptcy Act in 1937. The court said further that the omission from Chap. X of any provision requiring consent of the state was immaterial where the state actually had consented, and pointed out that where Chap. X says that the petitioner must be "authorized by law," the language refers to state law.

The opinion in the case of United States v. Bekins, supra, stated, among other things: "The ability to contract and to give consents upon the exertion of governmental power is of the essence of sovereignty. The reservation to the states by the 10th Amendment did not destroy, but protected, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution. Cooperation between Nation and State through the exercise of the powers of each, to the advantage of the people who are citizens of both, is consistent with an indestructible Union of Indestructible States."

The opinion in the Bekins case also mentioned Steward Mach. Co. v. Davis, 301 U. S. 548 (1937). That case stated, in part: ". . . even Sovereigns may contract without derogating from their sovereignty. . . The states are at liberty, upon obtaining the consent of Congress, to make agreements with one another . . . We find no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment." Generally, we think of sovereignty as the power or authority of the state, if not to do every act, at least to do all things necessary to the good government and well being of its citizens.

Query, is it logical to hold, as did the Ashton case, that the Act of Congress, the First Municipal Bankruptcy Law was a usurpation of state sovereignty, and the consent of the state, an unconstitutional surrender of sovereignty; or, is it better logic to hold with the Bekins case, that, in order to accomplish a much desired and decidedly beneficial end, that the Act of Congress, the Second Municipal Bankruptcy Act, and the consent of the state, were not inconsistent with the sovereignty of the state, but were constitutional exercises of sovereign powers, "cooperation between Nation and State," "to the advantage of the people who are citizens of both?"

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