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THE COLORADO INDUSTRIAL COMMISSION AND WAGE DISPUTES

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THE jurisdiction of the Colorado Industrial Commission in wage disputes is limited to industries "affected with a public interest". An article by Thomas Penberthy Fry in the Rocky Mountain Law Review the issue of June, 1931, states that the jurisdiction of the Commission is unlimited because of the 1921 statute, and this unqualified statement is responsible for this article.

The Colorado Industrial Commission does not have jurisdiction over wage disputes in all industries. Its jurisdiction is limited by the express terms of Chapter 30 of the 1923 Session Laws to industries "affected with a public interest".

The Industrial Commission statute was adopted in 1915 and in Section 30 thereof provided that in industries affected with a public interest it should be unlawful for an employer to declare or to cause a lockout or for any employe to go on a strike prior to an investigation by the Commission. In 1921, Chapter 252 of the Session Laws for that year was enacted which purported to give to the Commission jurisdiction over wage disputes in *all* industries. The Governor approved Chapter 252 of the 1921 Session Laws on April 4, 1921, but on that same day the Supreme Court of the State of Colorado rendered its decision in the case of People vs. United Mine Workers, 70 Colorado 269, in which the Supreme Court held that the jurisdiction of the Industrial Commission must be limited to industries "affected with a public interest". This, in effect, nullified the failure of the Legislature to include that exception in the 1921 statute but remedied by the 1923 amendment.

The only test, therefore, to be applied in considering an interested party's obligation to comply with notices received from the Industrial Commission requiring a hearing before a reduction in wages or a lockout or strike is to become effective is whether the industry in question is one "affected with a public interest". If not, the notices may be disregarded and the desired action taken without fear of prosecution.

The Commission, in its endeavor to be of service to the public generally will attempt to assume jurisdiction over such disputes in any industry.

If the industry relates to "heat, food or shelter" (People v. United Mine Workers, id.), it generally is held to be affected with a public interest, but whether an industry is "affected with a public interest" may be determined without much difficulty because the books are full of cases upon this subject.

In the case of In Re Morgan 26 Colo. 415, in which it was held that the business of smelting metalliferous ores was not affected with a public interest, the Court quoted, with approval, the following:

" 'The object of government is to impose that degree of restraint upon human actions, which is necessary to the uniform and reasonable conservation and enjoyment of private rights. * * * The conservation of private rights is attained by the imposition of a wholesome restraint upon their exercise, such a restraint as will prevent the infliction of injury upon others in the enjoyment of them.'

* * * * *

" 'This police power of the state extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the state.'

* * * * *

" 'Any law which goes beyond that principle which undertakes to abolish rights, the exercise of which does not involve an infringement of the rights of others, or to limit the exercise of rights beyond what is necessary to provide for the public welfare and the general security, cannot be included in the police power of the government.'

* * * * *

" 'It may be restrained only in so far as it is necessary for the common welfare and the equal protection and benefit of the pepole. That such restraint of the right and liberty of contract is for the common public welfare and equal protection and benefit of the people, must appear, not only to the general assembly, by force of popular clamor, or the pressure of the lobby, but also to the courts; and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare and equal protection and benefit of the people.' "

The Court in deciding this case also said:

"In selecting a subject for the exercise of the police power the legislature must keep within its true scope. The reason for the existence of the power rests upon the theory that one must so use his own as not to injure

others, and so as not to interfere with, or injure, the public health, safety, morals or general welfare."

In the above case of People vs. United Mine Workers, 70 Colo. 269, it was decided that the Colorado coal mine industry was affected with a public interest, and in discussing the question the Court said:

"Unless coal mining may be said to be affected with a public interest its regulation by statute to the extent attempted by said chapter is unconstitutional, see the cases cited below. The words 'affected with a public interest' were no doubt used by the General Assembly to keep the statute within constitutional limits. It becomes necessary, then, not only in order to construe the statute, but to decide whether it is constitutional, to determine whether coal mining is so affected, and it seems self-evident that it is. * * * Food, shelter and heat, before all others, are the great necessities of life and, in modern life, heat means coal."

In a note commencing on page 834 of 6 L. R. A. (New Series), we find cases referred to which have held that the following are affected with a public interest:

"Railroads, street railways, ferries, toll bridges, turnpike roads, telegraph companies, telephone companies, the business of supplying natural and artificial gas, the business of supplying water for domestic and irrigating purposes, the business of wharfing, milling, storing grain, operating grain elevators and operating stock yards."

The most recent case upon this subject is Williams vs. Standard Oil Company, decided by the Supreme Court of the United States on January 2, 1929, and reported in 49 U. S. Supreme Court Reporter 115. In this case, the Legislature of Tennessee had attempted to fix the price at which gasoline might be sold in the said State. The Supreme Court of the United States held that the Legislature did not have such power because the business of selling gasoline was not *affected with a public interest.* In part the Court said:

"It is settled by recent decisions of this Court that a state legislature is without constitutional power to fix prices at which commodities may be sold, services rendered, or property used, unless the business or property involved is 'affected with a public interest'. Wolff Packing Co. v. Industrial Court, 262 U. S. 522, 43 S. Ct., 630, 67 L. Ed. 1103, 27 A. L. R 1280; Tyson & Brothers v. Banton. Nothing is gained by reiterating the statement that the phrase is indefinite. By repeated decisions of this court, beginning with Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77, that phrase, however it may be characterized, has become the established test by which the legislative power to fix

prices of commodities, use of property, or services, must be measured. As applied in particular instances, its meaning may be considered both from an affirmative and a negative point of view. Affirmatively, it means that a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public. Tyson & Brother v. Banton, supra, 273 U. S. 434. Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. Id., 273 U. S. 430. The meaning and application of the phrase are examined at length in the Tyson case, and we see no reason for restating what is there said.

"In support of the act under review it is urged that gasoline is of widespread use; that enormous quantities of it are sold in the State of Tennessee; and that it has become necessary and indispensable in carrying on commercial and other activities within the state. But we are here concerned with the character of the business, not with its size or the extent to which the commodity is used. Gasoline is one of the ordinary commodities of trade, differing, so far as the question here is affected, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in the country. The decisions referred to above make it perfectly clear that the business of dealing in such articles, irrespective of its extent, does not come within the phrase 'affected with a public interest'. Those decisions control the present case."

The case of Tyson v. Banton, 273 U. S. 418, referred to in the above opinion, contains a most complete discussion of the meaning of the words "affected with a public interest". In that case the legislature of the State of New York passed a law limiting the prices at which theater tickets might be re-sold. The Supreme Court of the United States held that such statute was unconstitutional because the business involved (the theater business) was not affected with a public interest.

The United States Court of Appeals for the 10th Circuit recently held that the business of milling flour is not affected with a public interest.

The foregoing citations illustrate to some extent the types of business which have been held not to be affected with a public interest, and, in view of the fundamental law and the terms of our statute, indicate the limitations of the jurisdiction of the Industrial Commission of the State of Colorado as to wage disputes, lockouts and strikes.