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Article 7

Constitutional Law - Right of State to Regulate Federal Instrumentalities

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RECENT DECISIONS

Constitutional Law—Right of State to Regulate Federal Instrumentalities.—The Massachusetts Legislature enacted an Emergency Milk Control Law (St. 1934, c. 376 as amended by St. 1937, c. 428) wherein it established a Milk Control Board. The preamble of the act states that the milk industry is one of paramount interest to the public; that an uninterrupted continuance of a supply of pure milk is necessary for the public health; that such supply is seriously threatened, largely through the disparity between the prices paid milk producers and the prices such producers had to pay for other essential commodities. The board was given the power to fix minimum prices to be paid by dealers to producers for milk, and under certain conditions to fix minimum wholesale and retail prices to be charged by dealers for milk sold within the State.

The Milk Control Board brought a suit in equity to enjoin the defendant, Gosselin's Dairy Inc., from selling milk to the United States government to be used at the Northampton Veteran's Hospital at prices two and three cents a quart below the price fixed by the board. The sole issue involved in this case was whether such minimum prices fixed by the board apply to contracts for the sale of milk to the United States government where delivery is made within the State. On reservation and report from the Supreme Judicial Court of Suffolk County, it was *held,* that a permanent injunction against the defendant should be granted, on the ground that Federal instrumentalities are subject to a reasonable exercise of the police powers of the state at least where no Fderal law provides otherwise. *Milk Control Board* v. *Gosselin's Dairy Inc.* (Mass. 1938) 16 N.E. (2d) 641.

The police power of the States has been defined as an exercise of the Sovereign right of the Government to protect the lives, health, morals, comfort, and general welfare of the people. *Home Building and Loan Association* v. *Blaisdell,* 290 U.S. 398, 54 Sup. Ct. 231, 78 L.ed. 413 (1934). The mode or manner in which these results are to be accomplished is within the discretion of the State, subject only of course, so far as Federal power is concerned, to the condition that no rule prescribed by a State, nor any regulation adopted under the sanction of state legislation shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument. *Jacobson* v. *Massachusetts,* 197 U.S. 11, 25 Sup. Ct. 305, 49 L.ed. 643 (1905). Yet such illegal interference of a State by its laws must be substantial and direct, or the states will be greatly hampered in the conduct of their affairs, without any corresponding benefit flowing to the national government. *State of Washington* v. *Wiles,* 116 Wash. 387, 199 Pac. 749, 18 A.L.R. 1163 (1921).

A state statute penalizing one who operates a motor truck on its highways without having first obtained a state license, based upon an examination and the payment of a fee, cannot constitutionally apply to a postal employee while engaged in driving a government truck in the performance of his official duty. *Johnson* v. *Maryland,* 254 U.S. 51, 41 Sup. Ct. 16, 65 L.ed. 126 (1920); see also *American Motor Insurance Co. v. Struwe* (Texas Civil Appeals, 1920) 218 S.W. 534. But a person who owns and operates a truck used in transporting United States mail under contract, is not immune from a state license law, the interference with the national government being, in such case, considered only incidental and indirect. *State of Washington* v. *Wiles,* 116 Wash. 387, 199 Pac. 749, 18 A.L.R. 1163 (1921); *Ex Parte A. C. Marshall,* 75 Fla. 97, 77 So. 868, L.R.A. 1918c, 944 (1918). Such contractors are subject to the payment of the same tolls

for the use of State owned bridges, turnpikes, and ferries as are other persons not employed by the national government. *Dickey* v. *Maysville, Washington, Paris, and Lexington Turnpike Road Co.,* 7 Dana (Ky.) 113 (1830). Where there is no law of Congress to the contrary, a federal employee in charge of a vehicle transporting mail, is not exempt from the operation of state statutes and municipal ordinances regulating the mode of turning street corners. *Commonwealth* v. *Closson,* 229 Mass. 329, 118 N.E. 653, L.R.A. 1918C, 939 (1918). Nor are employees of the federal government exempt from the operation of statutes and ordinances fixing a speed limit. *Hall* v. *Commonwealth,* 129 Va. 738, 105 S.E. 551 (1921. Such statutes or ordinances, however, are not to be construed as applying to federal employees engaged in the performance of a duty where speed and the right of way are a necessity. *Lilly* v. *State of West Virginia,* 29 F. (2d) 62, (C.C.A. 4th, 1928); see also, *State* v. *Burton,* 41 R.I. 303, 103 Atl. 962, L.R.A. 1918F 559 (1918). It was held in *Ex Parte Willman,* 277 Fed. 819, (S.D., Ohio 1921), that an Ohio statute requiring a certain type of lamp to be used on trucks, did not apply to a United States mail truck equipped with standard lamps as issued by the Post Office Department pursuant to orders of the Postmaster General.

