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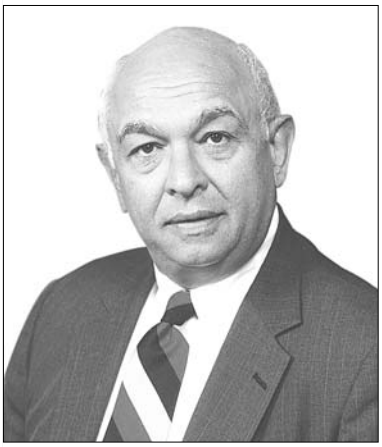
Public Trust Doctrine

State Legislative Okay Required for Local Actions

BY JOHN M. ARMENTANO

ZONING AND LAND USE PLANNING



The mysterious and often misunderstood public trust doctrine has its origins in Roman and English law and is based on the concept that the public holds inalienable rights in certain lands and resources and that such lands are in trust for the people of the state. Generally speaking, the doctrine originally applied to natural resources such as tide lands, bottoms of seas and oceans and navigable waters of lakes and streams.[1] In recent years, the doctrine also has been applied to land held for recreational purposes.

The 'Illinois Central' Case

The seminal case concerning the public trust doctrine in the United States is the Supreme Court's decision in *Illinois Central Railroad v. Illinois*.[2] In *Illinois Central*, the Illinois State Legislature attempted to convey to a railroad fee simple title to a large portion of the bed of Lake Michigan bordering Chicago. The Court held that the act by which the legislature conveyed the title was "a gross perversion of the trust over the property under which it was held." The Court noted that title was held in trust for the people of the state in order that they could "enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties." The Court continued by observing that "mischief" occurred when the grant of parcels of land under navigable water "substantially impairs the public interest in the lands under water" and therefore violated the public trust doctrine. The Court stated that a grant of land under navigable water of a state "has never been adjudged to be within the legislative power, and any attempted grant of the kind would be held if not absolutely void on its face as subject to revocation." The Court concluded that "so with trust connected with public property or property of a special character like lands under navigable waters; they cannot be placed entirely beyond the direction and control of the states."

In New York, in 1895, the Court of Appeals decided *Coxe v. State*,[3] which confirmed that New York courts recognize the revocability of legislative acts in violation of the public trust. In *Coxe*, the New York Legislature purported to convey to a private corporation the power to reclaim and drain all or any of the portion of certain wet and overflowed lands. The Court held that insofar as the statutes involved in *Coxe* purported to confer title to such a vast domain which the state held for the benefit of the public, they were absolutely void; they were in conflict with both the U.S. and New York State Constitutions because the dominion and ownership of such lands was in the state for the benefit of the public. Although dominion and ownership generally would imply the power of absolute disposition, the Court engrafted an important limitation on this power with respect to land under navigable or tide waters: the property is held in trust for the benefit of the public, and the state is "powerless to divest itself" of this property. The Court therefore ensured the inviolability of the public trust in these lands in the name of the state because it is beyond the power of the state to convey lands that are subject to a public trust. The Court went on to say:

> The title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated, or delegated, except for some public purpose or some reasonable use which can fairly be said to be for the public benefit.

In its analysis, the *Coxe* Court significantly relied on Illinois Central Railroad in its decision, therefore making the opinion a very strong statement of the public trust doctrine in underwater lands.

Expanded Doctrine

In recent years, the public trust doctrine has been expanded to include land other than underwater lands. For example, in *Johnson v. Town of Brookhaven*,[4] local homeowners sued the Town of Brookhaven for a judgment declaring invalid a lease that the town had entered into with a private developer to build and maintain cottages on a public park on a town beach. The Appellate Division, Second Department, held that the lease was invalid because the legislature had not granted the use of the land. The Second Department noted that dedicated park areas in New York state are impressed with the public trust, and their use for other than public purposes for a period of years or permanently requires the direct and specific approval of the New York State legislature.

In *Miller v. City of New York*,[5] the New York City park commissioner granted a lease to a private company to construct a golf driving range and accompanying structure on park land. The New York Court of Appeals held that because the property "was as a park impressed with the trust for the public, it could not without legislative sanction, be alienated or subjected to anything beyond a revocable permit."[6] Thus, the *Miller* case involved a

John M. Armentano, *a partner with the Long Island law firm of Farrell Fritz, P.C., represents local governments and developers in zoning, land use, and environmental matters, including litigation. He can be reached at jarmentano@farrellfritz.com.*

conveyance of park land that the court held could be accomplished only by the New York State Legislature.

