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Constitutional Law

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the subject matter was res judicata and not subject to collateral attack. The court recognized that there are situations where such a determination is not res judicata, as, for example, where there is no semblance of jurisdiction over the kind of action involved.[21]

FLETCHER R. ANDREWS

CONSTITUTIONAL LAW

The Ohio Supreme Court was enmeshed during 1953 in the basic problem of limiting the free communication of ideas. After sustaining the right of Ohio to censor motion pictures, the court found itself summarily reversed in a per curiam opinion by the United States Supreme Court.[1] The authority for reversal was *Joseph Burstyn Inc. v Wilson*[2] wherein the New York censorship law banning "sacrilegious" motion pictures was held unconstitutional. Apparently the Ohio law requiring films to be "moral, educational, or amusing and harmless"[3] provided unconstitutional standards for censoring motion pictures portraying crime and immorality. The *Burstyn* case did not strike down movie censorship *per se*. The concurring opinion of Justice Douglas agreed to by Justice Black in the Ohio case indicates that the United States Supreme Court majority still refuses to do so. The majority declined to join Justice Douglas' opinion which supported the view of no censorship of any type in communicating ideas by motion picture. The most that can be said for the constitutional status of motion picture censorship in Ohio today is that it is confused.

The law on censorship of books in Ohio is not confused, however. Suppression of books in circulation by a local police chief infringes freedom of the press. If the book be obscene or immoral the newsdealer may be prosecuted criminally for violation of a local ordinance barring the sale of such literature. The courts, not the police chief, determine the obscenity or immorality of written matter stated the United States District Court in enjoining the arbitrary action of the police chief.[4]

When the American Cancer Society was prohibited from publicly soliciting funds under an ordinance of the City of Dayton, the Ohio Supreme

[1] Superior Films v. Dept. of Educ., 159 Ohio St. 315, 112 N.E.2d 311 (1953), 5 WEST. RES. L. REV. 201, *rev'd*, 74 Sup. Ct. 286 (1953). See Note, 4 WEST. RES. L. REV. 148 (1952).

[2] 343 U.S. 495, 72 Sup. Ct. 777 (1952).

[3] OHIO REV. CODE § 3305.04 (OHIO GEN. CODE § 154-47b).

[4] New American Library of World Literature v. Allen, 114 F. Supp. 823 (N.D. Ohio 1953), 5 WEST. RES. L. REV. 205 (1954)

Court declared this restraint on communication unconstitutional.[5] The Society was denied a permit to solicit publicly. The year before it had obtained a permit on condition that it enter the Dayton Community Chest for a unified solicitation. A sum of $25,000 was available for the Society during the year in question, but this sum was refused in the interest of a separate public appeal. A permit was denied for another permit had been issued to a hospital for public solicitation at the same time. The issuance of the permit rested on whether the applicant proposed to serve an object or purpose in a field already covered, whether the solicitation would be beneficial to the city, whether the solicitation would not unduly burden the people solicited. These standards were unreasonable and unconstitutional. Had the city exercised its police power to regulate the time and place of solicitation only, the result would probably have been different.

Indirect restraint on the communication of ideas should follow the upholding as constitutional of a criminal statute prohibiting one from making "false statements to obtain unemployment compensation."[6] A claimant for unemployment compensation must swear that he does not advocate nor is he a member of a party which advocates the overthrow of government by force. A claimant so swore and was tried for making a false statement. Evidence of his advocacy of force including photographs was presented. Proof of his prior membership in the Communist party was also offered. The accused did not deny this, nor did he put in evidence his abandoning of his party affiliation. The appellate court sustained his conviction as constitutional approving the use of past affiliation without present denial to support present party membership. This latter aspect appears as a severe strain on the presumption of innocence, the confronting of the accused with his accuser, and proof beyond a reasonable doubt in criminal cases. Since ample evidence of his advocating forceful overthrow existed, the conviction itself appears valid.

The supreme court in an original action was called upon to interpret in 1953 the Ohio Constitutional provision limiting the court from holding a statute unconstitutional except on the vote of all but one member of the court, unless the appellate court has decided for unconstitutionality in the same case. In a mandamus action to hold a provision of the workmen's compensation act barring an injured fireman on pension from benefits, the court mustered a majority but not six for holding the section constitutional.[7] The section thus remained valid.

The Ohio Constitution in Art. XV, Sec. 6 prohibits lotteries. The state criminal statute in force punishes lotteries operating for private profit.

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[5] American Cancer Society v. Dayton, 160 Ohio St. 114, 114 N.E.2d 219 (1953), 5 WEST. RES. L. REV. 212.

[6] State v. Hamilton, 92 Ohio App. 285, 110 N.E.2d 37 (1951)