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Some Legal Questions Arising Out of the Use of Parking Meters

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NOTES

SOME LEGAL QUESTIONS ARISING OUT OF THE USE OF PARKING METERS

Few and fortunate are the sizeable cities in this country that have yet to meet the problem of providing sufficient parking places for the increasing number of automobiles that utilize their streets and highways.[1] For most cities the problem is an acute one.[2] Some indication of its perplexity can be ascertained from a glance at the number of cities that have resorted to traffic commissions, studies and boards to seek a solution.[3] If there is a solution to this problem, the traffic survey reports indicate that it lies in more extensive traffic control measures, rigidly enforced.[4]

This note is intended to discuss one means of traffic control — the parking meter. The first meter was installed in Oklahoma City, Oklahoma, in 1935;[5] and by 1947, 888 cities[6] at one time or another had done likewise. No attempt will be made herein to evaluate the efficacy, or prophesy the future, of the parking meter; such questions are for the traffic engineers and commissions.[7] Instead, this note will consider only the principal problems and questions that arise from the installation of a parking meter by the state, city or municipality.

Judicial attack upon the legality of the parking meter emanates generally from two sources, motorists and the owners of land abutting

1. See, *e.g.*, PARKING FOR SMALLER CITIES c. II, IX (Published by Associated Retailers of Indiana, 1949); MCCLINTOCK, STREET TRAFFIC CONTROL 146- 54 (1925); MCCRACKEN, TRAFFIC REGULATION IN SMALL CITIES (1932).

2. BAUER AND COSTELLO, TRANSIT MODERNIZATION AND STREET TRAFFIC CONTROL 8-11 (1950).

3. Nashville, Tennessee, as early as 1934 undertook such a survey the result of which was a series of recommendations, the foremost being to widen the streets. This met with strong objection from local merchants and taxpayers. The commission concluded that the only solution was traffic control. See A TRAFFIC SAFETY SURVEY OF THE CITY OF NASHVILLE, TENNESSEE 66, 83 (1934). See also EDWARDS AND MCCLINTOCK, A TRAFFIC CONTROL PLAN FOR KANSAS CITY (1930); THE PARKING PROBLEM (Published by the Eno Foundation for Highway Traffic Control, Inc., 1942) (note especially the impressive bibliography, *id.* at 71-75, as indicative of the municipal concern caused by the parking problem.)

4. See, *e.g.*, BAUER AND COSTELLO, *op. cit. supra* note 2 at 9-10 (1950); THE PARKING PROBLEM, *op. cit. supra* note 3, at 10, 11, c. VI (1942); A TRAFFIC SAFETY SURVEY OF THE CITY OF NASHVILLE, TENNESSEE 83 (1934).

5. KANE, FAMOUS FIRST FACTS 330 (1950).

6. PARKING FOR SMALLER CITIES, *op. cit. supra* note 1, at 69, Table 1, Appendix C (1949). Compare Table 3, Appendix C, with 35 CALIF. L. REV. 235, 236 n.3 (1947), and 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 78-10 (1948).

7. For those interested in the more erudite views expressed, see BAUER AND COSTELLO, *op. cit. supra* note 2, at 9 (1950); PARKING FOR SMALLER CITIES, *op. cit. supra* note 1, at 69 (1949); THE PARKING PROBLEM, *op. cit. supra* note 3, at 45 (1942); Grimes, *The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds*, 35 CALIF. L. REV. 235 (1947).

the metered streets.[8] The motorist contends that the meters violate his inherent rights to the free and unobstructed use of the highway.[9] The abutting landowners, on the other hand, assert that their special property rights,[10] such as those of ingress and egress,[11] light and air,[12] loading and unloading,[13] and so forth, are infringed.[14] Either or both groups can, and often do, assert that the parking meter is in reality a municipal revenue-raising measure imposed under the guise of the police power[15] and that the mere delegation of authority to the municipality from the state to control and regulate highways and traffic does not include the installation of parking meters.[16] Further, they question the delegation of this power by the municipality to its traffic boards or commissions.[17]

From this arise three problems that will be dealt with herein. They

8. See, *e.g.*, Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1943); Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968 (1943); Wilhoit v. City of Springfield, 273 Mo. App. 775, 171 S.W.2d 95 (1943); M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940); People v. Baxter, 32 N.Y.S.2d 320 (Utica City Ct. 1941); City of Columbus v. Ward, 65 Ohio App. 522, 31 N.E.2d 142 (1940); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945); Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688 (1947); County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631 (1939). Also 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE 144, 145 (1948); Notes, 22 IOWA L. REV. 713, 714 (1937), 29 VA. L. REV. 617 (1943). *Cf.*, Grimes, *The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds*, 35 CALIF. L. REV. 235 (1947).

9. See, *e.g.*, Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); Asbell v. Lahan, 158 Fla. 72, 27 So.2d 667 (1946); Stephens v. City of Russell, 306 Ky. 727, 209 S.W.2d 81 (1948); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952); Laubach & Sons v. City of Easton, 347 Pa. 542, 32 A.2d 881 (1943); Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688 (1947).

10. 4 DILLON, MUNICIPAL CORPORATIONS §§ 1123, 1126 (5th ed. 1911); ELLIOT, THE LAW OF ROADS AND STREETS 961 (2d ed. 1900).

11. 2 AMERICAN LAW OF PROPERTY § 9.54 (Casner ed., 1952); 3 TIFFANY, REAL PROPERTY § 927 (3d ed. 1939).

12. 2 AMERICAN LAW OF PROPERTY § 9.54 p. 494 (Casner ed., 1952); 3 DILLON, MUNICIPAL CORPORATIONS § 1127 (5th ed. 1911); 3 TIFFANY, REAL PROPERTY § 927 (3d ed. 1939).

