

10-1-1954

Other Cases—Election Law

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Recommended Citation

Frank Dombrowski Jr., *Other Cases—Election Law*, 4 Buff. L. Rev. 136 (1954).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol4/iss1/79>

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there is a patent inconsistency between the two, a more general statute will not reveal a more specific one.¹³

The court further pointed out that when the Grade Crossing Elimination Act became law in 1928, the Court of Claims Act then in existence had a six month statute of limitations for all claims not otherwise provided for with no discretionary extension. Later when the Court of Claims Act was liberalized by giving discretion to the court to extend the time beyond six months, no such liberality was shown to the Grade Crossing Elimination Act. Moreover, it is a general rule of law that when the legislature creates a new right of action, and in the statute of creation imposes a time limitation, that limitation is part of the grant of of power and the bringing of such action is subject to that limitation and no other.¹⁴

Election Law

Statutes that require an employer to give his employees time off on a general election day, so that they may exercise their franchise, are common.¹⁵ A minority of such statutes, including the New York provisions,¹⁶ also provide that "no deduction shall be made from the usual salary or wages of such voter." The constitutionality of these latter statutes has been questioned on several occasions in the state courts.¹⁷ The United States Supreme Court, has recently held that they do not violate the Federal Constitution.¹⁸

In *Williams v. Aircooled Motors, Inc.*,¹⁹ defendant company maintained a nine-hour day, the last hour being paid at time and a half. On election day, plaintiff worked the first seven hours and took off the last two hours of the day so that he could vote. The company paid him nine hours straight pay for election day

13. *People ex rel. Fleming v. Dalton*, 158 N. Y. 175, 184, 52 N. E. 1113, 1116 (1899).

14. *Gatti Paper Stock Corp. v. Erie R. R. Co.*, 247 App. Div. 45, 286 N. Y. Supp. 669 (1st Dep't 1936), *aff'd* 272 N. Y. 535, 4 N. E. 2d 724 (1936); *Meng v. Bischoff*, 227 N. Y. 264, 276; 125 N. E. 508, 511 (1919).

15. See, 47 COL. L. REV. 135 (1947).

16. ELECTION LAW §226.

17. *People v. Chicago, M. & St. P. R. Co.*, 306 Ill. 486, 138 N. E. 155, (1923); *Illinois Central R. Co. v. Commonwealth*, 305 Ky. 632, 204 S. W. 2d 973 (1947) held such statutes are unconstitutional because of a taking of property without due process of law. The following cases have held such statutes to be constitutional: *People v. Ford Motor Co.*, 271 App. Div. 141, 63 N. Y. S. 2d 697 (3d Dep't 1946); *Ballarini, in behalf of Lodge 1327, etc. v. Schlage Lock Co.*, 100 Cal. App. 2d Supp. 859, 226 P. 2d 771 (1950); *State v. International Harvester Co.*, ___ Minn. ___, 63 N. W. 2d 547 (1954), *review denied* 23 U. S. L. Week 3098 (U. S., Oct. 19, 1954).

18. *Dray-Brite Lighting, Inc. v. State of Missouri*, 342 U. S. 421 (1952).

19. 307 N. Y. 332, 121 N. E. 2d 251 (1954).

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despite plaintiff's assertion he was still entitled to an hour of overtime pay. The Court of Appeals, affirming the Appellate Division, held that the employer had not satisfied the statutory requirement that he pay his employee his "usual salary or wages," which in this case, under the union agreement was time and a half after eight hours straight pay.

The court indicated that any other result would be inconsistent with the obvious legislative intention that no penalty of any kind should be paid because of the exercise of the franchise.²⁰ To the defendant's assertion that under the statute plaintiff was entitled to his usual hourly *rate* of wages, the court replied that such a reading would discriminate against all workers who are paid at an hourly rate.

20. *Lee v. Ideal Roller & Mfg. Co.*, 197 Misc. 389, 92 N. Y. S. 2d 726 (N. Y. Munic. Ct. 1949), held that the two hours off must be included in the computation of hours in determining when overtime after forty hours begins. Thus, employees who worked thirty-eight hours and got two hours off on election day, received overtime pay for four hours recorded on Saturday.