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Constitutional Law

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the law of North Carolina relating to the registration of motor vehicles. The court also said that in the absence of any proof that plaintiff held a certificate of title *under the law of the state of his residence*, the trial court correctly denied recovery.¹⁶

Procedure: Evidence

*McGlone v. Gompert*¹⁷ exemplifies the established doctrine that in a conflict of laws situation a question relating to the admissibility of evidence is regarded as procedural and governed by the *lex fori*.¹⁸ The problem in the *McGlone* case involved the question of whether certain communications between an attorney and his client were privileged.

As previously noted, *Austin v. River*¹⁹ also recognizes the principle that matters of proof are governed by the *lex fori*.

Receivership

In *State ex rel. Bohlinger v. Annat*²⁰ a New York insurance company had deposited bonds in Ohio in accordance with statutory requirements relating to the carrying on of business in the state. A domiciliary receiver was appointed in New York for the company, and he sought a writ of mandamus in Ohio directing the delivery of the bonds to him. The court held that he was entitled to the bonds and ordered the issuance of the writ.

FLETCHER R. ANDREWS

CONSTITUTIONAL LAW

Constitutional issues involving primarily the State Constitution loomed large in 1954 Ohio Court decisions.

Unlawful delegations of legislative power to administrative agencies in the state or municipal government occurred in several cases decided. A city ordinance authorizing the Director of Public Safety to designate certain street spaces, with the abutting landowners' consent, as taxicab stands for taxicabs exclusively authorized by the Director to park was held unconstitutional under the unlawful delegation of legislative power principle.¹ Also held unconstitutional as an unlawful delegation was Ohio Revised

¹⁶ The court of appeals remanded the case to the court of common pleas for a new trial in order to give plaintiff an opportunity to prove ownership of the tractor.

¹⁷ 112 F. Supp. 840, 67 Ohio L. Abs. 76 (N.D. Ohio 1953).

¹⁸ See RESTATEMENT, CONFLICT OF LAWS § 597 (1934).

¹⁹ 95 Ohio App. 400, 120 N.E.2d 133 (1953).

²⁰ 68 Ohio L. Abs. 453, 123 N.E.2d 71 (Franklin Com. Pl. 1954).

Code Section 3301.03 which provides that the Superintendent of Public Instruction can revoke the charter of a high school which fails to meet the standards prescribed by the Department of Education. The Superintendent acted only on recommendation of an advisory board. The unconstitutional feature lay in the failure of the General Assembly to fix the standards for classifying and chartering high schools or the standards for revoking their charters.²

The Ohio State Racing Commission, however, was held not to have been delegated unlawfully a legislative power where specific standards for guiding the horse racing operations were absent. A commission regulation had required race track permit holders whose daily average betting handle exceeded \$200,000 to use a particular type totalizator. Permit holders with less than a \$200,000 daily average handle could use any type totalizator. This rule was thus held constitutional not only under the delegation of legislative authority concept but also under the equal protection of the laws requirement and Article II, Section 26 of the Ohio Constitution, which provides that all legislation of a general nature be uniform throughout the state. It was impractical to set forth these standards and to do so would have defeated the legislative objective.³

A municipal income tax ordinance presented a problem in retroactivity and uniformity. Cincinnati's tax *levied* a one per centum tax on profits earned by corporations, businesses and professional men from April to October. Such taxpayers were, however, required to *pay* a tax of one per cent on 7/12ths of their net profits for the entire year. In effect, since the ordinance was passed February 10, 1954, taxpayers were required to pay on income received before passage. This retroactive operation was unconstitutional. Also invalid was the requirement of paying on seven months' income. Some taxpayers had more income in the seven months period; others less. Within the class, different rules applied. Article XII, Section 8, demanding that income taxes be either uniform or graduated was not satisfied.⁴

Two cases involving election provisions of the Ohio Constitution were decided last year. First Article IV, Section 13, which denies an election to fill the vacancy in an unexpired judicial term when the term ends within the year immediately following the general election, was held in full force and effect and not repealed by implication with the 1947 amendment to Article

¹ Dayton v. Hickie, 122 N.E.2d 40 (Montgomery Com. Pl. 1955).

