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One Year Review of Constitutional and Administrative Law

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ONE YEAR REVIEW OF CONSTITUTIONAL AND ADMINISTRATIVE LAW

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During the period from October, 1955, to the end of 1956, relatively few decisions on points of constitutional law have been handed down by the Colorado Supreme Court. Important decisions invalidated minimum resale price maintenance and the motor vehicle dealer Sunday closing law. In another decision, the court defined "felony" in a way which reportedly affects a number of prisoners in the state penitentiary, and in the principal case resulted in the release of one prisoner, convicted under the habitual criminal statute. Other decisions dealt with self-incrimination, representation by counsel, exemption of charitable and educational organizations from the property tax, and refunds of taxes paid into the old age pension fund.

Minimum Resale Price Maintenance

In an unanimous decision in the case of *Olin Mathieson Chemical Corp. v. Francis*,[1] the court ruled that the so-called "nonsigner" clause of the Colorado Fair Trade Act[2] was unconstitutional for several reasons. The facts of the case are simple. Plaintiff and Fisher Denver Co., not a party to the action, had entered into a contract which purportedly obligated Fisher to maintain a minimum resale price on products manufactured by the plaintiff. The defendant had not signed such an agreement with the plaintiff. The statute in question provided that, "Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this Act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby."[3] The defendant, Francis, had lawfully obtained a stock of merchandise manufactured by the plaintiff, and was reselling such merchandise at prices less than those established in the contract between the plaintiff and Fisher Denver Co. The plaintiff sought an injunction and the defendant resisted on the ground that the restriction on his right to resell at any price was unconstitutional.

After noting that the declared legislative purpose in enacting the statute was "to safeguard the public against the monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented,"[4] the court made it plain that in its view the police power of the legislature extended to price fixing only of such businesses as might be said to be "affected with a public interest," and that the business of selling fire arms and ammunition,

[1] 301 P.2d 139 (Colo. 1956).
[2] Colo. Rev. Stat. Ann. § 55-1-4 (1953).
[3] *Ibid.*
[4] Colo. Rev. Stat. Ann. § 55-2-16 (1953).

the products of the plaintiff, was not affected with a public interest. Rather, it was the opinion of the court that minimum resale price maintenance was calculated to restrict competition, create a monopoly, increase prices to consumers, and make a mockery out of the declared purpose of the Act—to protect consumers. The non-signer clause of the statute was, therefore, beyond the police power of the State as applied to the products of the plaintiff.

But, the court went further. It ruled that even if the non-signer clause could be deemed within the power of the legislature, the statute must fall as an unlawful delegaion of legislative power to private individuals without any standards whatsoever within which —or even whether—minimum resale prices shall be fixed. The crux of the matter was that "We must look not to the statute, but to the contract between plaintiff and Fisher to determine the

minimum price, below which the defendant shall not sell."[5]

MOTOR VEHICLE DEALERS SUNDAY CLOSING LAW

By a bare majority the Supreme Court held invalid the statute prohibiting operation of new and used car establishments, a decision which, at the time of this writing, was under reconsideration on a petition for rehearing. The case, *Mosko v. Dunbar*,[6] began as an action for a declaratory judgment, the plaintiff alleging that the Sunday closing law, applying only to new and used car dealers, violated the state constitutional prohibition against special legislation[7] and the fourteenth amendment to the Constitution of the United States.

The court considered the principal question to be:

> "Does a statute which prohibits a dealer in motor vehicles from operating his place of business on Sundays have a real or substantial relation to the promotion and protection of the public health, the public morals, the public safety, or the general welfare of the people?"[8]

It was not indicated by the court just what provisions of the Constitutions were violated by the Sunday closing law. The pronouncement simply was that "Application of fundamental principles of constitutional law compel a negative answer to the question."[9] The language in which the question and answer were couched is the standard language of police power and due process of law, not of special legislation and equal protection. However, in a special concurring opinion, Mr. Justice Sutton expressly declared the statute invalid as being in violation of both the due process clause and the equal protection clause of the fourteenth amendment of Article V, section 25, of the state Constitution prohibiting special legislation. To him, there was no reasonable basis, as a means of protecting the public health, safety, welfare and morals, for discriminating against motor vehicle dealers when there were no more apparent dangers in selling motor vehicles on Sunday than in selling "houses or tractors, or horses or boats on Sunday."[10]

SELF-INCRIMINATION

In *People v. Schneider*,[11] the defendants, being county commissioners, were subpoenaed to appear before the grand jury investigating the affairs of the Board of County Commissioners. They appeared and testified without being advised of their constitutional immunity from self-incrimination. When indictments were returned against them for alleged offenses evidenced by the testimony given and the records produced by the defendants before the grand jury, the defendants moved that the indictments be quashed. The trial court granted the motion and the People procured a writ of error. The Supreme Court affirmed, holding that it was in violation of Article II, Section 18, of the state Constitution for the State to subpoena and require the giving of testimony by one who

[5] 301 P.2d at 152.
[6] 8 Colo. Bar Ass'n Adv. Sh. 439 (July 30, 1956).
[7] Colo. Const. Art. V, § 25 (1876).
[8] 8 Colo. Bar Ass'n Adv. Sh. at 440.
[9] *Ibid.*
[10] *Id.* at 442.
[11] 133 Colo. 173, 292 P.2d 982 (1956).

is under investigation and to use the information so obtained in a criminal proceeding against the witness. This was so even though it appears that the defendants did not claim immunity at any time prior to the motion to quash, but where nothing appears in the record except the giving of the testimony to indicate that the defendants waived the privilege.