13. Discussed generally in 2 AMERICAN LAW OF PROPERTY § 9.54 (Casner ed., 1952); 3 DILLON, MUNICIPAL CORPORATIONS §§ 1123, 1125, 1127 (5th ed. 1911); ELLIOT, THE LAW OF ROADS AND STREETS 961 (2d ed. 1900); Notes, 22 IOWA L. REV. 713, 715 (1937), 4 OHIO ST. L.J. 198, 203 (1938), 29 VA. L. REV. 617 (1943).

14. For the manner in which the contentions are asserted, see, *e.g.*, Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1943); Wilhoit v. City of Springfield, 273 Mo. App. 775, 171 S.W.2d 95 (1943); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945).

15. See, *e.g.*, City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673 (1948); City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952); Bowers v. City of Muskegon, 305 Mich. 626, 9 N.W.2d 889 (1943); Hendricks v. City of Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940); Wilhoit v. City of Springfield, 273 Mo. App. 775, 171 S.W.2d 95 (1943); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945).

16. See Asbell v. Lahan, 158 Fla. 72, 27 So.2d 667 (1946); Ashley v. City of Greensboro, 206 Ga. 800, 58 S.E.2d 815 (1950); City of Bloomington v. Wirrick, 381 Ill. 347, 45 N.E.2d 852 (1942); Miller v. City of Georgetwon, 301 Ky. 241, 191 S.W.2d 403, 406 (1945); Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1940); *In re* Opinion to the House of Representatives, 62 R.I. 347, 5 A.2d 455 (1939).

17. Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171, *rehearing denied*, 296 N.W. 352 (1940).

are: the effect of the parking meters upon the inherent rights of the public to the use of the road; upon the rights of owners of abutting property; and the legality of the fee or charge imposed along with meters. Exactitude requires the mention of several other related questions which will be noticed, but not elaborated.

I. Rights of the Public to the Free Use of the Streets and Highways

Regardless of how the municipality acquires property for a street or highway, whether by dedication of the land by the owner to use as a highway, by prescription or by statutory proceedings under eminent domain,[18] it is generally said that the fee is in the municipality and the public acquires a right of user only.[19] Whether that right of user is claimed as a legal right to pass and repass or an easement of passage, the legal result is the same.[20] It is a right which will be protected and upheld by the courts when unreasonably infringed upon by third persons or the municipality.[21]

It will be observed that the expression "when unreasonably infringed upon" is used to indicate the extent of judicial protection regarding the rights of the public to the free use of the streets. The implication is that reasonable restrictions or regulations upon those rights will not warrant judicial intervention. There is no doubt that the state or municipality acting through its police power authority to regulate and control highways has the right to regulate and control them whenever public welfare or convenience renders such action necessary.[22]

18. 2 American Law of Property (Casner ed., 1952); 3 Tiffany, Real Property § 596 (3d ed. 1939).

19. 2 American Law of Property §§ 482-497 (Casner ed., 1952); 3 Dillon, Municipal Corporations § 1797 (1911); 3 Tiffany, Real Property § 596 (3d ed. 1939). For an excellent discussion of the abutting property owners rights, see *In re* Opinion of the Justices, 297 Mass. 559, 8 N.E.2d 179 (1937). For the interesting but confusing situation of the law in Ohio, see Hamilton, Glendale & Cincinnati Traction Co. v. Parish, 67 Ohio St. 181, 65 N.E. 1011, 1014 (1902) (saying that abutting owner has only right of ingress and egress); Smith v. Central Power Co., 103 Ohio St. 681, 137 N.E. 159, 162 (1921) (saying abutting owner now has right to light and air); Eisenmann v. Tester, 191 N.E. 839, 934 (Ohio Ct. App. 1934) (holding that abutting landowner has right to use the street for loading and unloading free from legislative regulation without compensation).

20. 2 American Law of Property § 492 (Casner ed., 1952) (easement of passage); 4 Dillon, Municipal Corporations § 1797 (5th ed. 1911).

21. *E.g.*, Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940); M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940); Bergen v. Littman, 193 Misc. 40, 85 N.Y.S.2d 48 (1948); Wenzel v. Duncan, 32 N.Y.S.2d 223 (Sup. Ct. 1941); Eisenmann v. Tester, 47 Ohio App. 275, 191 N.E. 839 (1934); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937). See also, 3 Dillon, Municipal Corporations § 1123 (5th ed. 1911); 10 McQuillan, Municipal Corporations § 30.68 (3d ed. 1949).

22. See, *e.g.*, Andrews v. City of Marion, 221 Ind. 452, 47 N.E.2d 968 (1943); *In re* Opinion of the Justices, 297 Mass. 559, 8 N.E.2d 179 (1937); City of Clayton v. Nemours, 353 Mo. 61, 182 S.W.2d 57 (1944); M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940); People v. Baxter, 32 N.Y.S.2d 325 (Utica City Ct. 1941); 2 Cooley's Constitutional Limitations c. XVI, p. 1282-87 (8th ed., Carrington, 1927); 3 Dillon, Municipal Corporations § 1138 (5th ed. 1911).

