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CONSTITUTIONAL LAW — FREEDOM OF ASSOCIATION — STATE INQUIRY INTO TEACHERS' ORGANIZATIONAL AFFILIATIONS

As a condition of employment in state-supported schools or colleges, an Arkansas statute[1] required that each teacher annually file an affidavit listing every organization to which he had belonged or regularly contributed for the preceding five years. Plaintiffs, teachers in the Arkansas school system, brought separate class actions in state and federal district courts challenging the statute on the ground that it violated the due process clause of the fourteenth amendment.[2] Both courts upheld the statute. Upon consolidated appeal to the United States Supreme Court, *held*, reversed, four Justices dissenting.[3] The unlimited scope of the disclosures required by the statute, where narrower alternatives existed, went "far beyond what might be justified in the exercise of the state's legitimate inquiry into the fitness and competency of its teachers,"[4] unreasonably interfering with their freedom of association protected by the due process clause of the fourteenth amendment. *Shelton v. Tucker*, 364 U.S. 479 (1960).

Freedom of association is recognized by the Supreme Court as a fundamental liberty guaranteed by the first amendment, and is protected from unreasonable state interference by the fourteenth amendment.[5] The state, however, has an interest in the loyalty, fitness, and competency of its employees, and may require the disclosure of information relevant to determining their suitability for employment.[6] Refusal to answer such in-

1. Ark. Acts 1958 (2 E.S.), No. 10: "Section 1. It is hereby determined that it will be beneficial to the public schools and institutions of higher learning and the State of Arkansas, if certain affidavits of membership are required as hereinafter provided."

"Section 5. Every person who shall wilfully file a false affidavit . . . shall be guilty of perjury, shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), and in addition shall forfeit his license to teach in any of the schools, institutions of higher learning, or other educational institutions supported wholly or in part by public funds in this State. . . ."

2. Shelton v. McKinley, 174 F. Supp. 351 (E.D. Ark. 1959); Carr v. Young, 231 Ark. 641, 331 S.W.2d 701 (1960).

3. Shelton v. Tucker, 364 U.S. 479 (1960). Mr. Justices Frankfurter, Clark, Harlan, and Whittaker. *Id.* at 490. Mr. Justice Harlan (separate dissenting opinion). *Id.* at 496.

4. *Id.* at 490.

5. Bates v. Little Rock, 361 U.S. 516, 523 (1960): "And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States."

6. Adler v. Board of Education, 342 U.S. 485 (1952). In Beilan v. Board of

quiries is justification for dismissal,[7] as is membership in proscribed organizations where the state can show the employees' knowledge of the organization's illegal purpose.[8] Freedom of association is necessarily impaired by any required disclosure of one's membership in any organization, but a legitimate governmental purpose not unjustifiably encroaching upon the individual interest does not offend the due process clause when the legislation elicits information relevant to the purpose.[9] Thus, two distinct inquiries are made where the constitutionality of such an undertaking is at issue: whether the legitimate governmental interest justifies the abridgement, and if so, whether the inquiry or information sought is relevant to the interest.

In the instant case the Court recognized the state's legitimate purpose of inquiry into the fitness and competency of teachers but deemed irrelevant to this inquiry a listing of every organization to which they had belonged or regularly contributed for the preceding five years. In arriving at its decision the Court noted the lack of teacher job security in Arkansas[10] and alluded to the likelihood that the disclosures would cause serious abridgement of free association, inhibition of the free spirit essential to the classroom, and retardation of scholarship, trust, and the willingness to study and evaluate. Notwithstanding these considerations, the Court disposed of the constitutional issue on the narrower basis that the inquiry was irrelevant to the legislative purpose. The practical effect of this decision limits the purpose which the state may pursue in this area by requiring inquiries to be carefully drawn so as to reveal only that information which must necessarily be relevant to the state's interest in determining the suitability of its employees.

Public Education, 357 U.S. 399 (1958), the Court said there was no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness.

7. Lerner v. Casey, 357 U.S. 468 (1958); Beilan v. Board of Public Education, 357 U.S. 399 (1958).

8. Adler v. Board of Education, 342 U.S. 485 (1952); Wieman v. Updegraff, 344 U.S. 183 (1952) (Oklahoma Supreme Court construed the statute to exclude persons from state employment solely on the basis of membership, thus violating the due process clause of the fourteenth amendment); Garner v. Board of Public Works, 341 U.S. 716 (1951).

9. Bates v. Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama, 357 U.S. 449 (1958) (no justification for the state's purposes to require disclosure of membership lists).

