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CONSTITUTIONAL LAW—PRICE REGULATION OF LIQUOR INDUSTRY
NOT VIOLATIVE OF DUE PROCESS OF LAW

In 1963 the Governor of New York appointed the Moreland Commission to make a study and reappraisal of the state's liquor law. Such a study had not been made since the enactment of the Alcoholic Beverage Control Law in 1934. The Commission found that the statute assumed low prices would promote consumption, whereas high prices would promote temperance.¹ This assumption was said to be unfounded. The statute benefitted only the liquor interests, and resulted in gross price discrimination against the New York consumer. Based on this policy reappraisal, the Governor recommended to the legislature that the favored position of the liquor industry in an area subject to public regulation be terminated.² In 1964 the legislature enacted a statute changing the direction of liquor price policy and seeking to reduce consumer prices. The statutory provision in question reads that the brand owner must file an affirmation "that the bottle and case price" to wholesalers in New York "is no higher than the lowest price at which such item of liquor" was sold the previous month to any wholesaler elsewhere in the country or to any state or state agency operating a public liquor enterprise.³ Plaintiffs, sixty-two distillers and wholesalers of liquor, brought this action against the State Liquor Authority, seeking a declaration that the above provision of the statute was unconstitutional. Plaintiffs appealed from a decision of the Appellate Division, affirming a judgment for defendants. *Held*, the statute is constitutional, and the decisions of the lower courts are affirmed, three judges dissenting. *Joseph E. Seagram and Sons, Inc. v. Hostetter*, 16 N.Y. 47, 209 N.E.2d 701, 262 N.Y.S.2d 75, *cert. granted*, 34 U.S.L. Week 3179 (U.S. Nov. 23, 1965).

It is settled law that on a proper occasion and by appropriate measures, a state may regulate a business in any of its aspects, including the selling prices of products.⁴ Yet questions as to what constitutes a proper occasion or an appropriate measure are often before the courts. The twenty-first amendment to the Constitution gives the states authority to regulate the sale of alcoholic beverages within their borders.⁵ But such authority is subject to the restraints of the due process clause of the fourteenth amendment and the commerce clause of article I, section 8. Problems result in the interpretations given to the due process clause. The Supreme Court has stated that state courts are free to develop their own doctrines of *state* constitutional law independent of its decisions, as long as in so doing they do not contravene federal law.⁶ This has resulted in

1. Speech by Governor Nelson A. Rockefeller to the New York Legislature, N.Y. Sess. Laws 1964 at 1945.

2. *Id.* at 1948.

3. N.Y. Sess. Laws 1964, ch. 531, § 9.

4. *Nebbia v. New York*, 291 U.S. 502 (1934).

5. *Carter v. Virginia*, 321 U.S. 131 (1944); *Ziffrin, Inc. v. Reeves*, 308 U.S. 132 (1939); *Joseph S. Finch & Co. v. McKittrick*, 305 U.S. 395 (1939); *Indianapolis Brewing Co. v. Liquor Control Comm'n*, 305 U.S. 391 (1939). *But see Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324 (1964).

6. *Olsen v. Nebraska*, 313 U.S. 236 (1941).

RECENT CASES

different interpretations of the meaning of the due process clause in the state constitutions. In recent years, the Supreme Court has consistently refused to strike down state laws on substantive due process grounds under the federal Constitution. Illustrative of the Court's present position is *Williamson v. Lee Optical Co.*⁷ In that case, plaintiffs sought an injunction against the enforcement of a statute regulating visual care which, among other things, forbade an optician from duplicating lenses without a prescription from an ophthalmologist or optometrist. The district court admitted evidence tending to disprove the reasonableness of this regulation, and held it deprived opticians of property without due process of law.⁸ The Supreme Court unanimously reversed and held the statute valid. Speaking for the Court, Mr. Justice Douglas said:

The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought. . . .⁹

Thus, the Court based its decision, not upon the ground that a reasonable basis in fact for the regulation existed, but rather on the ground that, although the evidence might show the law to be both needless and wasteful, the state legislature might have concluded otherwise. This test places an almost impossible burden upon the party attacking the law; he must show not only that no basis for the law exists in fact, but also that the legislature could not in good faith believe such a need to exist.¹⁰

Since the abandonment by the Supreme Court of due process as a meaningful test of the validity of state economic regulation, there have been many conflicting decisions in the due process field in the state courts in regard to economic regulation. The state courts have been far less reluctant than the Supreme Court in finding violations of the due process clause of their state constitutions. The limitations placed upon the state legislatures by the state courts are that the police power must be directed only against some actual and manifest evil which threatens the public health, safety, or welfare.¹¹ Another limitation is that the means selected for dealing with the evil must have a real and substantial relation to the object sought to be attained.¹² The vigor with which these limitations have been enforced has varied in accordance with the degree

7. 348 U.S. 483 (1955).

8. 120 F. Supp. 128 (W.D. Okla. 1954).

9. 348 U.S. at 488.