As stated by one authority: "A street is a public way in a much broader sense than that of a mere way for citizens to pass and repass, for it is a way under the charge and control of the municipal authorities. . . ."[23]

Granted that the municipality has the right to regulate highways, does it include the authority to regulate and control parking or stopping of vehicles thereon? The answer, at least since 1812 when an English court said that the "king's highway" was "not to be used as a stable yard,"[24] has been that it does.[25] This is probably because parking, whether it was of horse and carriage or automobile, has always been considered a right inferior to that of travel or passage.[26] Practically all the decisions refuse even to classify parking as a right, but refer to it as a mere privilege.[27] Thus it follows that parking is more easily subjected to the municipal control and regulation than is travel itself.[28] Instances are many where the privilege has been limited, restricted or even prohibited; and the municipal authority appears, in the absence of gross indiscretion, to be unlimited.[29] An indication of its scope can possibly be ascertained from one state supreme court decision which asserted: "A parking ordinance is nothing more than a police regulation which settles the matter between the owner of the automobile and the city."[30] The United States Supreme Court dismissed without opinion an appeal from this decision.[31]

If the authority of the municipality to regulate and control its highways and parking thereon is recognized, there appears to be little merit in the contention that the inherent rights of the public to the free and unobstructed use of the highways are unlawfully violated or in-

23. ELLIOT, THE LAW OF ROADS AND STREETS 21 (2d ed. 1900).
24. Rex. v. Cross, 3 Camp. Rep. (1812).
25. See, *e.g.*, Commonwealth v. Fenton, 139 Mass. 195, 29 N.E. 653 (1885); City of Newark v. Local Government Board of New Jersey, 133 N.J.L. 513, 45 A.2d 139 (1945); Allen & Reed v. Presbrey, 50 R.I. 53, 14 Atl. 888 (1929); Village of Wonewoc v. Taubert, 203 Wis. 73, 233 N.W. 755 (1930); 8 MCQUILLAN, MUNICIPAL CORPORATIONS § 24.641 (3d ed. 1949).
26. *See, e.g.*, City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673, 685 (1948); City of Newark v. Local Government Board of New Jersey, 133 N.J.L. 513, 45 A.2d 139, 141 (1945). See also Note, 22 IOWA L. REV. 713, 714 (1937).
27. See note 26 *supra*. See also Village of Wonewoc v. Taubert, 203 Wis. 73, 233 N.W. 755 (1930).
28. "The right of passage is subject only to reasonable regulation by the municipality for the public good. The right to park on the other hand is merely a privilege . . . and may be entirely prohibited." Note, 22 IOWA L. REV. 713, 715 (1937).
29. See, *e.g.*, Chicago v. Foley, 355 Ill. 584, 167 N.E. 779 (1929); State v. Burkett, 119 Md. 609, 87 Atl. 514 (1913); Allen & Reed v. Presbrey, 50 R.I. 53, 144 Atl. 888 (1929); Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688 (1947). For a general discussion of the power of the municipality over its streets and highways, see Notes, 27 ILL. L. REV. 212 (1937), 17 ORE. L. REV. 126 (1937).
30. Allen & Reed v. Presbrey, 50 R.I. 53, 144 Atl. 888, 889 (1929), *appeal dismissed*, 280 U. S. 518 (1929).
31. See note 30 *supra*.

fringed by the installation of parking meters. The municipality has the right to impose parking regulations and the correlative right to enforce them in any reasonable manner.[32] Whether it chooses to enforce them by the use of traffic policemen or by "mechanical policemen" in the form of parking meters should make little difference.[33] A few early decisions[34] reveal a hesitancy to admit this in so many words, but the intervening years, which have seen parking problems and parking meters grow apace, have served to transform that early hesitancy into forthright acknowledgment.[35]

Despite this judicial approval, a word of caution is called for at this point. Though the privilege of parking is controllable and subject to regulation under the municipal police power, this exercise of the police power must be both reasonable and necessary.[36] Therefore, especially where parking meters are involved, in the regulation imposed, the municipality should first establish by survey or other means that the streets or districts are in need of such regulatory measures. If it fails to do this, there is the very real possibility that a challenging litigant may be able to show that the streets or districts were not in need of such severe regulation and the regulation could be upset.[37] If mere

32. See, *e.g.*, City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673 (1948); Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952); Opinion of the Justices, 94 N.H. 501, 51 A.2d 836 (1947); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1953); City of Buffalo v. Stevenson, 207 N.Y. 258, 100 N.E. 798 (1913).

33. City of Decatur v. Robinson, 251 Ala. 99, 36 So. 2d 673, 685 (1948); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952). See Note, 17 ORE. L. REV. 126, 131 (1937).

34. City of Birmingham v. Hood-McPherson Realty Co., 233 Ala. 352, 172 So. 114 (1937); Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947) (because of failure to adopt the ordinance by initiative and referendum); Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940) (revenue measure); Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1940) (ordinance void without express and special legislation); City of Shreveport v. Brister, 194 La. 615, 194 So. 566 (1939); M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940) (no express legislative authority); *In re* Opinion to the House of Representatives, 62 R. I. 347, 5 A.2d 455 (1939) (power to regulate and control traffic did not include power to impose a fee or charge for parking).

35. *Compare*, for example, the attitudes of the North Carolina Supreme Court in M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940), *with* State v. Scoggin, 236 N.E. 1, 72 S.E.2d 97 (1952). Implicit in the Louisiana and Rhode Island decisions cited note 34 *supra*, is the inference that, if expressly granted authority to install the metters, their use would be valid. That has been done in Rhode Island, where the meters are now widely used. It may be interesting to compare the language used by the courts in some of the early decisions cited note 85 *infra* with that used in some of the recent decisions, such as City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

36. See note 22 *supra*. See also Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); M. H. Rhodes v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937); City of Galveston v. Galveston County, 159 S.W.2d 976 (Tex. Civ. App. 1942). The question depends on the use made of the street. If very little traffic, the public interest is not served by the installation of parking meters and under such circumstances would be unconstitutional. *See* County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631, 634 (1939) (dissenting opinion).

