Michigan Law Review

Volume 37 | Issue 3

1939

MUNICIPAL CORPORATIONS - LICENSES - AMOUNT OF FEE

S. R. Stroud
University of Michigan Law School

MUNICIPAL CORPORATIONS — LICENSES — AMOUNT OF FEE — The defendant, a sandwich peddler, was convicted in the justice court of violation of an ordinance requiring peddlers to have a license. Upon appeal to the circuit

court the conviction was set aside on the ground that the ordinance requiring a peddler to obtain a license at $150 per vehicle per year was invalid since the fee was unreasonably high. *Held*, the circuit court should be reversed and the conviction sustained since the amount of the license fee could not be considered unreasonably excessive in view of all the circumstances. *People v. Riksen*, 284 Mich. 284, 279 N. W. 513 (1938).

It is generally agreed that power vested in a municipal corporation to regulate a business by licensing does not include the power to tax.[1] In the principal case the city common council was given power to license and regulate peddlers.[2] If under a municipal ordinance the license fee exacted far exceeds the costs of issuance of the license and regulation of the subject licensed, the ordinance *may* be deemed a revenue rather than a regulatory measure.[3] According to the principal case "the criterion, by which the reasonableness of the license fee charged is to gauged, is the cost of investigation, regulation, and control of the business by the municipality." [4] There was no provision made by the ordinance in question for investigation, regulation, or control other than the mere issuance of the license. Consequently the steep fee could not possibly be justified on the ground that it approximated the cost of policing the peddler's business.[5]

[1] Mayor of New York City v. Second Ave. R. R., 32 N. Y. 261 (1865); North Hudson Ry. v. Hoboken, 41 N. J. L. 71 (1879); Van Hook v. City of Selma, 70 Ala. 361 (1881); Barnard & Miller v. City of Chicago, 316 Ill. 519, 147 N. E. 384 (1925); 2 DILLON, MUNICIPAL CORPORATIONS, 5th ed., 996 (1911).

[2] Sec. 88 of the charter provided that the common council should have power by ordinance, "to make regulations for preventing auctions, peddling . . . without first obtaining from the common council license therefore"; and "for licensing and regulating auctioneers, peddlers. . . ." Charter of Ann Arbor, § 88, par. 23 (as amended 1923); Record in principal case, pp. 42-43.

Under the above power the common council enacted an ordinance entitled "An Ordinance to Regulate Hawkers and Peddlers in the City of Ann Arbor; To Provide for the Issuing of a License Thereunder. . . ." Hawkers and peddlers were defined and limited by § 1 to include the driver of every vehicle used for hawking and peddling. By § 4 it was provided that "A fee of $150 for a license good for a period of one year shall be charged each individual proposing to hawk or peddle by using a motor vehicle." Ordinances of City of Ann Arbor, §§ 1, 4 (1933); Record in principal case, pp. 44, 46.

[3] Van Hook v. City of Selma, 70 Ala. 361 (1881); Clark v. New Brunswick, 43 N. J. L. 175 (1881); In re Wan Yin, (D. C. Ore. 1885) 22 F. 701, 10 Sawy. 532; State v. Glavin, 67 Conn. 29, 34 A. 708 (1895); State v. Bevins, 70 Vt. 574, 41 A. 655 (1898); State v. Angelo, 71 N. H. 224, 51 A. 905 (1902); Town of Stamps v. Burk, 83 Ark. 351, 104 S. W. 153 (1907); Vernor v. Secretary of State, 179 Mich. 157, 146 N. W. 338 (1914); People v. Rawley, 231 Mich. 374, 204 N. W. 137 (1925); Fletcher Oil Co. v. Bay City, 247 Mich. 572, 226 N. W. 248 (1929); 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 419-420 (1927).

[4] In support of this proposition the court cited Vernor v. Secretary of State, 179 Mich. 157, 146 N. W. 338 (1914), where the court held invalid an act of the state legislature which imposed a license fee averaging $12 on motor vehicles under the guise of regulation.

[5] If the license fee assessed was primarily to cover the expenses of issuing the license and some manner of cursory regulation, it is difficult to understand why an additional $150 should be required for every additional vehicle used by a peddler. See Muhlenbrinck v. Long Branch Commrs., 42 N. J. L. 364 (1880), where the court

Furthermore, a municipal ordinance cannot impose a license fee upon a legitimate business so high as to be prohibitory where the city has power only to license and regulate.[6] However, the license fee may exceed the costs of issuance and regulation so long as not prohibitory if the business is one that would tend to become a nuisance.[7] If a peddler of sandwiches can be included in the class of businesses which tend to become a nuisance, there is justification for the decision in the principal case. It is unfortunate that the court did not see fit to state more clearly and explicitly its reason for sustaining a license fee which on its face and in the absence of other evidence seems exorbitantly high.

S. R. Stroud

expressed the view that the method of measuring the license fee on the basis of the number of vehicles used indicated that the measure was designed for revenue purposes.

[6] City of Mankato v. Fowler, 32 Minn. 364, 20 N. W. 361 (1884); People v. Grant, 157 Mich. 24, 121 N. W. 300 (1909); O'Hara v. Collier, 173 Mich. 611, 139 N. W. 870 (1913); People v. Rawley, 231 Mich. 374, 204 N. W. 137 (1925).

[7] Leavenworth v. Booth, 15 Kan. 472 (1875) (license fee of $100 per year on life insurance companies held valid); City of Duluth v. Krupp, 46 Minn. 435, 49 N. W. 235 (1891) (license fee of $100 per year for peddlers upheld); State v. Jensen, 93 Minn. 88, 100 N. W. 644 (1904) (yearly license fee of $100 for fruit peddlers held valid); People v. Kupusinac, 261 Mich. 398, 246 N. W. 159 (1933) ($25 yearly license fee for drug peddlers upheld). Where the business is injurious to the public morals or productive of disorder the license fee may exceed the costs of regulation and supervision for the purpose of discouraging the business. This is true of the liquor trade. Duluth Brewing & Malting Co. v. City of Superior, 59 C. C. A. (7th) 481, 123 F. 353 (1903); Schmidt v. City of Indianapolis, 168 Ind. 631, 80 N. E. 632 (1907). Also it applies to such devices as slot machines. Jackson v. O'Connell, 114 Fla. 705, 154 So. 697 (1934) (chief reliance placed here on the taxing power but also an analogy drawn to the restrictive license fee cases). See also, TIEDEMAN, LIMITATIONS OF POLICE POWER 273, 277-278 (1886).