Hastings Law Journal

Volume 12 | Issue 3 Article 11

1-1961

Business Regulation: Ambit of Municipal Control

Terence A. Pierson

poration's non-public activities, and therefore it can not require the petitioner to secure a certificate just because it may become a common carrier in the future. If the petitioner does become an actual common carrier, then it may be required to submit to the regulation of the Commission.[35]

The common practice in California bears out and is in accord with the interpretation of the California statutes. There are many instances in the past where oil and gas corporations have secured permits under the Mineral Leasing Act for pipelines across federal property. In each case a common carrier clause was included and accepted by the applying corporation and yet not once has such a corporation been declared a public utility.

Conclusion

Dedication is a beneficial prerequisite to state regulation, for it necessarily excludes regulation of many small producers who are defined by the technical language of the code ". . . but are too restricted to merit public concern."[36] It also encourages corporations to indulge in new enterprises.

Richfield does not extend nor does it limit the requirement of dedication. It does make the requirement more certain in application. Nevertheless, there is reason to believe the question of dedication will continue to arise in litigation until the broad language of the Public Utilities Code is revised by the legislature to include dedication and provide a clear definition.

On the basis of section 1858 of the California Code of Civil Procedure,[37] it was recently held that a court can not write into a statute, by implication, express limitations which the legislature itself has not seen fit to include in the statute.[38] Yet this has been done in the case of dedication. If the legislature would define dedication with respect to becoming a public utility, that meaning would be binding upon the courts,[39] and corporations desiring not to become regulated utilities would have a more concrete basis on which to plan their business activities.

*Robert L. Bletcher**

[35] Commercial Communications v. Public Util. Comm'n, 50 Cal. 2d 512, 327 P.2d 513 (1958).

[36] Richfield Oil Corp. v. Public Util. Comm'n, *supra* note 33, at —, 354 P.2d at 12, 6 Cal. Rptr. at 555.

[37] CAL. CODE CIV. PROC. § 1858 provides: "In the construction of a statute . . . the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . ."

[38] People v. White, 122 Cal. App. 2d 551, 265 P.2d 115 (1954).

[39] Rideaux v. Torgrimson, 12 Cal. 2d 633, 86 P.2d 826 (1939).

* Member, Second Year class.

BUSINESS REGULATION: Ambit of Municipal Control

Business regulation by state and local governmental units raises the perennial problem of the scope of power of the sovereign. While generally the sovereign has absolute power, the United States Constitution places limits on the sovereign power which can be exercised by the federal and

state governments respectively.[1] The state constitutions in turn place limits on the state and local governmental units in their relations with each other. California has two constitutional provisions which limit the power of the state or local governments. The state and local governments are both limited by the state provision which forbids imprisonment for civil debt.[2] The local governmental units are limited by the provision which allows them to pass local, police, and sanitary regulations which do not conflict with state law.[3] Both of these provisions have been applied in recent cases to determine important questions of municipal business regulation.[4]

Recent Cases

The area of possible regulation of modern business by California state and local governments has been brought into sharper focus in the recent cases of *Agnew v. City of Culver City* (1959)[5] and *In re Groves* (1960).[6]

Section 16240 of the California Business and Professions Code provides that every person who commences or carries on any business, trade, or profession, or calling, for the transaction or carrying on of which a license is required *by any law of the state,* without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor. This state criminal statute gave rise to a conviction for conducting a business without a *municipal* license in the 1960 case of *In re Groves.* Groves secured the necessary state license[7] to operate a milk products plant but failed to obtain a municipal license which was required by the Palm Springs, California, Ordinance Code.[8] He was charged with a failure to comply with the Palm Springs Ordinance Code[9] and convicted of a violation of the state law.[10] There was no criminal law penalty provided for by the Palm Springs

[1] U.S. CONST. art. I, § 8 which enumerates the powers granted specifically to the federal government; U.S. CONST. art. I, § 10 limits the power of the federal government; U.S. CONST. amend. X, grants to the states all powers not specifically given the federal government; there are additional specific restrictions such as the 5th amendment on federal power and the 14th amendment on state power.

