FILED
MAY 31 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOE SCHWARZKOPF, ET AL.,

Appellants,

vs.

SAC COUNTY BOARD OF SUPERVISORS, ET AL.,

Appellees,

STATE ASSOCIATION OF IOWA RURAL WATER SYSTEMS, INC.,

Intervenor,

WEST CENTRAL IOWA RURAL WATER ASSOCIATION,

Intervenor.

Filed May 31, 1979

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2-61862

Appeal from Sac District Court - Albert Habhab, Judge.

Plaintiffs appeal from the grant of summary judgment to defendants and intervenors in an action seeking to declare invalid defendant's grant of an easement across certain secondary roads to intervenor West Central. - Reversed.

Colin J. McCullough, Sac City, and James A. Lorentzen, Des Moines, for Appellants.

James A. Giles, John T. Ward, & R. Steven Johnson, Des Moines, for Intervenor - State Association of Iowa Rural Water Systems, Inc.

Lon Tullar, Sac City, for Appellees.

Claus Bunz & John R. Mugan, Manning, for Intervenor - West Central Iowa Rural Water Association.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs, communities, landowners, and residents of Sac City, appeal from a grant of summary judgment to defendants, Board of Supervisors of Sac County, and intervenors, State Association of Iowa Rural Water Systems and West Central Iowa Rural Association, in an action seeking to declare invalid defendants' grant of an easement across certain secondary roads to intervenor West Central. We reverse.

This action was in equity and, thus, our review is de novo. Iowa R. App. P. 4; Davidson v. Van Lengen, 266 N.W.2d 436, 438 (Iowa 1978).

In December of 1976, the Sac County Board of Supervisors granted to West Central an easement to use the county's highways for the purpose of laying a pipeline pursuant to the statutory authority of section 320.4, The Code 1975. This section states in part:

> [T]he board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired, may grant permission: 1. To lay gas and water mains in highways outside cities to local municipal distributing plants or companies. . . .

Crucial to the determination of the propriety of the Supervisors' grant of the easement in this case is the ascertainment of whether West Central is an entity within the scope of the phrase "local municipal distribution plants or companies." The trial court, following a comprehensive analysis of the issue, concluded that West Central was a quasi municipal corporation which came within the meaning of the language of the statute. Appellants contend that West Central is a private association and, as such, is not a corporation to which the Board of Supervisors can grant an easement pursuant to the authority of section 320.4. We agree with the appellants.

While we might be inclined to support the trial court's finding that quasi municipal corporations are "municipal corporations" under section 320.4, we are unable to support the trial court's determination that West Central is quasi municipal in nature. "Municipal" is a term which, in its narrower sense, pertains to a local governmental unit and, in its broader sense, pertains to public or governmental affairs. BLACK'S LAW DICTIONARY 1168 (4th rev. ed. 1968). A municipal corporation has been defined as "a public corporation, created by government for political purposes, and having subordinate and local powers of legislation." Id. The Iowa Supreme Court has said that the term "municipal corporation" is commonly used to include all public or political corporations.

Olson v. District Court (Dickinson County), 243 Iowa 1211, 1213, 55 N.W.2d 339, 339-40 (1952). Municipal corporations are arms of the State, see Graham v. Worthington, 259 Iowa 845, 853, 146 N.W.2d 626, 632 (1966), and owe their origin to and derive their rights from the legislature. Boyer v. Iowa High School Athletic Ass'n, 256 Iowa 337, 339, 127 N.W.2d 606, 607 (1964); Bd. of Trustees of Monona-Harrison Drainage District No. 1 v. Bd. of Supervisors of Monona County, 232 Iowa 1098, 1100, 5 N.W.2d 189, 191 (1942). In general, it can be said that municipal corporations are governmental creations designed to serve a public function.

Municipal corporations often possess a dual nature, governmental, public or political, and proprietary, private or quasi-private. 62 C.J.S. Municipal Corporations § 3 at 69 (1949). A municipal corporation is private in nature when it acts under governmental authority for a public purpose but using methods not considered municipal. Id. A municipal corporation acting in much the same manner as a private corporation is, nonetheless, a public corporation. Id.

In this case, West Central, a non-profit association organized under section 504A, The Code, and not subject to the public utility regulations of section 476.4, The Code, is not a municipal corporation performing functions of a private nature. Rather, it is a private corporation engaged in an activity which serves a public usefulness. West Central was not created pursuant to legislative mandate, nor does it act pursuant to the direction of the State or one of its political subdivisions. West Central is not municipal in nature.

Likewise, West Central is not a quasi municipal corporation. A quasi municipal corporation is distinguishable from a true municipal corporation only in that the latter is "more amply endowed with corporate functions." Wapello County v. Ward, 257 Iowa 1231, 1235, 136 N.W.2d 249, 251 (1965); Boyer, 256 Iowa at 339, 127 N.W.2d at 607. Like municipal corporations, quasi municipal corporations are governmentally created and governmentally empowered to exercise certain functions which have come to be recognized as at least quasi governmental in nature. Wapello, 257 Iowa at 1236, 136 N.W.2d at 252. The Iowa Supreme Court has stated:

> We conclude that the term "quasi municipal corporation" is to some extent a misnomer, insofar as its use implies that the governmental body to which it is applied may not have in some respect the status of a

> true municipal corporation. This means that a county, or school district, or township, or similar governmental creation is, in fact, a municipal corporation in carrying out the purposes, generally limited, for which it was formed, or with which it may be later endowed. It is the limited character of its powers which distinguishes it from cities and towns with their general governmental authorities. [Emphasis added].

Id. Consequently, West Central, a corporation which acts pursuant to private, not governmental, authority, is not quasi municipal in nature. While its primary function of establishing rural water systems is, without a doubt, a benefit to the public which it serves, this function is not enough, without clearer legislative authority, to bring this private corporation within the scope of section 320.4.

REVERSED.