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STUDENT NOTE

APPLICABILITY TO STATES OF FEDERAL LEGISLATION SPEAKING IN GENERAL TERMS

Washington State offered to sell timber from state school lands to the highest bidder. The congressional enabling act and the state constitution provided that these lands be sold at "public sale" and "not be sold except to the highest bidder." The state commissioner of public lands at a public action received a bid of \$86,335.39 from a pulp lumber company for timber. The price administrator, relying on the Emergency Price Control Act of 1942 informed the company that its bid exceeded the ceiling price and if it paid such price it would be prosecuted. In another suit the state supreme court held that the Emergency Price Control Act did not apply to state sale of timber from school lands. The price administrator sued in the federal court to enjoin the state commission of public lands and the highest bidder from completing the sale at a price above the ceiling. The district court held for defendant. The circuit court of appeals reversed and the supreme court granted certiorari. *Held*, that the Emergency Price

Control Act was operative to limit the price at which the state could sell. Judgment affirmed.¹

The state's main contention was that congress did not intend the act to apply to the states. Two other arguments were also advanced, one merely a facet of the interpretation question. The other, that the Tenth Amendment prevented such action by the Federal Government, was rather hopeless in view of the Court's attitude toward that Amendment.² The graver argument revolved around interpretation of the word "person" as used in the act,³ on the ground on which the state court⁴ had held against the price administrator and on which Mr. Justice Douglas dissented.⁵

The application of a general statute to the states where the intent of congress is not express has long occupied the Supreme Court with several tests suggested but none uniformly applied. It has been said, in interpreting regulatory statutes, that "this Court has disfavored inroads by implication on state authority and resolutely confined restrictions upon traditional power of states to regulate their local transactions to the plain mandate of Congress."⁶ Lately a different turn has apparently been taken in *California v. United States*⁷ declaring that "the crucial question is whether the statute, read in the light of the circumstances that gave rise to its enactment and for which it was designed, applies also to public owners"⁸ with which the statement in the principal case that "Excessive prices for rents or

¹ Case v. Bowles, 327 U. S. 92, 66 S. Ct. 438, 90 L. ed. 552 (1946).

² Darby v. United States, 312 U. S. 100, 124, 61 S. Ct. 451, 462, 85 L. ed. 609, 622 (1940) (The Amendment (10th) states but a truism that all is retained which has not been surrendered).

³ 59 STAT. 302(h) (1942), 50 U. S. C. A. §942(h) (1944) ("The term 'person' includes an individual, corporation, partnership, association or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions").

⁴ Soundview Pulp Co. v. Taylor, 21 Wash. (2d) 261, 150 P. (2d) 839 (1944).

⁵ Case v. Bowles, 66 S. Ct. 438, 444, 90 L. ed. 560. This argument briefly was that the words "any other government" meant co-equal national sovereignties or foreign governments and that the word "states" would have been used had congress intended the act to apply to them. For an excellent statement of this point see *Twin Falls County v. Hulbert*, 156 P. (2d) 319 (Idaho 1945).

⁶ *Palmer v. Massachusetts*, 308 U. S. 79, 84, 60 S. Ct. 34, 37, 84 L. ed. 93, 98 (1939); *Yonkers v. United States*, 320 U. S. 685, 64 S. Ct. 327, 88 L. ed. 400 (1943).

⁷ 320 U. S. 577, 64 S. Ct. 352, 88 L. ed. 322 (1943) (the word "person" defined by the statute as including "a corporation, partnership or association" included a state. But cf. *Parker v. Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. ed. 315 (1942) (the word "person" as used in the Sherman Anti-Trust Act did not apply to the states).

⁸ *California v. United States*, 320 U. S. 577, 585, 64 S. Ct. 352, 356, 88 L. ed. 322, 330 (1943).

commodities charged by a state or its agencies would produce exactly the same conditions as would be produced were these prices charged by other persons. We, therefore, have no doubt that congress intended the act to apply generally to sales of commodities by states"⁹ appears to agree.

A special doctrine of interpretation was raised by the claim that the state acted in a "governmental" capacity in selling land to secure money for its schools. In determining the applicability of a federal statute to the states, especially in tax cases, the Supreme Court for some years purported to distinguish state action in a "governmental" and in a "private" capacity¹⁰ deeming the tax collectible from the state as to the latter. However, it refused to apply the distinction where tariff duties were imposed on educational property imported by a state university¹¹ and in *California v. United States* to the regulatory power of congress over commerce and recently expressly repudiated it in *New York v. United States*¹² calling these "untenable criteria"¹³ and announcing a new rule of interpretation for tax cases that "so long as Congress generally taps a source of revenue by whomsoever earned and not uniquely capable of being earned by a State, the Constitution of the United States does not forbid it merely because the incidence falls also on a State."¹⁴

Apparently a uniform rule of interpretation is evolving for all cases where congressional statutes do not specifically deal with the states. Applicability of such statutes to the states was found alike in *California v. United States*, *New York v. United States*, and the instant case, with resultant extension of national controls and curtailment of state immunities. Resistance to this trend is still manifested, however, in some opinions for the Court¹⁵ and in concurrences¹⁶ and

⁹ *Case v. Bowles*, 66 S. Ct. at 442, 90 L. ed. at 558.

