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CONSTITUTIONAL LAW - STATE POLICE POWER - REGULATION OF ADVERTISING BY DENTIST

CONSTITUTIONAL LAW — STATE POLICE POWER — REGULATION OF ADVERTISING BY DENTIST — Plaintiff, a practicing dentist, brought an action to enjoin the enforcement of a section of Oregon legislation regulating the practice of dentistry, which defined certain types of advertising and solicitation as unprofessional conduct and, as such, ground for the revocation of a license to practice.[1] The section was upheld by the state supreme court and plaintiff appealed to the United States Supreme Court, alleging that the statute was unconstitutional in that it impaired the obligations of existing contracts and violated the "due process" and "equal protection" clauses of the Fourteenth Amendment. *Held*, that the statute was a valid exercise of the state police power and constitutional. *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608, 55 S. Ct. 570 (1935).

It is well established that a state through its legislature may regulate various trades and professions in the interest of the public welfare by requiring licenses and establishing qualifications of fitness, either directly or through an administrative board in which the enforcement of the legislation is placed.[2] Likewise, it is com-

[1] "advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head; employing or making use of advertising solicitors or free publicity press agents, or advertising any free dental work or free examination; or advertising to guarantee any dental service or to perform any dental operation painlessly. . . ." ORE. LAWS (1933), c. 166, § 2, p. 210, amending ORE. CODE (1930), § 68-1013.

[2] This regulation is conventionally justified as a protection of the public health or safety or as prevention of fraud and oppression of the public or a class thereof. Dentistry:

petent for the state to provide for revocation of the license by the board, although there is some diversity of opinion as to how much discretion may be given to the board.[3] Deceptive or misleading advertising by members of a healing profession has been frequently held to be a valid ground for the revocation of a professional license.[4] The statute involved in the principal case goes farther by including advertising generally regarded as unprofessional and without reference to its truth or falsity. The decision has the support of recent decisions of state courts in cases involving similar statutes.[5] Advertising and solicitation of comparable character by attorneys has also been held valid reason for disciplinary action.[6] The decision in the principal case appears desirable, and the constitutional objections raised untenable. The only important question would seem to be that involving the invocation of the "due process" clause of the Fourteenth Amendment, since the police power validly exercised transcends existing contracts,[7] and "equal protection" does not prevent classification on a basis as clearly reasonable as the practice of a given profession.[8] There is no lack of due process, from a substantive viewpoint,

Douglas v. Noble, 261 U. S. 165, 43 S. Ct. 303 (1923); Graves v. Minnesota, 272 U. S. 425, 47 S. Ct. 122 (1926). Medicine: State v. Dent, 25 W. Va. 1 (1884), affd. in Dent v. West Virginia, 129 U. S. 114, 9 S. Ct. 231 (1889). Optometry: Commonwealth v. S. S. Kresge Co., 267 Mass. 145, 166 N. E. 558 (1929), noted 9 BOSTON UNIV. L. REV. 272 (1929). Barbering: State v. Zeno, 79 Minn. 80, 81 N. W. 748, 48 L. R. A. 88 (1900). *Contra*: Plumbing: State ex rel. Richey v. Smith, 42 Wash. 237, 84 P. 851 (1906) (public health not really involved). Public accounting: Campbell v. McIntyre, 165 Tenn. 47, 52 S. W. (2d) 162 (1932) (legislation bears no relation to public health, comfort, safety, or welfare). For a list of businesses and occupations that have been held subject to state regulation see 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 1328 et seq. (1927); FREUND, POLICE POWER, § 494 (1904). As to the power of legislature to regulate the legal profession, see notes 16 MINN. L. REV. 857 (1932); 76 UNIV. PA. L. REV. 740 (1928).

[3] See annotation, 5 A. L. R. 94 (1920).