² High School Bd. in Dep't of Education v. Bd. of Education, 96 Ohio App. 429, 122 N.E.2d 192 (1953).

³ Standard "Tote" Inc. v. Ohio State Racing Comm'n, 68 Ohio L. Abs. 19, 121 N.E.2d 463 (Franklin Com. Pl. 1954).

⁴ Clark v. Cincinnati, 54 Ohio Ops. 200, 121 N.E.2d 834 (Hamilton Com. Pl. 1954).

XVII, Section 2. This amendment provides for the filling of a vacancy for the unexpired term at the next general election held more than 30 days after the vacancy occurred.⁵ Second, the petition requirements for a Probate judge candidate under Revised Code Section 3513.256 were seven per cent of the total gubernatorial vote in the last election or 2500 electors, whichever was less in counties with a population of 1,000,000 persons or more. This statute is unconstitutional because it violates the requirement that all laws of a general nature have a uniform operation throughout Ohio.⁶

The important procedure of properly raising a constitutional issue was discussed from two different viewpoints last year. The supreme court acknowledged that any citizen who has an interest in his state government has legal capacity to seek a writ of prohibition to require that a public official perform or refrain from performance of a public duty which affects citizens generally.⁷

This same court in a prior case considered a constitutional issue when it had not been raised in the lower courts. A significant difference occurs between the Uniform Dependent's Act as adopted in Ohio and Pennsylvania. Ohio provides that no person shall furnish a parent food, care, or maintenance where that parent has abandoned the person when a child. Pennsylvania has no such provision. An Ohio citizen was sued by his father, who had abandoned him, to get support in Ohio under reciprocal arrangement provided by the law. Recovery was denied even though the father claimed rights in accordance with the Pennsylvania law. The supreme court held such to be a denial of equal protection of the law.⁸ The dissent contended this constitutional issue had never been raised in the lower courts so the court was constrained not to decide it.

A far reaching decision involving the supreme court's original jurisdiction under the Ohio Constitution was handed down in 1954. Article IV, Section 2 of the state constitution grants original jurisdiction in the supreme court for quo warranto, mandamus, habeas corpus, prohibition and procedendo. As an added precaution there is also included in this section: "No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court." In *State ex rel Allied Wheel Products, Inc. v. Industrial Commission*,⁹ the court denied an original mandamus action stating that since mandamus issuance is discretionary and since the common pleas court and court of appeals also have original jurisdiction, the supreme court will refuse mandamus ordinarily

⁵ *State ex rel. Davis v. Brown*, 161 Ohio St. 346, 119 N.E.2d 277 (1954).

⁶ *State ex rel. Newell v. Brown*, 162 Ohio St. 147, 122 N.E.2d 105 (1954).

⁷ *Ibid.*

⁸ *Pennsylvania v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32 (1954).

⁹ 161 Ohio St. 555, 120 N.E.2d 421 (1954).

where the relator's action is primarily for the enforcement or protection of a purely private right. The court contended it was not making a rule which violated the express protection of the original jurisdiction in the constitution. At least one writer takes strong exception to this contention.¹⁰

Minority groups were involved in constitutional cases of novel character this past year. A Communist defendant was convicted on two counts of using a false name to obtain an automobile certificate of title. The trial court sentenced him to two indeterminate sentences from six months to five years to run consecutively and not concurrently. This arrangement was held to be an abuse of the judge's discretion. The only basis for the consecutive order appeared to be because a Communist was involved. Communists are also entitled to "even-handed justice," the supreme court held.¹¹ Then a common pleas court granted a permanent injunction to restrain an amusement park from refusing admission to members of the National Association for the Advancement of Colored People, whether they be white or Negro. The defendant corporation which owned and operated the park had rented it to a private organization which instructed the defendant to keep out NAACP members. Previously such members had displayed disorderly conduct in the park; nevertheless they could not be banned from admission under the Ohio Civil Rights Act, Ohio Revised Code, Sections 2901.35 and 2901.36.¹²

Many rules for statutory interpretation to preserve the constitutionality of the statute have been pronounced. Last year the supreme court chose to interpret the Workmen's Compensation statute to prevent an "inhumane" effect from resulting. In this manner the constitutional validity of the statute was preserved.¹³

Each year a number of Ohio decisions simultaneously involve the federal and state constitutions. The year 1954 was no exception. Occasionally the courts leave in doubt which charter—the Ohio or United States Constitution—is being expressly involved or whether both are. All these cases involve the broad field of human rights.