10. See *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938).

11. *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.*, 40 Cal. 2d 436, 254 P.2d 29 (1953); *Paterson v. University of State of New York*, 14 N.Y.2d 432, 201 N.E.2d 27, 252 N.Y.S.2d 452 (1964); *Defiance Milk Products Co. v. DuMond*, 309 N.Y. 537, 132 N.E.2d 829 (1956); *W. H. H. Chamberlin, Inc. v. Andrews*, 159 Misc. 124, 286 N.Y. Supp. 242, modified on other grounds, 271 N.Y. 1, 2 N.E.2d 22 (1936).

12. *Olsen v. Nebraska*, 313 U.S. 236 (1941); *Nebbia v. New York*, 291 U.S. 502 (1934); *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.*, 40 Cal. 2d 436, 254 P.2d 29 (1953); *Noyes v. Erie and Wyoming Farmers Co-op. Corp.*, 281 N.Y. 187, 22 N.E.2d 334 (1939).

of public interest in the area of activity in question.¹³ It has been shown that the liquor business is an area of activity in which the public welfare justifies extensive governmental regulation under the police power.¹⁴ Without violating the due process clause, the legislature may fix prices,¹⁵ restrict the use of credit between wholesalers and retailers,¹⁶ regulate hours during which taverns may remain open,¹⁷ and authorize the revocation of a license without any showing of wrongful conduct by the licensee.¹⁸

The due process aspect of the instant case in regards to the state constitution turns upon the legislative purpose of the statute. The majority said that high prices for liquor products are a detriment to the welfare of the average citizen. This evil can be corrected by the use of a price control system. The result will be to give the New York consumer a position in the market better than his previous one and less subject to the pricing whims of the distiller. Therefore, the majority held that the legislature's purpose in controlling prices is to enable the consumer to purchase liquor at a better price. Price control is reasonably calculated to achieve this end, thereby making this statute constitutional under both the federal and state theories of due process. Furthermore, said the majority, the statutory formulation is fair in allowing the distillers themselves to control the New York price, since they fix the lowest price elsewhere. If its effect on New York is too low a price, the distillers have it within their power to raise the lowest price elsewhere. The dissent, written by Chief Judge Desmond, finds a different statutory purpose. The minority said that the language of the statute specifically describes its purpose as that of promoting temperance.¹⁹ In applying the state test that the measures taken must be reasonably and appropriately addressed to a legitimate end, Judge Desmond says that there is no conceivable way that a decrease in prices would reasonably promote temperance. He says that "to promote temperance by making intoxicants cheaper is like trying to minimize the dangers of excessive smoking by abolishing cigarette taxes."²⁰ The probable result of a decrease in prices would be to promote consumption rather than temperance. Therefore, he reasoned that the statute is an unconstitutional violation of the due process clause of the New York constitution.²¹ If this is true, it is not necessary for the court to consider the statute in the light of the federal constitution.

A review of the recent cases brought under the due process clause of the

13. Hetherington, *State Economic Regulation and Substantive Due Process of Law*, 53 Nw. U.L. Rev. 226 (1958).

14. *Ibid.*

15. *Schwartz v. Kelly*, 140 Conn. 176, 99 A.2d 89 (1953); *Butler Oak Tavern v. Division of Alcoholic Beverage Control*, 20 N.J. 373, 120 A.2d 24 (1956); *Pompei Winery, Inc. v. Board of Liquor Control*, 167 Ohio St. 61, 146 N.E.2d 430 (1957).

16. *Weisberg v. Taylor*, 409 Ill. 384, 100 N.E.2d 748 (1951).

17. *Baton Rouge v. Rebowe*, 226 La. 186, 75 So. 2d 239 (1954); *Grillo v. State*, 209 Md. 154, 120 A.2d 384 (1956).

18. See generally Annot., 3 A.L.R.2d 107 (1949).

19. N.Y. Alco. Bev. Control Law § 2.

20. Instant case at 61, 209 N.E.2d at 707, 262 N.Y.S.2d at 84.

21. N.Y. Const. art. 1, § 6.

RECENT CASES

fourteenth amendment leads to the inevitable conclusion that, under federal law, due process in the area of price regulation has lost almost all meaning.²² Any successful claim must be brought under the due process clause of the state constitution. That price control is one of the means available to the states and to Congress for the protection and promotion of the welfare of the economy is beyond doubt.²³ But the instant case presents the question whether price regulation is reasonably calculated to achieve the legislature's purpose in passing this specific statute. The problem of determining the legislative purpose is one of fact rather than law. In construing the legislative purpose, the courts are bound to follow certain rules. The preferred construction of a statute is that which furthers the object, spirit, and purpose of the statute.²⁴ The purpose of a statute is of special importance in the construction of a remedial act designed to cure some evil in the existing system of law. In such a case, it is vitally important to consider and effectuate the contemplated reform.²⁵ But, a particular provision of a statute is not to be given a special meaning at variance with the general purpose of the statute, unless it is clear that the legislature intended it to have that special meaning.²⁶

If the purpose of the legislature in passing the statute was to promote temperance, the dissent is quite correct in saying that the statute violates the due process clause of the New York constitution. Lower prices are not reasonably calculated to decrease consumption. But it would appear that the approach taken by the majority is the better one. In passing the statute in question, the legislature took cognizance of the realities of life. Men will drink liquor whether its sale is legal or illegal. The number of people who consume liquor represent a substantial segment of the population. The taxes on liquor are a valuable source of revenue to the state government. These considerations find expression in the statute itself. The introduction to the statute, appearing just before section 1, says that the statute is "an act to amend the alcoholic beverage control law . . . [by] prohibiting price discrimination in sales to wholesalers and retailers. . . ."²⁷ Therefore, the majority reasons that there is no violation of the due process clause, for price regulation is reasonably calculated to achieve this legislative purpose.

