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Constitutional Law - Regulation of Public Accountants - Interference with Freedom of Contract

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CONSTITUTIONAL LAW—REGULATION OF PUBLIC ACCOUNTANTS—INTERFERENCE WITH FREEDOM OF CONTRACT.—In 1935 the Wisconsin legislature passed a statute requiring that all public accountants be licensed. A State Board of Accountancy was set up under the statutory scheme and the plaintiffs, purporting to be public accountants, sued to enjoin the enforcement of the penal provisions of the statute. [See Chapter 135 of the WISCONSIN STATUTES, 1935.] The plaintiffs contended that the practice of accounting does not affect the public welfare and that regulation of this business interferes with the plaintiffs' freedom of contract. The statute is comprehensive but it does not pretend to reach employee-bookkeepers. The defendants demurred to the complaint. The demurrer was sustained. On appeal, *held*, order affirmed; the general practice of public accounting affects the general welfare to the extent that regulation of the practice as set out in the current statute is within the scope of the state's police power, *Wangerin v. Wisconsin State Board of Accountancy*, (Wis. 1936) 270 N.W. 57.

Prior to 1935 legislation was enacted in Wisconsin and in other states prohibiting the use of the abbreviation "C. P. A." without certification, and the courts which passed upon the question held that this restriction was a proper exercise of state police power. See Wis. Laws (1913) c. 337. In *Lehman v. State Board of Accountancy*, 208 Ala. 185, 94 So. 94 (1922) an injunction to prevent the state board's cancelling the plaintiff's certificate was refused. The court felt that the legislature had the power to require that practitioners disclose that they had complied with the advanced standards required of certain accountants, compliance with which was voluntary on their part. The state board might confer such certificate and the state board might take it away. In *State v. De Verges*, 153 La. 349, 95 So. 805 (1923) the court held that anyone was at liberty to practice as an accountant, but that he had to pass the state requirements to hold himself out as a certified public accountant. Similarly in *Henry v. State*, 97 Tex. Cr. Rep. 67, 260 S.W. 190 (1924) and in *People v. Marlowe*, 203 N.Y. Supp. 474 (1923) it was held that it was within the police power of the state to regulate the highly skilled and technical profession of public accounting by forbidding the use of "C.P.A." without certification. The new Wisconsin statutes do little more than extend this doctrine to all public accountants. The framers of the Wisconsin law carefully avoided the single element upon which regulation has been ruled unconstitutional in other courts, by providing that anyone may serve as a bookkeeper for as many private individuals or firms as he chooses. In three other jurisdictions, *State ex rel. Short v. Reidell*, 109 Okl. 35, 233 Pac. 684 (1925), *Frazer v. Shelton*, 320 Ill. 253, 150 N.E. 696, (1926) and *Campbell v. McIntyre*, 165 Tenn. 48, 52 S.W. (2d) 162 (1932) regulation of accounting was held unconstitutional. In each case the entire field of accounting including that of bookkeeping was to be brought under state regulation. In *State ex rel. Short v. Reidell*, *supra*, it was held that a statute making it unlawful for one not a holder of a certificate to engage in the profession of accounting was unconstitutional. In *Frazer v. Shelton*, *supra*, and *Campbell v. McIntyre*, *supra*, the statutes involved prohibited any person's practicing accounting without his getting a certificate, unless he were merely a bookkeeper employed by one employer. In these three cases the courts felt that enforcement of the statutes would cut off the means of livelihood of a certain group of men. Moreover such enforcement would interfere with the business man's employing whom he would. The new Wisconsin statutes extend to all public accountants. But in the principal case the court felt that the statute met the tests of constitutionality because under it anyone can work as a bookkeeper and any employer

is free to hire whom he chooses. The Wisconsin court feels that the field of public accounting is a matter in which the public can be interested. The business has become technical and the demand for skilled accountants is great particularly by reason of the current legislative restrictions on business practices.

JOSEPH E. DEAN.

CORPORATIONS—FOREIGN CORPORATIONS DOING BUSINESS WITHOUT LICENSE—CONTRACTS MADE WITHIN STATE.—A Louisville liquor concern had shipped a consignment of liquor to itself in Wisconsin. The shipment was placed in the defendant's warehouse with a notation to notify the New Era Products Co. The latter paid a draft attached to the freight receipt from the proceeds of a loan from the Badger State Bank. As partial security for the loan, the New Era Products Co. turned over the warehouse receipts for the liquor; and whenever the New Era Products Co. paid on the loan, the bank released some of the warehouse receipts. Subsequently the plaintiff took an assignment of the liquor by paying to the New Era Co. whatever amount it had actually put out for the liquor exclusive of the loan from the bank. It was then the custom of the plaintiff to pay part of the balance to the New Era Co. who in turn would transfer such amount to the bank, which would release a corresponding number of warehouse receipts. In this manner the plaintiff obtained the liquor. The final balance on the loan was paid directly by the plaintiff to the bank which released to the plaintiff all of the remaining warehouse receipts. The defendant warehouse released all but ten cases of the liquor to the plaintiff. The latter sued for the alleged conversion of the liquor. The civil court in which the case was tried dismissed the complaint. On appeal to the circuit court judgment was entered for the plaintiff for the value of the liquor. On appeal to the supreme court, *held*, judgment reversed and the circuit court directed to enter judgment dismissing the complaint. The plaintiff was a foreign corporation doing business without a license and had acquired title to the property through a contract entered into in Wisconsin. *Holleb Liquor Distributors, Inc., v. Lincoln Fireproof Warehouse Co.*, (Wis. 1936) 270 N.W. 545.

Foreign corporations doing business within the state must comply with the local statutes. WIS. STAT. (1935) § 226.02. The sanction behind the statute is set out in Subsection 9: "Foreign corporations and the officers and agents thereof doing business in this state shall be subjected to all the liabilities and restrictions that are imposed upon domestic corporations of like character and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporations, affecting its liability or relating to property within this state, before it shall have complied with the provisions of this section, shall be void on its behalf and on behalf of its assigns, but shall be enforceable against it or them." Subsection 10 of the same statute provides for a forfeiture of \$500 on failure to comply with the provisions. The sanction of the statute declares a contract made by an unlicensed foreign corporation relating to property in this state to be absolutely void, and not merely voidable at the option of the other party. *Ashland Lumber Co. v. Detroit Salt Co.*, 114 Wis. 66, 89 N.W. 984 (1902). This, however, does not give the foreign corporation the right to rescind such contract. The contract is void only at the election of the party dealing with the corporation. Neither the corporation nor its assigns could enforce it against the other party. But such party may affirm or disaffirm the contract at his election. *Lanz-Owen and Co. v. Garage Equipment Mfg. Co.*, 151 Wis. 555, 139 N.W. 393 (1913). Neither can a corporation, by complying with the statute in