¹⁰ *Ohio v. Helvering*, 292 U. S. 360, 54 S. Ct. 725, 78 L. ed. 1307 (1934); *South Carolina v. United States*, 199 U. S. 437, 26 S. Ct. 110, 50 L. ed. 261 (1905).

¹¹ *University of Illinois v. United States*, 289 U. S. 48, 53 S. Ct. 509, 77 L. ed. 1025 (1933).

¹² *New York v. United States*, 326 U. S. 572, 66 S. Ct. 310, 90 L. ed. 265 (1946).

¹³ *Id.* at 583, 66 S. Ct. at 315, 90 L. ed. at 271.

¹⁴ *Ibid.*

¹⁵ *Davis Warehouse Co. v. Bowles*, 321 U. S. 144, 152, 64 S. Ct. 474, 479, 88 L. ed. 635, 641 (1944); *Parker v. Brown*, 317 U. S. 341, 351, 63 S. Ct. 307, 313, 87 L. ed. 315, 326 (1942).

¹⁶ See the concurring opinions of Mr. Justice Murphy in *Penn Dairies v. Milk Control Comm.*, 318 U. S. 261, 279, 63 S. Ct. 617, 625, 87 L. ed. 748 (1942), and Mr. Justice Rutledge in *New York v. United States*, 326 U. S. 572, 584, 66 S. Ct. 310, 315, 90 L. ed. 265, 271 (1946).

dissents¹⁷ so that, despite suggestions of broadened principles of interpretation, there is still some prospect of success for the states in continuing to rely primarily on claims for strict interpretation of statutes. The powers of congress as presently conceived¹⁸ make it much more unlikely that the Court will hold an act unconstitutional than that it may in a specific case apply a rule of "express application," under which congress would be called on for express and unequivocal reference. A settled practice of that tenor on the part of congress would in any case be desirable as relieving the Court of consideration of matters of policy not properly within its domain.¹⁹ D. C. C., JR.

CASE COMMENTS

CONSTRUCTIVE TRUSTS—DUTY OF AGENT TO RECONVEY LAND PURCHASED FOR PRINCIPAL—STATUTE OF FRAUDS.—Plaintiff seeks to recover realty, formerly belonging to him, which he alleges defendant, his brother, had bought at a judicial sale, on an oral agreement to reconvey to plaintiff at such time as plaintiff should be financially able to redeem it on payment of the purchase price plus interest. Both parties attempted to suppress bidding before the sale in order that defendant might purchase. Defendant took possession and held the property for approximately ten years after which he refused to reconvey on tender of the purchase price. The circuit court entered a decree for redemption of the realty upon payment of a sum to be fixed by an accounting. *Held*, that such oral agreement was unenforceable (1) as an oral contract for the sale of land within the Statute of Frauds, W. VA. REV. CODE (Michie, 1943) c. 36, art. 1, §3, (2) as an oral declaration of trust within the Statute of Frauds, W. VA. REV. CODE (Michie, 1943) c. 36, art. 1, §4, (3) as not being within the permissible provisions of the statute allowing an

¹⁷ See the dissents of Mr. Justice Murphy in *Pacific Coast Dairy v. Department of Agriculture of California*, 318 U. S. 285, 303, 63 S. Ct. 628, 634, 87 L. ed. 761, 771 (1942), and Mr. Justice Roberts in *California v. United States*, 320 U. S. 577, 586, 64 S. Ct. 352, 357, 88 L. ed. 322, 331 (1943).

¹⁸ See *z. g.*, *Stewart Machine Co. v. Davis*, 301 U. S. 548, 57 S. Ct. 883, 81 L. ed. 1279 (1937); *Wickard v. Filburn*, 317 U. S. 111, 63 S. Ct. 82, 87 L. ed. 122 (1942); CORWIN, *THE CONSTITUTION AND WHAT IT MEANS TODAY* (8th ed. 1946) 42, 143.

¹⁹ See *Penn Dairies v. Milk Control Comm.*, 318 U. S. 261, 275, 63 S. Ct. 617, 623, 87 L. ed. 748, 757 (1942) ("An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be implied where the legislative command, read in the light of its history, remains ambiguous . . . Court should guard against resolving these competing considerations of policy by imputing to Congress a decision which quite clearly it has not undertaken to make"); *Davis Warehouse Co. v. Bowles*, 321 U. S. 144, 152, 64 S. Ct. 474, 479, 88 L. ed. 635, 641 (1944) ("Where Congress has not clearly indicated a purpose to precipitate conflict (between state and federal governments) we should be reluctant to do so by decision").