37. See cases cited note 36 *supra*.

restrictions and regulations not involving parking meters can be successfully contested where they are shown to be unnecessary,[38] there seems to be no doubt that the courts will even more closely scrutinize the traffic situation where the meters are involved and hold the ordinance authorizing them unconstitutional as representing an unlawful exercise of the police power unless the necessity for such strict traffic regulation is established.[39]

A more serious problem is confronted, however, in the case of parking meter ordinances that do not expressly limit the parking motorist to only one "coin-deposit period."[40] This problem has been virtually ignored by almost every writer who has discussed the parking meter question. This possibly reflects a failure to keep in mind the underlying factor authorizing meter installation, *i.e.*, that the municipality by traffic survey or otherwise has found it necessary to call into play its police powers to restrict and limit parking in certain areas to a certain length of time. That this power must be used reasonably and without discrimination is too well settled to doubt.[41] Where it is used to permit the municipality to install parking meters, the argument is that in the interests of the public safety and traffic on the highways each motorist is limited to parking thereon to the length of the particular time limit imposed.[42] Public and traffic necessity which authorizes the meters in the first instance demands that limit. However, where there is no restriction on coin renewals it becomes possible for the first parker to violate the police power limit and monopolize the particular space for as long as he desires by merely depositing additional coins.[43] Moreover, he is being allowed to buy up and use parking rights belonging to other motorists.[44]

The parking meter ordinance, if it is found to be discriminatory or to allow discrimination in favor of certain motorists, could no doubt be

38. *E.g.*, Bergen v. Littman, 193 Misc. 40, 85 N.Y.S.2d 48 (City Ct. 1948); Decker v. Goddard, 233 App. Div. 139, 251 N.Y. Supp. 440 (4th Dep't 1931), and cases cited therein.

39. See, *e.g.*, Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937); *see* County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631, 634 (1939) (dissenting opinion).

40. *See, e.g.*, Hickey v. Riley, 177 Ore. 321, 162 P.2d 371, 378 (1945); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97, 103, 104 (1952); Kimmel v. City of Spokane, 7 Wash.2d 372, 109 P.2d 1069, 1071 (1941); County Court of Webster v. Roman, 121 W. Va. 381, 3 S.E.2d 631, 633 (1939) (dissenting opinion).

41. State v. Scoggin, *supra* note 39 at 102, and cases cited therein. See also 7 MCQUILLAN, MUNICIPAL CORPORATIONS 688 (3d ed. 1949).

42. See State v. Scoggin, *supra* note 39 at 104. This opinion contains an excellent discussion of the problem herein concerned.

43. *E.g.*, State v. Scoggin, *supra* note 39 at 104. See also County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631, 633 (1939), which contains a thought stimulating discussion in a dissenting opinion. Kimmel v. City of Spokane, 7 Wash.2d 372, 109 P.2d 1069, 1071 (1941).

44. *See, e.g.*, State v. Scoggin, 236 N.C. E, 72 S.E.2d 97, 104 (1952). *But see* Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945).

declared unconstitutional.[45] Yet, there are ordinances which by allowing renewal-coin motorists to buy up and monopolize the equal rights of others, permit just that result.[46]

II. Owners of Abutting Land

There is little dissent from the view that the abutting landowner has not only the right to the free and unobstructed use of the street and highway in common with other members of the public, but has certain additional rights.[47] These stem from the relationship of his land to the street itself and are principally rights of ingress and egress,[48] to load and unload,[49] to the light and air over the highway[50] and to a clear and unobstructed view of his premises from the street.[51] These rights exist whether the fee to the street or highway is in the municipality or in the abutting landowner to the center of the street.[52] Moreover, regardless of how they are described it is definitely established that they are as "sacred from legislative invasion" as the right to the land itself.[53]

As might be anticipated, however, these rights can be regulated and restricted within reasonable limits in the better interests of the rights of the public to the use of the streets.[54] Otherwise, as was stated by one court,[55] if they were to be considered absolute and free from regulation, there would be little, if any, parking on the streets except by the abutting property owners. Hence, under the police power which authorizes the regulation and control of traffic, the municipality can pass ordinances or parking restrictions which will, in effect, regulate and restrict the rights of the abutting property owners.[56] As was said by

45. See note 41 *supra*. The constitutional provisions applicable in Tennessee would be U. S. Const. Amend. XIV, § 1 and Tenn. Const. Art. I, § 8.

46. "This will not suffice for the lawfullness of parking cannot be made to depend upon the amount of money deposited in the meter. The maximum length of time the motorist may leave his vehicle standing in a parking space on a public street must be fixed by law." State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97, 104 (1952).

47. See 2 American Law of Property § 493 (Casner ed., 1952); 3 Dillon, Municipal Corporations § 423 (5th ed. 1911).

48. 2 American Law of Property § 494 (Casner ed., 1952); 10 McQuillan, Municipal Corporations § 30.63 (3d ed. 1949); 3 Tiffany, Real Property 605 (3d ed. 1939).

49. Eisenmann v. Tester, 191 N.E. 839 (Ohio App. 1934).

50. 2 American Law of Property § 494 (Casner ed., 1952); 10 McQuillan, Municipal Corporations § 30.65 (3d ed. 1949); 3 Tiffany, Real Property 607 (3d ed. 1939).

51. See 2 American Law of Property § 495 (Casner ed., 1952).

52. Tennessee has long recognized these rights. Frater v. Hamilton County, 90 Tenn. 661, 19 S.W. 233 (1891); Sharber v. City of Nashville, 27 Tenn. App. 625, 183 S.W.2d 777 (M.S. 1944).

53. See 3 Dillon, Municipal Corporations § 1123 (5th ed. 1911). Constitutional protection is afforded for these interests by Tennessee law. See note 45 *supra*.

