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CONSTITUTIONAL LAW - DELEGATION OF LEGISLATIVE POWER - AGRICULTURAL MARKETING AGREEMENT ACT

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CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER — AGRICULTURAL MARKETING AGREEMENT ACT — The declared policy of the Agricultural Marketing Agreement Act of 1937 was to raise the purchasing

power of agricultural commodities and, at the same time, to protect the interest of the consumer.[1] The Secretary of Agriculture was empowered to issue orders which, in his belief, based upon a consideration of evidence introduced at a public hearing,[2] would tend to effectuate this policy. Certain minimum requirements as to the provisions of the orders were imposed.[3] For any order to be effective, it must have been approved by a proportion of the producers of the commodity concerned.[4] Pursuant to the provisions of this act, an order was issued regulating the handling of milk in the New York metropolitan area. In the suit for a mandatory injunction to force compliance with the terms of this order, the defense was raised that the act involved an unconstitutional delegation of legislative power, both to the secretary and to the commodity producers. *Held*, that the delegation of authority was within reasonable limits and was, therefore, permissible. *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 59 S. Ct. 993 (1939).

The principle that legislative authority may not be delegated has been considered fundamental in our system of government.[5] Practical problems, however, have produced a considerable modification of constitutional theory. In approving examples of undoubted legislative delegation, most courts have frankly admitted that a certain amount of such delegation is both necessary and proper.[6] But it is agreed that the legislature may not abdicate its policy-making function. A standard must be set[7]—a framework within which the executive discretion may

[1] ". . . 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, amending Agricultural Adjustment Act of 1933, 48 Stat. L. 31, 7 U. S. C. (Supp. 1938), § 602.

[2] Agricultural Adjustment Act as amended by 49 Stat. L. 754 (1935), 7 U. S. C. (Supp. 1938), § 608c(4).

[3] Every order must include one or more of four specified conditions, ibid., § 608c(7); any order affecting milk must contain one or more of seven conditions, ibid., § 608c(5). The subject matter of the orders is restricted to a few named commodities. Ibid., § 608c(2).

[4] Two-thirds of the producers of the commodity, in point of number or of volume of production. Ibid., § 608c(8), (9).

[5] 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 224 (1927); Field v. Clark, 143 U. S. 649 at 692, 12 S. Ct. 495 (1891).

[6] "The essential facts upon which courts . . . agree is that there is an overpowering necessity for a modification of the doctrine of separation and non-delegation of powers of government." Rosenberry, J., in State ex rel. Wisconsin Inspection Bureau v. Whitman, 196 Wis. 472 at 498, 220 N. W. 929 (1928). See also Hampton, Jr. & Co. v. United States, 276 U. S. 394 at 406, 48 S. Ct. 348 (1927); Union Bridge Co. v. United States, 204 U. S. 364 at 387, 27 S. Ct. 367 (1906). Often, however, the courts attempt to reconcile their decisions with the principle of nondelegation. "Congress was merely conferring administrative functions. . . ." United States v. Grimaud, 220 U. S. 506 at 516, 31 S. Ct. 480 (1910). "The true distinction, therefore, is, between the delegation of power to make the law . . . and conferring an authority . . . as to its execution. . . ." Ranney, J., in Cincinnati, W. & Z. R. R. v. Commissioners, 1 Ohio St. 77 at 88.

[7] Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837 (1935);

function. There is no pattern of required elements which such a standard must contain. The statutory language is important but not controlling; vague, general terms which may provide a sufficient criterion in one case may be unsatisfactory in another.[8] Ordinarily, words of a definite, well-recognized meaning are required; [9] but it is possible that a standard may be implied where none is specifically stated.[10] Various factors must be considered.[11] The background of the statute,[12] its subject matter,[13] and the agency to which the authority is to be delegated [14] are elements of possible significance. Importance is also attached to the presence in the statute of provisions requiring the agency to give notice and hearing, and to make specific findings justifying its action.[15] But even though a court is able to find that the legislature has provided adequate guideposts, the fact often remains that an almost unlimited discretion is given to the executive.[16] For this reason, the granting of an extensive rule-making power to the Secretary of Agriculture would not seem to necessitate a condemnation of

Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241 (1934); Holgate Bros. v. Bashore, 331 Pa. 255, 200 A. 672 (1938).

[8] The phrase, "to rehabilitate industry," did not provide a standard, in Schechter Poultry Corp. v. United States, 295 U. S. 495 at 538, 55 S. Ct. 837 (1935); but "public interest" was an adequate criterion in New York Central Securities Co. v. United States, 287 U. S. 12 at 24, 53 S. Ct. 45 (1932).

[9] "Natural marketing area," State v. Auclair, (Vt. 1939) 4 A. (2d) 107; "unit" (labor bargaining), Metropolitan Life Ins. Co. v. New York State Labor Relations Board, 280 N. Y. 194, 20 N. E. (2d) 390 (1939).

[10] Mayo v. Texas Co., (Fla. 1939) 188 So. 206 at 208. Power to make rules was construed to mean "reasonable rules . . . to effectuate the purposes of the act."

[11] "Between the extremes of adequate standards and no standards, there is a twilight zone in which each case must be appraised. . . ." Chapman v. Huntington, W. Va., Housing Authority, (W. Va. 1939) 3 S. E. (2d) 502 at 511.