[4] State Medical Board v. McCrary, 95 Ark. 511, 130 S. W. 544, 30 L. R. A. (N. S.) 783, Ann. Cas. 1912A 631 (1910). State ex rel. Williams v. Purl, 228 Mo. 1, 128 S. W. 196 (1910). *Contra*: Green v. Blanchard, 138 Ark. 137, 211 S. W. 375, 5 A. L. R. 84 (1919) (prescribed standard too vague).

[5] Laughney v. Maybury, 145 Wash. 146, 259 P. 17, 54 A. L. R. 393 (1927); Modern System Dentists, Inc. v. State Board of Dental Examiners, 216 Wis. 190, 256 N. W. 922 (1934). But see Green v. Blanchard, 138 Ark. 137, 211 S. W. 375, 5 A. L. R. 84 (1919); Hewitt v. State Medical Board, 148 Cal. 590, 84 P. 39, 113 Am. St. Rep. 315, 3 L. R. A. (N. S.) 896, 7 Ann. Cas. 750 (1906) where the grounds for revocation as prescribed by statute were held too vague for enforcement.

[6] State ex rel. Mackintosh v. Rossman, 53 Wash. 1, 101 P. 357, 21 L. R. A. (N. S.) 821, 17 Ann. Cas. 625 (1909); Kelley v. Judge of Recorder's Court, 239 Mich. 204, 214 N. W. 316 (1927), noted 12 MINN. L. REV. 74 (1927). Regulation of legal advertising involves somewhat different policy considerations and has usually been regulated by bar associations.

[7] Thorpe v. Rutland & B. R. R., 27 Vt. 140, 62 Am. Dec. 625 (1855); Meffert v. State Board of Medical Registration, 66 Kan. 710, 72 P. 247, 1 L. R. A. (N. S.) 811 (1903), affd. in Meffert v. Packer, 195 U. S. 625, 25 S. Ct. 790 (1904); Manigault v. Springs, 199 U. S. 473, 26 S. Ct. 127 (1905). 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., p. 1237 (1927).

[8] Dr. Bloom, Dentist, Inc. v. Cruise, 288 U. S. 588, 53 S. Ct. 320 (1933); Kirk v. State, 126 Tenn. 7, 150 S. W. 83, Ann. Cas. 1913D 1239 (1911). Cf. Chenoweth

if the legislation is directed toward a real public interest, and the means adopted have a reasonable tendency to accomplish the desired end.[9] It does not seem unreasonable to say with the Supreme Court that the prohibition of the censured advertising in the Oregon statute will directly prevent fraud and imposition on the public and indirectly a demoralization of the dental profession.[10] The definitive character of the legislation will eliminate to a large degree the evils that might result from the administration of a sectarian board with a strong self-interest to protect.[11]

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v. State Board of Medical Examiners, 57 Colo. 74, 141 P. 132, 51 L. R. A. (N. S.) 958, Ann. Cas. 1915D 1188 (1913).

[9] State v. De Verges, 153 La. 349, 95 So. 805, 27 A. L. R. 1526 (1923); California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 26 S. Ct. 100 (1905); Otis v. Parker, 187 U. S. 606, 23 S. Ct. 168 (1903).

[10] As interpreted by the state supreme court the section in question was aimed at "bait advertising." Semler v. Oregon Board of Medical Examiners, 148 Ore. 50 at 58, 34 P. (2d) 311 (1934). The United States Supreme Court accepting this interpretation said (294 U. S. 608 at 612), "We do not doubt the authority of the State to estimate the baleful effects of such methods and to put a stop to them. The legislature was . . . dealing . . . with the vital interest of public health, and with a profession . . . demanding different standards of conduct from those which are traditional in the competition of the market place."

[11] In general, see comment 26 COL. L. REV. 472 (1926). A statute very similar to that of principal case was construed by Wisconsin Supreme Court in Modern System Dentists, Inc. v. State Board of Dental Examiners, 216 Wis. 190, 256 N. W. 922 (1934) to prescribe exclusive standards for unprofessional conduct with the state board to determine only what is and is not within the terms of the statute.