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CONSTITUTIONAL LAW

COMMERCE CLAUSE STATE REGULATION OF FEDERAL WAREHOUSES

A dealer in grain brought a complaint before the Illinois Commerce Commission charging warehousemen, operating a public warehouse for the storage of grain in Illinois, with violations of Illinois warehouse laws.¹ The warehousemen had been licensed by the Secretary of Agriculture pursuant to

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16. Board of Finance v. Hawkins, 207 Ind. 171, 191 N.E. 158 (1934); Fountain Park v. Hensler, 199 Ind. 95, 155 N.E. 465 (1927); Hirth-Krause v. Cohen, 177 Ind. 1, 97 N.E. 1 (1912).
 17. Cf. Tigner v. Texas, 310 U.S. 141 (1940) (held ". . . a difference in fact or opinion . . ." is sufficient to sustain a classification).
 18. It does not follow that the Evansville or Holt cases need be overruled. There is no apparent relationship between the normal duties of the police and fire departments and an interest in political parties to sustain the classification in these two cases.
 1. Illinois Public Utilities Act, Ill. Rev. Stat. (Smith-Hurd, 1945) c.111 ½, §§ 32, 33, 35, 36, 38, 41, 49, 49(a), and 50; Illinois Grain Warehouse Act, Ill. Rev. Stat. (Smith-Hurd, 1945) c.114, §§ 293-326(a). These sections relate to regulation of rates, discrimination, dual position of warehousemen, mixing of grain, rebates, unsafe elevators, abandonment of service, and the filing and publishing of rates. Petitioner also alleged violations of §§ 8a(3), 21, and 27 of the Public Utilities Act pertaining to certain aspects of financing and control of financial structures.

the United States Warehouse Act.² The District Court dismissed the suit to enjoin proceedings before the Commission. The Seventh Circuit Court of Appeals reversed on the grounds that the Warehouse Act superseded the authority of the Illinois Commission to regulate any of the subject matter of the complaint.³ On certiorari to the Supreme Court, the Circuit Court of Appeals was affirmed as to those alleged violations of the Illinois statutes which were in any way regulated by the Warehouse Act⁴ but was reversed as to those alleged violations which were not in any way regulated by that Act.⁵ *Rice v. Santa Fe Elevator Corporation*, 67 Sup. Ct. 1146 (1947) (Frankfurter and Rutledge, JJ., dissenting.)

The main issue before the Court was the interpretation of the Warehouse Act in terms of Congressional intent. For if, as the warehousemen claimed, Congress clearly indicated in §29 of the Warehouse Act⁶ that warehousemen who were licensed by the Secretary of Agriculture were not subject to any state regulation, the supremacy clause⁷ ruled out other considerations. Therefore questions usually presented in commerce clause cases (the local or national nature of the subject matter, the desirability of balancing freedom from restraint on interstate commerce in respect to state police power, traditional regulation by states, and the possibility of complementary state and federal regulation) were of importance only indirectly in determining the intent of Congress.

Seventy years ago the Court found that the business of public warehousing is affected with a public interest and its regulation by the state is appropriate and constitutionally

2. 39 Stat. 486 (1916), as amended 46 Stat. 1463 (1931), 7 U.S.C. § 241 et seq. (1940).
3. 156 F.2d 33 (C.C.A. 7th 1946).
4. The Court found that the following items in the complaint had in some way been regulated by §§ 2-9, 13, 15, 18, 21, and 25 of the Warehouse Act: just and reasonable rates; discrimination; storing and dealing in warehouseman's own grain while storing grain for the public; maintenance of inadequate and inefficient warehouse service; operating without a state license; abandonment of warehouse; failure to file and publish rate schedules.
5. The Court found that the Warehouse Act contains no provisions relating expressly to financing and control of financial structures. Thus, the failure to secure prior approval of the Illinois Commission for contracts with affiliates and other public utilities and the issuance of securities are subject to the control of the state.
6. 46 Stat. 1463, 1465 (1931), 7 U.S.C. § 269 (1940).
7. U.S. Const., Art. VI, § 2.

permissible.⁸ By the time Congress enacted the Warehouse Act⁹ in 1916, the states had provided extensive laws regulating grain elevators, and the Act was expressly declared to be subservient to state laws relating to warehouses.¹⁰ In fact before a warehouseman could obtain a federal license he had to provide a bond securing performance of his obligations as a warehouseman under state law.¹¹ The Act neither in its original nor in its amended form makes it mandatory for all public warehousemen engaged in interstate commerce to obtain a federal license. The obtaining of such license is entirely up to the discretion of the warehouseman. Those who obtain a license cannot be compelled to perform any positive duties. The only sanction for failure to comply with the few regulations set out in the Act is loss of license, with the exception of certain penalties in the case of fraud.

