Michigan Law Review

Volume 38 | Issue 4

1940

CONSTITUTIONAL LAW - EQUAL PROTECTION OF THE LAWS - DISCRIMINATION AGAINST TRANSIENTS VENDING PURCHASED PRODUCE

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Agriculture Law Commons, Constitutional Law Commons, and the State and Local Government Law Commons

Recommended Citation

Michigan Law Review, *CONSTITUTIONAL LAW - EQUAL PROTECTION OF THE LAWS - DISCRIMINATION AGAINST TRANSIENTS VENDING PURCHASED PRODUCE*, 38 MICH. L. REV. 544 (1940).
Available at: https://repository.law.umich.edu/mlr/vol38/iss4/12

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CONSTITUTIONAL LAW — EQUAL PROTECTION OF THE LAWS — DISCRIMINATION AGAINST TRANSIENTS VENDING PURCHASED PRODUCE — A Minneapolis ordinance required transient dealers in farm produce to procure a license, but exempted farmers selling their own produce. The appellant was fined for selling butter without the necessary transient merchant license as provided by the ordinance. On appeal, appellant contended that the ordinance was unconstitutional because of class discrimination since (1) sellers in established places of business paid one type of fee while the transients paid another, and (2) farmers selling produce grown by themselves were exempt while other transients were required to pay a fee and furnish bond. *Held*, that the ordinance was unconstitutional because the discrimination between farmers selling their own produce and other merchants was a discrimination so arbitrary and unreasonable as to make the ordinance class legislation forbidden by the Fourteenth Amendment, section 1, of the federal Constitution. *State v. Pehrson*, 205 Minn. 573, 287 N. W. 313 (1939).

The opinion of the court in regard to the fairness of imposing different fees on transient and established merchants seems to be almost universally followed.[1] However, courts are in disagreement as to whether an ordinance or statute can constitutionally differentiate between farmers selling their own produce and transient dealers selling purchased produce. A line of Nebraska decisions has held that the differentiation is reasonable since the selling of one's own produce is beneficial to society by eliminating the profits of retail merchants, jobbers and wholesalers.[2] Furthermore, the transient producer-seller had a fixed abode, taxable immovable property and a social, educational, and financial interest in the community which the other type of transient merchant lacked. The Nebraska decisions had distinguished their ruling from the Minnesota cases[3] on the ground that the Nebraska statute was a taxing measure for revenue

[1] State ex rel. Lawson v. Woodruff, 134 Fla. 437, 184 So. 81 (1938), and Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 34 S. Ct. 493 (1913), are two typical opinions demonstrating the difference between transient and established businesses. Surely, an established business, paying local taxes, being subject to local regulation and dependent upon returning customers is far more of a community asset than the mere transient who escapes both property tax and most local regulation, and is less careful about his warranties and the quality of his goods.

[2] Rosenbloom v. State, 64 Neb. 342, 89 N. W. 1053 (1902); Gerrard v. State, 64 Neb. 368, 89 N. W. 1062 (1902).

[3] State ex rel. Luria v. Wagener, 69 Minn. 206, 72 N. W. 67 (1897).

purposes, while the latter cases involved regulatory statutes, and those classifications which might be reasonable for tax purposes might not be reasonable for purposes of regulation.[4] In an analogous field, in support of the Nebraska reasoning, one court upheld the distinction between non-manufacturing sellers and manufacturing vendors as a constitutional attempt to encourage manufacturing.[5] Courts in other jurisdictions have escaped the distinction under the statutes taxing peddlers by finding that farmers dispensing their own produce are not peddlers, on the theory that the farmer's main occupation is production and the distribution of his produce is merely secondary.[6] However, these distinctions are not substantial and it does not appear reasonable for taxing or regulatory purposes to license transients who are reselling purchased produce and then free from control those transients who sell their own produce.[7] In either case, each type of transient escapes city taxes, and each is apt to become a nuisance in the absence of regulation. Further, each must be equally supervised to maintain a good standard of cleanliness and quality in the marketing of a city's food supply. It is submitted, therefore, that these factors support the principal decision in the finding that there can be no reasonable basis for discriminating between growers selling their own produce and transient merchants selling purchased produce.

[4] People v. De Blaay, 137 Mich. 402 at 406, 100 N. W. 598 (1904), passes lightly over the issue involved by simply saying in regard to a similar statute, "Under this provision all persons in the same class are treated alike under like circumstances and conditions." Other cases supporting this are: City of Muskegon v. Zeeryp, 134 Mich. 181, 96 N. W. 502 (1903); People v. Smith, 147 Mich. 391, 110 N. W. 1102 (1907); and People v. Sawyer, 106 Mich. 428, 64 N. W. 333 (1895). In the last case, the court in discussing a licensing statute analogous to the one in the principal case held that an exemption of farmers and mechanics selling their own products was an immunity which was a natural development beyond questioning, and the court did not consider the constitutional implications.

[5] Seymour v. State, 51 Ala. 52 (1874). This case may be said to have forgotten the intrastate class discrimination in the court's desire to permit the taxing of outstate transient merchants. In a later case, Vines v. State, 67 Ala. 73 (1880), the court again considered discrimination against citizens of another state without regard to intrastate class discrimination, but under the facts the court found the statute unconstitutional because of the discrimination.

[6] Roy v. Schuff, 51 La. Ann. 86, 24 So. 788 (1899); Commonwealth v. Gardner, 133 Pa. 284, 19 A. 550 (1890); Lansford v. Wertman, 18 Pa. Co. 469 (1896); Irwin Borough v. Douglass, 8 Pa. Dist. 505 (1898); St. Louis v. Meyer, 185 Mo. 583, 84 S. W. 914 (1904).

[7] Ex parte Faison, 93 Texas Crim. 403, 248 S. W. 343 (1923). The court here held that a statute exempting trucks and tractors owned by farmers from a license requirement was unconstitutional class legislation as all truck and tractor drivers were in substantially the same business and no reasonable distinction could be made between them. State ex rel. Luria v. Wagener, 69 Minn. 206, 72 N. W. 67 (1897); State ex rel. Mudeking v. Parr, 109 Minn. 147, 123 N. W. 408 (1909); State v. Jensen, 93 Minn. 88, 100 N. W. 644 (1904).