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Constitutional Law—Statutes Certifying Psychologists Held Valid

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Under the dissent's interpretation, the plaintiff should receive 50% of the original sales proceeds, and the 25% to be deducted should be taken entirely from the cemetery association's share, for it is they who should have the entire burden of maintenance of the cemetery.

However, if this were to be so, the phrase from Section 87(2), "provided however that there be first deducted from said proceeds . . ." would have no meaning. Thus, it can be said that in reading the Section in its entirety, the Legislature did intend to put part of the burden of maintenance on the seller and that in order to give effect to all the words of the section, the 25% is to first be deducted before any shares are made and that the seller's 50% is to be that of 75% rather than 100%.

STATUTES CERTIFYING PSYCHOLOGISTS HELD VALID

In an action for declaratory judgment as to the validity of Article 153 of the New York Education Law,⁵³ a statute which provides for the certification of all those who use the title "psychologist" or its derivatives, the validity of the law was upheld through the courts from Special Term,⁵⁴ to the Appellate Division,⁵⁵ to the Court of Appeals in *National Psychological Association for Psychoanalysis, Inc. v. University of the State of New York*.⁵⁶

This statute was passed to protect the public from unscrupulous or unqualified people who attempt to cash in on the public's confidence in psychology or who profess to be skilled in applying its theories.⁵⁷

The statute is a certifying law rather than a licensing law. It does not prohibit anyone from rendering psychological services, but rather prohibits anyone not certified from accepting money while holding himself out to be a psychologist. By establishing a certification procedure, the Legislature hoped to protect the public against charlatans and quacks who, despite inadequate training and professional experience, guarantee easy solutions to psychological problems.

The Legislature has in the past regulated and protected certain professions with licensing laws, e.g., lawyers and medical doctors, or with certifying laws, e.g., accountants, plumbers, architects.⁵⁸

Plaintiffs real objection to this statute was the fact that the University of the State of New York in administering the statute refused to certify certain graduates of European colleges whom the Association wished to be certified.

53. §§ 7601-7617.

54. 18 Misc. 2d 722, 188 N.Y.S.2d 151 (Sup. Ct. 1959).

55. 10 A.D.2d 688, 199 N.Y.S.2d 423 (1st Dep't 1960).

56. 8 N.Y.2d 197, 203 N.Y.S.2d 821 (1960).

57. For an interesting discussion of the selling power of the term "psychologist" and its use by non-professionals see Note, Regulation of Psychological Counseling and Psychotherapy, 51 Colum. L. Rev. 474 (1951).

58. *Roth v. Hoster Realty Co.*, 119 Misc. 686, 197 N.Y. Supp. 220 (Sup. Ct. 1922), commented that what is now N.Y. Education Law §§ 7301-7307 was directed solely against the assumption of the title architect or registered architect and did not forbid the practice of the profession or occupation generally.

The National Psychological Association For Psychoanalysis, Inc., however, couched their objection in constitutional terms and attacked the validity of the statute on the ground that it did not contain a formal definition of "psychologist" and hence was violative of due process in that it arbitrarily restricted the carrying on of a lawful occupation by proscribing a non-certified psychologist from describing his professional services truthfully. Similarly, they argued that the statute's qualifying standards are meaningless without a definition to which they can attach and hence the statute unlawfully delegates legislative power without accompanying standards to guide the exercise of administrative discretion.

The Court of Appeals quickly dismissed the arguments by noting that the only thing proscribed was the use of specific words by non-certificants to describe the rendition of psychological services without in any manner proscribing the services themselves. Moreover, despite the relative impossibility of agreeing on a definition of modern psychology, for all practical purposes the term "psychologist" is defined as one who meets the standards set up by the statute.⁵⁹

Inconsistent with its own motion for summary judgment, plaintiff, on appeal, objected to the determination of a constitutional issue without a trial. The Court summarily dealt with his objection by pointing out that there were no issues of fact in this case; and a pure issue of law, even though it be constitutional law, can be dealt with by a motion for summary judgment.

The instant case represents no enlargement or retrogression from the established law of this state. It does however point up the power of the Legislature to protect the public while still interfering to only a minimal degree with the practice of a profession through the use of certifying laws rather than licensing laws.⁶⁰

SEPARATION OF CHURCH AND STATE

Prior to the Russian Revolution, the world wide membership of the Russian Orthodox Church recognized the Patriarch of Moscow as its spiritual and administrative head. The revolution resulted in the Church of Moscow becoming subject to the Communist party. After much hesitation and confusion, in 1924, because of this political interference, the North American Diocese declared itself administratively independent of the Patriarch of Moscow, with the right to elect its own bishops, rather than having them appointed in Moscow. In 1945, the North American Diocese instituted an action to gain

59. N.Y. Education Law § 7605.

60. An interesting provision of the statute which was not under attack in this case is § 7611 which reads as follows:

The confidential relations and communications between a psychologist registered under provisions of this act and his client are placed on the same basis as those provided by law between attorney and client, and nothing in this article shall be construed to require any such privileged communications to be disclosed.