MUNICIPAL CORPORATIONS - REGULATION OF WEIGHTS AND MEASURES - DUE PROCESS OF LAW

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**Municipal Corporations — Regulation of Weights and Measures — Due Process of Law** — An ordinance of the city of Chicago \(^1\) required the net weight of all commodities sold in load lots in the city to be determined by a municipal weighmaster *prior* to delivery of the load to the purchaser. This necessitated weighing the vehicle of transportation first empty, and then again when loaded. On indictment for violation of the ordinance defendant, a coal dealer, whose place of business was located 63 miles outside the municipal limits, asserted that compliance with the ordinance would involve extremely expensive rehandling of the load unless the trucks were first sent into the city unloaded, a financially disastrous procedure; that, because of the heavy burden thus imposed, the ordinance deprived him of property without due process of law. The court, however, *held*, that the ordinance provided a reasonable means of preventing short-weight frauds, and its enactment was, therefore, a constitutional exercise of police power. *Hauge v. City of Chicago*, 299 U. S. 387, 57 S. Ct. 241 (1937).

The Supreme Court has recognized that the state may legitimately exercise its power to regulate weights and measures in order to prevent fraud in commercial transactions. Thus it has permitted states to fix the minimum net weights of loaves of bread \(^2\) and of containers of lard, \(^3\) and to restrict to official weighmasters the issuance of weight certificates for commodities sold in large

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\(^1\) Chicago Rev. Code (1931), §§ 2947-2957.


unit quantities.\textsuperscript{4} Similarly, it seems fairly clear that the provisions of the ordinance mentioned in the principal case, establishing a compulsory system of weighing at municipal scales, are "reasonably appropriate" to the prevention of frauds through short weight, and, therefore, are constitutional in their general scope.\textsuperscript{5} Mere inspection of the vendor's scales, however frequent and detailed, affords little protection to a purchaser not present at the weighing, and without facilities for reweighing after delivery—the situation usually prevailing in retail sales of bulky commodities.\textsuperscript{6} While opportunity for fraud and imposition exist despite the weighing at municipal scales, the likelihood of its commission is substantially lessened; for the expense of manipulating a shipment already loaded and weighed would probably counterbalance any "saving" realized thereby. Moreover, the Court's rejection of the defendant's claim that the ordinance was unreasonably burdensome as applied to him seems unexceptionable. Administrative necessities frequently justify inequalities within a class resulting from enforcement of a legislative enactment uniform in methodology.\textsuperscript{7} If the municipality in the instant case were required to ascertain, and exempt from the operation of its ordinance, those whose distance from the nearest public scales would make economically inadvisable the double trip necessary to avoid rehandling, the entire scheme might be rendered impracticable. The foregoing discussion assumes that the Chicago ordinance was in fact designed primarily to curb short-weight practices; but certain provisions


\textsuperscript{5} Cf. Lockhart v. Anderson, 62 Okla. 209, 162 P. 946 (1917), holding unconstitutional an ordinance which required the purchaser to pay for the weighing of cotton imported from neighboring cities.

Also, there seems to be little dissent from the view that the enactment of such an ordinance is within the implied powers of the municipality. The authorization has been most frequently deduced from express powers, such as "to appoint public weighmasters," Stokes & Gilbert v. Corporation of New York, 14 Wend. (N. Y.) 87 (1835); "to provide for the weighing or measuring of hay, stone, coal, etc.," Sylvester Coal Co. v. City of St. Louis, 130 Mo. 323, 32 S. W. 649 (1895); Davis v. Town of Anita, 73 Iowa 325, 35 N. W. 244 (1887); Taylor, Cleveland & Co. v. City of Pine Bluff, 34 Ark. 603 (1879) (dictum); "to regulate markets," City of Lamar v. Weidman, 57 Mo. App. 507 (1894); Intendant v. Sorrel, 46 N. C. 49 (1853); "to regulate place and manner of selling hay," Yates v. City of Milwaukee, 12 Wis. 75z (1860). The "general welfare" clause has also been relied on. O'Maley v. Borough of Freeport, 96 Pa. 24 (1880). It is interesting to note that the ordinance in the principal case was declared infra vires under statutory authority to "regulate weights, measures and public scales," in Chicago v. Wisconsin Lime Co., 312 Ill. 520, 144 N. E. 3 (1924), without mentioning an earlier lower court decision which had reached an opposite conclusion, City of Savannah v. Robinson, 81 Ill. App. 471 (1898).

\textsuperscript{6} See opinion of the state court in the principal case, holding that the mere fact that defendant's scales had been tested and approved by state officials did not preclude application of the ordinance. Chicago v. Waters, 303 Ill. 125, 1 N. E. (2d) 396 (1936).

not referred to in the principal case appear to be more consonant with a purpose of suppressing non-resident competition, an object of doubtful constitutionality. The Chicago ordinances expressly authorize dealers to qualify as public weighmasters by paying a nominal annual fee and furnishing a $2,000 bond, thus enabling them to avoid the expense of using scales not their own. Obviously this avenue of avoidance was not open to the defendant since, in the absence of express authority, a municipality cannot license activity outside its territorial limits. It is difficult to understand this legislative loophole in favor of resident dealers if the ordinance was not intended simply to improve their competitive position. Requirement of bond and annual fee may insure financial responsibility of fraudfeasors, but it cannot reach the real difficulty which bona fide fraud prevention measures seek to obviate—namely the impracticability of proving short-weight frauds already perpetrated.

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8 The decision in New State Ice Co. v. Liebmann, 285 U. S. 262, 52 S. Ct. 371 (1932), indicates that an attempt to restrict competition is a denial of due process of law where a legitimate business is involved and where there is no dominant public interest to justify such regulation. Furthermore, an attempt to restrict competition on the part of residents of other municipalities in the state may be considered a denial of the equal protection of the law, contrary to the Fourteenth Amendment and, in the case of residents of other states, an unlawful discrimination against interstate commerce. See Minnesota v. Barber, 136 U. S. 313, 10 S. Ct. 862 (1890). The interstate feature, however, was not present in the principal case.


10 See 2 McQuillin, Municipal Corporations, 2d ed., § 693 (1928). Of course, the question has usually arisen on the objection of the intended licensee. There appears to be no case in which the non-resident has consented to be licensed, and a third party asserts lack of municipal power to issue the license. However, it would seem extremely doubtful that any court would imply authority to license as a public weighmaster one residing 63 miles from the municipal limits, despite willingness of the non-resident to be licensed.

11 This argument was not considered by the Supreme Court in the principal case or by the state supreme court. However, the dissenting judges of the state court emphasized the point, asserting that the ordinance was "cleverly designed for the purpose of conferring a monopoly in the coal business upon dealers residing within the city of Chicago." Chicago v. Waters, 363 Ill. 125 at 134, 1 N. E. (2d) 396 (1936).