

April 1931

Constitutional Law--Legislative Regulation of Fees Charged by Employment Agencies

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Recommended Citation

Henry P. Snyder, *Constitutional Law--Legislative Regulation of Fees Charged by Employment Agencies*, 37 W. Va. L. Rev. (1931).

Available at: <https://researchrepository.wvu.edu/wvlr/vol37/iss3/11>

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celeration provisions were construed to give the holder an option¹⁰ to declare the maturity of all the notes. Let us suppose after default in the payment of one note, the holder transferred all the notes to a purchaser, who, as in the other cases herein discussed, knew of the default, but had no actual knowledge of a defect or infirmity in the notes. *Quaere*: Should the purchaser be treated as a holder in due course as to the balance of the notes? This action by the transferor would indicate an election not to insist on his cause of action, but to sell the notes. But could not the purchaser still reasonably think such election was caused by the inability of the maker to pay, rendering immediate suit useless, as well as by the existence of a defect or infirmity in the notes? It is submitted that the question raised differs so slightly from the one presented in *Morgan v. Farnington Coal & Coke Company*¹¹ that under the NEGOTIABLE INSTRUMENTS LAW¹² it should be treated the same.

—DAVID G. LILLY, JR.

CONSTITUTIONAL LAW—LEGISLATIVE REGULATION OF FEES CHARGED BY EMPLOYMENT AGENCIES.—A federal court has recently held a Missouri statute fixing the maximum registration fee that employment agencies may charge for their services to be void and contrary to the Fourteenth Amendment.¹ The court reasons that it is bound by the decision of the Supreme Court of the United States in *Ribnik v. McBride*,² in which the Court split, six to three, on legislation also construed to fix fees charged by employment agencies and held the statute invalid.³ Yet the intimation of the court in *Bradford v. Hargis* is sympathetic to the dissenting view of *Ribnik v. McBride*.

The need for employment agency regulations seems apparent. Many state statutes have attempted it to various extents.⁴

¹⁰ *Ibid.* 767.

¹¹ *Supra* n. 3.

¹² NEGOTIABLE INSTRUMENTS LAW, § 56.

¹ *Bradford v. Hargis*, 45 F(2d) 223 (D. C., W. D. Mo. 1931).

² *Ribnik v. McBride*, 277 U. S. 350, 48 S. Ct. 545 (1927).

³ The majority of the Court, composed of Chief Justice Taft and Justices Sanford, Sutherland, McReynolds, VanDevanter and Butler, decided the statute in question was void. The dissenters were Justices Brandeis, Holmes and Stone.

⁴ See Hamilton, *The Regulation of Employment Agencies* (1930) 38 YALE L. J. 225, 229. Also see, *Statistics of Unemployment and the Work of the Employment Offices* (U. S. Bureau of Labor 1913) Bull. No. 109, 35-36.

California appears to be the only state in which such legislative price-fixing regulations have been declared unconstitutional.⁵ Various investigations have clearly recommended it.⁶ Mr. Justice Stone, dissenting along with Mr. Justice Brandeis and Mr. Justice Holmes in the *Ribnik* case, very forcibly shows this.⁷ Yet the majority of the Court then and there refused to regard these factors as a sufficient persuasive force to justify price fixing as a regulation. Since 1927 and the decision in *Ribnik v. McBride*, however, the personnel of the Supreme Court has changed;⁸ the present Supreme Court is anticipated to be both liberal and social minded.⁹ Recent decisions reveal a tendency of this Court to allow price-fixing legislation.¹⁰ On a recent question of social policy, the Court split, five to four, the majority favoring the adoption of a liberal policy toward price-fixing legislation.¹¹ This trend of the Supreme Court might cause it to employ some other device than the rule announced in *Ribnik v. McBride* in order to reach a contrary conclusion to the present decision in *Bradford v. Hargis*. This could be easily accomplished.

The Supreme Court has always permitted price regulation and control of businesses by legislation in times of emergencies when such legislation might have been bad at other times.¹² The effect of the present economic depression, assuming, as it has, such tremendous proportions, can easily be considered to render the problem an emergency justifying price regulation. This being so, and the employment agency business being so interrelated and

⁵ Ex parte Dickey, 144 Cal. 234, 77 Pac. 924 (1904); *In re Smith*, 193 Cal. 337, 223 Pac. 971 (1924).

