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## Constitutional Law—Veterans’ Benefits as a Violation of Equal Protection of the Laws

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## RECENT DECISIONS

### CONSTITUTIONAL LAW — VETERANS' BENEFITS AS A VIOLATION OF EQUAL PROTECTION OF THE LAWS

Action for a declaratory judgment to declare unconstitutional a statute exempting veterans from fees for hunting and fishing licenses. *Held*: The statute violates the equal protection clauses of the Indiana and Federal Constitutions. *Hanley v. State*, — Ind. —, 123 N. E. 2d 452 (1954).

Generally, there are three different types of benefits offered veterans: restoration of pre-war status, by such provisions as re-employment rights and renewal of professional licenses, *e. g.* N. Y. GENERAL BUSINESS LAW § 405 (6); Civil Service employment and promotional benefits, *e. g.* N. Y. CONST., Art 5, § 6, N. Y. CIVIL SERVICE LAW § 21; exemptions from license fees and from other taxes, *e. g.* N. Y. GENERAL BUSINESS LAW § 32. Each of these general types has been attacked from the constitutional standpoint. The first two commonly have been upheld, with only a few exceptions. The constitutionality of license renewals was upheld in *Motley v. State Barber Examiners*, 228 N. C. 337, 45 S. E. 2d 550 (1947). Civil Service benefits were sustained in *Matter of Wortman*, 22 Abb. N. Cas. 137 (N. Y. 1888) and *Potts v. Kaplan*, 264 N. Y. 110, 190 N. E. 201 (1934); but compare *Commonwealth v. O'Neill*, 368 Pa. 369, 83 A. 2d 382 (1951). The third class of benefits has been the subject of considerable litigation, with varying results.

Several different types of tax exemptions have been statutorily granted, including poll taxes, upheld in *Davis v. Teague*, 220 Ala. 309, 125 So. 51 (1929), property taxes, upheld in *State v. Snyder*, 29 Wyo. 199, 212 Pac. 771 (1923), and peddling and occupation license taxes. The latter are frequently attacked, and in the majority of jurisdictions have been declared unconstitutional. *Marallis v. Chicago*, 349 Ill. 422, 182 N. E. 394 (1932). The precise problem has never reached the U. S. Supreme Court, since the only case to reach that Court was reversed on other grounds. *Ratta v. Healy*, 1 F. Supp. 669 (D. N. H.), *aff'd* 67 F. 2d 554 (1st Cir. 1933), *rev'd* 292 U. S. 263 (1934). Among the jurisdictions which have upheld these exemptions are North Carolina, Georgia, Maine, and Ohio. On the other hand, Vermont, Iowa, Wisconsin, South Carolina, and Massachusetts have been among the majority which have struck down these tax exemptions. See note, 83 A. L. R. 1233. The usual grounds for the majority reasoning is that veterans do not have a sufficient connection to the subject matter of the tax to constitute a reasonable classification. *Marallis v. Chicago*, *supra*.

Although the instant Indiana case involves a tax which has not previously been brought to issue, the court treats it identically with other license taxes. The court bases its analysis on the purpose of the statute, which is the preservation of wild life, which is accomplished with the funds obtained from those licenses. The court asserts that exempting veterans will deplete the funds available for this purpose, and thereby defeat the purpose of the legislature in passing this license fee.

If this reasoning were to be adopted universally, it would seem that almost all of the veteran benefits will fall. With the exception of the statutes attempting to restore pre-war status, no statute will be furthered by granting exceptions or exemptions. This would be especially apparent with regulatory taxes, but will also apply to other taxes with equal force. Although the Indiana court mentioned that a large number of licenses are obtained by veterans, they do not require that the impairment of the statutory purpose be great, but only that the exception "tend to produce this result." This decision would seem to sound the death knell for veterans benefits in Indiana, as perhaps in other states as well.

*Raymond S. Ettlinger*

### CRIMINAL LAW — OBSCENE TELEPHONE CALL HELD COMMON LAW CRIME

Defendant was convicted of telephoning a married woman on a four-party line, and using lewd and salacious language in soliciting her to commit sodomy and adultery with him. *Held*: Although the act violated no statutory provision, the common law is still in effect in Pennsylvania and is broad enough to punish acts which injuriously affect public morality. A dissent argued that the judiciary had arrogated legislative functions to itself. *Commonwealth v. Mochan*, — Pa. Super. —, 110 A. 2d 788 (1955).

The decision cites cases in which killing a horse, *Respublica v. Teisher*, 1 Dall. 335 (U. S. 1788), showing a lewd picture in a private home, *Commonwealth v. Sharpless*, 2 S. & R. 91 (Pa. 1830), and even mildly vilifying the Christian religion, *Updegraph v. Commonwealth*, 11 S. & R. 394 (Pa. 1824), were held to constitute indictable offenses at common law.

New York abolished all common law crimes in 1881, PENAL CODE § 2, L. 1881, c. 676, now PENAL LAW § 22, and all crimes must now be statutory offenses. *People v. Beintner*, 168 N. Y. Supp. 945 (Sup. Ct. 1918); *People v. Knapp*, 206 N. Y. 373 (1912). But