

Book VIII.
Title XI.

Concerning public works.
(De operis publicis.)

Bas. 58.12, etc.

8.11.1. Emperors Constantine and Constans to Catullinus.

Many have been exempted from (contribution toward) constructing public works by the partiality of governors. We order, therefore, that hereafter unlawful exemptions shall have no force.

Given at Sirmium July 27 (338).

C. Th. 15.1.5.

Note.

Senators of the empire and veteran soldiers were generally exempt from contributing to the construction of public works. C. 12.1.7; C. 12.46.1. But law 7 of this title exempts no one whatever in connection with the construction of harbors, water-mains or city walls. As to the method by which such contributions were raised at times when no other funds were on hand, see law 12 of this title.

8.11.2. The same Emperors to Marcellinus, Count of the Orient.

You know that the amounts clearly expended on public works are to be credited. Given at Constantinople October 3 (349).

C. Th. 15.1.6.

Note.

To understand the purport of this law, it must be borne in mind that in Justinian's time and for many years previously, municipalities were under the general control of the emperor. Part of their income went to the imperial exchequer, part of it was expended for municipal needs. (See C. 8.11.11; C. 11.70) Special agents were sent by the emperor from time to time to inspect the public works in a city and to audit the accounts. C. Th. 15.1.2; C. 1.4.26. Governors were deprived of the power of having their accounts examined (C. 8.12), but Justinian gave bishops the power to interfere with the affairs of the municipality and to see that its income was properly expended. C. 1.4.26 (which ought to be read in this connection). The meaning, accordingly, of the foregoing law is that the amounts expended for public works is to be duly credited in the audit that was made.

8.11.3. Emperor Julian.

Whoever builds in a public place of a city at his own expense, by which he does no damage to the city, may hold the building as his own, and thanks are due him for having ornamented the city.

A.D. 362.

8.11.4. The same Emperor to Ecdicius, Prefect of Egypt.

The palaces of justice and public buildings ought always to be kept for public use.

Promulgated December 2 (362) at Antioch.
C. Th. 15.1.8.

8.11.5. Emperors Valentinian and Valens to Symmachus, City Prefect.

None of the officials who govern old or new Rome must construct any new work therein without an order of Our Serenity, unless he wishes to construct it at his own expense. But we give permission to all to restore those which are said to be in a state of bad repair.

Given at Philippi May 25 (464).

C. Th. 15.1.11.

Note.

The control of municipalities by the emperor has already been mentioned. While governors of provinces and the city prefects in Rome or Constantinople might cause public buildings in cities to be repaired without consulting the emperor, no new work, except public granaries and stables, could be undertaken without the emperor's order. That was a general law. D. 50.10.3.1. See law 13 of this title.

8.11.6. Emperors Gratian, Valentinian and Theodosius to Proculus.

Lapse of time should be no defense to a public right, not even pursuant to an imperial rescript. And all structures, therefore, which have been erected in the forum or other public places in the different cities, and spoil the convenience and proper appearance thereof, should be torn down.

Given at Constantinople June 3 (383).

C. Th. 15.1.22.

Note.

The statute of limitations does not ordinarily run against public rights under the common law. That principle also applied in the Roman law, as here noted. As to construction of buildings in public places, see note to law 19 of this title.

8.11.7. The same Emperors to Cynegius, Praetorian Prefect.

Everyone must willingly contribute services toward the restoration or construction of ports, aqueducts and walls, and no one must be excused from this common duty by any privileges of rank.

Given at Constantinople January 18 (384).

C. Th. 15.1.23.

8.11.8. The same Emperors and Arcadius to Cynegius, Praetorian Prefect.

All who have charge of the construction of public works or who, in the customary manner, receive money for that purpose, shall, together with their heirs, be liable for fifteen years from the completion of the works, so that if any defect in construction appears within that time it shall be made good at their expense, except in cases where such defect is caused by accident.

Given at Constantinople February 3 (385).

C. Th. 15.1.24.

Note.

Persons put in charge of such construction were known as curators. They were directly responsible to the city. While the contractors under him were, in turn, responsible to him. Such curators were selected from among the decurions - municipal senators - and who received no salary unless by special order of the emperor. C. 10.37.1. See Gothofredus' comments on this law (C. Th. 12.2.1).

8.11.9. Emperors Theodosius, Arcadius and Honorius to Aurelianus, City Prefect.

If permission has at any time been granted by us to build (new public works), Your Sublimity must see that no house be torn down for the purpose of the construction of such work unless valued below 50 pounds of silver. To tear down buildings of greater value, a report must first be made to us, so that if an expenditure of greater amount (than 50 pounds of silver) is required, imperial authority may be granted.

Given at Constantinople February 27 (393).

C. Th. 15.1.30.

8.11.10. The same Emperors to Rufinus, Praetorian Prefect.

If any of the governors inscribe their names, without mention of Our Majesty, on any work constructed with public money, they are guilty of the crime of treason.

Given at Constantinople July 5 (394).

C. Th. 5.1.31.

Note.