⁶ Report of the Commission on Industrial Relations, Sen. Doc. No. 415 64th Cong., 1st Sess. Vols. 1 & 2. Ninth Annual Convention of the Association of Governmental Labor Officials (1923).

⁷ 277 U. S. 350, 370-372 (1927).

⁸ Chief Justice Hughes has replaced Chief Justice Taft and Mr. Justice Roberts has taken the place of Mr. Justice Sanford.

⁹ See Fordham, *The Present Supreme Court, Social Legislation and The Judicial Process* (1931) 37 W. VA. L. Q. 167, 207; Hardman, *Public Utilities, I. The Quest for a Concept* (1931) 37 W. VA. L. Q. 250.

¹⁰ Tagg Bros. & Moorhead v. U. S., 280 U. S. 420, 50 S. Ct. 220 (1930). (Holding statute providing for the prices to be charged by market agents in stockyards not unconstitutional.)

¹¹ O'Gorman & Young v. Hartford Fire Ins. Co., 51 S. Ct. 130, 74 L. Ed. 287 (1931). (Holding statute regulating commissions on insurance policies to a reasonable amount, not to exceed that paid to local agents, did not violate the 14th Amendment. The majority was composed of Chief Justice Hughes and Justices Brandeis, Holmes, Stone and Roberts. The minority were Justices Sutherland, McReynolds, VanDevanter and Butler.)

¹² *Wilson v. New*, 243 U. S. 332, 37 S. Ct. 298 (1917); *Block v. Hirsh*, 256 U. S. 135, 41 S. Ct. 458 (1921); *Marcus Brown Holding Co. v. Feldman*, 256 U. S. 170, 41 S. Ct. 465 (1921).

essential to business in general, it would appear that a statute like the one in *Bradford v. Hargis* might be upheld on the principles of those cases permitting legislative regulation, in emergencies, of businesses which are not otherwise so "affected with a public interest" as to permit legislative regulation.¹³ This proposition, if capably enough urged to the Supreme Court would probably even be acceptable to those members constituting the majority in *Ribnik v. McBride*.¹⁴

—HENRY P. SNYDER.

CONTRACTS—ACCEPTANCE OF AN OFFER IN WHICH THE TIME LIMITATION IS AMBIGUOUS.—Cline, the owner of a tract of land, wrote a letter dated January 29, 1929 to Caldwell, the owner of another tract, offering to exchange his lands plus \$6,000 for those of Caldwell. The letter was sent from Valls Creek, West Virginia, to Caldwell at Peterstown, West Virginia; Caldwell should have received it on either the 29th or 30th, but did not actually receive it until February 2. The letter, among other things, stated: "I will give you 8 days to either *except* or reject this offer"; "I am prepared within 8 days to make you same deeds"; and, further, "I will not *spent* any more money on this deal and after 8 days it will not be for sale for 90 days." Caldwell wired an acceptance on February 8, which reached Cline on the 9th. In the meantime, and after the expiration of what he considered to be the eight day period, Cline had given an option on the land to a third party, under which option the land was sold.¹

Caldwell, claiming that his acceptance created a binding contract, brought action to obtain specific performance thereof. The Circuit Court sustained Cline's demurrer to the bill and dismissed the action. Upon appeal therefrom, the West Virginia Supreme Court of Appeals, in *Caldwell v. Cline*,² reversed the decree, rein-

¹³ *Supra* n. 12.

¹⁴ Mr. Justice Sutherland, speaking for the Court in *Tyson & Bro., United Theatre Ticket Offices v. Banton*, 273 U. S. 418, 47 S. Ct. 426, at 430 (1926), recognizes the validity of such legislation, citing and approving cases.

¹ This fact does not appear in the reported case, but was stated in defendant's answer in the Circuit Court, which was left out of the record by agreement of counsel; and also in defendant's petition for rehearing; nor was it denied, plaintiff having failed to allege in the bill of complaint that defendant was the then owner of the premises.

² 156 S. E. 55 (W. Va. 1931).