

**THE CITY SCHOOL DISTRICT:  
STATUTORY PROVISIONS  
FOR ORGANIZATION AND  
FISCAL AFFAIRS**

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Erwin Bard

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**STATUTORY PROVISIONS FOR ORGANIZATION AND FISCAL AFFAIRS**

BY

**HARRY ERWIN BARD**

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## THE CITY SCHOOL DISTRICT

### INTRODUCTION

The aim of this study is primarily descriptive. Its purpose is to describe the city school district as it is found, with respect to certain important features. Probably the study will be best understood when regarded as composed of two parts: the first part attempting (1) to point out the relation of the city school district to the city, (2) to determine its relation to the state, (3) to show the nature of the control the state exercises over it; the second part aiming to show the provisions the state has made for the city school district with reference to its organization and fiscal affairs. It will be seen that the task which has been set is not an easy one. The subject is not one which lends itself readily to logical treatment. The first part can be treated adequately only when considered from the point of view of administrative law. But the aim of this study is practical, from the point of view of educational administration. A general understanding of the first part is, however, necessary to a full appreciation of the second part. The excuse for giving it here is that no student of administrative law has as yet presented it elsewhere. It is thought then pardonable that the practical aim be allowed to prevail even at the sacrifice of a possible full rounded development of a logical theme.

It follows, further, that the first part of this study is valuable here chiefly in so far as it contributes to a fuller understanding of the second part.

For various apparently satisfactory reasons it has seemed advisable to approach the study of the city school district through a brief study of the city. The city school district is intimately related to the city in many ways. Territorially it is frequently co-extensive with the city, and where it is not it contains a city within its corporate limits. It is sometimes provided for within the city corporation, and where it is not it is the same aggregation of people reincorporated exclusively for educational purposes. But whether the city school district is provided for within

the city corporation or is itself an independent corporation, it is as a municipal body subject in general to the same control as other municipal corporations. Quite commonly constitutional provisions and legislative enactments affect the city school district much as they affect the city. Whatever may be said regarding special legislation with reference to the city is in general applicable to the city school district as well. Further, the relation of the city school district to the state can best be appreciated through a study of the functions of the city with reference to the state.

The study of the city must necessarily be brief, and largely incomplete. It is the aim primarily to discuss only such features of the city as have a bearing upon the city school district. These may be briefly stated as (1) the relation of the city to the state, (2) the nature of the control the state exercises over the city, and (3) the city's functions. By a brief historical statement it is the purpose to show the position the city has occupied at different times and in different countries with respect to the state, and particularly the position the city has occupied and now occupies in this country in this respect. In the discussion of the movement towards limiting the powers of the state legislatures through constitutional provisions, it is aimed to show not only the character of these provisions, but also some of the results which have been effected through such provisions, particularly with regard to the matter of general legislation as opposed to special legislation. By a brief discussion of the functions of the city it is aimed to show the various functions which the city has discharged at different times as a city and as an agent of the state, and to indicate in a general way the functions which the city in this country is now permitted to discharge, in the one or in the other capacity.

It is not expected that the reader who is not familiar with administrative law will fully appreciate the various details involved in this study of the city, but it is hoped that he will receive an adequate impression of the general movement affecting the relation of the city to the state and particularly of the nature of the control exercised by the state over the city, and that he will make use of this impression in following the further discussion of the city school district.



## PART I

### A STUDY OF THE CITY AND THE CITY SCHOOL DISTRICT; THEIR RELATIONS TO EACH OTHER; THE RELATION OF BOTH TO THE STATE; THE NATURE OF THE CONTROL WHICH THE STATE EXERCISES OVER THEM

#### CHAPTER I

##### THE CITY\*

*The City-State.* Historically, the city has occupied three more or less different and distinct positions in political society. In early Greek and Roman periods a type of city known as the City-State was common. Later cities of this type were to be found in Italy and in other parts of modern continental Europe. Hamburg, Bremen, and Lubeck in Germany are the only existing cities which approximate to this old type. The old City-State exercised not only such functions as are now usually ascribed to cities, but also many of those generally recognized as functions of the state. In general, the City-State exercised all the powers of a sovereign state, including those having to do with foreign and military affairs. In England or in the United States, no city has ever occupied the position of a City-State, and in general it may be said that the City-State has now in any country little interest save to the historian.

