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COMPETITION IN PUBLIC SERVICE — A NEW INTERPRETATION

Whether the theory that competition is the life of trade be regarded as an economic maxim that does not rise to the stature of law or whether it be thought of as a "legal ideal" (accepted background of judicial reasoning—an ideological starting point that influences judges just as authoritatively, in its way, as ordinary legal rules),¹ there can be no doubt that in decision after decision this theory has swayed our courts, consciously or unconsciously, to

¹ As to "legal ideals", see Pound, *The Ideal Element in American Judicial Decision* (1931) 45 HARV. L. REV. 136; Pound, *A Comparison of Ideals of Law* (1933) 47 HARV. L. REV. 1; Pound, *What Is Law?* (1940) 47 W. VA. L. Q. 1. Cf. Hardman, *Public Utilities. I. The Quest for a Concept—Another Word* (1934) 40 W. VA. L. Q. 230; Hardman, "The Law"—in *West Virginia* (1940) 47 W. VA. L. Q. 23. For a different approach, see Parry, *Economic Theories in English Case Law* (1931) 47 L. Q. REV. 183.