[2] CAL. CONST. art. I, § 15.

[3] CAL. CONST. art. XI, § 11.

[4] *In re* Groves, 54 Cal. 2d —, 351 P.2d 1028, 4 Cal. Rptr. 844 (1960); Agnew v. City of Culver City, 51 Cal. 2d 474, 334 P.2d 571 (1959); Agnew v. City of Los Angeles, 51 Cal. 2d 1, 330 P.2d 385 (1958); Agnew v. City of Culver City, 147 Cal. App. 2d 144, 304 P.2d 788 (1956).

[5] Agnew v. City of Culver City, 51 Cal. 2d 474, 334 P.2d 571 (1959).

[6] *In re* Groves, *supra* note 4.

[7] See CAL. AGRIC. CODE §§ 660, 661.

[8] PALM SPRINGS, CAL., ORDINANCE CODE, chs. 21, 22: § 2111, "It is unlawful for any person . . . to commence, manage, engage in, conduct or carry on any business, vocation, profession, calling, show, exhibition or game . . . in this city, without first having procured a license from the City of Palm Springs to do so . . . ." § 2131, "No person shall be licensed to carry on an activity requiring a state license unless he has such a license." § 2133, "No person shall be licensed to carry on an activity requiring a permit under some other city ordinance unless he has secured such a permit."

[9] PALM SPRINGS, CAL., ORDINANCE CODE § 2111.

[10] CAL. BUS. & PROF. CODE § 16240.

Code.[11] Groves' petition for a writ of habeas corpus was denied by the California Supreme Court.

The regulatory and revenue raising aspects of modern business in California have become amazingly complex as indicated by the intricate manner of conviction in *In re Groves*. Groves unsuccessfully contended that the municipal ordinances involved were regulatory in nature, and hence the municipality of Palm Springs was constitutionally precluded from enforcing the statutory scheme on the theory it conflicted with a comprehensive state law regulatory scheme and was unreasonably burdensome. This argument was based on the California Constitution, article XI, section 11, which declares, [a]ny . . . city . . . may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." The supreme court pointed out that the ordinances were not accurately characterized as regulatory but were only revenue raising measures, relying partly on the 1959 case of *Agnew v. City of Culver City*.[12] The municipality was not precluded from enforcing them as revenue raising measures even though there was also a state law provision to which compliance had in fact been made.[13] The area of revenue raising measures is open to municipal control, in addition to state control, since in essence the tax is a tax on the privilege of doing business.[14] Assuming the tax is reasonable in amount, it is constitutional to compel a business enjoying municipal benefits to share the municipal burdens and responsibilities.

The Agnew *Decisions*

In re Groves is also a clarification of the statutory picture of business regulation in California by criminal sanctions. It further amplifies the now well known *Agnew* cases.[15]

Agnew v. City of Culver City[16] held that where the municipal ordinances were part of a comprehensive regulatory scheme rather than merely revenue raising measures they were unconstitutional as unreasonably burdensome, since they were in conflict with a comprehensive state regulatory

[11] PALM SPRINGS, CAL., ORDINANCE CODE § 2132.1 provided that "The criminal penalties provided for by this code shall not be applied to businesses or professions requiring a state license as a condition precedent to doing business in this city, nor as a method of obtaining collection of the license fee."

[12] Agnew v. City of Culver City, *supra* note 5.

[13] Nor is there anything inherently obnoxious in the requirement that a person engaging in a business shall have two licenses, one issued by the state, and another by a political subdivision or public corporation. City and County of San Francisco v. Boss, 83 Cal. App. 2d 445, 189 P.2d 32 (1948); Medias v. City of Indianapolis, 216 Ind. 155, 23 N.E.2d 590 (1939).

[14] *In re* Galusha, 184 Cal. 697, 699, 195 Pac. 406, 406 (1921); Franklin v. Peterson, 87 Cal. App. 2d 727, 731, 197 P.2d 788, 790 (1948); City of San Mateo v. Mullin, 59 Cal. App. 2d 652, 654, 138 P.2d 351, 352 (1943); *In re* Johnson, 47 Cal. App. 465, 468, 190 Pac. 852, 854 (1920). See also Ainsworth v. Bryant, 34 Cal. 2d 465, 476-77, 211 P.2d 564, 570-71 (1949); Horwith v. City of Fresno, 74 Cal. App. 2d 443, 445, 168 P.2d 767, 768 (1946).

