



Volume 2. From Absolutism to Napoleon, 1648-1815

"Edict on Communal Affairs," issued by King Maximilian I, cosigned by Ministers Montgelas, Hompesch, and Morawitzky (September 24, 1808)

This edict introduced a new, moderately liberal, and elected urban and municipal self-government partly in order to subordinate the recently acquired, formerly autonomous Imperial cities to an effective centralized rule and partly in order to reflect the contemporary trend towards a strengthening of governmental administrative power (as was the case in Napoleonic France). This self-government was subjected to centralized supervision and bureaucratic control to a higher degree than stipulated by the Prussian bylaws of the same year.

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We have decided to enact general and uniform regulations for *communal affairs*, and to incorporate into the ordinance about this both the *legal conditions* that are appropriate for communities, and the principles by which their administration of *public order* and the *economy* shall be organized.

*Part One. Of the legal conditions of the communities.*

§ 1. What is understood by communities with respect to *land* and *territory*; – how they are to be formed and used, has already been determined by a supreme decree. Every city, market, every large village with farms nearby, or several close villages and individual farms form a community.

§ 2. In forming the communities, the utmost care should be taken that their boundaries are congruent with the natural location and encompass all parts of the administration in such a way that their boundaries simultaneously also determine, as much as possible, the boundaries of the tax district, the school district, the parish, and so on.

§ 3. With respect to the *members* of a community: every community is made up of the residents who own taxable landholdings within the boundaries or engage in taxable professions.

§ 4. That also includes house owners and tradespeople without any landholdings, if they pay tax on their houses or businesses.

§ 5. Excluded are lodgers and tenants, and those who, while they do own taxable land or hold rights within the boundaries of the community, have their residence elsewhere.

§ 6. No distinction is made between full owners and usufruct owners – the person who uses the land as a tenant and lives in the community is regarded as sufficiently entitled to exercise his participation in the community.

§ 7. The communities have the rights of public corporations that are permanently obligated to the common good.

§ 8. However, in accordance with the nature of all communities, they can act only according to the common will and are under the permanent guardianship of the state.

§ 9. The following norms therefore concern especially the *rights and duties* of the communities, and then *the manner in which they exercise and fulfill them*.

*Section I. Of the rights and obligations of the communities.*

§ 10. In their capacity as public corporations, the communities can exercise all rights and enter upon all duties that the civil laws accord to private individuals in general and do not specifically withhold from the communities.

§ 11. The rights of the communities express themselves chiefly in the *communal goods*.

§ 12. The duties either lie in the social purposes of the communities, or have been created only by arbitrary actions.

§ 13. The resources to meet these obligations must be looked for within the powers of the communities themselves; – in the absence of other community assets, they consist of *dues and taxes*.

*Chapter 1. Of the communal goods.*

§ 14. The communal goods are threefold in nature and meaning, namely:

- 1) the *common goods* that the community owns as a necessary means for achieving its social purpose;
- 2) the *community funds* to be administered for its benefit;
- 3) the *community lands*, which are used individually by the members themselves although they belong to the community. [ . . . ]

*Chapter 2. Of the obligations of the communities.*

§ 32. The obligations of every community lie either in the communal purposes, and are general and necessary – or they are merely accidental and have grown from special legal grounds.

*Title One. Of the necessary obligations.*

§ 33. The purpose of society imposes two kinds of obligations on the communities: – in part those they must fulfill as members of the entire body of the state, – in part those that lie within their own social association.

§ 34. As parts of the state, the communities must share in all burdens of the state, and in particular, they must submit to the tax rates determined by general regulations, or distributed by the authorized agencies of the state, either to the entire state or individual parts thereof.

§ 35. As individual societies they are obligated:

- 1) to generate, supplement, and preserve the first class of common good, which is indispensable for the public welfare;
- 2) to preserve the community wealth that is earmarked to pay for the community's needs;
- 3) to maintain the personnel necessary for regulatory oversight and administration.

*Second Title. Of the incidental obligations.*

§ 36 Apart from these general obligations, the communities can be obligated:

- 1) by contract and taking out a loan;
- 2) through the use of a thing for the common good;
- 3) by damage done, or by a criminal act that is attributed to the entire community.

§ 37. Liable for these obligations are the community's assets that can be sold without violating the social purpose. [ . . . ]

*Section II. On the exercise of community rights.*

§ 54. The village communities are under the constant guardianship of the state; – they express themselves through communal decrees and in communal assemblies, or they act through their representatives and plenipotentiaries.

*Chapter 1. Of the guardianship of the village communities.*

§ 55. The guardianship of the communities is part of the state's civil regulation, and is exercised at the highest level by the Ministry of Internal Affairs and under its oversight by the general district commissariats through the sub-courts, as policing agencies, and in the larger cities by special officials.

§56. The communities are therefore restricted in the exercise of their rights, like minors, and also enjoy the latter's privileges.

§ 57. Without permission from the guardianship, neither they nor their representatives can buy or sell; – assume any new liabilities; – set up any important new institutions; – take on or empower new personnel, – or make any valid community decisions.

§ 58. To be sure, the guardianship is likewise limited in that it cannot issue any directives on these matters without hearing from the communities; – however, the approval by the community can also be complemented by authorization from the General District Commissariat, with which the highest guardianship is connected.

#### *Chapter 2. Of the communal assemblies and the municipal council.*

§ 59. The smaller markets and village communities that are subsumed under the term rural communities manage their affairs through communal assemblies and communal decisions; – they cannot appoint any permanent representatives or deputies.

§ 60. In the cities and in the larger markets that are regarded as their equals, the community is represented by a *municipal council* elected from its midst and composed of at least 4 and no more than 5 members of the community.

§ 61. In cities of fewer than 5,000 inhabitants, this municipal council is elected by the *members of the community* themselves under the leadership of the guardianship officials; – in cities of more than 5,000 inhabitants, the election is done through separate *electors*, which are appointed for each separate election by the General District Commissariat, at the suggestion of the director of police and with input from the municipal council.

The number of electors is twice the size of the municipal council.

§ 62. Half of the municipal council is renewed every three years; – the members can be reelected every time. They hold their positions without remuneration.

§ 63. Both the communities and the municipal council can assemble only upon the summons of and under the oversight of the police office; – they cannot decide anything without the knowledge and approval of the latter.

§ 64. In those localities where the supervisors or police officials are not themselves present, it is up to them to transfer the task and oversight to an assessor or subordinate official; – moreover, this function is performed by the head of the community who has been charged with maintaining public order.

§ 65. The *matters* that can come up for deliberation in the communal assemblies or the municipal council are:

- 1) the maintenance of the communal lands;
- 2) the fulfilling of the community's obligations;
- 3) the regulation of the dues and taxes and of the tax rate
- 4) the authorization of the members of the community;
- 5) the annual audit of the community's books;

§ 66. Neither the communities nor the municipal council can exercise any kind of *jurisdiction*.

§ 67. They cannot deliberate on anything that falls under the executive power of the police which the leaders of the community have been charged with carrying out.

Source: *Königlich-Baierisches Regierungsblatt* [*Royal Bavarian Gazette*], October 19, 1808, Col. 2405-08, 2411 f., 2415-18.

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