*The City as an administrative district.* At different times, in all the countries of continental Europe, the city has occupied

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\* For the material of this chapter the author has depended very largely upon the lectures in Municipal Science and Administration (Public Law 244) given by Professor Frank J. Goodnow in Columbia University in 1909. These lectures have not been published and no references can be given. Much of the same material may be found in Professor Goodnow's published volumes, and to these references are made. Other volumes bearing upon the subject are given in the bibliography. Any one interested in this phase of the subject should read the following in particular.

Goodnow, *Municipal Home Rule and Municipal Problems.*

Goodnow, *City Government in the United States.*

Goodnow, *Principles of the Administrative Law of the United States.*

Goodnow, *Comparative Administrative Law.*

the position of an administrative district, differing in no way from other administrative districts of the larger state. The Roman city in the time of Constantine was reduced from its position of independence and became merely an administrative district to be used by the superior government to further the interests of the state as a whole rather than those of the city in particular. After the fall of the Roman Empire the city began again to develop a large degree of independence in all parts of Europe, and in Italy not a few cities reached the proud eminence of city-states. But again in the later part of the fourteenth century there began in France a movement towards subjecting cities to the control of the central government, a movement that reached its climax in the Napoleonic scheme of administration which was incorporated in the great administrative act of 1800. There was a similar movement in other parts of continental Europe.

*The City in England—Charter regarded as in the nature of a contract.* In England, however, conditions were somewhat different. From a very early time the city in England has been subject to the control of the central government, as represented either by the Crown or by Parliament. The central government conferred upon the city, at first upon application and later *nolens volens*, a charter which was regarded as in the nature of a contract. The city was not recognized as having any rights not secured to it by virtue of the charter granted to it by the central government. The establishment of municipal governments in this country began under the influence of the system in England. The charters granted to the cities by the sovereign state were regarded, as in England, as in the nature of contracts.

By the beginning of the nineteenth century, in all important countries, the city was regarded only as an administrative district of the larger state, controlled by the central government in the interest of the state as a whole. In some instances, while retaining its identity, the city acted in all governmental matters not in its own right but as agent of the sovereign state; in other instances, its position differed not at all from that of other administrative districts of the state.

*Movement towards local autonomy.* With the Prussian Act of 1808 began a movement towards the recognition of the city

as having certain rights and duties as a city, in the exercise or performance of which the sovereign state need not interfere. This Act was followed by the Municipal Corporations Act of 1835 in England; by a series of acts beginning in 1830 and ending in 1884, in France; and by several similar acts in Italy, the most important of which was that of 1889. These acts do not, however, restore the city to the position of independence which it previously occupied; nor do they permit it to perform all the functions which it was accustomed to perform while occupying such position. Where these acts permit the city to participate in the earlier governmental functions, it participates as an agent of the state. The functions which it is permitted to exercise in its own right lie in an entirely new field created through the development of new conditions, industrial, economic, and social.

*Administrative control.* In Europe, in connection with the city's participation in governmental functions as an agent of the state, there were developed, by the state, systems of administrative control, which it has since very successfully exercised.

*The City in the United States—Charter regarded in the nature of a contract.* The municipal institutions of the United States were naturally borrowed from those in England as they existed prior to the adoption of the Municipal Corporations Act of 1835. The early colonial charters were, like the early English charters, regarded as in the nature of contracts entered into between the people of the city and the Crown, represented by the colonial government. After the United States secured its independence, charters of municipal corporations were granted by the legislatures of the states, and up to about the middle of the nineteenth century they were contained in special acts which affected only the city. These charters were still regarded, however, during this period, as in the nature of contracts, and were granted by the state legislatures only upon application in each case.

*Conception of charter as a contract abandoned.* About the middle of the nineteenth century the state legislatures, in the various states, began to pass special laws applicable to particular cities, without obtaining the consent of the cities. Thus the idea that charters were to be regarded as contracts was abandoned. From this time charters and all acts regulating city affairs were