

10-1-1958

Constitutional Law—Statute Unconstitutional for Vagueness

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Constitutional Law Commons](#)

Recommended Citation

Buffalo Law Review, *Constitutional Law—Statute Unconstitutional for Vagueness*, 8 Buff. L. Rev. 79 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/33>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

COURT OF APPEALS, 1957 TERM

The unanimous decision of the Court of Appeals in the instant opinion is well within the principle quoted above from the *Winters* case. Although the rationale would not seem to be subject to dispute of any substantial legal significance, it is likely that research would disclose numerous local ordinances which would run afoul of the *Diaz* decision.⁵¹

Statute Unconstitutional for Vagueness

In *People v. Firth*,⁵² the Court of Appeals was confronted with the constitutionality of a traffic law which provided:

No person shall operate a motor vehicle or a motor cycle upon a public highway at such speed as to endanger the life, limb or property of any person, nor at a rate of speed greater than will permit such person to bring the vehicle to a stop without injury to another or his property.⁵³

Defendant driver struck a child causing serious personal injuries, and was subsequently charged and convicted of violating the above statute.

In unanimously affirming the judgment of the lower appellate court⁵⁴ which had reversed the conviction, the Court of Appeals held that the statute neither set forth a sufficient definition of criminal conduct nor contained an ascertainable standard by which a judge or jury could measure a driver's conduct. The Court pointed out that notwithstanding a violation of the statute was only a so-called "traffic infraction",⁵⁵ the statute's constitutional status was to be determined by the usual rules of criminal law.⁵⁶

In construing the statute the Court analyzed each of its prohibitory provisions separately. As to the first prohibition, it pointed out that any speed would be capable of endangering life, limb or property; while a fair reading of the statute's second prohibition would indicate that any driver who could not stop his car in time to avoid an accident would, *ipso facto*, be driving at an

51. *E.g.* BUFFALO, N. Y., CITY ORDINANCES, ch. IX, §16, provides:

. . . [n]o person shall idly sit, stand or lounge upon or in any street, lane, alley or bridge or park

52. 3 N.Y.2d 472, 168 N.Y.S.2d 949 (1957).

53. N. Y. VEHICLE AND TRAFFIC LAW §56, subd. 1.

54. 5 Misc.2d 439, 159 N.Y.S.2d 794 (Cy. Ct. 1957). Accord: *People v. Gaebel*, 2 Misc.2d 458, 153 N.Y.S.2d 102 (Cy. Ct. 1956); *People v. Horowitz*, 4 Misc.2d 632, 158 N.Y.S.2d 166 (Cy. Ct. 1956). Contra: *People v. Sprague*, 204 Misc. 99, 120 N.Y.S.2d 725 (Cy. Ct. 1953); *People v. Burkhalter*, 203 Misc. 532, 117 N.Y.S.2d 609 (Cy. Ct. 1952). See also *Commonwealth v. Pentz*, 247 Mass. 500, 143 N.E. 322 (1924).

55. N. Y. VEHICLE AND TRAFFIC LAW §2, subd. 29.

56. *People v. Hildebrandt*, 308 N.Y. 397, 126 N.E.2d 377 (1955).

unlawful speed. Accordingly, the Court concluded, the statute was "too vague for validity".

Although there was some evidence to support the state's contention that the statute was intended to be a proscription against "a speed which is greater than that which is reasonable and prudent under the conditions",⁵⁷ the Court refused to twist the language of the statute into that meaning. It deemed the face of the statute to be controlling, not the unexpressed intention of the legislature.

Since the Court rejected the state's interpretation of the statute, the constitutionality of a "negligence" type of statute remains an open question in New York. However, the greater weight of authority⁵⁸ has sustained such statutes on the ground that the historic support of the common law has provided the concept of negligence with meaning and boundaries sufficient to enable a person of ordinary intelligence safely to estimate⁵⁹ what course of conduct to pursue, and sufficient to provide a standard by which a jury can appraise a defendant's conduct.⁶⁰

In contrast to the "negligence" type of statute, the inadequacies of the invalidated statute are readily apparent. The latter, in effect, imposes liability without fault and makes a driver the insurer of public safety. Since, as the Court pointed out, any speed is capable of endangering life, limb or property, a person would have to discontinue driving in order to completely avoid the reach of this statute.

Municipal Regulation of Transport and Dumping of Garbage

The Town of Somers, acting pursuant to statutory authority,⁶¹ enacted an ordinance prohibiting the transportation and dumping within the town of garbage originating outside the town. The plaintiff, who had been operating a private dump within the township with a collection area embracing several

57. GOVERNOR'S CONFERENCE REPORT ON HIGHWAY AND TRAFFIC SAFETY, p. 22 (1940).

58. See *State v. Wojahn*, 204 Or. 84, 282 P.2d 675 (1955), which is a good review of legislation in this area. Also see *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932).

59. *Wash v. United States*, 229 U.S. 373, 377 (1913), Holmes J.: [T]he law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree.

60. *People v. McMurchy*, 294 Mich. 47, 228 N.W. 723, 734 (1930): The term "negligence" is so well known, the elements so certain, the definitions so definitely settled, and the precedents so many, that there is nothing indefinite whatsoever about it.

61. N. Y. TOWN LAW §130(6).