Constitutional Law-General and Special Laws

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RECENT CASE NOTES

Nov. 3—Making the Police Force an Efficient Fighting Unit. O. W. Wilson, Chief of Police of Wichita, Kansas; interviewed by Will Shafroth, Assistant to the President of the American Bar Association.

Nov. 10—Scientific Research in the Field of Criminal Justice. William Draper Lewis, Director of the American Law Institute.

Nov. 17—The Preservation of Constitutional Liberty Under the New Deal. Donald R. Richberg, General Counsel of the National Recovery Administration.


Station List—Central Standard Time 6:45 to 7:00 P.M. Cincinnati, Ohio, WKRC; Indianapolis, Ind., WFBM.

RECENT CASE NOTES*

Constitutional Law—General and Special Laws—Appellant brought an action seeking a judgment declaring Chapter 31, p. 153 of the Acts of 1933 unconstitutional. The statute provides that in all second and fourth class cities (Hammond, Gary, Whiting and East Chicago) located in a county having a population of not less than 250,000 nor more than 400,000 (Lake), the office of city treasurer is abolished, and all of the rights, powers, and duties of such city treasurer are conferred upon and shall be performed by the county treasurer: that the county treasurer shall appoint a deputy to collect and disburse the taxes and assessments in each such city. Appellant contended the law was local and special and therefore offended section 23 of Article 4 of the Constitution of Indiana. Section 23 provides that “In all cases enumerated in the preceding, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform application throughout the state.” Held, the statute is a local and special law and unconstitutional because in conflict with section 23 of article 4 of the Constitution of Indiana.†

A law which applies generally to a particular class of cases is not a local or special law.‡ The question which then arises is “What is a proper classification?” The Indiana law on this point is well summarized in the cases cited in the principal case:§

* This department is devoted to the publication of critical comments and annotations of Indiana cases from both the Supreme and Appellate courts, decisions of the United States Supreme Court and cases in the Federal District and Circuit Court of Appeals arising in Indiana. The work done in preparing this material is performed by the students and faculty of the Indiana University Law School.
† Heckler v. Conter (1933), 187 N. E. 878 (Ind.).
‡ 131 Ind. 446.
§ Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N. E. 465; School City of Rushville v. Hayes, 162 Ind. 193, 70 N. E. 198; Bullock v. Robison, 176 Ind. 198, 93 N. E. 998.
"The characteristics which can serve as a basis of a valid classification must be such as to show an inherent difference in situation and subject-matter of the subjects placed in different classes which peculiarly requires and necessitates different or exclusive legislation with respect to them."  

"Classification must embrace a class of subjects or places, and not omit any, one naturally belonging to the class. It must be based on some reasonable ground, which bears a just and proper relation to it, and not be a mere arbitrary selection. . . . The characteristics serving as a basis must be of such substantial nature as to mark the objects so designated as particularly requiring exclusive legislation. There must be a substantial distinction having reference to the subject-matter of the proposed legislation, between the objects or places embraced in it and the objects or places excluded. Whether a law is general or special depends on its subject-matter, not its form."  

The requirements for a valid classification seem to be (1) a reasonable basis for the classification, and (2) the law must operate upon all within the class.  

The following classifications have been sustained as reasonable: an act applying to privately owned public utilities and not to those owned or operated by municipalities; an act applying to cities having a population of not less than 50,000 nor more than 100,000. But where an act applied to cities of more than 85,000 and less than 86,000 inhabitants, the act was held local and special, and unconstitutional. The court took judicial notice that the statute applied only to Evansville.  

A special law is one made for individual cases, or for less than a class requiring laws appropriate to its particular condition and circumstances, or one relating to particular persons or things of a class. Acts providing that when a certain number of freeholders of a township or townships petition for highways or highway improvements, the proper board of commissioners shall proceed with such case are held to be general laws.  

Under a constitution providing that where a general law can be made applicable, no special law shall be enacted, laws of a general nature do not necessarily have to operate upon every locality in the state, but such laws must apply equally to all classes similarly situated and to like conditions and subjects.  

