



# Chapter 1



## **The Municipality Public Services in Mexico**



## 1.1 Context of Municipal Utilities in Mexico

### *Background of Public Services in Mexico*

The idea of public service says Fernandez (2002), begins to settle in a vague and imprecise manner in France and Spain in the first half of the nineteenth century, although from the previous century had been used the phrase “public service.” In France, the idea of public service in the jurisprudential field emerges as a byproduct of the demarcation of powers. In Spain is also a marginal product, originated to regulate the confiscation of church property.

The greatest contribution to the final development of the notion of public service are the conclusions of the government commissioner David and, under its influence, the famous White PARRET Court Conflict, issued in the same case on February 6, 1873. The phrase “public service” was received in Mexico through the Cadiz Constitution of 1812, as synonymous branch of public administration; the Constitution was the first who used it in 1857.

The organic Criterion according to Fernandez (2002) considers public service “service”, basically, as an organization, that is, as a body that is capable of acting, working, performing activities. Other writers understand the service primarily as an activity, as a function. As for the “public” word, an organic criterion is derived from the character of the subject or body in charge is the service; which means that the public service can only be attributed to public person. According the functional criteria, the public service stems from the nature of the need to meet with the activity in the provision thereof; if such activity we meets a need in general, will face a public service; therefore, according to functional criteria, the service shall be public if, and only if, it satisfies the need of a general nature.

This functional approach, Says Marienhoff (2002) defines public service by the following: “Understood all activities of government or individuals or administered, which would satisfy the needs or interests, where their nature, in the course of activities of individuals or administered, needed to control state authority”.

The legal Criteria, arguing that public service demands a special legal regime to ensure adequate protection of the general interest; Jeze (1969) inferred that the public nature of a given service prints the legal regime of public policy that regulates it, it is a regime in which private interests are subordinated to the general interest, so that the legal regulation of service is permanently modified in order to meet the needs; so, such a scheme is shaped by legislative or regulatory acts that amount to service standards.

About the legal standard, says Garcia & Martinez (1968), for the very purpose of public service, the satisfaction of collective needs are properly met, will need to accompany a number of determinants of a special legal regime, who disagree of course, the general legal regime of private services.

The legal criteria on the concept of public service, puts Serra (1975), as follows: “From a legal point of view, the creation of a public service is the work of the legislature, which in a general law of public services, or a law that organizes a specialized public service, determines whether that service care. The creation of a public service is checked by law”.

### **1.1.1 Classification of the Public Services**

Public services have different classification criteria; the broader concerns the services themselves and in the nature of mandatory as are contained in the third

and fourth constitutional articles; and across all services provided by the administration like are: public transport, telegraph, etc.

The public services, says Serra (2002), can be classified in categories four:

- Federal public services
- State public services
- Municipally public services
- International public services

By other side, Garrido (1992), give other classification like follow:

- By the ownership of the service
- By the need to provide
- By the content of the provision
- By the uniqueness of the exercise
- By involving users in their benefits

Public service is classified according to Fernández (2002), for the doctrine in response to different criteria related to:

- By the exercise of authority: public management and private management;
- By its use: voluntary and mandatory;
- By the nature of the provision: also voluntary and mandatory;
- Because of its importance; essential, secondary and superfluous;
- Due to the nature of the need: constant, daily, intermittent and sporadic;

- Because of its collection: free and burdensome;
  - By its legal status: legal regime of public and mixed;
  - Because of the economic competition: from monopoly, oligopoly regime and system of open competition;
  - By the service provider: undifferentiated public management without special body in charge of managing public property without legal personality or as personified public service;
  - And as a private company; and ownership or jurisdiction of the service; according to this criterion, public services can be classified into general, regional, municipal and concurrent.
1. **Generals.** General public services are considered, also known as national, in the case of Mexico, federal; those whose provision, regulation and control is allocated to general government of the country; in such cases we speak of a general public service, called Federal when it comes to a system of this type, as is the case of Mexico, whose federal public services can cite, among others, the supply of electricity, postal and the telephone.
  2. **Regional.** They are classified as regional or state public services, which are under the control of the government of the region, state, province or federal entity and not the government of the country; in Mexico, to distinguish those from the federal government is called public services.
  3. **Municipal.** Municipal public services are attributed to the local public administration, the provision contained in Section III of Article 115 of the Constitution, the town serves the drinking water, drainage, sewage treatment and disposal of wastewater; street lighting; clean, collection,

transfer and disposal of waste; markets and supply centers; pantheons and trail; also includes streets, parks and gardens, which strictly speaking are not public utilities but works.

