

# Constitutional Law: Due Process; Price Fixing Legislation

Stewart G. Honeck

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action, the credit of the state is not being loaned in the aid of any individual corporation or association."

3. "The transaction does not result in an indebtedness on the part of the state. Under the plan the only obligation entered into by anyone representing the State or with power to bind the State is the obligation to pay the designated rent stipulated by the terms of the lease running from the building corporation to the board of regents. But for this purpose only, the proceeds arising from the operation of the leased premises are to be applied upon the payment of the rent. The regents are free at their election to abandon the plan of acquiring or holding that which prior to the contract they did not own. (The land was owned by the university.) The board of regents acquired an interest in the property which it did not have. In purchasing that property it does not pledge the general credit of the state. It pledges to the payment for the property moneys acquired from the operation of the property thus acquired."

4. As to the delegation of legislative powers to the board, the court merely said, "that this was merely a duty imposed by the legislature upon the board in order that the purpose of the statute might be carried out."

MORGAN MALONEY

#### Constitutional Law: Due Process: Price-Fixing Legislation.

When supported and accelerated by a general public interest in the matter which it seeks to control or regulate, police power knows nor recognizes no law. But when that necessary element of "public interest" is lacking, police power is a cart *sans* wheels.

The instant case<sup>1</sup> presents a discussion of what constitutes a public interest of quality sufficient to warrant price fixing legislation. Here a statute required all persons who sought to establish employment agencies to procure licenses from the commissioner of labor of that state, providing a penalty for failure to do so. Applicants were required to submit to the commissioner a schedule of fees which they proposed to charge for services in the conduct of such agencies. The commissioner of labor was empowered by the same statute to reject applicants "for any good cause shown within the meaning of this act."

The case at hand was precipitated by the refusal of the commissioner of labor to issue a license to the appellant on the sole ground that, *in his opinion*, the proposed fees were exorbitant and unreasonable. In reply to the appellant's contention that the attempt to confer upon the commissioner of labor the power to fix prices in the manner described above contravenes the due process clause of the Constitution,

<sup>1</sup> *Ribnik v. McBride*, 48 S. Ct. Rep. 545.

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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

STEWART G. HONECK

#### Equal Protection of the Laws: Constitutional Law: Classification.

The case of *Quaker City Cab Co. v. Pennsylvania*<sup>1</sup> 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

<sup>2</sup> *Wolff Co. v. Industrial Court*, 262 U.S. 522.

<sup>3</sup> *Idem.*

<sup>4</sup> *Idem.*

<sup>5</sup> *Adkins v. Children's Hospital*, 261 U.S. 525.

<sup>6</sup> *Tysons and Brother v. Banton*, *supra*.

<sup>7</sup> *Wolff Co. v. Industrial Court*, *supra*.

<sup>8</sup> *Tysons and Brother v. Banton*, *supra*.

<sup>1</sup> 48 Sup. Ct. 553.