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Trade Associations: Their Legal Aspects, by Benjamin S. Kirsh

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TRADE ASSOCIATIONS: THEIR LEGAL ASPECTS*

The legal practitioner or instructor who is confronted with a question as to the legality of a specific act or the general program of a trade association can find no more concise and accurate solution of his problem than that afforded by the volume here under review. Trade association practices are, and will continue to be, the subject of considerable litigation. Even the most bold of predictors would hesitate to define what changes will be worked, but the reviewer is confident in his statement that this book will not soon be rendered obsolete. The author's careful analysis of recent cases insures a lasting value for his work.

That the courts have altered their methods of inquiry as to the legality of co-operative promotion of business activities is admitted. The change is clearly evidenced by recent Supreme Court cases¹ where the process was a searching for the presence of substantial economic benefits rather than for a technical violation of the anti-trust laws. Judicial decisions have heeded the dictates of social and economic welfare in this respect as it is to be hoped for in some others. The author, after considering this general trend in the interpretation of our anti-trust laws, proceeds to an analysis of the cases to determine what practices of trade associations² have received judicial approval.

The modern doctrine that the dissemination of trade statistics by associations is not necessarily a suppression of competition or otherwise opposed to public policy was expressed by Justice Brandeis in his dissenting opinion in the *Hardwood Case*:

"* * * On the contrary it tends to promote all in competition which is desirable. By substituting knowledge for ignorance, rumor, guess and suspicion, it tends also to substitute research and reasoning for gambling and piracy, without closing the door to adventure or lessening the value of prophetic wisdom. * * * If, as is alleged, the Plan (dissemination of statistics, etc.) tends to substitute stability in prices for violent fluctuations, its influence, in this respect, is not against the public interest." (P. 51.)

* *Trade Associations: Their Legal Aspects*, by Benjamin S. Kirsh. Central Book Company: New York. 1928. Pages 271.

¹ *Maple Flooring Manufacturers' Association et al. v. United States*, 268 U. S. 563 (1925); *Cement Manufacturers' Protective Association et al. v. United States*, 268 U. S. 588 (1925).

² Defined page 13. "A Trade Association is an organization of producers or distributors of a community or service upon a mutual basis for the purpose of promoting the business of their branch of industry and improving their service to the public through the compilation and distribution of information, the establishment of trade standards and the co-operative handling of problems common to the production or distribution of the commodity or service with which they are concerned."

Definition formulated by the American Trade Association Executives.

It is equally as well determined that when the apparent end of the distribution of statistics or adoption of uniform cost accounting methods or other association practices is price fixing, allocation of territory, limitation of production, blacklist, boycott, or the like, the practice becomes subject to the punitive provisions of the *Sherman Law*.

There is one feature of this book which justifies special remark. The reviewer has in mind the fact that Mr. Kirsh did not confine himself to those practices of trade associations which have been the subject of many decisions in the United States Supreme Court. He has proceeded to discuss in the light of social and economic need the activities of associations in patent interchange, Chapter V; collective purchasing, Chapter VIII; standardization, Chapter IX; and trade relations, Chapter X; which activities have not been the subject of extensive judicial opinion.

The author has presented a book worthy of consideration.

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