General Preference Laws

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retaliated by ordering her importers to exclude Michigan beer. By
gentlemen's agreement, both embargoes were suspended until the Indi-
aana legislative session of 1939. Indiana then repealed her port of entry
law and adopted a defensive discrimination act which permits the ex-
clusion of beer produced in states discriminating against Indiana beer
and which authorizes the commission to enter into reciprocity agree-
ments promotive of free trade.23 Active controversy is at an end, but
the states have kept their powder dry, and so long as the Court and
Congress do not take active leadership the desire for local advantage
will continue to burden the free flow of commerce.24

Important as free commerce is to national unity, one economic ad-
vantage should be credited to the barrier legislation. It has encouraged
sale near the source of manufacture and discourages the economically
unsound practice of shipping New York beer to St. Louis and St. Louis
beer to New York. So long as active and efficient competition on a
basis of price and quality obtains locally, the consumer should achieve
advantages resulting from the elimination of heavy transportation and
distribution costs sustained by companies following the will-o’-the-wisp
of a national market. To date, unfortunately, these advantages are not
evident.

V.R.B.

GENERAL PREFERENCE LAWS

Preference to local laborers, business firms, and products in the
expenditure of government funds is common in nearly every state in the
Union. Motivated by the desire to benefit resident laborers and busi-
ness firms, preference legislation normally increases during periods of
economic stress. Thus, during the last depression such statutes became
extensive.1

Preference laws protecting the local labor market in the field of
public employment from out-of-state competition have been enacted by
approximately two-thirds of the states. The strictness of this regulation
ranges from mere directory preferences of residents and the prohibition
of alien employees to the imposition of residence or citizenship qualifi-
cations as conditions to employment on public works.2

24 Giving the states enough rope is perhaps the most significant con-
tribution of the Supreme Court's surprising interpretation of the
Twenty-First Amendment for we can test by experience the ne-
cessity of the commerce clause as an instrument of national unity.
See McAllister, Court, Congress and Trade Barriers, supra p. 144.
2 Statutes merely requiring that residents be preferred: Conn. Gen. Stat.
Supp. (1931, 1933, 1935) c. 279, §1603c; Idaho Laws 1935, c. 140;
Iowa Code (1939) §1171.03. Preference requested only by resolution
of the legislature: Texas Laws 2d Called Sess. 1931, S.C.R. No. 10,
Laws Ex. Sess. 1937-38, Title IV, No. 376, p. 189. Requirement that
as a condition to employment, the laborer must have been a resident
for a certain minimum length of time: Stats. Ark. (Pope's Digest,
Two kinds of preference laws restrict the purchase of materials and supplies by governmental agencies. A few states base the preference upon the residence of the firm. The more common type bases the preference on the place of production, requiring purchasing agents to give preference to materials that have been grown, produced, or fabricated within the state. Not infrequently particular items have been singled out to be granted preferences. Coal and building stone are widely favored in this respect. One somewhat specialized field in which preference laws are extant is that of public printing. The usual provision is the requirement that public printing be done within the state.

Statutes requiring government agencies to purchase supplies from prisons and other institutions of the state, though not establishing a preference among private firms, do tend to restrict a state's markets. But the ordinary problems presented by purchase preference laws do not arise in connection with this latter type of statute, for as among private producers and business firms, there is no discrimination along state lines.

It is perfectly clear that government preference laws constitute interstate trade barriers. They are enacted for the very purpose of discriminating against out-of-state persons and products, and in favor of state residents and products. It is likewise clear that in line with their purpose, the statutes do discriminate in fact. The keenness of such discrimination is illustrated by the pressure brought to bear on one state legislature to secure the abrogation of preferences enacted by another. A resolution of the Wisconsin legislature prohibited all departments of that state from furnishing any plans for the erection of public buildings

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Indiana requires that in construction of state highways and bridges all unskilled laborers employed thereon must be residents of the county in which such work is being done. Ind. Stat. Ann. (Burns' 1933, 1938 Supp.) §36-114.


to the various building exchanges in Minnesota until Minnesota should repeal all laws discriminating against labor and materials of Wisconsin. Just as it is clear that such preference laws are barriers to trade, it is equally clear that they are constitutional. They have been upheld as an exercise of the government's proprietary powers. The states are not limited by the clauses of the federal constitution relating to interstate commerce, privileges and immunities, due process, or equal protection in the conduct of the business of government. In Heim v. McCall and Crane v. People, the United States Supreme Court sustained the New York Labor Law prohibiting employment on public works of anyone except United States citizens and requiring that preference be given to residents of the state. In upholding the validity of the statute the court relied on the authority of Atken v. Kansas, where it had formerly said that "it belongs with the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf. . . ." In spite of the rapidly increasing significance of government purchasing in the national economy, there is little cause to doubt that the authority of these cases will stand.

C.D.S.


The Nevada legislature passed a resolution urging change of a federal ruling to permit employment of Nevada labor on the Boca Dam in California. Nev. Laws 1937, A. J. R. No. 8, p. 551.

10 Other forms of discrimination have been upheld under the state's proprietary powers, as where Virginia denied to citizens of other states the privilege of planting oysters in the navigable rivers of Virginia. In upholding this statute, the Court said that the privileges and immunities clause of the federal constitution does not vest the citizens of one state with any interest in the common property of the citizens of another state. McCready v. Virginia, 94 U.S. 391 (1876). Cf. Geer v. Connecticut, 161 U.S. 519 (1895); Patsone v. Pennsylvania, 232 U.S. 138 (1913).


13 State v. Senatobia Blank Book and Stationery Co., 115 Miss. 254, 76 So. 258 (1917).

14 In re Gemmill, 20 Idaho 732, 119 Pac. 298 (1911), City and County of Denver v. Bossie, 83 Col. 329, 266 Pac. 214 (1928).

15 There may be provisions in state constitutions or city charters which would invalidate attempted preferences. Consider St. Louis Quarry and Construction Co. v. Von Versen, 81 Mo. App. 519, (St. Louis Ct. of App., 1899).

16 239 U.S. 175 (1915).

17 239 U.S. 195 (1915). For the opinion of the New York Court in the case, see People v. Crane, 214 N.Y. 154, 185 N.E. 427 (1915).

18 191 U.S. 207 (1903).