Marquette Law Review

Volume 18
Issue 1 *December 1933*

Article 8

Corporations: Compensation of Officers: Bonuses

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1103, 27 A.L.R. 1280 (1922). By the declaration of the emergency the court takes the control of milk out of this class.

The use of the police power must be reasonable and necessary, connected directly with the public welfare. *Lochner* v. *N. Y.,* 198 U.S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937 (1904). Any interference with private rights which is unreasonable and unneeded is deprivation of property without due process of law and is void under the 14th Amendment. *State Freight Tax Case,* 15 Wall. 232, 21 L. Ed. 146 (1872). The mere declaration by the legislature that a given industry is of public concern is not sufficient to make it so. It is subject to judicial review. *Tyson & Bro.* v. *Banton,* 273 U.S. 418, 47 Sup. Ct. 426, 71 L. Ed. 718, 58 A.L.R. 1236 (1926); *Wolff Packing Co.* v. *Court of Industrial Relations,* supra. The courts will follow the judgment of the legislature as far as possible wherever the statute aims to stimulate the production of a vital food by price fixing, and will interpret it liberally according to the purpose of the legislature. *Austin* v. *City of New Court,* 258 N.Y. 113, 179 N.E. 313 (1921).

The court distinguished between the control of the price of milk and the control of the number of ice plants in Oklahoma, *New State Ice. Co.* v. *Liebman,* supra, on the grounds that the Oklahoma statute tended to set up monopolies which the New York statute does not do.

CAROLINE AGGER.

CORPORATIONS—COMPENSATION OF OFFICERS—BONUSES.—Plaintiff brought action as a minority stockholder to have defendants, officers of the corporation, account for amounts paid them under a 1912 by-law authorizing the diversion to six senior officers of ten per cent of any annual profits in excess of those realized in 1910, and that such payments be enjoined. It was shown the capital of the company since 1910 had more than doubled; profits had increased fivefold; that under this by-law over ten million dollars had been distributed to the executives since 1921; that in 1930 the president received a cash bonus of more than $842,000 in addition to a stipulated salary of $168,000 and "special credits" of $273,470; that the directors, to insure continuance of employees' zeal, put through several stock subscription plans, the benefits of which had accrued in large part to the inaugurators, the plans being at no time revealed to the stockholders; inter alia. In March, 1931, after a demand for an accounting to the company and a refusal to comply, plaintiff brought suit in the Supreme Court of New York; thereafter the suit was removed to the federal court for the Southern District of New York whose temporary injunction was reversed with direction to dismiss the suit by the Cicuit Court of Appeals. [60 F. (2d) 109 (C.C.A. 2d, 1932]. On writ of certiorari. *Held,* reversed. The by-law could not be used to justify payments to the officers of sums so large as in substance and effect to amount of spoilation or waste of corporate property, over the protest of a stockholder, and the lower court is warranted to determine whether and to what extent such payments constituted misuse and waste. *Rogers* v. *Hill, et al.,* 53 Sup. Ct. 731, 77 L. Ed. 945 (1933).

A bonus is not a gift or gratuity, but a sum paid for services, or upon a consideration or in addition to that which would ordinarily be given. *Steeple* v. *Max Kuner Co.,* 121 Wash. 47, 208 Pac. 44 (1922), quoting *Kennicott* v. *Wayne County Sup'rs,* 16 Wall. 452, 21 L. Ed. 319 (1873). The contract to pay an officer additional compensation in the way of a bonus may be either express or implied. *Church* v. *Harnit,* 35 F. (2d) 499 (C.C.A. 6th, 1929). It is well settled that corporations, generally through their boards of directors, may pay or prom-

