

1-1-1957

Constitutional Law—Licensing of Electricians

June A. Murray

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



Part of the [Constitutional Law Commons](#)

Recommended Citation

June A. Murray, *Constitutional Law—Licensing of Electricians*, 6 Buff. L. Rev. 159 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss2/17>

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.

any doubt that the statute was unconstitutional. The Court upheld the statute feeling that the landlord had done no more than raise a conflict of testimony and opinion as to the continuance of the emergency and he had failed to carry his burden of proof. The Court held that where, in looking at the basis of statutes which were enacted under particular conditions, questions of what the facts elicited tend to establish is a debatable one, the Court will accept the legislative determination and will not substitute its judgment for that of the legislature as long as the Court can discover any state of facts either known or reasonably assumed, which support the legislation. Questions of wisdom, reasonableness and propriety are for the legislature and not for the courts.²⁴

It is impossible from this decision to determine that the Court has retreated from the stand which it took in *Defiance Milk*²⁵ against economic restrictions. There the Court felt that the Attorney General had to show some basis for the statute whereas in the instant case it was not necessary for the Attorney General to do so for the evidence adduced in opposition to the legislation itself showed that there was some basis for an enactment of this type. This case appears to follow the general police power principles which the Court has long followed and adds little to the concept of the weight which is to be given to legislative determinations.

Licensing of Electricians

It has long been generally recognized that all property is held subject to the general police power of the state to regulate and control its use to secure the general safety and the public welfare.²⁶ The right of an individual to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit, subject to such restraints as are necessary for the common welfare, has never been denied.²⁷ A license to engage in a traditionally lawful business is a property right, protected by due process.²⁸ But a license in a potentially harmful or nuisance-type activity is a mere privilege,²⁹ which does not constitutionally even require notice and hearing before revocation.³⁰

Licensing statutes are usually classified in two ways: (1) according to the

24. *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177 (1938).

25. *Defiance Milk Products Co. v. DuMond*, 309 N. Y. 537, 132 N. E. 2d 829 (1956), 6 BUFFALO L. REV. 42 (1956).

26. *Nebbia v. New York*, 291 U. S. 502 (1934).

27. *Slaughter House Case*, 83 U. S. (16 Wall.) 36 (1873); *Matter of Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636 (1885).

28. *Ex parte Robinson*, 86 U. S. (19 Wall.) 505 (1873); *Bender v. Board of Regents*, 262 App. Div. 627, 30 N. Y. S. 2d 779 (3d Dep't 1941).

29. *Lodes v. Dept. of Health*, 189 N. Y. 187, 87 N. E. 187 (1907).

30. *Matter of Yates v. Mulrooney*, 245 App. Div. 146, 281 N. Y. Supp. 218 (4th Dep't 1935).

trades licensed and (2) by the method of licensing used. In most states licenses are regulated by either a statewide administrative agency or by a municipal ordinance pursuant to statutory authority and administered by a special agency or by an already established branch of the municipal government.³¹ The most frequently regulated occupations are those of plumber and electrician.³² Plumbing statutes are generally held constitutionally valid because plumbing and drainage vitally affect the health and safety of city dwellers.³³ Similarly, electricians' licensing statutes are upheld on the ground that they are closely related to fire prevention.³⁴

Where a board is created to examine applicants for licenses, the statutes setting up the boards generally make it unlawful for any person to engage in business without first obtaining a certificate of competency. This latter requirement has withstood a challenge to its constitutionality as reasonably calculated to protect the public health.³⁵ Statutes prohibiting the installation or repair by anyone but a licensed master have also been upheld.³⁶

In a recent decision,³⁷ the Court of Appeals went one step further in permitting the City of New York, under the authority of a provision in its administrative code, to require that one licensed as a master electrician be principally engaged in such work and to provide that if he is engaged in any other business his license may be revoked. Since the master electrician is the one on whom the full responsibility falls for all the work done, there is a basis for requiring that all persons licensed as a master be not principally engaged in any other business. This is only a reasonable regulation designed to give residents the proper protection from fire hazards inherent in a crowded metropolis and the Court held it reasonably tends toward that end which is a legitimate object of the police power, the public welfare.

The dissent felt that the requirement bore no relation to the public welfare and was merely a means whereby business competitors limited competition. The reasoning of the majority appears sound since it cannot be doubted that requiring a man to be principally engaged in an occupation will ensure greater skill on his part and afford greater protection to the public.

31. Clark, *Occupational Licensing in the Building Industry*, 1952 WASH. U. L. Q. 483 (1952).

32. Clark, *supra* note 31, at 485.

33. *People v. Harford*, 286 N. Y. 477, 36 N. E. 2d 670 (1941).

34. *City of Tucson v. Stewart*, 45 Ariz. 36, 40 P. 72 (1935); *Richardson v. Coker*, 78 Ga. 170, 3 S. E. 2d 636 (1939); *Berry v. Chicago*, 320 Ill. 536, 151 N. E. 581 (1926).

35. *People ex rel. Nechamus v. Warden*, 144 N. Y. 529, 39 N. E. 686 (1895).

36. *People v. Harford*, 286 N. Y. 477, 36 N. E. 2d 670 (1941).

37. *Spielvogel v. Ford*, 1 N. Y. 2d 558, 136 N. E. 2d 586 (1956).