It also should be noted that legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored. Indeed, in *Williams v. Gallatin*,[7] a taxpayer sought to enjoin the New York City Commissioner of Parks from leasing the Central Park Arsenal Building to the Safety Institute of America, arguing the transaction was "foreign to park purposes." The lease was for a 10-year term, cancellable if the city needed the property for park use. In other words, there was no divestiture of ownership —there was a 10-year lease cancellable by the city—and upon expiration of the lease the property could return to park use. Nonetheless, without legislative approval the lease was prohibited.

Having recognized that park land is subject to a public trust, a doctrine that has become deeply imbedded in New York courts, one must turn to these same courts for an analysis of what constitutes a "park" in New York State. In *Williams*, the Court of Appeals explained that a park is a "pleasure ground set apart for recreation of the public, to promote its health and enjoyment. It need not and should not be a mere field or open space, but no objects, however worthy, such as courthouses and schoolhouses, which have no connection with park purposes, should be permitted to encroach on it without legislative authority plainly conferred."[8] This definition of park in the context of the public trust doctrine is extremely powerful and broad and can encompass a large number of situations.

Delegation

An interesting question arises as to whether the state may delegate to a commissioner or to one of its agencies or other governmental entities the ability to transfer land that is subject to a public trust. In *Williams*, the Court suggested that such delegation is not permitted, observing that the legislative will was that Central Park should be kept open as a public park and that it "ought to be and not be turned over by the commissioner of parks to other uses." The Court, in *People v. Steeple Chase Park*,[9] indicated that there was a question as to whether commissioners can convey underwater lands, but clearly indicated that they may not convey title to park land.

In the *Matter of Lake George Steam Boat Co. v. Blais*,[10] the Village of Lake George attempted to enter into a five-year lease for the use of a dock and other facilities located on land owned by the village on the shores of Lake George. The Court of Appeals held that the lease was an invalid exercise of the municipality's authority. In pertinent part it stated:

> It has long been the rule that a municipality without specific legislative sanction may not permit property acquired or held by it for public use to be wholly or partly diverted to a possession or use exclusively private....the ultimate control over the uses of public places is in the legislature, and the only powers in this respect possessed by the municipality are derivative.... moreover, legislative sanction must be clear and certain to permit a municipality to enter into a lease of public property for private purposes.

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One of the most recent discussions of the public trust doctrine occurred in *Van Cortlandt Park v. NYC*,[11] in which the Court of Appeals was unequivocal in stating:

> In the 80 years since Williams, our courts have time and again, reaffirmed the principle that park land is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes.

In addition, to sum up and distill the public trust doctrine in New York, the state's highest court stated:

> Our law is well settled: Dedicated park areas in New York are impressed with a public trust for the benefit of the people of the state. Their use for other than park purposes either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred.

It is clear, therefore, that, at least as to park land, the state legislature itself and no other body has the sole authority and power to deal with public use of lands that are held in public trust. Thus, the public trust doctrine in New York is in fact two pronged—one dealing with land underwater and one dealing with land taken generally speaking for park purposes and recreational purposes.

Easements

Easements often are created under the Environmental Conservation Law or imposed as a mitigation measure as part of a subdivision or site plan approval. One might ask whether this creates a public trust issue because there is an interest in land (the easement) for recreational and open space purposes. Certainly, one must look to the notion of an easement as an interest in property when analyzing this issue. For example, if an easement (such as a recreation or an open space easement) is given to a municipality, that easement could easily be viewed the same as a park, especially under the expansive definition of "park" embraced in *Williams*. This can become very complicated when the easements are given to third parties or are for the benefit of third parties because an easement is an interest in land that is being conveyed, and as such, courts might deem the public trust doctrine to apply.

Conclusion

This is an era where the acquisition of open space, conservation easements and other environmental measures are common, with many professed benefits. Great caution should be taken by local government officials, however, when considering whether they wish to accept property for recreation, open space or park purposes. That is because such property may become public trust land that cannot be conveyed or even modified unless properly released.

1. See, e.g., *Landmark West v. City of New York*, 9 Misc. 3d 563 (Sup. Ct. N.Y. Co. 2005).
2. 146 U.S. 387 (1892).
3. 144 N.Y. 396 (1895).
4. 230 A.D. 2d 774 (2d Dep't 1996).
5. 15 N.Y.2d 34 (1964).
6. Id. at 37.
7. 229 N.Y. 248 (1920).
8. Id. at 253.
9. 218 N.Y. 459 (1916).
10. 30 N.Y.2d 48 (1972).
11. 95 N.Y.2d 623 (2001).