

Charles C. G. Evans, Esq., City Solicitor (cont'd)

enjoin the Mayor and City Council and the Board of School Commissioners from using the premises for any other purpose than that of English-German School No. 1. There was no allegation in the bill that the contemplated change was to be effected without the concurrence and authority of the Mayor and City Council of Baltimore. A demurrer to the bill of complaint was sustained and the bill dismissed. The decree was affirmed by the Court of Appeals. It was held (1) that the plaintiffs, as taxpayers who did not live near the premises, could not maintain a bill of this character as they could show no special injury, and (2) that the Mayor and City Council had power to change the use of the premises from one type of school to another.

Although the bill of complaint did not affirmatively allege that the Mayor and City Council of Baltimore had authorized the proposed change, there was no allegation that the proposed change was to be effected without the concurrence and authority of the Mayor and City Council. The Court of Appeals predicates its opinion upon the theory that the proposed action was taken with the consent of the Mayor and City Council. See page 511 of the opinion:

"The charge in the bill is that the School Board 'have determined to change the use of the said premises, etc.,' from that of the English-German School No. 1, to that of a colored high school. But there is no averment that this contemplated change is to be effected without the concurrence and authority of the Mayor and City Council. The attitude of that body is in fact that of resistance to the claim of the appellants that the proposed action of the School Board is in violation of law and 'unwarranted.'

The claim of the appellant therefor carries with it the necessary implication that by the passage of the ordinance the corporation has deprived itself of all power to employ the premises for any other purpose than that for which it was purchased, although the public necessities may at some other period absolutely demand that its use should be altered. This view would be in violation of the terms of the charter, for by the first and second sections of that instrument all the property of the city is vested in them, with full power of disposition of it in the manner and terms therein provided. Under the lease the Mayor and City Council became the owner of the premises and by reason thereof had full power to designate from time to time the uses to which it could be put. The designation in the ordinance of such use as the Mayor and City Council deemed was then appropriate and needed, could not operate as a limitation upon their power to designate other uses whenever in the discharge of their duties they chose to do so. Their power with reference to the premises could not be limited by their own ordinances. The terms of the charter and the Acts of Assembly (if there were any) determined what should be the measure of their power and duty, and these could not be amended or altered by their own act."