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CONSTITUTIONAL LAW-DELEGATION OF LEGISLATIVE POWER - UTAH MILK CONTROL ACT

Edward S. Biggar
University of Michigan Law School

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CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER — UTAH MILK CONTROL ACT — The Utah Milk Control Act declared the necessity of stabilizing the production and distribution of market milk, for the purpose of insuring "a continuous and adequate supply of pure, wholesome milk."¹ The state board of agriculture was authorized to fix prices² and regulate the surplus of milk in particular marketing areas.³ Provision was made for public hearings to precede the board's issuance of regulatory orders.⁴ In fixing prices, the board was directed to consider the cost of "producing, handling, pasteurizing, and distributing" the milk to be sold.⁵ There was no requirement that the orders promulgated contain any specific provisions. Pursuant to the provisions of this act, an order was issued purporting to regulate the Salt Lake milk marketing area. Plaintiffs, having refused to comply with the terms of the order and being threatened with the revocation of their licenses as distributors, applied for a writ of prohibition against the board. *Held*, that the statute was unconstitutional as an improper delegation of legislative power. Ordered that a permanent writ of prohibition be issued. *Rowell v. State Board of Agriculture*, (Utah, 1940) 99 P. (2d) 1.

The principal case is particularly interesting by contrast with another recent case, *United States v. Rock Royal Co-operative*,⁶ in which the Supreme Court of the United States upheld a similar federal statute. To say that the decisions merely represent divergent attitudes on the broad question of delegation of powers is not adequately to explain the contrary results obtained. For, in general, the Utah court has taken a liberal view of the separation of powers doctrine.⁷ A more satisfactory reconciliation of the cases may be based upon significant differences appearing in the language of the statutes. The Agricultural Marketing Agreement Act, the validity of which was concerned in the *Rock Royal* case, expresses a fairly definite legislative policy;⁸ it sets forth specific factors which the secretary of agriculture is to consider in deciding upon the promulgation of orders;⁹ it provides a comprehensive administrative procedure to be observed in

¹ Utah Laws (1937), c. 7, § 2.

² *Ibid.*, § 4(b) (5).

³ *Ibid.*, § 4(b) (2).

⁴ *Ibid.*, §§ 6, 7, 8. It was not required that the board make any express findings of fact, such as were recommended in *Panama Refining Co. v. Ryan*, 293 U. S. 388, 55 S. Ct. 241 (1934).

⁵ Utah Laws (1937), c. 7, § 4(b) (5).

⁶ 307 U. S. 533, 59 S. Ct. 993 (1939). The decision affirmed the constitutionality of the Agricultural Marketing Agreement Act of 1937, 50 Stat. L. 246, amending Agricultural Adjustment Act of 1933, 48 Stat. L. 31, 7 U. S. C. (Supp. 1939), § 601 et seq. See note in 38 MICH. L. REV. 540 (1940).

⁷ For a recent decision of the Utah court, concerning the question of delegation of powers, see *McGrew v. Industrial Commission*, 96 Utah 203, 85 P. (2d) 608 (1938), wherein the Utah Minimum Wage Law was sustained.

⁸ ". . . establish prices to farmers at a level that will give agricultural commodities a purchasing power . . . equivalent to the purchasing power of agricultural commodities in the base period. . . (2) To protect the interest of the consumer. . ." Agricultural Marketing Agreement Act of 1937, 50 Stat. L. 247, 7 U. S. C. (Supp. 1939), § 602.

⁹ *Ibid.*, §§ 602, 608e.

the issuance of orders;¹⁰ and it imposes minimum requirements as to the provisions of the orders finally issued.¹¹ The Utah Milk Control Act, in contrast, contains a very general declaration of policy, barely sketches the elements to which the board should give attention, and states no requisites as to the contents of the orders which are published. It may realistically be argued that not much broader discretionary powers are conferred by the Utah act than by the Agricultural Marketing Agreement Act; for the only binding restriction on the administrative agency's action contained in the latter statute and not in the former is the requirement that every order must include certain minimum provisions. And, as has been pointed out in a dissenting opinion of Justice Roberts,¹² even this restriction is more apparent than real. But then it has never been considered a necessary condemnation of a statute that it grants extensive powers to an administrative agency.¹³ The prime defect of the Utah act seems not to lie so much in the delegation of sweeping power as in the absence of adequate aids for the exercise of that power. The relative specificity of the language used provides the striking difference between this act and the Agricultural Marketing Agreement Act. While the federal statute does not control the secretary's discretion, it nevertheless clearly indicates the different courses that his regulation may take. The Utah act, on the other hand, gives no hint of possible methods of control; the board is left entirely to its own devices, the only statutory requirement being that the orders have as their aim, to "prevent the creation of any surplus of market milk in the . . . area."¹⁴ Since the delegation of legislative power is usually justified on grounds of practical necessity,¹⁵ it may reasonably be demanded that the legislature should go as far as is practically possible in directing the action of administrative agencies. Such a demand appears pertinent to the principal case. The Utah Milk Control Act might well have been made more definite and instructive without its execution thereby being impaired; numerous state acts would have served as satisfactory models.¹⁶ The policy favoring certainty and efficiency of administration would seem to afford ample justification for the decision of the court.

Edward S. Biggar

¹⁰ *Ibid.*, § 608c (4).

¹¹ Every order must contain one or more of several specified conditions. *Ibid.*, §§ 608c (7), 608c (5).

¹² *H. P. Hood & Sons v. United States*, 307 U. S. 588 at 607, 59 S. Ct. 1019 (1939) (involving the Marketing Act): "These sections give the Secretary the choice of three independent programs. . . . Within each, variation of the widest sort is allowed."

¹³ For examples of broad delegations of power, see *Federal Radio Commission v. Nelson Bros. Bond & Mtg. Co.*, 289 U. S. 266, 53 S. Ct. 627 (1932), and *Interstate Commerce Commission v. Louisville & N. R. R.*, 227 U. S. 88, 33 S. Ct. 185 (1912).

¹⁴ Utah Laws (1937), c. 7, § 4(b) (2).