

EXHIBIT 10 - continued

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BIENNIAL SURVEY

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ARTICLE 78—PROCEEDING AGAINST BODY OR OFFICER

Unaggrieved citizen-taxpayer has standing to constitutionally challenge a village law and injunctive relief is available in an Article 78 proceeding.

*Policemen's Benevolent Ass'n v. Board of Trustees*²⁸⁹ involved a proceeding brought by an individual taxpayer and a Patrolmen's Benevolent Association pursuant to Article 78 to obtain a declaration of invalidity of a local village law, and related injunctive relief. The respondents were the board of trustees of the village and the village chief of police. The supreme court granted respondents' motion²⁹⁰ made before answer, to dismiss the petition as being insufficient on its face on two grounds. First, petitioners failed to show that they were personally aggrieved, thus lacking standing to bring the proceeding. Second, injunctive relief is not available in an Article 78 proceeding.

The appellate division, second department, reversed, holding that the petitioners had standing, and that injunctive relief could be granted in such a proceeding. In holding that the petitioners had standing to challenge the local village law, the court expressly overruled its prior decision in *Ahern v. Board of Supervisors of Suffolk County*.²⁹¹ The court in *Ahern* had held that the mere fact that the petitioner was a taxpayer, resident and voter, did not give him the standing to challenge a local legislative act. In the instant case the court stated that "one who is a citizen, resident and taxpayer has standing to bring an Article 78 proceeding such as the one at bar, even though he does not show a personal grievance or a personal interest in the outcome. . . ."²⁹² The court distinguished the instant case from that of *St. Clair v. Yonkers Raceway, Inc.*,²⁹³ wherein it was held that an unaggrieved citizen-taxpayer lacked standing to challenge the constitutional validity of a state statute. Here, because a village law was involved, the court ruled that petitioner had standing.

With respect to the granting of injunctive relief in an Article 78 proceeding, the court saw no reason why it should not be obtainable²⁹⁴ in the instant case, despite some case law²⁹⁵ to the contrary.

²⁸⁹ 21 App. Div. 2d 693, 250 N.Y.S.2d 523 (2d Dep't 1964).

²⁹⁰ CPLR 7804(f); CPLR 3211.

²⁹¹ 7 App. Div. 2d 538, 185 N.Y.S.2d 669 (2d Dep't 1959).

²⁹² *Policemen's Benevolent Ass'n v. Board of Trustees*, 21 App. Div. 2d 693, 250 N.Y.S.2d 523, 526 (2d Dep't 1964).

²⁹³ 13 N.Y.2d 72, 192 N.E.2d 15, 242 N.Y.S.2d 43 (1963).

²⁹⁴ Cases holding that injunctive relief in an Article 78 proceeding is available are: *Matter of New York Post Corp. v. Leibowitz*, 2 N.Y.2d 677, 143 N.E.2d 256, 163 N.Y.S.2d 409 (1957); *Matter of O'Reilly v. Grumet*, 308 N.Y. 351, 126 N.E.2d 275 (1955).

²⁹⁵ *Gapinski v. Zoning Bd. of Appeals*, 3 App. Div. 2d 976, 162 N.Y.S.2d