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Equal Protection of the Laws: Constitutional Law: Classification

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the respondents urged that the business under consideration afforded an especially fertile ground for the cultivation of the evils of extortion, fraud, imposition, discrimination, and the like.

In arriving at its conclusion, the court considered these propositions: It is granted that where businesses are devoted to public use, and the public has an interest in the business, i.e., is vitally affected by the operation of such business, the legislature has the power to regulate prices.² But the phrase "affected with the public interest" demands careful consideration. The mere declaration by a legislature that a business is affected with a public interest is not conclusive of the question whether its attempted regulation on that ground is justified.³ The circumstances which clothe a particular kind of business with a public interest in the sense that the power to regulate prices follows, must be such as to create a peculiarly close relation between the public and those engaged in it, and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public.⁴ So, where Congress enacted a law fixing minimum wages for women and children in the District of Columbia, it was held invalid insofar as it affected women as an arbitrary interference with the right to contract in respect of terms of private employment.⁵ And also, where an act of the New York Legislature sought to fix the price at which theater tickets should be sold by a ticket broker, such act was held invalid.⁶ The business of an employment agency is essentially a brokerage. There is no substantial difference between a real estate broker, merchandise broker, ticket broker, or employment broker as regards the character of the several undertakings. In none of these pursuits, however, does the interest of the public approach the interest the law contemplates as the basis for legislative price control.⁷

The evils attendant upon the operation of an employment agency render it subject to *regulation*, but not to price fixing.⁸

STEWART G. HONECK

Equal Protection of the Laws: Constitutional Law: Classification.

The case of *Quaker City Cab Co. v. Pennsylvania*¹ arose thus: A tax was placed upon the gross receipts of the Quaker City Cab Co., a foreign corporation doing business in the State of Pennsylvania. The statute read that every transportation company, foreign and

² *Wolff Co. v. Industrial Court*, 262 U.S. 522.

³ *Idem*.

⁴ *Idem*.

⁵ *Adkins v. Children's Hospital*, 261 U.S. 525.

⁶ *Tyson and Brother v. Banton*, *supra*.

⁷ *Wolff Co. v. Industrial Court*, *supra*.

⁸ *Tyson and Brother v. Banton*, *supra*.

¹ 48 Sup. Ct. 553.

domestic, owning or operating any device for the transportation of passengers "shall pay to the state treasurer a tax of eight mills upon the dollar, upon the gross receipts of said corporation received from passengers transported wholly within the state." The plaintiff claimed that if such tax is applied to the gross receipts of the corporation, the statute violates the equal protection clause of the fourteenth amendment to the United States Constitution. The plaintiff further contended that because the tax was placed upon corporations only, and not upon individuals or partnerships, the classification was discriminatory. The state contended that it possessed the right to classify and therefore could tax the corporations differently than individuals and partnerships.

A foreign corporation within the jurisdiction of a state is protected by the equal protection clause and is guaranteed the equal protection of the laws as regards other corporations doing the same kind of business. The state has the right to classify for the purpose of taxation, but the classification must be reasonable and based upon real and substantial differences and not arbitrary or unjust. The statute divides the taxicab business into two classes: those operating as corporations and those doing business as individuals and partnerships. The former is taxed while the latter is not. Such classification is unreasonable and is not based upon real and substantial differences. The statute therefore was held to violate the equal protection clause of the fourteenth amendment.

Mr. Justice Brandeis wrote a forceful dissenting opinion to the ruling in this case, stating that the policy of Pennsylvania since 1840 has been to tax businesses conducted by corporations heavier than those conducted by individuals and partnerships. The equal protection clause, he states, merely requires that the classification be reasonable. To place corporations in one class and businesses conducted by individuals in another is a reasonable classification. The difference between the two is a real and important one. To conduct a business in a corporate form is far more advantageous than to conduct such business as a partnership or individual. The thing taxed is not the dealing in merchandise, but the privilege of doing business in a corporate form. Therefore the Pennsylvania statute imposing heavier taxes on corporations does not violate the equal protection clause.

The Wisconsin cases on this question seem to lean more favorably toward the dissenting opinion. In *Chicago and Northwestern Ry. v. State*,² it was held that it was within the discretion of the legislature to place railroad corporations in a class by themselves for taxing purposes, but the taxation as to such classes shall be uniform. *Bern-*

² 128 W. 553.

*hard Stern and Son v. Bodden*³ holds that if the rule of taxation is uniform, proper classification may be made and different rates applied to each class. Classification, however, must be based upon substantial distinction which make real differences, is the ruling of *Kily v. Chicago, Milwaukee and St. Paul Ry. Co.*⁴ The state can tax all privileges or select certain classes leaving others untaxed. *Beals v. State*.⁵ In the case of *Pick v. Rubicon Hydraulic Co.*⁶ the court held that the legislature can impose other restrictions upon corporations as to method of acquiring easements, than those applied to individuals.

LEWIS I. COHEN

Taxation: State Taxation of Federal Agencies and Instrumentalities.

The application of the doctrine prohibiting state interference with the agencies and the instrumentalities of the federal government has been greatly enlarged by two recent decisions of the United States Supreme Court. Both of the cases were decided by a divided court, and it would seem from a summary review of the decided cases and the principles therein enunciated that the limits of the application of this doctrine are reached in this type of case.

The first of these cases is that of *Long v. Rockford*, 48 S.Ct. 463, in which it was held that royalties for use of patents cannot be taxed by the states. The argument being, that the primary object in granting and securing the monopoly to the inventor was the benefit to the public and community at large and secondarily to promote the progress of science and the useful arts. That the patent is the instrument by which that end is accomplished, and like a franchise granted by the United States is not subject to state taxation. If the state "cannot tax the patent, it cannot tax the royalties received from its use."

The second case arose under a law enacted by the state of Mississippi providing that dealers in gasoline shall pay for the privilege of engaging in such business an excise tax of a designated amount per gallon upon the sale of gasoline. Defendant company sold gas to the United States Government for use in operation of Coast Guard fleet and Veteran's Hospital. The company defended the action brought to recover taxes levied on this sale with the contention that the tax was void since it was an interference with the instrumentalities of the federal government. This view was upheld by the Supreme Court in *Panhandle v. State of Mississippi*, 48 S.Ct. 451. Quoting Mr. Justice

³ 165 Wis. 75.

⁴ 142 W. 154.

⁵ 139 W. 544.

⁶ 27 W. 433.