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## Constitutional Law—Municipal Regulation of Transport and Dumping of Garbage

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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",<sup>57</sup> 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 authority<sup>58</sup> 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 estimate<sup>59</sup> what course of conduct to pursue, and sufficient to provide a standard by which a jury can appraise a defendant's conduct.<sup>60</sup>

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,<sup>61</sup> 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

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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).

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townships, brought this action to enjoin the enforcement of the ordinance, alleging principally its unconstitutionality. He argued that the ordinance was violative of due process, being "unreasonable, arbitrary, oppressive, and capricious" in that it prohibited importation of garbage without in any way regulating the quantity of local garbage which could be "dumped". Hence, the ordinance did not directly relate to public health factors but rather was a discriminatory restriction only. The Court held that the prohibition of *transportation* of garbage on public highways was not valid, since it exceeded the power of the town board to regulate traffic.<sup>62</sup> However, the prohibition of dumping foreign garbage within the town was valid and constitutional.<sup>63</sup>

Property privately held is subject nonetheless to the right of the legislative power to regulate its use, provided that the regulation is not "unreasonable or arbitrary" and that it is "reasonably related and applied to some actual and manifest evil" within the competence of the police power sought to be exercised.<sup>64</sup> The problem of applying these standards is particularly acute where the effect of the regulation involved is to exclude business at political boundaries, since *prima facie* the possibility of discrimination between local and foreign interests is involved.<sup>65</sup>

In the instant case, the Court took judicial notice of factors making the control of dumping activities an object of legitimate local concern. The deleterious effects of garbage and dumping in general on real estate values as well as the general living conditions were necessarily involved. The majority rejected the allegation of arbitrariness inasmuch as the ordinance, to the extent that it dealt with dumping itself, as a practical matter tended to place an upper limit on the quantity of the material deposited in the township, thereby conserving dumping facilities and cutting down on the normal harmful effects incident to waste material. The ordinance seemed a fair compromise in effecting the interests of the community: (1) to make ample facilities available to local residents and (2) to limit the total amount of garbage dumped. A restriction on a general tonnage or other quota basis applying equally to residents and non-residents would not have adequately served the community interest, since the quota might be used up by foreign garbage leaving local disposal needs unsatisfied.

Because there was a rational explanation for the ordinance which would

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62. N. Y. VEHICLE AND TRAFFIC LAW §§54, 90; *People v. Grant*, 306 N.Y. 258, 117 N.E.2d 542 (1954).

63. *Wiggins v. Town of Somers*, 4 N.Y.2d 215, 173 N.Y.S.2d 579 (1958).

64. *Defiance Milk Products Co. v. DuMond*, 309 N.Y. 537, 132 N.E.2d 829 (1956); *Nebbia v. New York*, 291 U.S. 502 (1934).

65. *Robbins v. Shelby County Taxing District*, 120 U.S. 489 (1887); *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951).

justify its passage,<sup>66</sup> the Court held that the presumption in favor of constitutionality of statutes had not been overcome.<sup>67</sup> It was incumbent on the plaintiff to show, beyond a reasonable doubt,<sup>68</sup> that there was no possible reasonable basis for the classification of the ordinance.

Judge Desmond dissented, agreeing with the plaintiff that there was no rational explanation, but rather that the ordinance was an arbitrary interference with his property interests. This is the position which has been adopted elsewhere,<sup>69</sup> but the majority rationale would seem preferable.

The Court of Appeals has been reluctant, as demonstrated in a 1956 case, *Defiance Milk Products Co. v. Du Mond*,<sup>70</sup> to uphold regulatory statutes which have the effect of prohibiting the introduction of goods into commerce even though a legitimate goal of legislative policy was seemingly present.<sup>71</sup> Involved there, however, was regulation and restriction on the movement of marketable goods. Cases such as the instant one present strong arguments which may not be available elsewhere. The regulation of what is by its nature a "necessary evil" should be viewed most liberally by the courts. Although the Court spoke in terms of reasonableness of purpose in the garbage situation, perhaps the result is pointed up by viewing this as simply an area where equal treatment between local and foreign residents is not necessary because of the peculiar interest of the local community in the subject matter. Viewed as such, the result appears analogous to those cases, for example, which allow states to restrict the enjoyment of wild life to residents on a theory of property interest of the sovereign therein.<sup>72</sup>

### Gross Receipts Tax Applied to Publishing Contract Upheld

It is well settled that the liberty of the press is safeguarded by the due process clause of the Fourteenth Amendment.<sup>73</sup> Freedom of the press as well as those other "fundamental" liberties essential to "a scheme of ordered liberty" enjoys a unique position<sup>74</sup> in our society, a position that can not be infringed upon directly.<sup>75</sup> The press is free from censorship. This is not to say, however,

66. *United States v. Carolene Products Co.*, 304 U.S. 144, 154 (1938).

67. *Borden's Co. v. Baldwin*, 293 U.S. 194, 209-210 (1934).

68. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 79 (1911).

69. See *Ex parte Lyons*, 27 C.A.2d 182, 80 P.2d 745 (1938); *People v. Marine Products Co.*, 77 C.A.2d 929, 177 P.2d 67 (1947).

70. *Supra* note 64.

71. See *Limitations on Police Power*, 6 BUFFALO L. REV. 42 (1956).

72. *Geer v. Connecticut*, 161 U.S. 519 (1896).

73. *Near v. Minnesota*, 283 U.S. 697 (1931).

74. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Palko v. Connecticut*, 302 U.S. 319 (1937).

75. See *Follett v. McCormick*, 321 U.S. 573 (1944), where the exaction of a tax as a condition to the exercise of the liberties secured by the First Amendment was considered obnoxious.