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Constitutional Law—State Taxation of Interstate Carriers

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commerce. Therefore, it follows that taxability can be avoided, saving those *Dye Works*, activities deemed promotional, by refraining from those two types of activities.

STATE TAXATION OF INTERSTATE CARRIERS

In *Public Service Coordinated Transport v. State Tax Commission*,³⁴ the Court of Appeals held that Section 186-a of the Tax Law as amended by Chapter 601 of the Laws of 1951 was a constitutional imposition on carriers engaged in interstate commerce. The taxing statute as it existed prior to the above amendment was a tax on utilities, "for the privilege of exercising its corporate franchise, or holding property, or of doing business in the City of New York."³⁵ Later it was amended so as to become a state-wide imposition.³⁶ Up to this time, it was a tax exclusively on intrastate service companies, and carriers engaged in interstate service were not included among those taxed.³⁷ By Chapter 601 of the Laws of 1951 it was amended, so as to enlarge the definition of "utility" to include "every person engaged in the business of operating one or more omnibuses having a seating capacity of more than seven passengers," and the definition of "gross operating income" was amended so as to include "receipts from all transportation, whether originating, terminating or traversing this state . . . allocated on the basis of mileage within and without this state."³⁸

The plaintiff argued, that the history of the act (its previous characterization) demonstrated it was a tax on interstate commerce for the privilege of doing business, an unconstitutional channel for taxation,³⁹ and that the tax had no relation to the use of the highways, hence violated the commerce clause.⁴⁰ There is no question that a non-discriminatory gross receipts tax on interstate commerce enterprises may be sustained if fairly apportioned to the business done in the taxing state.⁴¹ Mileage in transportation is an approved method.⁴²

The Court of Appeals construing the language,⁴³ and using the legislative history⁴⁴ determined the tax was a valid tax for the purpose of requiring contribution for the maintenance of the state highways, and that at the time of the

34. 6 N.Y.2d 173, 189 N.Y.S.2d 137 (1959).

35. *New York Steam Corp. v. City of New York*, 268 N.Y. 137, 146, 197 N.E. 172, 175 (1935).

36. N.Y. TAX LAW § 186(a); N.Y. GEN. CITY LAW § 20(b); N.Y. SESS. LAW 1937 c. 321.

37. *Supra* note 34 at 181.

38. N.Y. SESS. LAW 1951 c. 601.

39. *Spector Motor Service v. O'Connor*, 340 U.S. 602, 608 (1951). "The question whether a state may validly make interstate commerce pay its way depends first of all upon the constitutional channel through which it attempts to do so."

40. U.S. CONST. art. 1 § 8.

41. *State of Maine v. Grand Trunk R. Co.*, 142 U.S. 217, 228 (1891).

42. *Central Greyhound Lines of New York v. Mealy*, 334 U.S. 653 (1948); *Cantor R. Co. v. Rogan*, 340 U.S. 511, 516 (1951); *Mid-States Frt. Lines v. Bates*, 345 U.S. 908 (1953).

43. *Supra* note 34 at 184.

44. N.Y. LEGIS. ANNUAL 1951, pp. 291, 196-297.

characterization as a business privilege tax, the section applied only to domestic corporations, which was no longer the case.

CONSTITUTIONALITY OF WATER POLLUTION CONTROL ACT I

In 1955 the Water Pollution Control Board submitted to the City of Utica, a plan for the abatement of pollution in the waters of the area. For over two years nothing was done by the City in pursuance of the plan. In 1957 the Board proceeded against the City for violation of Section 1220 of the Public Health Law.⁴⁵ The City instituted this Article 78 proceeding to restrain the Board from continuing its hearing upon the ground that the Water Pollution Control Law is invalid as an unconstitutional delegation of legislative power.⁴⁶ In *City of Utica v. Water Pollution Control Board*⁴⁷ the Court upheld the Appellate Division's affirmance of the Supreme Court's dismissal of the City's petition.⁴⁸

The Court looked to the language of the statute to see what standards it contained and found that it included clear statements of policy and purpose,⁴⁹ that it reflected an awareness of the complexity of the situation,⁵⁰ and that the Board is directed to use trained experts.⁵¹ The assigning of the classifications is to be guided by certain enumerated considerations,⁵² and they are to be adopted only after public hearing.⁵³

The Court then reviewed the law on the subject and concluded that discretion may be conferred upon an administrative agency if there are standards for its exercise and it is to operate only in a limited field.⁵⁴ Where the area to be regulated is complex, the Legislature need only specify standards in as detailed a fashion as is reasonably practicable.⁵⁵ It would be impossible for the Legislature to anticipate every situation which may arise and provide specific rules for every such situation. At some point it becomes unreasonable to compel the prescribing of detailed standards.

In applying these principles to the problem at hand the Court pointed out that control of water pollution is a complex problem. Conditions vary considerably in the various waters of the State. The Legislature has provided the manner in which the Board must act and the matters it must consider; it could be no more specific and that is all that is necessary.⁵⁶

Judge Van Voorhis dissented. He felt that the statute was an invalid

45. N.Y. PUB. HEALTH LAW § 1220 prohibits the contamination of the State in contravention of the Board's classification.

46. *Id.* §§ 1200-1263.

47. 5 N.Y.2d 164, 182 N.Y.S.2d 584 (1959).

48. 6 A.D.2d 340, 177 N.Y.S.2d 47 (3d Dep't 1958).

49. *Supra* note 45 §§ 1200, 1201.

50. *Id.* § 1209.

51. *Id.* § 1206.

52. *Supra* note 50.

53. *Ibid.*

54. *Packer Collegiate Institute v. University of the State of New York*, 298 N.Y. 184, 81 N.E.2d 80 (1948), *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1934).

55. *Lichter v. United States*, 334 U.S. 742 (1948).

56. *Buttfield v. Stranahan*, 192 U.S. 470 (1904).