Persons who constructed a public work had the right to inscribe their name thereon, and this right was protected by the president. If only a part of the expense of a public building was contributed by an individual, he had the right to have his name inscribed thereon, by also stating the amount contributed by him. D. 50.10.2 pr.; D. 50.10.2.2; D. 50.10.3.2; D. 50.10.7. 1. See also C. 1.24.

8.11.11. Emperors Arcadius and Honorius to Eurebius, Count of the Imperial Exchequer.

Lest the splendid cities and towns go to ruin through age, we assign the third part of the income from the municipal farms to be used for the reparation of public walls and the heating of baths.

Given at Milan June 21 (395).

C. Th. 15.1.32.

Note.

The emperors at times assigned certain revenues from public places to certain designated purposes, as shown above and in law 19 of this title. See to the same effect C. Th. 15.1.41, and commentary of Gothofredus thereon. Similar in effect to the instant law is C. 4.61.13.

8.11.12. The same Emperors to Caesarius, Praetorian Prefect.

All provincial rectorors should be admonished by letter, that they must know that the local senate and inhabitants of each city should build new walls or make the old walls

stronger.¹ The expenses thereof should be apportioned (among the land-holders) according to the ability of each. An estimate of the amount should be made and then assessed against the lands of the citizens, so that no more than necessary may be demanded, nor less than required to bring about the desired result. A definite sum should be assessed against each taxable unit (which is not sterile), so that the burden of defraying the expense may be imposed equally on all, and no one shall be excused or presume to receive any exemption therefrom.

Given March 24 (396).

C. Th. 15.1.34.

Note.

C. Th. 15.1.17, - not embraced in the Justinian Code - states that when a public work is to be repaired, it is proper to demand the necessary contribution in kind, such as iron, stone or other necessary material. A peculiar provision, of the year 380 A.D., states that if bakers steal any grain and cannot pay the penalty in any other way, payment may be made in copper or lead. C. Th. 14.3.16. And Amm. Marc. 27.3.10, relates that one Lampridius, Prefect of Rome, seized iron, lead, copper or any other material when he entered upon the construction of a public building. In as much as taxes were largely payable in kind, it is not unlikely that the same principle was followed, where possible, in paying the necessary contributions to the needs of a city. The law here considered evidently contemplates a situation where the city had no funds. Many if not all the cities had some independent income from rental from lands or other public property. See Reid, Munic. of Roman Empire 452, et seq. C. 10.69; C. 8.11.11 and 19.

8.11.13. The same Emperors to Theodorus, Praetorian Prefect.

No governor shall have the temerity to commence any new (public) work without consulting Our Piety, or to tear from any public structure any ornaments or marbles or other material in serviceable use or serving as ornamentation in any city, or to transfer it to some other place, without the order of Your Sublimity. 1. Whoever violates this shall be punished by a fine of six pounds of gold. A like penalty will be visited upon the senates of the cities, if they fail to protect the ornamentation of their native city pursuant to the authority of this decree. 2. But the governors of the provinces may, in their discretion, and to show the zeal of their praiseworthy devotion, assume to construct granaries (for military food supplies) and stables (for the horses of the public post).

Given at Milan January 1 (398).

C. Th. 15.1.37.

8.11.14. The same Emperors to Severus, City Prefect.

If buildings commonly called parapessia (attachments) or other structures are so joined to walls or public buildings that the neighborhood is in fear of fire or other dangers, or if the rooms in streets or the width of the public porticoes is diminished thereby, they shall be torn down and destroyed.

Given at Constantinople October 10 (398).

C. Th. 15.1.39.

¹ In one of his notebooks, has a page headed "Mistakes in CJ Trans." in which he has written: "C. 8.11.12—1st sentence."

Note.

Amm. Marc. 27.9.10, says that Praetextatus, Prefect of Rome, removed all the balconies which the ancient laws of Rome had forbidden to be constructed, and separated from the sacred temples the walls of private houses which had been improperly joined to them. This, doubtless, was done for the purpose of removing danger from fire.

8.11.15. The same Emperors to Eutychianus, Praetorian Prefect.

If at any time there are men who have asked Our Clemency to give them a public building, they shall receive only such as is dilapidated, entirely worthless and not fit for use of cities. Rescripts making such grant must be registered (intimandis) in your high office.

Given December 13 (398).

C. Th. 15. 1. 40.

Note.

The emperor, being, in theory, the owner of all public buildings, was frequently besought for gifts of them, just as he was petitioned to give lands to private individuals. Several laws relating to this subject are contained in the Theodosian Code.

C. Th. 15.1.40-43. These public buildings were frequently sought by Christians, as well as pagans, for use as a place of worship. The present law provides that all good buildings shall be reserved for the public use - for the decurions and the various guilds.

C. Th. 15.1.41. Old buildings not necessary for public use might be granted. If private parties constructed a building on public ground, they must pay rental. See C. 8.11.19, and C. 11.70.1. It will also be noted that any grant must be registered in the office of the praetorian prefect. Rescripts, generally, in order to have validity, must be reported and registered.