In *Ohio* v. *Thomas,* 173 U.S. 276, 19 Sup. Ct. 453, 43 L.ed. 699 (1898) an Ohio statute regulating the use of oleomargarine was held to have no application to the use of such a commodity in a National Veteran's Home, where such use of it was authorized by valid Federal authority. Similarly the national census is exclusively within the authority of Congress and the Director of Census cannot be controlled or interfered with by state legislation. *United States ex rel. City of Atlanta* v. *Steuart,* 47 F. (2d) 979 (Ct. of Appeals of D. of C., 1931). Federal employees acting under orders to dispose of deer in a national park are not amenable to state game laws. *Hunt, Governor of Arizona* v. *United States,* 278 U.S. 96, 49 Sup. Ct. 38, 73 L.ed. 200 (1928). But a telegraph or telephone company erecting wires and poles over a post road under a federal franchise is amenable to the police power of a municipality in fixing a reasonable annual rent to be paid for each pole and requiring such company to deposit a fund with such municipality to protect its citizens recovering a judgment for the negligence of the company in the erection and maintenance of the poles and wires. *St. Louis* v. *Western Union Telegraph Co.,* 148 U.S. 92, 13 Sup. Ct. 485, 37 L.ed. 380 (1892); *Western Union Telegraph Co.* v. *Richmond,* 224 U.S. 160, 32 Sup. Ct. 449, 56 L.ed. 710 (1912).

The grant of a federal patent does not prevent the police power of a state from regulating the use, sale, or assignment of an invention or discovery. *Allen* v. *Riley,* 203 U.S. 347, 27 Sup. Ct. 95, 51 L.ed. 216, 8 Ann. Cas. 137 (1906); *John Woods & Sons* v. *Carl,* 203 U.S. 358, 27 Sup. Ct. 99, 51 L.ed. 219 (1906); *Ozan Lumber Co.* v. *National Bank of Liberty,* 207 U.S. 251, 28 Sup. St. 89, 52 L.ed. 195 (1907).

National Bank are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. Any attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, whenever such attempted exercise of authority conflicts with the laws of the United States. *Davis* v. *Elmira Savings Bank,* 161 U.S. 275, 16 Sup. Ct. 502, 40 L.ed. 700 (1896); see also, *First National Bank in St. Louis* v. *State of Missouri,* 263 U.S. 640, 44 Sup. Ct. 213, 68 L.ed. 486 (1923). State statutes relating to the distribution of assets of insolvent banks have no application to the assets of national banks, as the national

banking act provides for the method of distributing the assets of insolvent national banks. *Spradlin* v. *Royal Manufacturing Co.*, 73 F. (2d) 776 (C.C.A. 4th, 1934); *Grindley* v. *First National Bank of Detroit*, 87 F. (2d) 110 (C.C.A. 6th, 1936); see also, *American Surety Company of New York* v. *Baldwin*, 90 F. (2d) 708. (C.C.A. 7th, 1937).

Officers of the United States, when discharging duties under federal authority pursuant to and by virtue of valid federal laws, are not subject to arrest or other liability under the laws of the state in which their duties are being performed. *Ohio* v. *Thomas*, 173 U.S. 276, 19 Sup. Ct. 453, 43 L.ed. 699 (1898). A state court has no power to control by mandamus the official discretion of an officer or agent of the United States and arrest and punish him for an act done or omitted to be done in the performance of his duties. *Ex Parte Shockley*, 17 F. (2d) 133, (D.C. Ohio, 1926). But the mere fact that a person is an officer or agent of the United States charged with the performace of certain duties under that government, will not afford him immunity from prosecution under the laws of the state, if the acts complained of are such as to show that the claimed immunity is a mere subterfuge and that under no fair consideration of his official duty could he have assumed he was acting in his official capacity. *In re Waite*, 81 Fed. 359 (D.C. Iowa, 1897).

It must be conceded that the States are without power to enforce any laws or regulations which directly and materially interfere with the instrumentalities of the Federal government. But on the other hand, the police power of a state is not exceeded when the interference with a federal instrumentality is only indirect or incidental. It is in the application of this "axiomatic" principle, however, where difficulties arise. This is true because the ascertainment by the courts of what is a "direct" and "material" interference as contrasted with that which is an "indirect" or "immaterial" interference is governed by the particular facts and circumstances of each case.

Observing the great increase in the number and importance of federal instrumentalities in recent years, the principal case is indicative of a possible trend by the courts to construe liberally state laws as merely exercising an indirect or immaterial interference with an instrumentality of the federal government and thus within the police power of the states.

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Insurance—What Constitutes An Insurance Business?—Proceeding in quo warranto to oust the defendant from the insurance business with the state of Ohio. The defendant was engaged in the sale of automobile equipment including pneumatic rubber tires. It was charged that he entered into a form of guarantee agreement which constituted a violation of the state insurance laws. There were two distinct forms available. One provided for a quarantee for a specific period against road hazards that might render the tire unfit for further service. In the event of such damage the defendant was to have the option of furnishing a new tire or repairing the damaged one. The other printed form was a guarantee that the tire would wear for not less than a stated period, and that should it fail to do so it would be repaired or replaced with a new tire.

It was contended that these guarantee agreements were made in violation of Section 665 of the General Code: "No company, corporation, or association . . . shall engage directly or indirectly in this state in the business of insurance or enter into any contracts substantially amounting to insurance . . . unless it is