It must be noticed that under section 23 of article 4, a general law is not necessary except in cases where a general law can be made applicable. In the principal case, it was contended by appellees that this was a question for the legislature, and that the legislative determination of that question was not subject to judicial review. In support of their position,  

4 Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N. E. 465.  
5 Bullock v. Robison, 176 Ind. 198, 93 N. E. 998.  
6 Hirth-Krause Co. v. Cohen (1911), 177 Ind. 1; Railroad Commission v. Grand Trunk (1912), 179 Ind. 255; Sarlls v. State (1928), 201 Ind. 88.  
7 Springfield Gas & Electric Co. v. City of Springfield (1920), 292 Ill. 236, 126 N. E. 739.  
8 Bumb v. City of Evansville (1906), 168 Ind. 272.  
9 Rosencranz v. City of Evansville (1923), 194 Ind. 499, 143 N. E. 593.  
10 State v. Foster, 28 N. M. 273, 212 P. 454; 7 Words and Phrases (3rd series), p. 76.  
11 Gilson v. Board of Commissioners (1890), 128 Ind. 65; Strange v. Board of Commissioners (1909), 173 Ind. 640.  
12 Sapulpa v. Land, 101 Okla. 22, 225 Pac. 640; See also Cooley: Constitutional Limitations, p. 259.  
13 Constitution of Indiana, Article 4, Section 23.
appellees cited the case of Gentile v. State. In that case it was held that since all members of the legislature were required to take oath to support the constitution of the state, it could not be presumed that the members would disregard their obligations in this respect in deciding whether or not the constitutional restriction on special laws was or was not applicable. The court in the principal case properly repudiated the doctrine of Gentile v. State, pointing out that the same reasoning would apply to all provisions of the constitution limiting the power of the legislature, and that whenever the legislature over-stepped one of these bounds, the fact that the members had been bound by oath would not prevent such legislation being held unconstitutional.

Contracts—Arbitration—Sherman Act—Plaintiff Distributing Corporation sued the Defendant Theater Company for damages for breach of contract in which contract the defendant agreed to pay a fixed sum for the privilege of exhibiting certain pictures in defendant theater. The alleged breach of contract consisted of defendant's refusal to accept, play, or pay for the motion picture productions for which it had contracted. Defendant contended that the clause of the contract which required that the plaintiff should have pursued a course of arbitration before resorting to court action had not been complied with and also that the contract sued on was in restraint of trade and a violation of the Sherman Anti-Trust Law. Plaintiff obtained judgment in the trial court. Held: on appeal, affirmed, the court declaring that the clause requiring arbitration was void as in violation of the Sherman Act but that the contract was divisible and thus the remainder could be sued upon.

The first attack on the validity of the Standard Exhibition Contract in the motion picture industry was made by the federal government in 1929. As a result of such attack, the United States Supreme Court in the case of Paramount Famous Lasky Corporation v. United States found that the activities of the defendant producers and distributors, including the agreement to adopt and to use the Standard Form Contract, with its compulsory arbitration clause, constituted a conspiracy in restraint of trade and thus in violation of the Sherman Act. As a result of this decree, the question arose as to what effect the decision must have on the thousands of contracts made in the standard form by distributors and exhibitors throughout the country.

Before proceeding with the discussion, let it be said that the court's finding that the arbitration clause is invalid, yet the contract is divisible and the remaining portions are enforceable is not without respectable authority. But there is, also, equally as strong authority to the contrary.

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14 (1868) 29 Ind. 409.
1 Walker Theater Co. v. R. K. O. Distributing Corporation (Ind. 1934), 189 N. E. 162.
2 (1930), 282 U. S. 30, 51 S. Ct. 45.
5 United Artist Corporation v. Odeon Bldg. (Wis. 1933), 248 N. W. 784; Fox Film Corporation v. C. & M. Amusement Co. (1932), 58 Fed. (2d) 337; United Artists Corporation v. Piller (N. Dak. 1932), 244 N. W. 20; Universal Film Exchanges v. West (Miss. 1932), 141 So. 93; Fox Film Corporation v. Tri-State Theaters (Idaho 1931), 6 Pac. (2d) 155; Vitagraph Inc. v. Theatre Realty Co. (1931), 50 Fed. (2d) 907; see Majestic Theater Co. v. United Artist Corporation (1930), 43 Fed. (2d) 991.