10. Arkansas law provided for automatic renewal of teachers' contracts if teachers were not notified within ten days after the end of the school year that their contracts had not been renewed. ARK. STATS. § 80-1304(b) (Supp. 1961). Thus, teachers enjoy no tenure of office or job security beyond a period of one school year.

The four dissenting Justices[11] disagreed with the majority's finding that the inquiry was irrelevant. They did not concede that the state could discover all information relevant to teacher suitability by requiring less than full disclosure. Nor did they attribute to the adoption of the statute a purpose to employ it as a means to accomplish that which is constitutionally forbidden. In a separate dissenting opinion[12] Justice Harlan recognized the difficulty of fixing the scope of inquiry in advance so that it would yield only relevant information.

A difficult question raised by the instant case is whether or not the required information was relevant to the legitimate legislative purpose of determining the suitability of teachers for employment. It is submitted that the information sought may have served a number of useful purposes: school authorities could place teachers in areas of instruction more suitable to their backgrounds; members of listed organizations would be potential sources for personal references; and an indication of time spent in particular outside activities would be furnished. Notwithstanding these useful possibilities, it appears that the majority opinion was influenced by the serious impairment to the exercise of free association, along with the realization that Arkansas' purpose[13] may have been to withhold employment from members of groups deemed unpopular by community standards. That the Court sought to avoid such findings and did so by disposing of the case on the narrower basis quite properly precluded any examination of legislative motives.

The basis for the instant case holding is legally sound. After finding a legitimate governmental interest justifying the abridgment of free association, the Court found that the information sought was irrelevant to the purpose. The fact that the Court may have been influenced by a possible legislative purpose to discourage membership in unpopular organizations does not detract from the desirability of the analytical process employed.

11. Shelton v. Tucker, 364 U.S. 479 (1900). See note 3 *supra*.

12. 364 U.S. 479, 496 (1960).

13. Ark. Acts 1958 (2 E.S.), No. 10, § 1 quoted note 1 *supra*; *id.* § 7: "It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately and which involve the health, safety and general welfare of the people of the State of Arkansas, and that the purpose of this act is to assist in the solution of these problems and to provide for the more efficient administration of public education. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

By virtue of this analysis the state is able to determine the suitability of its employees, yet the individual is protected in his fundamental rights inasmuch as they may not be unreasonably impaired.

David S. Bell

CONSTITUTIONAL LAW — STATE AND LOCAL TAXATION — ASSESSMENT OF COMPENSATING USE TAX ON PROPERTY MANUFACTURED BY USER

Plaintiff manufactured certain oil well service units in Oklahoma and shipped the finished units to Louisiana for use in his business. He then paid the Louisiana use tax[1] on them based on the cost of the materials used in their manufacture.[2] The Louisiana Collector of Revenue assessed a deficiency for failure to pay the use tax on the value of the goods attributable to labor and shop overhead. Plaintiff paid the alleged deficiency under protest, and instituted suit for refund. The trial court rendered judgment for the plaintiff. On appeal to the Supreme Court of Louisiana, *held,* reversed. The use tax is measured by the value of the property at the time it becomes taxable by the state. *Halliburton Oil Well Cementing Co. v. Reily,* 241 La. 67, 127 So.2d 502 (1961).

The United States Supreme Court has held that the commerce clause of the Federal Constitution[3] forbids a state from using its economic powers to affect transactions occurring beyond its borders.[4] Thus it has been held that a state sales tax is limited by the Constitution to transactions occurring within the taxing state.[5] Because of this limitation, states which assessed sales taxes were faced with the problem that residents made their purchases in neighboring states which imposed no such taxes. This resulted in a loss of revenue and put local mer-

1. LA. R.S. 47:301-318 (1950).
2. The plaintiff was exempted from paying the Oklahoma sales tax because he manufactured for export. See OKLA. STAT. ANN. tit. 68, § 1251d (1951).
3. U.S. CONST. art. 1, § 8, cl. 3.
4. See Baldwin v. Seelig, 294 U.S. 511 (1935). *Cf.* Welton v. Missouri, 91 U.S. 275 (1875).
5. McLeod v. Dilworth Co., 322 U.S. 327, 330 (1944): "[A] tax on an interstate sale . . . involves an assumption of power by a State which the Commerce Clause was meant to end." See Miller Bros. v. Maryland, 347 U.S. 340 (1954); McGoldrick v. Berwind-White Co., 309 U.S. 33 (1940).