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Constitutional Law—Constitutionality of Minimum Wage Law Provision

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The shotgun approach used by the majority renders the opinion somewhat confusing in that no one set of facts can be pointed to as a basis for voiding the ordinance and thus it is difficult to determine exactly what type of test was applied. In contrast, the logic of the dissent is clear and cogent. The result reached by the majority is probably the more desirable when viewed with a practical eye, but such an approach is fraught with the dangers which arise from flexible judicial determinations.

Constitutionality Of Minimum Wage Law Provision

Article 19 of the Labor Law[35] sets forth the law concerning minimum wage standards for women and minors the purpose of which is to provide adequate maintenance for and to protect the health of women and minors. Section 663(a) of that article is a supplemental provision designed to effectuate the aim of the whole article by protecting the minimum wage standards established for women and minors. It is therein declared that no male twenty-one years of age or over shall be employed in an occupation at less than the minimum wage standards fixed for women and minors in that occupation. The purpose of this section is clearly to prevent unemployment of this protected class because of wage competition from men.

The constitutionality of this section was challenged for the first time in *N. H. Lyons & Co. v. Corsi*[36] Plaintiff brought action for an injunction and a judgment declaring invalid an order of the Industrial Commissioner establishing minimum wages for women and minors in the hotel industry. He claimed that the enforcement of a minimum wage under §663(a) for the men he employed in his cheap "flophouse" where the employment of women was forbidden by municipal regulation was unconstitutional as a general minimum wage act for men, or, in the alternative, that this section was unconstitutional as applied to him. The Court of Appeals,[37] affirming the lower courts' decisions,[38] held that §663(a) was not a general minimum wage act for men, and that any objection as to application should have been appealed under §662 of the act.[39]

While it can no longer be disputed that a general minimum wage law for men is constitutional,[40] it remains that this is not such a wage law since it affects men only in those occupations where a minimum wage rate for women and minors has been established. However, this section, as the Court found, has a reasonable relation to the enforcement of the general policy of protecting women and minors

35. N.Y. LABOR LAW §§650-666.
36. 3 N.Y.2d 60, 163 N.Y.S.2d 677 (1957).
37. *Ibid.*
38. 203 Misc. 160, 116 N.Y.S.2d 520 (Sup. Ct. 1955); 286 App. Div. 1065, 146 N.Y.S.2d 663 (1st Dep't 1955).
39. N.Y. LABOR LAW §662.
40. United States v. Darby, 312 U.S. 100 (1940).

in industry. A similar result was reached in *Lincoln Candies v. Department of Labor*[41] where the setting of minimum hours per week for women was held constitutional as a means to effectuate the policy of article 19 of the Labor Law.[42]

Since this statute is not unconstitutional on its face, the only issue remaining is whether it is unconstitutional in its applcation to plaintiff. The Court of Appeals refused to decde this issue because the plaintiff had not exhausted his remedies under the act. Section 662[43] allows matters of law to be reviewed by the Board of Standards and Appeals as provided in §110[44] which states that matters of validity and reasonableness shall be proper for that Board's review. Thereafter appeals from that determination can be taken direct to the Appellate Division, third Department. Due to the plaintiff's failure to seek relief under these sections before appealing to the Court of Appeals, that body followed the well-established rule that constitutional issues will not be decided unless there are no other grounds on which to disposes of the case in controversy.[45]

The dissent would have decided the constitutional question as to application in favor of the plaintiff in this instance instead of relegating him to his remedy under the statute.

In the light of the prevailing doctrine in the federal as well as the state courts to avoid constitutional issues if possible,[46] the majority's approach to this problem is the more acceptible.

Invoking Privilege Against Self Incrimination—Grounds For Discharge

A controversial area of law today is the extent of the protection given by the courts to a party who invokes the privilege against self-incrimination. Although the basic merits of the privilege have been questioned,[47] the right seems firmly entrenched in our legal system.[48] Dean Griswold has called it "one of the landmarks in man's struggle to make himself civilized."[49]

Due process considerations were present in *Lerner v. Casey*,[50] where petitioner

41. 289 N.Y. 262, 45 N.E.2d 434 (1942).
42. See note 35 *supra.*
43. See note 39 *supra.*
44. N.Y. LABOR LAW §110.
45. Schieffelin v. Goldsmith, 253 N.Y. 243, 170 N.E. 905 (1930); O'Kane v. State, 283 N.Y. 439, 28 N.E.2d 905 (1940).
46. *Ibid;* Carter v. Carter Coal Co., 298 U.S. 238 (1936); Driscoll v. Edison Light & Power Co., 307 U.S. 104 (1938).
47. 74 U. PA. L. REV. 139 (1925). For a discussion of the privileges against self-incrimination, see 6 BUFFALO L. REV. 343 (1957).
48. 24 FORDHAM L. REV. 19 (1955); see Maffie v. United States, 209 F.2d 225 (1st Cir. 1954).
49. GRISWOLD, THE FIFTH AMENDMENT TODAY, 7 (1955).
50. 2 N.Y.2d 355, 161 N.Y.S.2d 7 (1957).