In another case in which the privilege against self-incrimination was invoked,[12] the prosecution sought to place a mask on the face of the defendant, charged with robbery, in the manner in which such a mask had been worn by the robber. To this, counsel for the defendant said, "We object to it." When the mask was in place and the defendant was asked to stand up, counsel interposed, "We object to his standing up, as being improper." Both objections were overruled, the defendant was convicted, and in the Supreme Court the defendant assigned the rulings as error, apparently upon the ground that such procedure violated the prohibition against compelling a person to testify against himself.[13] The reason for affirming the rulings of the trial court seems to be that unless reasons for the objections are obvious, the grounds therefor must be stated with sufficient particularity as to call the attention of the court to the specific points relied upon, and only the grounds specified need be considered. However, the court ruled that even if a proper objection had been interposed, no constitutional right of the defendant had been violated. The prohibition against self-incrimination was said to relate to testimonial evidence, not to the exclusion of the body as evidence when such evidence may be relevant and material.

REPRESENTATION BY COUNSEL

One case reached the court in which it was called upon to decide the adequacy of counsel in a murder trial.[14] At the arraignment of the defendant, a member of the bar of New Mexico appeared for the defendant and entered a plea of not guilty. The lawyer was admitted by order of the Supreme Court to represent the defendant in the trial. Upon trial, a verdict of guilty was returned. On writ of error prosecuted by new counsel of the Colorado bar, it was assigned as error that the trial court failed to appoint competent

[12] Vigil v. People, 300 P.2d 545 (Colo. 1956).
[13] Colo. Const. Art. II, § 18 (1876).
[14] Martinez v. People, 299 P.2d 510 (Colo. 1956).

local counsel. The contention was that the representation of the defendant was obviously inadequate and that trial of the defendant under the circumstances was a denial of due process of law under the fourteenth amendment and a violation of Article II, Section 16, of the state Constitution. Without discussion or statement of reasons specifically addressed to the constituional questions, the court simply held that there was no constitutional error.

EXEMPTION FROM STATE PROPERTY TAXES

In a case of first impression in Colorado, the Supreme Court decided the applicability of the constitutional exemption of property of charitable, religious and educational organizations from state property taxes, where the organization and the users of the property are non-residents of the State.[15] The plaintiff, Young Life Campaign, was a Texas non-profit corporation which owned ranches in Colorado allegedly used solely for benevolent, educational and religious purposes. Of the entire attendance at the summertime programs of the corporation, only about two percent came from Colorado. Property taxes were collected from the plaintiff who brought this action to recover back the taxes, claiming exemption under the Colorado Constitution which provides:

"The following classes of property shall be exempt from general taxation:

* * *

2. The property, real and personal, that is used solely and exclusively for religious worship . . .

* * *

4. Property, real and personal, that is used for strictly charitable purposes."[16]

Although the evidence showed that there was some use of the properties in question by vacationers on a commercial basis, the court passed the question whether the properties were used "solely and exclusively" for religious worship or "strictly" charitable purposes and held that:

"it was not the intention of the people of the State of Colorado by the adoption of its constitutional provision . . . or by legislative act to relieve a non-profit foreign corporation, be it charitable, religious or educational, of the payment of taxes and

[15] Young Life Campaign v. Board of County Com'rs. 300 P.2d 535 (Colo. 1956).
[16] Colo. Const., Art. X, § 5 (1876).

thereby increase the tax burden upon its resident taxpayers. . . ."[17]

The conclusion was based on the theory that the intent and purpose of the exemption was to relieve from taxation only those organizations which contributed to the welfare of Colorado citizens, relieving the State of such burdens. Since the benefits provided by the plaintiff were enjoyed almost entirely by non-residents, the corporation did not qualify as one to which the Constitution extended exemption.

"FELONY" DEFINED

The Colorado Constitution, Article XVIII, Section 4, provides that "The term felony, wherever it may occur in this constitution, or the laws of the State, shall be construed to mean any criminal offense punishable by death or imprisonment in the penitentiary, and none other." In *Smalley v. People* [18] the court set aside a life sentence imposed under the habitual criminal statute for a fourth conviction of a felony. Smalley contended that his first conviction for burglary and grand larceny were not convictions for felonies because at the time he was under the age of twenty-one years and the statutes[19] substituted imprisonment in the reformatory for imprisonment in the penitentiary. The court set aside the life sentence without discussion beyond stating in effect that the language of the Constitution was plain and should be construed in favor of the accused.

REFUNDS OF TAXES FROM OLD AGE PENSION FUND

The Constitution, providing that "all money deposited in the old age pension fund shall remain inviolate for the purpose for which created, and no part thereof shall be transferred to any other fund or used or appropriated for any other purpose,"[20] does not prevent the refund of taxes erroneously paid into the fund. In *State v. Newton*[21] the Supreme Court held that the Article applies only to taxes lawfully assessed and paid, not to taxes erroneously assessed and paid on the theory that the constitutional provision extended only to taxes lawfully or properly deposited in the fund.

[17] 300 P.2d at 543.
[18] 304 P.2d 902 (Colo. 1956).
[19] Colo. Rev. Stat. Ann., § 39-10-1 (1953).
[20] Colo. Const. Art. XXIV, § 7 (1876).
[21] 8 Colo. Bar Ass'n Adv. Sh. 205 (1956).