A main purpose of the Warehouse Act was to make it possible to properly finance agricultural products while in storage by standardizing warehousing methods so that uniform receipts might be issued.¹² However, since the Warehouse Act was subservient to state laws the desired uniformity was not achieved. Bankers claimed it was impossible to keep track of the various regulations of the forty-eight states as well as the federal regulations, and consequently they could not safely rely on such warehouse receipts. Because of these contentions of the uncertainty of the value of grain receipts for collateral purposes due to the dual system of regulation of federally licensed warehouses, the Secretary of Agriculture in 1928 proposed an amendment to the Warehouse Act to make it independent of any state legislation on warehousing.¹³ The main feature of the amendment was the deletion from §6 of the requirement of a bond securing faithful performance of state requirements and a revision of §29 to make the Secretary of Agriculture's authority exclusive with respect to federal licensees.¹⁴ A unanimous committee reported the bill to the House of Representatives where it

8. *Munn v. Illinois*, 94 U.S. 113 (1877).

9. 39 Stat. 486 (1916).

10. *Id.* § 29.

11. *Id.* § 6.

12. H. R. Rep. No. 60, 64th Cong., 1st Sess. (1916).

13. H. R. Rep. No. 2314, 70th Cong., 2d Sess. (1929).

14. 46 Stat. 1463 (1931) 7 U.S.C. § 269 (1940): "In the discretion of the Secretary of Agriculture he is authorized to cooperate with

was passed without opposition or debate.¹⁵ Mr. Clarke of the Committee on Agriculture in reporting the bill to the House said, "To make the law accomplish the real purpose of Congress, it should be independent of any state legislation on the subject. The amendments proposed to section 29 of this bill aim to make the Federal Warehouse Act stand on its own bottom."¹⁶ Senator McNary speaking for the Committee on Agriculture and Forestry reported to the Senate, "The Act has demonstrated beyond question its usefulness in the marketing of our agricultural products. But experience has demonstrated that it can and should be strengthened. With that in mind the amendments embodied in H.R. 7 are offered Section 29 of the Act now provides [quoting section]. The effect of this wording is to make the Federal Act subservient to State acts wherever there is a conflict this feature militates against the full value of Federal Warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal Act independent of State laws and if it is decided to secure a license under the Federal Act then the warehouseman would be authorized to operate without regard to State Acts and be solely responsible to the Federal Act In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made this choice they shall then be permitted to operate without interference of any agency."¹⁷

Section 29 of the Warehouse Act as thus amended by Congress in 1931, first of all gives the Secretary of Agriculture authority to cooperate with state officials charged with enforcing state warehouse laws. Next, it says that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this Act shall be exclusive with

State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. This chapter shall not be construed so as to limit the operation of any statute of the United States relating to warehouses . . . now in force. . . ."

15. 72 Cong. Rec., 8529 (1930).

16. H. R. Rep. No. 4, 71st Cong., 1st Sess. (1929).

17. S. Rep. No. 1775, 71st Cong., 3d Sess. (1931).

respect to all persons securing a license hereunder.”¹⁸ Giving the Secretary authority to cooperate and at the same time giving him exclusive authority seems on the face to be contradictory. However, the accompanying committee reports, *supra*, make clear that Congress did intend for licensees to be solely responsible to the Warehouse Act and not to state laws. Before the principal case was litigated, the view had been taken by the Supreme Court, as well as by other authorities, that the Warehouse Act was an example of exclusive regulation.¹⁹ However it should be noted the holding of the Court in the principal case is that federally licensed Warehousemen are free from state regulation only in that part of the field in any way covered by the federal regulations.

Justice Frankfurter, dissenting,²⁰ after weighing the practical administrative defects of the Warehouse Act, does not find that Congress intended by the amendment to exclude state regulation where there is no conflict. He validly points out the lack of affirmative policy-fixing authority in the Secretary of Agriculture, the vast body of state law invalidated, the possibility of no regulation at all outside the “very narrow scope of the Secretary’s powers,” and the ease with which the state legislation could supplement the Warehouse Act. Thus since this legislation has administrative weaknesses, Justice Frankfurter says the Court should not impute to Congress the desire to exclude state regulation,²¹ even though in the opinion of the writer that is the only clear meaning that can be derived from reading the history of this amendment.

18. See n. 14, *supra*.

19. The Supreme Court itself cited the Warehouse Act as an example of the following proposition: “where the United States specifically exercises its power of legislation so as to conflict with a regulation of the states, . . . the state legislation becomes inoperative and the federal legislation exclusive in its application.” *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 156, n. 6 (1941). See *In re Farmers Cooperative Ass’n.*, 69 S.D. 191, 8 N.W. 2d 557 (1943); *Braden “Umpire to the Federal System,”* 10 U. of Chi. L. Rev. 27, 29, n. 18 (1942).

20. Mr. Justice Rutledge concurred in the dissent.

21. In discharging “the duty of judicially adjusting the interests of both the Nation and the State,” Justice Frankfurter has consistently given the interpretation to federal and state acts which will permit both state and national regulation to stand. See the following dissenting opinions either written by or concurred in by Justice Frankfurter: *Bethlehem Steel Corp. v. N.Y. State Labor Relations Board*, 67 Sup. Ct. 1026, 1032 (1947); *First Iowa Hydro-Electric Co-op. v. Federal Power Commission*, 328 U.S. 152, 183 (1946); *Hill v. Florida*, 325 U.S. 538, 547 (1945); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 170 (1942).