8.11.16. The same Emperors and Theodosius to Aemilianus, City Prefect.

If it is necessary at any time to repair porticoes or other (public buildings) which are in bad condition through age or unavoidable accidents, our picture, or that of our predecessors, may be taken down reverently, even without consulting Our Clemency, to be put back in its proper place after the building is repaired.

Given at Constantinople June 27 (406).

C. Th. 15. 1. 44.

8.11.17. Emperors Honorius and Theodosius to Monaxius, City Prefect.

If any place within the grounds of the imperial palace in this city, is improperly occupied by private buildings, such buildings shall be torn down, as soon as possible, and the place restored to the palace grounds. These should not be encroached upon by the walls of private buildings; for the imperial residence needs segregation from others, so that only those should live within whom the ordinary needs of Our Majesty and the established forms of our empire has selected; all such usurpations are hereafter forbidden.

Given at Constantinople February 21 (409).

C. Th. 15.1.47.

Note.

The term palatium included not only the imperial residence, but the grounds connected therewith, and further, it appears herefrom that the dignitaries of the empire,

residing in Constantinople, and the other imperial officials residing in the palace, that is to say, within the area set off for the imperial court. These grounds were at times encroached upon by merchants. Gothofredus' commentaries of this law, and see note to law 19 of this title.

8.11.18. The same Emperors to Anthemus, Praetorian Prefect.

The towers of the new wall, constructed for the fortification of this splendid city, shall, after the completion of the work, be assigned to the use of those through whose grounds this wall was erected by the zeal and foresight of Your Magnitude, pursuant to the desire of Our Serenity. 1. This rule shall be good for all time to come under the same condition, and they and those to whom the title to these grounds may be transferred, may know that they shall each year cause them (the towers) to be kept in a state of repair at their own expense, and not doubt that the care of repair and solicitude thereof belongs to those who have the use thereof by public grant. 2. Thus, the splendor of the work and the protection of the city will go hand in hand with the use and benefit of private persons.

Given April 4 (413).

C. Th. 15. 1. 51.

Note.

The towers were of more than one floor. The occupants were compelled to quarter the soldiers assigned to watch these towers, on the ground floor, as appears from C. 12.40.7. The new walls were erected to extend the city of Constantinople. See Socrates 7.1 [book 7, c. 1].

8.11.19. Emperor Theodosius to Severinus, City Prefect.

Many houses, with their shops, are stated to be on the porticoes of the baths of Zeuxippus. We order that the income from the aforementioned places, in the amount fixed therefor, shall be devoted, without any exemption (on the part of anyone to pay his rental) to furnishing lights and repairing the buildings and roofs for these baths of this imperial city.

Given January 9 (424).

C. Th. 15.1.52.

Note.

The baths of Zeuxippus were among the most famous baths in Constantinople, constructed by the emperor Severus, when the city was still named Byzantium, for its name was changed by the emperor Constantine. It will here be noted that the baths had porticos, and on them merchants constructed houses and shops for the sale of goods, as appears to have been the custom generally in connection with public buildings and places in the Roman Empire. Even the palace grounds were thus encroached upon according to law 17 of this title. The superficiary, the persons occupying the ground, had to pay a fee or rental for the use of the space occupied by him. See Gothofredus' commentaries on this law and on C. Th. 15. 1. 25, and see laws 6, 20 and 21 of this title; also C. Th. 15.1.15; C. 11.69.1; Reid, Munic. of Roman Empire 453; C. 1.5.20.2.

8.11.20. Emperors Theodosius and Valentinian to Cyrus, City Prefect.

We order that persons who, without authority of an imperial rescript, to be directed to the office of Your Highness, in whole or in part, encroach, with their houses, on passage-ways (angiportus) or usurp porticos, must, without question, restore its former rights to the imperial city. A fine of fifty pounds of gold will be imposed on anyone who hereafter rashly attempts an act of a similar nature.
Given November 1 (439).

8.11.21. The same Emperors to Cyrus, City Prefect.

We order that the basilica, gilded and decorated with marble, shall always remain unobstructed, and shall not be darkened by the shade of a painting of anyone's portrait, no matter in whose honor it may be, and we ordain that no establishment or workshop of boards shall be erected in any part thereof. We also direct that no horses shall be permitted to enter it and no nuptials shall be celebrated therein.
Given at Constantinople January 22 (440).

Note.

For the description of a basilica, which was a structure used for public purposes, see that title in Smith's Dictionary G. & R. Ant.

8.11.22. Emperor Leo to Erythrius, Praetorian Prefect.

No one of the judges (governors) shall be permitted to commence new structures in this famous city or in the provinces until they have, with diligence and zest, completed those which they find to have been commenced by their predecessor or predecessors in office, and which have fallen down by reason of age or which were left unfinished through negligence, since they will acquire the greatest praise for themselves if they restore and put in proper condition the structures which are old and require repair, and structures which were commenced but were left in incomplete condition by others.
Given at Constantinople February 28 (472).