54. See 3 Dillon, Municipal Corporations §§ 1125, 1138 (5th ed. 1911). See also Note, 29 Va. L. Rev. 617 (1943).

55. Gilsey Buildings, Inc. v. Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S.2d 694 (Sup. Ct. 1939).

56. *In re* Opinion of the Justices, 297 Mass. 559, 8 N.E.2d 179 (1937); *see*

the Tennessee Supreme Court: "The exercise of the police power, otherwise valid and constitutional cannot be defeated because property rights are taken or destroyed."[57] That view is everywhere accorded judicial recognition and sanction.[58]

The municipality's power to control and regulate, if it involves the installation and utilization of parking meters, does not then appear to be diminished in any substantial respect by the conflicting rights of the abutting landowners. It is true that if the abutting owners can show that the meters have been installed in areas not requiring police regulation, the ordinance promulgating installation can be overthrown,[59] but this attack is not limited to the abutting owners.[60]

Although paid scant attention by the commentators, it appears from the decisions that one of the more substantial contentions alleging violation of property rights can originate from the abutting owner or lessee who is also a merchant.[61] Perhaps the clearest and most convincing support for this statement is in the words of Fox, J., dissenting in *County Court of Webster County v. Roman*:

> "An abutting property owner has, of course, no special rights in the street which passes his door; the rights of those who travel thereon are paramount; but he does have the right, in common with all others, to the free use thereof, a right which is undoubtedly infringed when anyone is permitted for a money consideration, to monopolize the right to park a car for any particular length of time. For example a merchant owning and occupying a building is entitled to reasonable access thereto, which access may, under a parking meter system, under some conditions, be practically destroyed; whereas, under the general power of regulation, provision could always be made for reasonable ingress and egress."[62]

When the fact that there are parking meter ordinances which do not limit the number of coins that can be deposited as "renewals" is taken

City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673, 686 (1948); Garner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135, 137-138 (1943); Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968, 971 (1943); Allsmiller v. Johnson, 309 Ky. 695, 218 S.W.2d 28, 29 (1949); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371, 372 (1945); Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688, 689 (1947); see 48 HARV. L. REV. 339 (1934).

57. Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688, 689 (1947), quoting Spencer-Sturla Co. v. City of Memphis, 155 Tenn. 70, 79, 290 S.W. 608, 611 (1927).

58. See, *e.g.*, cases cited note 56 *supra*. See also 7 MCQUILLAN, MUNICIPAL CORPORATIONS §§ 24.641, 30.58 (3d ed. 1939); 3 TIFFANY, REAL PROPERTY § 927 (3d ed. 1939).

59. This proposition is implicit in the holdings, for example, in the cases cited note 39 *supra*.

60. The interest of a motorist, or the public in general as represented by a county or municipal commission can also contest installation as being unnecessary or unreasonable. See, *e.g.*, City of Galveston v. Galveston County, 159 S.W.2d 976 (Tex. Civ. App. 1942).

61. See the thought-provoking language used by the New York court in discussing the property rights of abutting landowners and merchants in Reining v. New York, L. & W. Ry., 13 N.Y. Supp. 238 (Superior Ct. 1891).

62. 121 W. Va. 381, 3 S.E.2d 631, 633 (1939).

into consideration, these words of Judge Fox set forth a very forceful grievance. This is especially so if allowing the renewal deposit results in hindrance or exclusion of the abutting merchant's customers because of inability to park within reasonable access of his place of business.[63]

Despite this problem, however, the courts are now unanimous in holding that the installation of parking meters does not violate the rights of the abutting landowners or merchants to such an unreasonable extent as to warrant judicial intervention.[64] At least one decision held that they did, *City of Birmingham v. Hood-McPherson Realty Co.*,[65] but this decision has not been followed.[66]

III. Parking Meters as a Municipal Revenue-Raising Measure

There is no doubt that one of the major obstacles which must be overcome by the municipality is the argument that parking meters are a revenue-raising device.[67] The fundamental problem is, of course, that the parking meter, which is based upon the municipality's unwritten police power, is a regulatory measure whereas revenue measures must stem from the general legislative powers expressly granted.[68] Therefore, the municipality cannot utilize its police power to obtain municipal revenues and any attempt to do so will be quickly upset as unconstitutional municipal action.[69]

63. This argument could be advanced in Tennessee, on the basis of the language of the Tennessee Supreme Court in Sharber v. City of Nashville, 27 Tenn. App. 625, 183 S.W.2d 777, 778 (M.S. 1944), which indicates an eager intention on the part of the court to protect the rights of abutting owners. Also pertinent are the words of Fox, J., dissenting in County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631, 633 (1939). See Note, *Validity of Parking Meter Ordinances*, 29 Va. L. Rev. 617, 624 (1943), the author of which would possibly agree.

64. See, *e.g.*, cases cited note 56 *supra*.

65. 233 Ala. 352, 172 So. 114, 108 A.L.R. 1140 (1937), 22 Minn. L. Rev. 111, 16 Texas L. Rev. 104.

66. The Alabama court refused to follow the *City of Birmingham v. Hood-McPherson* rule in City of Decattur v. Robinson, 251 Ala. 99, 36 So.2d 673 (1948).

67. Most of the cases involve the contention that the metters constitute a revenue measure. 1 Blashfield, Cyclopedia of Automobile Law and Practice 144, 145 (1948); 10 McQuillan, Municipal Corporations § 30.58 (3d ed. 1939). But see Grimes, *The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds*, 35 Calif. L. Rev. 235 (1947).

68. See Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); for an excellent discussion and collection of cases, *see* Foster's, Inc. v. Boise City, 63 Idaho 201, 118 P.2d 721, 728 (1941); Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889, 891 (1943).

