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Constitutional Law—Jury Selection Statute

June A. Murray

Registration of Gasoline Stations

Section 283-a of the New York Tax Law requires the procurement of a license from the Department of Taxation and Finance prior to operating a filling station, such license being issued upon application and payment of a registration fee. This section was passed to prevent tax evasion by giving the Tax Commissioner a list of operators enabling him to determine if a distributor has paid the motor fuel taxes which he has collected from the consumers.[38]

In upholding the constitutionality of this statute,[39] the Court agreed that the section was valid without giving any reason for its assertion. It might be argued that the statute was valid as an exercise of the police power. The welfare of the citizen is of such primary importance as to make laws tending to promote such object proper under this power.[40] Generally, legislation is valid which has for its object the prevention of fraud, and deceit.[41] A statute tending to prevent the fraudulent evasion of taxes would appear to be within the power of the state.

It would also seem that this statute, being designed as an integral part of the motor fuel tax could be upheld as an aid in tax collection and a necessary adjunct to the taxing power of the state.[42] If a sovereign is given the right to tax, it has the right to utilize the most efficient methods of collecting this tax within the bounds of due process and this registration device is a reasonable way of enforcing the motor vehicle tax.

As the concurring opinion points out, this statute cannot be treated as a true licensing statute for it is devoid of standards to guide the Commissioner in its enforcement.[43] There would seem to be no reason for invalidating this statute; whether regarded as an aid to tax collection or as a measure designed to prevent fraud, it is reasonably calculated to effectuate a legitimate legislative goal.

Jury Selection Statute

The problem of modernizing New York's antiquated jury system has long plagued the Legislature as well as the Judicial Council.[44] Prior to 1940 there were over 250 sections of the Judiciary Law and about 150 sections of the Unconsolidated Laws which governed the selection of jurors and which set up a maze of

38. 1931 ANNUAL REPORT STATE TAX COMMISSION, 1932 LEG. DOC. No. 11, p. 18.
39. *People v. Faxlanger*, 1 N. Y. 2d 393, 135 N. E. 2d 705 (1956).
40. *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63 (1927).
41. *Biddles v. Enright*, 239 N. Y. 354, 146 N. E. 625 (1925).
42. *Genet v. City of Brooklyn*, 99 N. Y. 296, 1 N. E. 777 (1885).
43. *Packer Collegiate Institute v. University of the State of New York*, 298 N. Y. 184, 81 N. E. 2d 80 (1949).
44. SEVENTH ANNUAL REPORT AND STUDIES, THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK, 153 (1941).

law due to the inclusion of many archaic, obsolete and contradictory provisions.[45] In an effort to raise the quality of the jurors and to clarify existing law the Judicial Council recommended to the Legislature the adoption of a uniform system of jury selection, applicable however only to the City of New York.[46] Through the efforts of the Judicial Council a statute was finally adopted applicable to the entire state. This statute,[47] passed in 1954, provided for a centralized jury system under the direction of a Commissioner of Jurors who was to be selected for each county. The small counties were quick to complain that this statute put a great financial burden on them in requiring the establishment of this new office in the counties. As a result of this agitation, before the 1954 statute ever went into effect, it was amended to allow those counties with a population of less than 100,000 to elect not to come under the 1954 law.[48] Thus the counties which were most in need of this type of rehabilitation for their jury systems were allowed to continue as they had in the past.

In a taxpayer's action the constitutionality of this 1955 amendment was challenged on the ground that it was a local law enacted in an area where the g overnment can act only by general laws. The Court, in overruling this objection, had no difficulty in labeling this a general law. To be general, unless it applies to all counties within a state, an act must create a class[49] which may be based on population if population is a factor which can be recognized as possibly common to a class.[50] The classification must be reasonable and have a reasonable relation to its subject[51] and it must be based on standards of general application to all persons or localities within a class created by the statute.[52] It has been held that a statute applicable to only one county may be general if it can possibly be recognized that its population has created the problem which the statute attempts to solve.[53]

This decision of the Court appears to be in harmony with prior decisions and appears to carry on the trend begun with the *Adler*[54] case of weakening the Home Rule provisions of the Constitution. Those who hoped to grant greater local autonomy to city and county governments have seen their hopes frustrated by judicial watering down of home rule.[55]

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45. Schechter and Jerome, *Selecting Persons for Jury Service*, 26 CORNELL L. Q. 677 (1941).
46. N. Y. JUDICIARY LAW §§745-9.
47. N. Y. JUDICIARY LAW §§650-685.
48. N. Y. JUDICIARY LAW §§501-531.
49. *Farrington v. Pinckney*, 1 N. Y. 2d 74, 133 N. E. 2d 817 (1956).
50. *Matter of Henneberger*, 155 N. Y. 420, 50 N. E. 61 (1898).
51. *Stapleton v. Pinckney*, 293 N. Y. 330, 57 N. E. 2d 38 (1940).
52. *Stapleton v. Pinckney, supra* note 51.
53. *Clay v. Saunders*, 184 Misc. 143, 52 N. Y. S. 2d 837 (Sup. Ct. 1945).
54. *Adler v. Deegan*, 251 N. Y. 467, 167 N. E. 705 (1929).
55. See, Richland, *Constitutional Home Rule in New York*, 54 COLUM. L. REV. 311 (1954).