4. Coincident and coexistent. According Carpizo (1983), about the division of powers can in turn be classified into coincident and coexistent. Will be matched against a public service when the control is attributed to two or three levels of government federation, states, municipalities, but only one of them is conferred establish criteria to distribute their provision and control; this occurs, for example, the public service education, attributed by the 3rd Constitutional Section of the Federation, states and municipalities, since in its Section VIII gives the Congress the issue of laws designed to distribute including the provision of that service. We consider concurrent utilities, which in part are assigned to the Federation and partly to the states, and partly to municipalities, public health services and public transport of passengers, are examples of this category.

### **1.1.2 Public Services in the *prehispanic* Era**

In pre-Hispanic Mexico, according to Ochoa (1981), the neighborhood organization is through the *calpulli* (*Nahuatl*: big house or village), but not why such an institution is identified with the Roman municipality or Spanish, although some aspects common; “The *calpulli* was a clan, elevated work of a sedentary lifestyle, to the category of primitive rural municipality and in it, the alliance of families identified a form of government: the Council”, The Geographical *calpulli* or clan, as some authors contemporaries have called him, was an important social organization in ancient Mexico, built on family, geographic, political and theological grounds, since its members had ties of

kinship, were located in specific territory owned by the respective community, had An internal government and had a common protective divinity.

The *calpulli* says Ochoa (1968) was the product of a meeting of a group of families or lineage, was governed by a council of elders consisting of the heads of families, and various officials appointed by the council itself, chief among them:

- The teachcauh was in charge *calpulli* administration and the administration of justice and the organization of worship.
- The tecuhtli who came to be the military leader.
- The tequitlatos was in charge the management of communal work.
- The Calpizques collectors of taxes.
- The tlayacanques or task masters.
- The tlacuiles write hieroglyphs.
- The topiles police, priests, doctors and sorcerers.

It is worth mentioning that the way tax collection, as says Sandoval (2001), along with the provision of personal services in agriculture, construction, transport, domestic work and collaboration in the war, given the dominance exerted on Tenochtitlan subordinated peoples and their own masses of workers, resulted in a payment of varied and extensive tribute in kind. In addition to this the tax liability was not individual but collective, for populations.

### **1.1.3 Public Services in Colonial Era**

The City Council is the representative institution of the common in the Spanish colonization. Zavala says (1996) that although certain oligarchic tendencies and the limitations imposed by selling royal regiments, and exercise the authority of the governors and magistrates on elections and municipal agreements, the City, however, is the main body of the request and defending the rights of citizens; is particularly up in some distant populations of the central focuses of the royal government and in the form of open town comes to play popular features.

Already in full agony of Spanish rule in New Spain, the constitution of the Spanish monarchy, promulgated in Cadiz on March 19, 1812, devotes the entire first chapter of Title VI to the subject of the councils as a form of government peoples, and even if not expressly mention the municipality does refer to jobs and municipal ordinances in Articles 319 and 321, respectively.

### **1.1.4 Public Services in the Independent Mexico**

The centralist Constitution of 1836 was the so-called Constitution of the seven laws or centralist 1836 constitution and was the first to regulate municipalities, to provide, in the sixth of its laws, the existence of not municipalities but these colleges popularly elected the capitals of the departments.

Among the requirements for membership of the council appeared to have the capital to produce at least five hundred dollars annually. In accordance with Article 25 of that sixth constitutional law, the council was in charge:

- Police

- Comfort
- Care from prisons
- The hospitals and almshouses other than individual
- The primary schools by common funds
- The construction and repair of bridges, roads and paths
- The collection and expenditure of the excise own
- The promotion of agriculture, industry and trade
- Mayors from aid in the preservation of peace and public order

### **1.1.5 Municipal Public Services According the Constitution of 1917**

In Mexico it was not until 1917 in Article 115, Section III, of the Constitution of the United Mexican States, where references to municipal utilities is done, which dictate the next: The Municipalities with the cooperation of the states, when and where necessary. Will be responsible for the following municipally public services:

- Drinking Water, Sewerage, Drainage and Wastewater
- Lighting
- Cleans and waste disposal
- Markets and supply centers
- Pantheons
- Trail
- Streets, parks, gardens, parks and recreation
- Transit Public Safety and

- Beautification and maintenance of the villages, cities and works of social interest
- Social assistance in the field of competence
- Employment

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Other public services those local legislatures to determine, according to the territorial and socio-economic conditions of the municipalities, as well as its administrative and financial capacity. The municipalities of the same state by agreement between the municipalities and subject to law coordinate and associate for more effective delivery of public services which they belong. This system emphasizes the possibility that states the agreement of the local legislatures, municipalities can participate in the provision of public services; and also provides that municipalities in the same state can be associated or coordinated for the same purpose.