[15] Agnew v. City of Culver City, 51 Cal. 2d 474, 334 P.2d 571 (1959); Agnew v. City of Los Angeles, 51 Cal. 2d 1, 330 P.2d 385 (1958); Agnew v. City of Culver City, 147 Cal. App. 2d 144, 304 P.2d 788 (1956).

[16] Agnew v. City of Culver City, *supra* note 5.

scheme. It also held the criminal sanctions to enforce the scheme were invalid. The other two Agnew decisions, *Agnew v. City of Culver City* (1956)[17] and *Agnew v. City of Los Angeles* (1958)[18] reached substantially similar results. After the *Agnew* decisions many municipalities, including Palm Springs, denominated their licensing statutes revenue raising measures rather than regulatory measures[19] to avoid any possible conflict with Article XI, section 11, of the state constitution.

This characterization would seem also to preclude application of the municipality's criminal law sanctions to enforce the municipal ordinance provisions since such sanctions would be a violation of the state constitutional provision[20] prohibiting imprisonment for civil debt according to *Agnew v. City of Culver City*.[21] The state criminal law statute is not a violation of the California constitutional provision prohibiting imprisonment for civil debt.

In re Groves holds squarely that the state criminal law sanctions can constitutionally be applied to enforce municipal revenue raising ordinances. There are conflicting dicta, possibly unintentional, in *In re Groves* and *Agnew v. City of Culver City*[22] as regards municipal criminal law sanctions to enforce municipal revenue raising ordinances. *In re Groves* states through Judge Traynor that "cities may tax businesses carried on within their boundaries and enforce such taxes by requiring business license for revenue and by criminal penalties."[23] *Agnew v. City of Culver City* in dicta voiced by Judge McComb states that ". . . licenses . . . may be required by public agencies requiring payment of license fees for revenue purposes only under duly and legally adopted ordinances enforcible by civil process only . . . ."[24]

In re Groves would seem to control as the more recent pronouncement of the supreme court on the issue by way of dicta. It is interesting to note that Judge McComb concurred in the dissent in *In re Groves* but the issue as to the possible conflict with his opinion in *Agnew v. City of Culver City*[25] as to enforcement of municipal revenue measures by municipal criminal law sanctions was not raised in the dissent. Neither case is directly in point on the issue whether municipal revenue raising ordinances may be enforced by municipal criminal law sanctions. *Agnew v. City of Culver City*[26] involved a municipal regulatory rather than municipal revenue raising ordinance. *In re Groves* involved a municipal revenue raising ordinance but

---

[17] Agnew v. City of Culver City, 147 Cal. App. 2d 144, 304 P.2d 788 (1956).

[18] Agnew v. City of Los Angeles, 51 Cal. 2d 1, 330 P.2d 385 (1958).

[19] PALM SPRINGS, CAL., ORDINANCE CODE § 2132.1.

[20] CAL. CONST. art. I, § 15: "No person shall be imprisoned for debt in any civil action." In Agnew v. City of Culver City, 51 Cal. 2d 474, 334 P.2d 571 (1959) the California Supreme Court said in dicta that a license fee for revenue raising purposes could only be enforced by civil process. Any ordinance provisions providing for criminal process were unconstitutional. In *In re* Groves, *supra* note 4, there is dicta to the effect that municipal revenue measures are constitutional.

[21] Agnew v. City of Culver City, *supra* note 5.

[22] *Ibid.*

[23] 54 Cal. 2d —, 351 P.2d 1028, 1030, 4 Cal. Rptr. 844, 846 (1960).

[24] 51 Cal. 2d 474, 475, 334 P.2d 571, 572 (1959).

[25] Agnew v. City of Culver City, *supra* note 5.

[26] *Ibid.*