69. Although the only instance of an ordinance which represented a revenue measure failing is in Brodkey v. Sioux City, 229 Iowa 1291, 191 N.W. 171 (1940), it is a cardinal rule that if the ordinance is shown to constitute a revenue measure, it will be struck down. See, *e.g.*, cases cited *supra* note 69; Glodt v. City of Missoula, 121 Mont. 178, 190 P.2d 545 (1948); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945); Laubach & Sons v. City of Easton, 347 Pa. 542, 32 A.2d 881 (1943). The power of the municipality to regulate and control highways is a result of delegation to it by the state of state police power. The power to impose a tax or revenue measure on the other hand is not included in a delegation of power to control and regulate highways and requires a separate delegation of authority. Tenn. Const. Art. II, § 29. See also, 2

This does not mean, however, that in exercising its police power and imposing regulations the municipality cannot impose, along with the regulation, a fee or charge. It is well settled that it can do so.

> "Effective exercise of the police power necessarily involves expenditures in many ways. The means and instrumentalities, by and through which the supervising powers of the policing authority are brought on the subject to be regulated, involve costs and expenses. It is only reasonable and fair to require the business, traffic, act, or thing that necessitates policing, to pay this expense. To do so has uniformly been upheld by the courts."[70]

The problem then is whether the fee or charge required by the parking meters amounts to a revenue measure and hence becomes illegal. There is no clear-cut distinction, in definitive words at least, as to when the charge is for regulation or for revenue, but the usual limitation used by the courts is that it is valid under the police regulation if intended as a regulatory charge and if the revenue realized from the meters is not too disproportionate to the cost of regulation.[71] This is of little help in differentiating between the regulatory charge and the revenue charge concept, however, because although these decisions pay homage to that definition, it appears that the restrictions inherent within it are indeed slight. For example, in Miami, Florida, the proceeds of the meters have totalled $51,000 for a ten month period,[72] and in Kansas the net revenue for 1950 was $45,488.75.[73]

Where will the courts draw the line and hold that the net surplus derived from meters is so large as to constitute a revenue measure? Is it possible that the courts have lost sight of the basis underlying the authority for the charge, to defray the cost of installation, upkeep and enforcement? Apparently some courts[74] have either done exactly that; or, the net surplus has not reached the danger point, which is evi-

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COOLEY, CONSTITUTIONAL LIMITATION 1230 (8th ed. 1927); 4 COOLEY, TAXATION 3386 (4th ed. 1924).

70. Foster's Inc. v. Boise City, 63 Idaho 201, 118 P.2d 721, 728 (1941).

71. See, *e.g.*, Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889 (1943); Glodt v. City of Missoula, 121 Mont. 178, 190 P.2d 545 (1948); Opinion of the Justices, 94 N.H. 501, 51 A.2d 836 (1947); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945); Laubach & Sons v. City of Easton, 347 Pa. 542, 32 A.2d 881 (1943). See also, 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE 144-45 (1948); Note, *Validity of Parking Meter Ordinances*, 29 VA. L. REV. 617 (1943); 18 IND. L.J. 324 (1943); 21 NOTRE DAME LAW. 58 (1945). On the other hand, lack of excess or even sufficient funds to cover costs will not invalidate the ordinance. Ashley v. City of Greensboro, 206 Ga. 800, 58 S.E.2d 815 (1950).

72. See Note, 22 IOWA L. REV. 713 n.55, 57 (1937). A similar problem was discussed in Clark v. City of New Castle, 32 Pa. D. & C., 30 Mun. 65 (1939).

73. Discussed in City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952).

74. See, *e.g.*, City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952). Evidence was admitted to show that a large surplus of collections over costs existed. Said the court, "The excess, though impressive, is consistent with sound fiscal policy." 242 P.2d at 494.

dently extremely high.[75]

It would seem that after the initial cost of the meter is met and before new meters are needed there will be a preponderance of receipts over the cost of the upkeep of the meters, inspection, and so forth.[76] The regulatory charge was originally imposed to assist the municipality in enforcing the time parking restrictions by helping to defray the costs of the "mechanical policemen" "employed" for that purpose.[77] When the municipality begins to realize a sizeable surplus, the need for the police power regulation and enforcement still exists, but is the imposition of the *original* regulatory charge justified? It would seem that when the money received is in excess of the necessary regulatory costs, the charge should be lowered or temporarily suspended. There are no instances of this having been done, possibly because of a failure of the challenging litigant to adequately raise the question; instead, the surplus money is used to defray the costs of general highway improvements, controls and regulations, which in most instances are not connected with the metered streets.[78] It appears to the writer that when such is done, the municipality is not following the purpose authorizing and validating the imposition of the original charge, and it is dangerously close to performing its general legislative duties with police power receipts. The fee is not to prohibit or deter parking, it is to defray the costs of enforcing the parking time restrictions caused by use of the parking meters.[79] The availability of a large surplus for general highway expenditures, not connected with those costs, should, in itself, be strong evidence that the same rate of charge is no longer necessary.[80]

The courts sanctioned the imposition of the fee only when it was related proportionately to that for which it was imposed.[81] Did they mean to say that the reason for the charge was to aid in defraying the costs of general traffic and highway improvements and regulation, or,

75. In Lansing, Michigan, the revenues for the two years preceding 1949 were averaging $83,404.19 per year or $98.23 per meter. PARKING FOR SMALLER CITIES, *op. cit. supra* note 1, at 72. *But see* the language of the Michigan court in Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889, 891 (1943).

76. The average income per meter, per year in 1943, in 316 cities was $62.00 per meter. Servicing costs, collection and repairs average about 10 percent of that sum. PARKING FOR SMALLER CITIES, *op. cit. supra* note 1, at 72. Oklahoma City's meters paid for themselves within 60 days. 22 IOWA L. REV. 713 n.55-57 (1937).

