

Book X.  
Title XLI.

That municipal honors and liturgies shall no be uninterrupted between father and son, and concerning vacations (intervals).  
(De honoribus et muneribus non continuandis inter patrem et filium et de intervallis.)

Bas. 54.7.39.

10.41.1. Emperors Severus and Antoninus to Septimius Zenonas.

Just as honors and liturgies, when father and sons are decurions, should not be continuous in the same home, so the intervals of time granted are not for the benefit of persons other than those that are called to the same or other honors and duties the second time.<sup>1</sup> 1. You will, however, not be compelled to bear burdens for your infant son whom you wanted to be a decurion, although you bound yourself in his behalf for the future, since you will be considered to have given your consent only as to those burdens which may properly be entrusted to him.

Note.

The imposition of personal liturgies, or municipal burdens to which this title seems to be confined, was not arbitrary, but according to the local and imperial regulations. Liebenam, Stadteverwaltung 424. Thus it is said in D. 50.4.14.3 that when the question of undertaking an honor or liturgy arises, regard must principally be had as to the person, his origin, whether his property suffices to undertake the honor or liturgy, and the provisions of the local law. Again, in D. 50.4.3.15, it is said that the governor of the province must see to it that the liturgies and honors are performed in consecutive order according to age and rank. And by C. 10.42.1 it was provided that liturgies should be performed in consecutive order according to the amount of property possessed. A person possessing no property was not subject to any liturgy. C. 10.52.4. See further C. 10.43. D. 50.2.7 states that the honors and liturgies should be performed by those most able. See also C. 10.67.1. So that the rule that the men should be taken in regular order was subject to the further rule that the most able should perform them. And if a person selected for an honor or liturgy thought that he could show that someone else was more able, he could appeal on that ground. C. 10.67.1. This principle was carried farther in connection with serfs in the contrary and perhaps also small, poor farmers, for it was provided that they could not be called away from their work on the farm to perform any service. C. 10.48.1; C. 10.55.1; C. Th. 11.16.3 and 4. Some liturgies rested primarily upon the person, and were called "personal," while others rested primarily upon property, as will be noted at the next title of this book. The latter were, seemingly, imposed equally on all lands. See note C. 10.42.10. The assignment of personal liturgies evidently rested primarily upon the municipal senate, but was controlled by the governor

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<sup>1</sup> [Blume] In other words, the interval granted for example to the father was of no benefit to the son, except only in so far that the services of the two should not be continuous. The intervals granted to anyone are mentioned in the next law. If there was a lack of persons, however, to undertake the duties, exemption ceased. D. 50.4.11.2; law 3 of this title; D. 50.4.14.6.

of the province. C. 10.32.2; C. 10.46.1; D. 50.4.3.15; Liebenam, supra 424; Marquardt, 1R. Staatsc.137. Abbott & Johnson, Munic. Adm. in R.E. 98, referring to the appointment of irenarchs, as mentioned in C. 10.77.1, says that, since those who nominated anyone to an office were responsible for the proper fulfillment of the duties thereof, "in the fifth century it is probable that the decurions drew up a list of citizens for each liturgy and forwarded them to the provincial governor who made the appointments."

The assignment of patrimonial liturgies which were purely municipal, doubtless also rested upon the municipal authorities. But the imposition, assignment and distribution of imperial-patrimonial liturgies is not at all clearly stated in the laws left us. Those connected with the road work outside of the boundaries of municipalities was probably left to road-supervisors (headnote C. 10.42), but whether they were subordinates of municipal officials is not clear, but they probably were. C. Th. 11.16.4, of date 328 A.D., specifically provided that the municipal authorities should not impose the so-called "extraordinary" liturgies discussed in headnote C. 10.42, which would imply that they assigned all other liturgies not included in that term. See comment of Gothofredus thereon. Further, that law and C. Th. 11.16.3, (see also C. Th. 8.5.18), delegating duty of assigning patrimonial duty to the governor, were omitted from the Justinian Code, and C. 10.46.1, speaks of "extraordinary" liturgies being assigned by municipal magistrates, and we might gather from these facts that the assignment of all liturgies was therefore left in the hands of the latter, and this is not unreasonable, since cities ordinarily had jurisdiction over the surrounding territory. This conclusion is confirmed by C. 10.48.8, which states that no governor should impose any burden upon provincials. Gothofredus says that this law related only to additions made to taxes. But this opinion is probably not correct, in view of the fact that the law is embodied in a title which deals with liturgies, although the intention may have been that it should relate to both taxes as well as liturgies, which would not at all be inconsistent, inasmuch as patrimonial liturgies were similar to taxes. The intention of the law as originally enacted may, however, have been stated by Gothofredus.

But some liturgies, could be imposed by the praetorian prefect, as shown by C. 10.48.8. And C. 12.9.1; C. 12.52.3 and C. 12.54.4 speak of imposition of liturgies by civil and military judices - judges, governors and other high officers. These laws give exemption to the officials therein mentioned from all liturgies imposed by these civil and military judices. The context of these laws, particularly when construed in the light of other laws (see note to C. 12.9.1), shows that the intention was that the officials mentioned in these laws should be exempt from all imperial liturgies and yet municipal magistrates were not included in the term "judices," so that if assignment of these burdens, or most of them, was made by such municipal magistrates, the exemption granted to the officials mentioned in these laws would not have been great. The date of these laws is about 444 A.D., and it is possible that the rule of C. Th. 11.16.4 was still in force, but that the rule was changed at a later date, leaving the assignment of all liturgies, except on special occasions, to municipal magistrates, so that the term "judices" as used in the three laws in Book 12 of the Code, above mentioned, should, by construction, include municipal magistrates.

10.41.2. Emperor Gordian to Cyrillus.

An interval of five years is given from the time of holding one honor to the time of holding the same honor again; an interval of three years, as to other honors. Persons acting as ambassadors will have exemption of two years.<sup>2</sup>

10.41.3. Emperors Diocletian and Maximian and the Caesars to Nicea.

It has frequently been decided that the benefit of an interval to which anyone is entitled does not extend to his brothers, although they possess their property in common.

1. Of course, such persons who have not yet performed their liturgies and are suitable therefor, have been excused but should be called, the president of the province will take care that you, if he finds you to have performed your municipal liturgies, will not again be called upon.

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<sup>2</sup> [Blume] Only if the embassy was transmarine. C. 10.65.3.