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CONSTITUTIONAL LAW

Limitations on Police Power

All property is held subject to the right of the state reasonably to regulate its use under the police power in order to secure the general safety and public welfare.¹ The exact limitations of the police power have never been drawn² and its lines are gradually pricked out as they come before the courts.³ It is capable of modification and development, within constitutional limitations, allowing the powers of governmental control to be adequate to meet changing social, economic and political conditions.⁴ But it is not limitless;⁵ its exercise can only be justified by the presence of public interest;⁶ it may not unreasonably invade private rights, violating those rights guaranteed under the federal or state constitutions.⁷ Therefore, the exercise of this power must be reasonably necessary and appropriate for the accomplishment of legitimate objects falling within its scope.⁸ The legislature may enact laws regulating, restraining or prohibiting anything harmful to the welfare of the people even though such regulation interferes with the liberty or property of an individual.⁹ But it has no power, under the guise of police power, arbitrarily to invade the personal rights and liberties of individuals,¹⁰ interfere with private business,¹¹ or invade property rights.¹²

Once the legislature determines that the exercise of the police power is necessary, the means adopted by it to carry out its objective must be reasonably necessary and appropriate for its accomplishment¹³ and must tend toward such

1. *Nebbia v. New York*, 291 U. S. 502 (1934); *Munn v. Illinois*, 94 U. S. 113 (1877); *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601, error denied, 257 U. S. 665 (1921).

2. *People v. Ewer*, 141 N. Y. 129, 36 N. E. 4 (1894).

3. *Noble State Bank v. Haskell*, 219 U. S. 104 (1911).

4. *Holden v. Hardy*, 169 U. S. 366 (1898).

5. *Lochner v. New York*, 198 U. S. 45 (1905); *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 94 N. E. 431 (1911).

6. *N. Y. Central R. Co. v. White*, 243 U. S. 188 (1917).

7. *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N. Y. 429 130 N. E. 601, error denied, 257 U. S. 665 (1921); *Lochner v. New York*, 198 U. S. 45 (1905).

8. *Wulfsohn v. Burden*, 241 N. Y. 288, 150 N. E. 120 (1925); *Health Department v. Trinity Church*, 145 N. Y. 32, 39 N. E. 833 (1895). Physical welfare of its citizens is a subject of such primary importance to the state and has such a direct relation to the general good as to make laws tending to promote that object proper under police legislation. *N. Y. Central R. Co. v. White*, 243 U. S. 188 (1917). The State may prescribe regulations to secure the people against the consequences of fraud. *Hawker v. N. Y.*, 170 U. S. 189 (1898); *People v. Perretta*, 253 N. Y. 305, 171 N. E. 72 (1930). It may regulate any and all kinds of businesses to protect public health, morals and welfare. *People ex rel. Armstrong v. Warden*, 183 N. Y. 223, 76 N. E. 11 (1905).

9. *N. Y. ex rel. Bryant v. Zimmerman*, 278 U. S. 63 (1928); *Re People (Title & Mtge. Guarantee Co.)*, 264 N. Y. 69, 190 N. E. 153 (1934).

10. *Hauser v. North British & M. Ins. Co.*, 206 N. Y. 455, 100 N. E. 52 (1912).

11. *Wright v. Hart*, 182 N. Y. 330, 75 N. E. 464 (1905).

12. *Matter of Jacobs*, 98 N. Y. 98, 50 Am Rep. 636. (1885).

13. Police power extends only to such measures as are reasonable (*People v. Perretta*, 253 N. Y. 305, 171 N. E. 72 (1930)) under all the circumstances. *People v. Wilber*, 198 N. Y. 1, 90 N. E. 1140 (1910).

accomplishment in a clear and perceptible degree.¹⁴ If it can be determined that the means adopted are fairly appropriate, the test of reasonableness is met even though the regulation is not necessarily what is best.¹⁵ The discretion of the legislature is very large in determining what the interests of the public require and what means and measures are reasonably necessary for the protection of such interests.¹⁶

When a statute reaches the courts, it is the duty of the judiciary to determine whether the exercise of the power is actually necessary for the public good.¹⁷ The measure must be sustained unless clearly, plainly and palpably in violation of the Constitution.¹⁸ General principles relating to the presumption of validity surrounding legislative acts and the duty of the courts to uphold the action if possible apply with particular emphasis to the exercise of the police power.¹⁹ A party assailing a police measure as unconstitutional carries the burden of showing, by clear and convincing evidence, that there is no rational basis for the legislation and that it is an arbitrary fiat.²⁰

