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Article 11

Constitutional Law - Curfew Law Constitutional

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offer to purchase and after a quarrel had told the claimant that he could use the driveway so long as he was a good neighbor. The court said that this showed permission and sufficiently explained the claimant's subsequent use and rebutted the presumption that such use was adverse.

The principal case shows that the Wisconsin Court will follow the majority rule and presume that use for the statutory period was adverse where there is proof only of verbal protests against the use on specific occasions but no evidence of the owner's having given any permission or indulgence to so use.

PAUL F. KRUMHOLZ

Constitutional Law — Curfew Law Constitutional — Calvin W. Goodwin and his wife, Sophia D. Goodwin were convicted in the municipal court of violating an ordinance of the City of Portland, making it unlawful for any person to roam or be upon any street between the hours of 1:00 and 5:00 o'clock A.M. without having and disclosing a lawful purpose. They appealed. The circuit court sustained their demurrers, which alleged that the complaint did not state a cause of action and that the ordinance violated the Fourteenth Amendment. The City appealed. *Held:* Reversed. The Supreme court stated: "the real question is whether an ordinance such as this bears a sufficiently close relation to the peace, safety and welfare of the public so far as to justify the inconvenience to which law abiding citizens may occasionally be submitted." The court found that the ordinance bears a reasonable relation to the evil at which it is directed. *City of Portland v. Goodwin, 210 Pac. (2d) 577 (Oregon 1949).*

Such ordinances come under the police power of the governing authority, for everything contrary to public policy or inimical to the public interest is the subject of the exercise of the state's police power.[1] This is true because the possession of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.[2] It is a general rule that in order for a police measure to be reasonable, the means adopted must be reasonably necessary and appropriate for the accomplishment of legitimate objects falling within the scope of the power.[3] It has also been held that a state in suppressing what it regards as a public evil may adopt any reasonable measures which it may deem necessary, and the reasonableness of a police regulation is not necessarily what is best, but what is fairly ap-

[1] Gross v. Commonwealth, 256 Ky. 19, 75 S.W. (2d) 558 (1934).
[2] Gundling v. City of Chicago, 177 U.S. 183, 20 S.Ct. 633, 44 L.Ed. 725 (1900).
[3] 11 C.J. 1075, 303.

propriate under attendant circumstances.[4] Furthermore courts will declare a statute invalid only if manifestly unreasonable, and reasonableness is primarily a matter for the legislative judgment.[5]

However, there are jurisdictions which temper the broad scope of the police power by requiring that the ordinances or statutes actually remedy and remove the evil at which they are directed, for if it is manifest that the statute or ordinance, under the guise of a police regulation, does not tend to preserve the public health, safety, or welfare, it is void as an invasion of the property rights of the individual.[6] In *Ex parte McCarver* the court held invalid a nine o'clock curfew ordinance which prohibited any person under twenty-one years of age from being upon the streets unless accompanied by parent or guardian. The ordinance was construed as prohibiting legitimate errands or necessary business.[7]

In *United States v. Gordon Kiyoshi Hirabayashi,* the court seemed to indicate that an emergency would have to exist before a curfew could be imposed when it said, "there must, of course, be extraordinary reasons to justify curfew for or removal, even from a Military area, of American citizens therein. But with respect to those of Japanese ancestry in Military Area No. 1 certainly since Pearl Harbor most extraordinary reasons have been obtained."[8]

In the instant case the court held that the priveleges and immunities of the defendants had not been violated. As to personal liberty, a right possessed by every citizen of the United States, the court in *United States v. Kaplan* said, "Liberty means more than nonconfinement in jails; it means the right to enjoy one's life uninterruptedly and uninterfered with so long as the rights of others be not invaded, and so long as the laws of the land are not violated in a way that will evidence probable cause of such violation."[9] Furthermore personal liberty, which is guaranteed to every citizen under our constitution and laws, consists of the right of locomotion,—to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.[10] Also, in Pennsylvania it is held that freedom of locomotion, although subject to proper restrictions, is included in the "liberty" guaranteed by our Constitution.[11] Thus it would seem that the right to freely walk the streets can not be taken away from a per-

[4] 16 C.J.S. 542, 175.
[5] State v. Kincaid, 133 Or. 95, 285 P. 1105 (1930).
[6] People v. Carolene Products Co., 345 Ill. 166, 177 N.E. 698, (1931).
[7] Ex parte McCarver, 39 Tex.Cr.R. 448, 46 S.W. 936, 42 L.R.A. 587 (1898).
[8] United States v. Gordon Kiyoshi Hirabayashi, 46 F.Supp. 657 (D.C. Wash. 1942).
[9] United States v. Kaplan, 286 F. 963 (D.C. Ga. 1923).
[10] Pinkerton v. Verberg, 78 Mich. 573, 44 N.W. 579 (1899).
[11] Commonwealth v. Doe, 109 Pa.Super. 187, 167 A. 241 (1933).

son unless an emergency exists which makes the curtailment of the right necessary, or unless he is so acting that he is violating the rights of others, or gives indication that he will violate the rights of others, or that he is breaking or will break some valid law.

In the instant case there was no showing of an emergency, nor was there any showing that the defendants were violating the rights of others or that they were violating any valid laws. Therefore it is the opinion of the writer that the ordanance in the instant case is not a valid exercise of the police power because it violates the right of the individual to move about freely without interrogation by police as to his purpose when conducting himself in an orderly manner, without violating the rights of others, or violating any valid law.

EMIL SEBETIC

Labor Law — Financial Contribution by Employer to Union as Unfair Labor Practice — In the midst of negotiations for a new contract between the defendant union and the employer, the proprietor of a small beauty shop employing four employees, the defendant demanded that the employer join the union as a non-voting or non-active member. When he refused to do so the defendant began peacefully to picket his place of business, whereupon the employer applied to the Wisconsin Employment Relations Board for relief. The Board found the defendant guilty of an unfair labor practice under the Wisconsin Employment Peace Act and instituted the present suit for an injunction to enforce their order that the union cease picketing. *Held:* Section 111.06(1)(b), Wisconsin Statutes, defines as an unfair labor practice employer contribution of financial support to any labor organization, and though it is true that the term "financial support" is much broader than the mere payment of dues and includes financial support of any kind, it also includes the payment of dues. Picketing an employer to compel him to do that which the law prohibits him from doing is not constitutionally protected free speech and may be enjoined. *Wisconsin Employment Relations Board v. Journeymen Barbers Union, 256 Wis. 77, 39 N.W. (2d) 725 (1949).*

In *Senn v. Tile Layers Protective Union*[1] the United States Supreme Court held that there is no absolute federal constitutional right of an individual to work with his hands, and that a state statute might authorize or permit the union to picket his shop to make him stop doing so in order to spread employment of union members. And in *Cafeteria Employees Union v. Angelos*[2] they determined that a state court may

[1] 301 U.S. 468, 57 S.Ct. 857, 81 L.Ed. 1229 (1937).
[2] 320 U.S. 293, 64 S.Ct. 126, 88 L.Ed. 58 (1943).