ise to pay to their officers extra compensation in the way of a bonus, and when properly authorized, it is not in itself a fraud upon dissenting stockholders. *Church* v. *Harnit,* supra; *Putnam* v. *Juvenile Shoe Corp.,* 307 Mo. 74, 269 S.W. 593 (1925) where the court said: "The payment of a bonus may be legal or illegal, according to the purposes to which and the circumstances under which the same is authorized;" *Witt* v. *James McNeil & Bro. Co.,* 296 Pa. 386, 146 Atl. 27 (1929). Generally, however, these schemes purporting to stimulate executive initiative by cash bonuses or rights to purchase stock at preferential prices have received judicial sanction. *Bennett* v. *Milville Improvement Co.,* 67 N.J.L. 320, 51 Atl. 706 (1902); *Zwolanek* v. *Baker Mfg. Co.,* 150 Wis. 517, 137 N.W. 769 (1912); *Young* v. *United States Mtg. & Trust Co.,* 214 N.Y. 279, 108 N.E. 418 (1915); *Roberts* v. *Mills,* 184 N.C. 406, 114 S.E. 530 (1922); *Church* v. *Harnit,* supra. And although bonuses are usually contingent on the amount of profits, here the courts have upheld them as a cost of the enterprise rather than a distribution of profits to other than stockholders. See Comment (1933) 42 Yale Law Jour. 419, 422. Some courts have gone to the extent of attaching an economic value to the bonus scheme. *Booth* v. *Beattie,* 95 N.J.Eq. 776, 118 Atl. 257 (1924); *Harker* v. *Ralston Purina Co.,* 45 F. (2d) 929 (C.C.A. 7th, 1931). Their economic value may be reasonably doubted, however, in view of the fact that recent disclosures have indicated that these "bonus" plans may "mask raids on corporate treasuries." See N. Y. Times, Feb. 22, 1933, at p. 1, re: National City Bank of New York bonus plan; Time, Mar. 6, 1933, at p. 47; N. Y. Times, Aug. 1, 1930, at p. 20, and id., Nov. 1, 1930, at p. 28, re: Bethlehem Steel Corp. bonus system; Cox, COMPETITION IN THE AMERICAN TOBACCO INDUSTRY (1933) p. 308 et seq. A number of courts, however, have not hesitated to inquire into the reasonableness of compensation received by corporate executives, even after the approval of stockholders. *Ward* v. *Davidson,* 89 Mo. 445, 1 S.W. 846 (1886); *Lillard* v. *Oil Paint & Drug Co.,* 70 N.J.Eq. 197, 56 Atl. 254 (1903); *Booth* v. *Beattie,* supra; *Godley* v. *Crandall & Godley Co.,* 212 N.Y. 121, 105 N.E. 818 (1914); *Atwater* v. *Elkhorn Valley Coal-Land Co.,* 184 App. Div. 253, 171 N.Y. S. 552 (1918); *Sotter* v. *Coatesville Boiler Works,* 257 Pa. 411, 101 Atl. 744 (1917); *Nichols* v. *Olympia Veneer Co.,* 139 Wash. 305, 246 Pac. 941 (1926); *Collins* v. *Hite,* 109 W.Va. 79, 153 S.E. 240 (1930). Reasonableness, being the test then, intervention is frequently placed on the theory enunciated by Judge Swan, dissenting in *Rogers* v. *Hill,* 60 F. (2d) 109 (C.C.A. 2d, 1932), saying, that if the payment is unreasonable, it constitutes a gift which the majority stockholders have no right to make against the protest of the minority. See also *Godley* v. *Crandall & Godley Co.,* supra; *Collins* v. *Hite,* supra. Other cases have justified interference by a statement of the rule: "The fairness of such salaries is open to examination in equity for the benefit of the corporation." See Rugg, C. J., in *Stratis* v. *Anderson,* 254 Mass. 536, 150 N.E. 832 (1926). See also *Booth* v. *Beattie,* supra; *Lowman* v. *Harvey R. Pierce Co.,* 276 Pa. 382, 120 Atl. 404 (1923); *Sotter* v. *Coatesville Boiler Works,* supra.

CLEMENS H. ZEIDLER.

MASTER AND SERVANT—PAUPERS.—Proceedings for compensation under the Workmen's Compensation Act. The plaintiff received aid from the defendant city pursuant to a statute requiring the municipality to relieve its poor, and continued to be so relieved without performing any labor for what he received until the city instituted a scrip plan of relief under which able persons were "required" to work. The rate of scrip pay was forty cents per hour. Plaintiff was assigned to