77. Probably the clearest judicial treatments of the purpose of the fee, and expenditures in general are to be found in Foster's Inc. v. Boise City, 63 Idaho 201, 118 P.2d 721, 728 (1941); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97, 102 (1952).

78. See PARKING FOR SMALLER CITIES, *op. cit. supra* note 1, at 73.

79. See, *e.g.*, Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); People v. Littman, 193 Misc. 40, 85 N.Y.S.2d 48 (City Ct. 1948); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945); Kimmel v. City of Spokane, 7 Wash.2d 372, 109 P.2d 1069 (1941).

80. See, *e.g.*, Hendricks v. City of Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945).

81. See notes 79, 80 *supra*.

did they mean only to aid in defraying the costs of the meters, their installation, upkeep and patrolling? There is no doubt that most of the courts implied that their approval of the charge was based on the latter type of expenditures.[82] A number of courts have, however, confused the types of expenditures,[83] and a few have added to the chaos by losing sight of the real purpose of the parking meter itself.[84]

Retrospectively, it would have been a hazardous assertion to state that surplus funds realized from the meters could be used for the costs of painting crosswalks, pedestrian waiting stations, traffic stanchions, and so forth, on distant unmetered streets.[85] Today, that such expenditures are permissible appears to be the rule in most jurisdictions.[86] Thus the line between a fee imposed under the police power and an unconstitutional revenue measure imposed under the same power is all but obliterated. The reason and justification for the charge in most instances has been neatly camouflaged by judicial precedent.

It should be noted, that to date, the "revenue" attacks upon the parking meters have involved meters installed under a delegated police authority from the state. What if the meters were to be installed under an express delegation of taxing powers? It is unsettled whether an attempt by the municipality to install meters under the power to tax would be valid. Only one case denying constitutionality can be said to be pertinent, although it is easily distinguishable[87] and is based primarily on dicta from cases concerned with delegated police power. If permissible, the judicial restrictions applicable to "police power meters" would be avoided and the "tax meters" would then permit the municipality to raise revenue as well as regulate. Research has failed, however, to discover any additional authority indicating whether or not such a delegation and tax could be constitutionally effectuated.

It is submitted that the questions posed herein in regard to the re-

82. See note 80 *supra,* and Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943) (containing an excellent collection of pertinent cases).

83. *Compare* the judicial attitudes in City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952), *with* those expressed in cases cited notes 79, 80 *supra.*

84. Is it the fee imposed or the police power regulation that is to control parking? See Opinion of the Justices, 94 N.H. 501, 51 A.2d 836, 839 (1947). Can the raising of revenue to finance general traffic control be a secondary but yet important purpose behind the parking meter ordinance? See Grimes, *The Legality of Parking Meter Ordinances and Permissible Use of Parking Meter Funds,* 35 CALIF. L. REV. 235 (1947). Compare this view with 1 COOLEY, TAXATION § 27 (4th ed. 1924), cited and discussed in 8 GEO. WASH. L. REV. 239 (1939). See also 1 COOLEY, TAXATION § 26 *et seq.* (4th ed 1924).

85. See, *e.g.,* Harkow v. McCarthy, 126 Fla. 433, 171 So. 314, 316, 317 (1936); Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889, 892 (1943); Glodt v. City of Missoula, 121 Mont. 178, 190 P.2d 545, 548, 549 (1948); M. H. Rhodes Inc. v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389, 391 (1940); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015, 1017, 1018 (1937).

86. See 1 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE 144 *et seq.* (1948); PARKING FOR SMALLER CITIES, *op. cit. supra* note 1 at 73.

87. Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940).

newal of coin deposits,[88] assessment of parking meter charges and expenditures of funds realized[89] merit the attention of the traffic boards and commissions responsible for installation and upkeep of the meters. They have seldom been directly posed to the courts, but where they have, there are implications in the resulting decisions that make them worthy of consideration, in other jurisdictions.

IV. Some Related Questions

In addition to the aforementioned, there are several other questions which are worthy of mention. Of these, the most significant involves the question of whether a general-delegation-of-authority statute by the state to the municipality, to regulate and control highways and traffic includes the power to install parking meters.[90] Another concerns the delegation by the state or municipality of the zones to their traffic boards or commissions as involving an unlawful delegation of legislative discretion and police powers.[91] Another question is whether there is a contracting away of the municipality's discretionary and governmental powers when the contract for the purchase, installation and payment is to extend beyond the term of office of the traffic board or other authorizing body.[92]

The courts have encountered and considered these objections, and today there is little doubt that the decisions are practically all in accord in denying them. There is evident in many of the decisions, however, a note of hesitancy and qualification precedent to denial, and for this reason they have been considered worthy of at least passing acknowledgment. There are, of course, various other objections[93] which have

88. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97, 103, 104 (1952).

89. See cases cited notes 79, 80 *supra.*

90. *Compare* City of Bloomington v. Wirrick, 381 Ill. 347, 45 N.E.2d 852 (1942); Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1940); M. H. Rhodes, Inc., v. City of Raleigh, 217 N.C. 627, 9 S.E.2d 389 (1940); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937); *In re* Opinion to the House of Representatives, 62 R.I. 347, 5 A.2d 455 (1939), *with* Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); Ashley v. City of Greensboro, 206 Ga. 800, 58 S.E.2d 815 (1950); Miller v. City of Georgtown, 301 Ky. 241, 191 S.W.2d 403 (1945) City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952); County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631 (1939). See also 1 Dillon, Municipal Corporations § 237 (5th ed. 1911).

91. See, *e.g.*, Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940), *rehearing denied*, 296 N.W. 352 (1941). See also 7 McQuillan, Municipal Corporations § 24.642 (3d ed. 1949).