In the substantive constitutional law area are found the following cases in 1954. The supreme court sustained a municipal zoning ordinance which barred strip mining in residential areas. A coal company leased land for strip mining operation; tests were in progress to determine the advisability of strip mining; no coal had yet been removed. At this stage the electorate

¹⁰ Shuler, *State ex rel. v. Industrial Commission: A Constitutional Issue*, 25 Cleveland Bar Assoc. J. 187 (1954).

¹¹ *State v. Hashmall*, 160 Ohio St. 565, 117 N.E.2d 606 (1954).

¹² *Fletcher v. Coney Island, Inc.*, 121 N.E.2d 574 (Hamilton Com. Pl. 1954).

¹³ *State ex rel. Nemeth v. Industrial Commission*, 161 Ohio St. 179, 118 N.E.2d 541 (1954).

adopted the zoning ordinance prohibiting such mining in residential areas. The constitutional issues which the coal company presented — impairment of the lease contract, unreasonable zoning classification, retroactive legislation — were struck down. The court stated that the use of the land by the company had not been enough to become a non-conforming use when the zoning ordinance was adopted, so the ordinance constitutionally can prohibit strip mining.¹⁴

Courts of appeals were also busy with substantive constitutional law last year. They upheld the right of a municipality to refuse to issue a sewer connection permit until an increased connection charge was paid. The lot owner was seeking to improve his property after the sewer assessment was passed. The ordinance required an increased charge for this endeavor. Such classification was proper; it was not a denial of equal protection of the laws. The class members had actual similarity and the classification has reasonable and logical relation to the objective to be accomplished.¹⁵ A municipality can also constitutionally provide for fluoridation of its water supply for dental health purposes. The police power permits such action overcoming such constitutional objections as the violation of a person's religious freedom, his right to be free from medical experimentation, and his liberty to protect his own personal health.¹⁶ Also, a city may enforce the "Sunday closing" law against local businesses as a valid public welfare measure. Evidence that other businesses were violating the prohibition against Sabbath business was properly rejected in this prosecution without denying the accused equal protection of the laws.¹⁷

A prosecution under an ordinance prohibiting the operation of a motor vehicle while under the influence of intoxicating liquor was attacked as violating Article I, Sections 1 and 16 [sic] of the Ohio Constitution, the inalienable right to liberty and due process requirement, as well as the due process clause of the Fourteenth Amendment of the United States Constitution. Since operation of a motor vehicle is a privilege and not an inalienable or natural right, restrictions on the use of the automobile are constitutional. Failure of the ordinance to provide a measure of what "influence of intoxicating liquor" means was also not invalid. This phrase does not mean a minute consumption of liquor but by court interpretation has acquired certain standards which satisfy the due process clauses of the federal and state constitutions.¹⁸

¹⁴ *Smith v. Juillerat*, 161 Ohio St. 424, 119 N.E.2d 611 (1954).

¹⁵ *State ex rel. Stoeckle v. Jones*, 121 N.E.2d 922 (Ohio App. 1953).

¹⁶ *Kraus v. Cleveland*, 121 N.E.2d 311 (Ohio App. 1954). For greater detail of the constitutional issues see the common pleas court's opinion in 116 N.E.2d 779 (1953).

¹⁷ *State v. Haase*, 116 N.E.2d 224 (Ohio App. 1953).

¹⁸ *Columbus v. Mullins*, 118 N.E.2d 178 (Ohio App. 1953).