Because it has been recognized that the changing conditions of our complex society make it imperative for the state to exercise additional powers, there has been a strong, nationwide trend to extend the police power.²¹ However, recently, the highest court of New York voiced its unwillingness to go along with the trend and declared an avowed police measure unconstitutional.²² Section 63(2) of the Agricultural and Markets Law, prohibiting the sale of condensed or evaporated skim milk in packages containing ten pounds or less was declared unconstitutional as an unreasonable deprivation of a citizen's property rights. The Court of Appeals held that since evidence proved that the plaintiff's product was a wholesome and useful food product, the means chosen by the legislature were *as a matter of law*, not a reasonable way of dealing with any confusion or possibility of confusion of the public as the legislature might have found to exist. As to the State's argument that plaintiff had failed to carry his burden of proof, the Court held that since no one had discovered any reasonable basis, the milk company did not have to go further and show there was none. It appears that the Court

14. *Health Department v. Trinity Church*, 145 N. Y. 32, 39 N. E. 833 (1895).

15. *People v. Perretta*, 253 N. Y. 305, 171 N. E. 72 (1930).

16. *Adamec v. Post*, 273 N. Y. 250, 7 N. E. 2d 120 (1937); *Barrett v. State*, 220 N. Y. 423, 116 N. E. 99 (1917).

17. *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 94 N. E. 41 (1911).

18. *Euclid v. Ambler Realty Co.*, 272 U. S. 365 (1926); *People v. Chas. Schweinler Press*, 214 N. Y. 395, 108 N. E. 636, error denied 242 U. S. 618 (1916).

19. *People v. Chas. Schweinler Press*, *supra* note 18.

20. *U. S. v. Carolene*, 323 U. S. 18 (1944); *Harmon v. Board of Education*, 300 N. Y. 21, 88 N. E. 2d 351 (1949).

21. *State ex rel. Olson v. Guilford*, 174 Minn. 457, 219 N. W. 770 (1928); *South Carolina Highway Department v. Barnwell Bros.* 303 U. S. 177 (1938).

22. *Defiance Milk Products Co. v. Du Mond*, 309 N. Y. 537, 132 N. E. 2d 829 (1956).

thus shifted the burden of proof to the State requiring it to come forth with evidence of reasonableness. The Court distinguished the *Carolene* case²³ by holding that the ultimate basis for the decision was a passing off²⁴ while in the instant case there is no evidence of passing off.

The dissent, in a well-reasoned opinion, points out that here we are concerned with the state's right of self-preservation; that the milk industry, a paramount industry,²⁵ is one which is ever a concern of the legislature in its desire to protect the health and welfare of the people. Since public health and the prevention of fraud and deceit are unquestionably proper subjects of the police power and since courts do not sit as a super legislature, the statute cannot be invalidated merely because the Court disagrees with the desirability of the statute. The burden rested on the plaintiff to show by clear and convincing evidence that it did not rest on any reasonable evidence. It introduced no evidence on this point. The dissent relies on the *Carolene* case²⁶ for the proposition that even though the product was proven to be healthful, the evil of confusion remained and exclusion of the product from commerce was upheld upon Congressional determination that this was an appropriate way of suppressing the evil.

It seems difficult to dismiss the *Carolene*²⁷ case as being based merely on passing off. The Supreme Court, in that case, based its decision on passing off *and* confusion in spite of proper labeling. "The possibility and actuality of confusion, deception and substitution was appraised by Congress. The prevention of such practices or dangers through control of shipments in interstate commerce is within the power of Congress."²⁸

It is impossible, at this time, to appraise the possible effects of this decision of the Court of Appeals. If the Court has determined that the legislature has gone too far in its control of businesses in decreeing absolute prohibitions rather than stricter regulation, many police regulations may have to undergo revision to fall in line with the new policy.

23. *Carolene Products Co. v. United States*, 304 U. S. 152 (1938) and 323 U. S. 23 (1944). In these cases the Supreme Court upheld a federal statute which barred "filled milk" from interstate commerce.

24. Passing off has been defined as the sale of the goods of one manufacturer for those of another. *Elgin National Watch Co. v. Illinois Watch Case Co.* 179 U. S. 665 (1901).

25. *People v. Nebbia*, 262 N. Y. 259, 186 N.E. 694 (1934).

26. *Carolene Products Co. v. U. S.*, 323 U. S. 18 (1944).

27. See note 26 *supra*.

28. *Carolene Products Co. v. U. S.*, 323 U. S. 18, 23 (1944).