92. For an excellent discussion of this problem, see Town of Graham v. Karpark Corp., 194 F.2d 616 (4th Cir. 1952).

93. See *e.g.*, Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947) (meter charge was illegal exaction because ordinance was not adopted by initiative and referendum); Asbell v. Lahan, 158 Fla. 72, 27 So.2d 667 (1946) (meter charge was an attempt to exact payment from users of street); Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1943) (meter ordinance discriminatory because only applied to certain streets); Foster's Inc. v. Boise City, 63 Idaho 201, 118 P.2d 721 (1941) (fee was tax on right to use streets); Stephens v. City of Russell, 306 Ky. 727, 209 S.W.2d 81 (1948) (ordinance discriminated against persons with vehicles over 20 feet long); City of Louisville v. Louis-

been posed but their failure to command any appreciable judicial recognition precludes their inclusion herein.

V. CONCLUSION

Since 1936, at least 34 states[94] have been confronted with the question of the constitutionality of the parking meter. Although there were some early contra decisions,[95] the courts are now unanimous in upholding their use.[96] Despite the formidable array of judicial approval, however, one cannot help but detect within many of the decisions the same note of cautiousness that was reflected in the earlier decisions. Qualifications and restrictions as to reasonableness, revenue-raising and improper discrimination are ever present and the rights of the abutting landowners are more alive than one might be led to believe.[97] It is granted that there are some recent decisions[98] which reflect a

ville Automobile Club, 290 Ky. 241, 160 S.W.2d 663 (1942) (meter constituted nuisance and statute discriminatory in that fine for overparking on metered streets was one dollar, on nonmetered streets five dollars); Hendricks v. City of Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940) (ordinance allowing illegal appropriation of municipal funds for private persons); People v. Baxter, 32 N.Y.S.2d 320 (Utica City Ct. 1941) (motorist violates ordinance whenever he parks when meter flag time is out; ordinance should have allowed time to get change); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945) (discriminates against horse drawn vehicles, and in favor of rich as against poor).

94. City of Decatur v. Robinson, 251 Ala. 99, 36 So.2d 673 (1948); Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947); Deayran v. City of San Diego, 75 Cal. App.2d 292, 170 P.2d 482 (1946); Cassidy v. City of Waterbury, 130 Conn. 199, 33 A.2d 142 (1943); Harkow v. McCarthy, 126 Fla. 433, 171 So. 314 (1936); Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1943); Foster's Inc. v. Boise City, 63 Idaho 201, 118 P.2d 721 (1941); City of Bloomington v. Wirrick, 381 Ill. 347, 45 N.E.2d 852 (1942); Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968 (1943); Brodkey v. Sioux City, 229 Iowa 1291, 291 N.W. 171 (1940); City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952); City of Louisville v. Louisville Automobile Club, 290 Ky. 241, 160 S.W.2d 663 (1942); Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1940); *In re* Opinion of the Justices, 297 Mass. 559, 8 N.E.2d 179 (1937); Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889 (1943); Hendricks v. City of Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940); Wilhoit v. City of Springfield, 273 Mo. App. 775, 171 S.E.2d 95 (1943); Glodt v. City of Missoula, 121 Mont. 178, 191 P.2d 545 (1948); Opinion of the Justices, 94 N.H. 501, 51 A.2d 836 (1947); City of Newark v. Local Government Board of New Jersey, 133 N.J.L. 513, 45 A.2d 139 (1945); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952); People v. Baxter, 32 N.Y.S.2d 320 (Utica City Court 1941); State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952); State v. Brekke, 75 N.D. 468, 8 N.W.2d 598 (1947); City of Columbus v. Ward, 65 Ohio App. 522, 31 N.E.2d 142 (1940); *Ex parte* Duncan, 179 Okla. 355, 65 P.2d 1015 (1937); Hickey v. Riley, 177 Ore. 321, 162 P.2d 371 (1945); Laubach & Sons v. City of Easton, 347 Pa. 452, 32 A.2d 881 (1943); *In re* Opinion to the House of Representatives, 62 R.I. 347, 5 A.2d 455 (1939); Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940); Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688 (1947); Harper v. City of Wichita Falls, 105 S.W.2d 743 (Tex Civ. App. 1937); Kimmel v. City of Spokane, 7 Wash.2d. 373, 109 P.2d 1069 (1941); County Court of Webster County v. Roman, 121 W. Va. 381, 3 S.E.2d 631 (1939).

95. See note 34 *supra*.

96. See note 87 *supra*.

97. See, *e.g.*, Sharber v. City of Nashville, 27 Tenn. App. 625, 183 S.W.2d 777 (1944). See also cases cited *supra* notes 52, 56.

98. City of Hutchinson v. Harris, 173 Kan. 18, 244 P.2d 222 (1952); Opinion of the Justices, 94 N.H. 501, 51 A.2d 836 (1947); City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

position contrary to that just expressed, but, with all due respect, it is submitted that in most instances it appears that the court concerned has failed to grasp the real purpose and legal justification for the installation of the parking meters and imposition of the fee. Necessity, not the need of revenue for general highway control purposes, justifies the exercise of the police power to authorize the imposition of such strict parking regulation, as is represented by the parking meter. Some of the decisions reflect a failure to realize this fact and, as a result, a reading of them is apt to lead the unwary municipal traffic board or commission into believing that the right to install parking meters is an absolute municipal prerogative, free from question by the abutting landowner, motorist or taxpayer. A moment's consideration of the real reason for the parking meter should be sufficient to cause them to realize, however, that there are still several strong objections that can be raised.[99] While apparently kinetic, they are yet potential:

99. For a recent example, see State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).