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CONSTITUTIONAL LAW

POWER OF A STATE TO FIX PRICES ON MILK SOLD TO AN ARMY CAMP.

Defendant sold milk to a military camp at a price lower than the minimum set by the Pennsylvania Milk Control Commission.¹ Because of this, the commission refused defendant's application for a milk dealer's license for the next year.² Defendant appealed to the Pennsylvania Supreme Court on the ground that the commission had no power to fix prices of milk sold to the United States government. From an unfavorable judgement,³ defendant appealed. Held, the commission had such power and the exercise thereof did not place an undue burden on the federal government or interfere with its policy of competitive bidding. *Penn Dairies, Inc. et al. v. Milk Control Comm. of Pa.*, 63 Sup. Ct. 617 (1943).⁴

Since the subject of the regulation was milk, the court felt at liberty to invoke the police power to sustain the regulation. The limit of a state's police power, however, is reached when the regulation transcends public necessity,⁵ and courts seem hesitant to approve of state regulations imposing a burden on other states or on the federal government, especially where such regulation affects the federal government's powers under our dual form of government.⁶

However, it has been held that a state may tax the property of private individuals or corporations although they are operating under a license of the federal government or are instrumentalities of that

1. By statute, a milk control commission is established with authority to fix prices for milk sold within the state, wherever produced, including minimum wholesale and retail prices (§802). *Pa. Laws 1937, No. 105, p. 417.*
2. §404 (10) authorizes such refusal for violations of any of the provisions of the act, or any rules, regulations, or orders of the commission.
3. *Penn Dairies, Inc. v. Milk Control Commission*, 244 Pa. 635, 26 A. (2d) 431 (1942).
4. Justices Douglas, Black and Jackson dissenting. A companion case, *Pacific Coast Dairy, Inc. v. Department of Agriculture of California et al.*, 63 Sup. Ct. 628 (1943) involved the same question, but was decided differently because the camp (Moffet Field, California) was under the exclusive jurisdiction of the federal government at the time the regulation was adopted. In the principal case, the federal government was operating the camp not as its own property, but under a permit from the state, which retained jurisdiction in the state.
5. *People's Petroleum Producers v. Sterling*, 60 F. (2d) 1041 (E.D. Tex. 1932); *People v. Chicago, M. & St. P. Ry. Co.*, 306 Ill. 486, 138 N.E. 155 (1923); *Ludgate v. Somerville*, 121 Ore. 643, 256 Pac. 1043 (1927).
6. *Arizona v. California*, 283 U.S. 423 (1931); *Johnson v. Md.*, 254 U.S. 51 (1920) (state automobile operators' competency regulations held not to apply to an employee of the post office department while driving a government truck on a post road in the performance of his duties); *Ohio v. Thomas*, 173 U.S. 276 (1899) (Held, the state could not, through its police power, regulate the management of a federal soldiers home); Willis, "Constitutional Law" (1936) 230.

government.⁷ Taxes on materials purchased under a contract with the federal government have also been upheld⁸ on the theory that those who furnish supplies or render services to the government under contract are not governmental agencies,⁹ and the increased economic burden on the government does not invalidate the measures.¹⁰

While it may be pointed out that these are tax cases and that the taxing power and the police power are distinguishable,¹¹ the two are at least analogous¹², and it would seem logical to sustain the regulation here because of the public interest in good food.

Fixing a minimum price level prevents dealers' competitive price slashing at the expense of sanitary conditions, and while it may place a burden on the federal government, that burden is only incidental compared to the interest to be protected. It is true that this may be an extension of the state's police power, but that power is, and must continue to be elastic enough that the powers of governmental control may be adequate to meet changing social, economic, and political conditions.¹³

7. *Alward v. Johnson*, 282 U.S. 509 (1931), 44 Harv. L. Rev. 1141. Cf. *R.F.C. v. J. G. Menihan Corp.*, 312 U.S. 81 (1941); *Colo. Nat'l Bank v. Bedford*, 310 U.S. 41 (1940). A state may tax property bought with war risk insurance money even though such money is exempt. *Trotter v. Tenn.*, 290 U.S. 354 (1933).
8. *Alabama v. King & Boozer*, 314 U.S. 1 (1941), (1942) 40 Mich. L. Rev. 457. Cf. *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940) (upholding local building regulations involved in a contract to build a post office for the government); *Groves v. New York*, 306 U.S. 466 (1939) (salary of an attorney for the H.O. L.C. held subject to state taxation); *Baltimore & A. R. Co. v. Lichtenberg*, 176 Md. 383, 4 A. (2d) 734 (1939) (upholding regulations affecting operations of a trucking company in performing its contracts with the federal government to transport workers employed on a P.W.A. project).
9. See *Buckstaff Bath House Co. v. McKinley*, 308 U.S. 358, 359, 362 (1939); *James v. Dravo Contracting Co.*, 302 U.S. 134, 149 (1937); *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 524, 525 (1925). Cf. *Susquehanna Power Co. v. State Tax Comm.*, 283 U.S. 291, 294 (1931); *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 385, 386 (1938).
10. See note 8 supra.
11. "The boundary line which divides the police power of the state from other functions of government is often difficult to discern, but it is distinguishable from taxation and eminent domain." 11 Am. Jur. 974 §248.
12. ". . . each [police power, taxation and eminent domain] has characteristics which resemble characteristics of the others . . ."
13. *Holden v. Hardy*, 169 U.S. 366 (1898); *Feldman v. City of Cincinnati*, 20 F. Supp. 531 (S.D. Ohio 1937); *Miller v. Board of Public Works*, 195 Calif. 477, 234 Pac. 381 (1925) writ of error dismissed, 273 U.S. 781 (1926); *Fenske Bros. v. Upholsterer's International Union*, 358 Ill. 239, 193 N.E. 112 (1934, cert. denied, 295 U.S. 734 (1935)); *Pittsburgh C.C. & St. L. R. Co. v. State*, 180 Ind. 245, 102 N.E. 25 (1913); *People v. Brazee*, 183 Mich. 259, 149 N.W. 1053 (1914), aff'd, 241 U.S. 340 (1916).