[12] Buttfield v. Stranahan, 192 U. S. 470, 24 S. Ct. 349 (1903); a limitation on the delegated power was found in the legislative history of the statute.

[13] Federal Radio Commission v. Nelson Bros. Bond & Mtg. Co., 289 U. S. 266 at 285, 53 S. Ct. 627 (1932). Power to grant licenses "as public convenience, interest or necessity requires" upheld. "The [power] is to be interpreted by its context, by the nature of radio transmission and . . . the scope . . . of services. . . ."

[14] The fact that the agency is already governed by an adequate code would seem important; broad delegations to the Interstate Commerce Commission have been sustained. Interstate Commerce Commission v. Louisville & N. R. R., 227 U. S. 88, 33 S. Ct. 185 (1912); New York Central Securities Corp. v. United States, 287 U. S. 12, 53 S. Ct. 45 (1932).

[15] Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241 (1934). In Schechter Poultry Corp. v. United States, 295 U. S. 495 at 541, 55 S. Ct. 837 (1935), the lack of "appropriate administrative procedure" is noted by the Court. The inclusion of this requirement in the statutes has been generally approved by the courts. Jersey Maid Milk Products v. Brock, 13 Cal. (2d) 620, 91 P. (2d) 577 (1939); McGrew v. Industrial Commission, 96 Utah 203, 85 P. (2d) 600 (1938); Bohannon v. Duncan, 185 Ga. 840, 196 S. E. 897 (1938).

[16] United States v. Chemical Foundation, 272 U. S. 1, 47 S. Ct. 1 (1926), power given to the President to regulate the disposition of enemy property; Conway v. New Hampshire Water Resources Board, (N. H. 1938) 199 A. 83, power to designate and construct projects for the utilization of water power.

the statute involved in the principal case.[17] The declaration of policy which he must consider, the requirement of written findings, and the restrictions imposed on the orders which he may issue are checks on the exercise of the secretary's power. Viewed in the light of precedent, these provisions seem to furnish a satisfactory, legislative standard.[18] And since further limitations might reduce the flexibility of the act and thus impair its effectiveness, policy reasons would also seem to support the Court's decision. A further question is raised as to the delegation of authority to private individuals. As a general rule, such delegation has met with judicial disfavor.[19] Exceptions have been made, however, the decisions being rationalized on various grounds.[20] The Court, in the principal case, upholds the producer-referendum provisions, apparently reasoning that the vote is merely an event, the occurrence of which gives effectiveness to the

[17] But see, to the contrary, dissent of Roberts, J., in H. P. Hood & Sons v. United States, 307 U. S. 588 at 604, 59 S. Ct. 1019 (1939).

[18] Several factors distinguish the principal case from Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241 (1934), and Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837 (1935), where unconstitutional delegations of power were found. By contrast to the specific statement of purpose contained in the Agricultural Marketing Agreement Act, the National Industrial Recovery Act, with which those cases were concerned, declared an extremely vague policy aimed at the general rehabilitation of industry. Nor did the latter statute burden the executive with any restrictions comparable to the minimum requirements for the secretary's orders, set forth in the former. In Panama Refining Co. v. Ryan, the President's regulatory power was completely unchecked; and in the Schechter case the only limitation on the executive was that he act "to effectuate the policy of the Act." The Schechter case is further distinguishable in that, there, the President's authority extended throughout the entire field of industry, whereas in the principal case the secretary was confined to the regulation of specified agricultural commodities. Another point of dissimilarity between the cases lies in the fact that the Agricultural Marketing Agreement Act required that the promulgation of orders be preceded by adequate notice and opportunity for public hearing, while the National Industrial Recovery Act prescribed no definite administrative procedure to be employed by the President. Under this latter statute, the President could, and undoubtedly did, in the press of emergency, approve proposed codes after only cursory examination. In contrast, the record of the principal case shows that hearings were held by the secretary from May 16, 1938, to June 7, 1938, that some three thousand pages of testimony were taken, and that twenty briefs were filed by interested parties.

[19] 1 COOLEY, CONSTITUTIOAL LIMITATIONS, 8th ed., 239-340 (1927); Carter v. Carter Coal Co., 298 U. S. 238, 56 S. Ct. 855 (1935); Maryland Co-Op. Milk Producers, Inc. v. Miller, 170 Md. 81, 182 A. 432 (1936), noted in 34 MICH. L. REV. 1240 (1936); annotation, 76 A. L. R. 1053 (1932).

[20] The most common explanation is that the popular approval is a mere contingency or event, so that no delegation of legislative power is involved. Currin v. Wallace, 306 U. S. 1, 59 S. Ct. 379 (1938); Holcombe v. Georgia Milk Producers Confederation, (Ga. 1939) 3 S. E. (2d) 705. If the action of the individuals is advisory only, there is no delegation of authority. Associated Industries of Oklahoma v. Industrial Welfare Commission, (Okla. 1939) 90 P. (2d) 899. The so-called local option laws are considered as exceptions to the usual rule, justified because of special, local interest. 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 245 (1927).

already complete order.[21] The result obtained seems satisfactory; but it is submitted that more persuasive argument would have been based squarely on the policy considerations in favor of giving to farmers a voice in their own regulation.

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[21] This is the reasoning of Currin v. Wallace, 306 U. S. 1, 59 S. Ct. 379 (1938), which is cited as authority. The Court makes no additional comment upon this question.