The language quoted by the dissent, saying that the purpose of the statute is to promote temperance, is found in section 2 of the Alcoholic Beverage Control Law.²⁸ The dissent assumes this stated purpose is the only purpose the

22. See *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955).

23. See *Cities Service Gas Co. v. Peerless Oil and Gas Co.*, 340 U.S. 179 (1950); *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381 (1940).

24. *Dalzin v. Medvinsky*, 200 Misc. 1, 106 N.Y.S.2d 245 (Munic. Ct. N.Y.C. 1951); *Dobess Realty Corp. v. Magid*, 186 Misc. 225, 61 N.Y.S.2d 324 (Sup. Ct. 1946); *Cohen v. Freedman*, 185 Misc. 848, 58 N.Y.S.2d 154 (N.Y. City Ct. 1945).

25. *Beal v. Finch*, 11 N.Y. 128, 9 How. Pr. 385 (1854).

26. *People v. Long Island R. Co.*, 194 N.Y. 130, 87 N.E. 79 (1909); *People ex rel. Bingham v. State Water Supply Comm'n*, 153 App. Div. 587, 138 N.Y. Supp. 746 (4th Dep't 1912); *Ketcham v. Ketcham*, 176 Misc. 993, 29 N.Y.S.2d 773 (Dom. Rel. Ct. 1941).

27. N.Y. Sess. Laws 1964, ch. 531.

28. N.Y. Alco. Bev. Control Law § 2.

statute may have. This assumption is contrary to the rules of judicial construction saying it is not necessary to the validity of a statute that the legislature declare on the face of the act the policy or purpose for which it was enacted.²⁹ The statute should be held to have accomplished what the legislature had in view, when the language will warrant an interpretation favorable to the apparent object.³⁰ Furthermore, a remedial statute should be construed so as to meet the mischief it seeks to correct and advance the remedy.³¹ In determining what was the mischief, the courts may look to legislative debates and contemporaneous outside events.³² Therefore, the court may look at the findings of the Moreland Commission and the recommendations of Governor Rockefeller in determining the purpose of the statute. These two reports clearly show that the purpose of the statute was to remedy an evil which resulted in price discrimination against the New York consumer, a purpose somewhat inconsistent with promoting temperance, but, nevertheless, a legislative purpose. This alone should be sufficient to meet Chief Judge Desmond's argument, but there is further evidence available. The purpose of prohibiting price discrimination against the New York consumer is explicitly stated in the introduction to the revised statute as it appears in the session laws, for it says that the statute is "an act to amend the alcoholic beverage control law . . . [by] prohibiting price discrimination in sales to wholesalers and retailers . . ."³³ Therefore, one can conclude that the statute in question had more than one purpose. Section 9, seeking to achieve lower liquor prices for the benefit of the New York consumer, is entirely consistent with one of the stated purposes of the statute. The means chosen, price regulation, to achieve a stated purpose of the statute, the prohibition of price discrimination in sales to wholesalers and retailers, thereby benefitting the New York consumer, does not violate the due process clause of the United States or New York Constitutions, for it is reasonably calculated to achieve that desired end.

CHARLES E. MILCH

CONSTITUTIONAL LAW—INSPECTIONS AND THE WARRANT REQUIREMENT—WARRANT REQUIRED IN ZONING INSPECTIONS WHERE PURPOSE IS TO GATHER EVIDENCE FOR A CRIMINAL PROSECUTION

Erwine Laverne was a furniture designer and interior decorator who carried on his business in his home, which was located in a residential zone. The local zoning ordinance prohibited the operation of any business within a

29. *People v. West*, 106 N.Y. 293, 12 N.E. 610 (1887).

30. *Fonda, Johnstown and Gloversville R. Co. v. State Tax Comm'n*, 3 A.D.2d 178, 159 N.Y.S.2d 400 (3d Dep't), *aff'd*, 3 N.Y.2d 853, 166 N.Y.S.2d 305 (1957).

31. *Commissioners of Excise v. Taylor*, 21 N.Y. 173, 19 How. Pr. 289 (1860); *Beal v. Finch*, 11 N.Y. 128, 9 How. Pr. 385 (1854).

32. *Vanderbilt v. Vanderbilt*, 207 Misc. 291, 138 N.Y.S.2d 222 (Sup. Ct. 1955), *aff'd*, 1 A.D.2d 3, 147 N.Y.S.2d 125 (1st Dep't 1955), *aff'd*, 1 N.Y.2d 342, 153 N.Y.S.2d 1 (1956), *aff'd*, 354 U.S. 416 (1957).

33. N.Y. Sess. Laws 1964, ch. 531.