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Financial Responsibility Law--Unconstitutionality of Security Provision

Michael Dean Rose

FINANCIAL RESPONSIBILITY LAW — UNCONSTITUTIONALITY OF SECURITY PROVISION

People v. Nothaus, 363 P.2d 180 (Colo. 1961)

In *People v. Nothaus*[1] the defendant was tried and convicted for driving while his operator's license was under suspension. The Colorado Director of Revenue had suspended the defendant's license upon his failure to deposit post-accident security following his involvement in an accident resulting in damage to personal property. Under the Colorado Safety Responsibility Law, the Director of Revenue was required to suspend the license of each operator involved in an accident unless the driver deposited security ". . . sufficient in the judgment of the director to satisfy any judgments for damages resulting from such accident as may be recovered against such operator. . . ."[2] On appeal the Supreme Court of Colorado held this provision of the statute unconstitutional on the ground that the suspension of a license without a hearing upon failure to deposit security deprived the individual of his property and liberty without due process and was an unreasonable exercise of the state's police power.[3]

The provision declared unconstitutional is a part of the Uniform Safety Responsibility Law.[4] Similar statutes have been enacted in at least forty-three other states.[5] Such statutes have been attacked in at least eleven of these states and in every instance have been held constitutional.[6] The fundamental reasons set forth in these decisions, asserting that such a provision is valid, are that a license is a mere privilege, not a property right, and that the statute authorizing a summary proceeding is justified by a compelling public interest and therefore is a reasonable exercise of the state's police power.

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1. 363 P.2d 180 (Colo. 1961).

2. COLO. REV. STAT. ANN. § 13-7-7 (1953).

3. People v. Nothaus, 363 P.2d 180, 182-83 (Colo. 1961). The two dissenting justices reasoned that since the legislature may require insurance or other security as a condition precedent to the right to operate a motor vehicle on the highway, it follows that such compulsion may be limited to depend upon contingencies such as involvement in an accident. Furthermore, the dissent pointed out that in every instance in which similar statutes have been attacked on identical constitutional grounds the statutes have been held constitutional. See Franklin v. Scurlock, 272 S.W.2d 62 (Ark. 1954); Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Doyle v Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Sharp v. Dep't of Pub. Safety, 114 So. 2d 121 (La. Ct. App. 1959); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938); Berberian v. Lussier, 139 A.2d 869 (R.I. 1958); Gillaspie v. Dep't of Pub. Safety, 152 Tex. 459, 258 S.W.2d 177 (1953); State v. Stehlek, 262 Wis. 642, 56 N.W.2d 514 (1953).

4. See UNIFORM VEHICLE CODE ch. 7 (1954).

5. Comment, *The Louisiana Motor Vehicle Safety Responsibility Act*, 27 TUL. L. REV. 341, 344 n.15 (1953). Section 4509.12 of the Ohio Revised Code, like the Colorado statute, provides for a security deposit, but apparently the statute has not been attacked on the basis of unreasonable exercise of the state's police power.

6. Cases cited note 3 *supra*.

The Colorado Supreme Court, however, held that a license to operate a motor vehicle *is* a property right. The court stated that the term "property," within the meaning of the due process clause, includes the right to make use of the designated property which under the Colorado Constitution all persons have an inalienable right to acquire.[7]

Yet the great weight of authority is that driving is a privilege and that a license is a manifestation of the terms of the grant.[8] In other words, the state confers merely a privilege when it grants a driver's license, which the citizen is at liberty to accept or refuse as he pleases. Acceptance, however, does not vest him with a property right.[9] This view is so well accepted that it is unlikely to be modified in the foreseeable future.

The Colorado Supreme Court's reasoning regarding "liberty" under the due process clause was more thorough than its treatment of "property" rights under the due process clause. The court held that every citizen has full freedom to travel the public highways of the state in the enjoyment of liberty within the meaning of the fourteenth amendment.[10] This view has gained the favor of several courts in recent years.[11] Its basis is well reasoned and sound. Today the use of the automobile is a necessary adjunct to the earning of a livelihood. The term "liberty" within the meaning of the fourteenth amendment has been recognized to include the right to be free from unreasonable interference in the pursuit of a livelihood.[12] Therefore, viewing the use of an automobile as a "liberty," it actually becomes unnecessary to consider whether or not a license to operate a motor vehicle is a privilege or a property right. To assert one's right to operate such a vehicle under the fourteenth amendment, one need only allege that such a right is a "liberty."

The court further held that the immediate suspension of an operator's license upon failure to post security was not a valid exercise of the police power of the state. Apparently the sole purpose of the security provision

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7. COLO. CONST. art. II, § 3.

8. Rietz v. Mealey, 314 U.S. 33 (1941); Muntz v. Harnett, 6 F. Supp. 158 (S.D.N.Y. 1933); Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); De Vries v. Alger, 329 Mich. 68, 44 N.W.2d 872 (1950); Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938); Gafford Trucking Co. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (Sup. Ct. 1935); Ragland v. Wallace, 80 Ohio App. 210, 70 N.E.2d 118 (1946); Commonwealth v. Funk, 323 Pa. 390, 186 Atl. 65 (1936); La Planta v. State Board of Pub. Roads, 47 R.I. 258, 131 Atl. 641 (1926). *Contra,* Thompson v. Smith, 155 Va. 367, 154 S.E. 579 (1930).

9. Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938).

10. The doctrine that the freedom to make use of one's own property, such as a motor vehicle, as a means of getting from place to place is a "liberty" within the meaning of the fourteenth amendment has been relatively unexplored by the courts. *But see* Wall v. King, 206 F.2d 878 (1st Cir. 1953); Thompson v. Smith, 155 Va. 367, 154 S.E. 579 (1930).

11. Wall v. King, 206 F.2d 878 (1st Cir. 1953); Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Berberia v. Lussier, 139 A.2d 869 (R.I. 1958).

12. Allgeyer v. Louisiana, 165 U.S. 578 (1897); Wall v. King, 206 F.2d 878 (1st Cir. 1953.

of the Colorado statute was to insure that a private person would be indemnified for any injury resulting from a motor vehicle accident caused by another individual. Such indemnification was for a purely private obligation. There was no correlation betwen the carelessness of the driver and the posting of the security. Furthermore, once the individual posted the security he was permitted to drive again, careless or not, even though he might not be able to post further security if involved in a subsequent accident. Thus, in the view of the Colorado court, there was no compelling public interest which could justify the legislature in authorizing a summary proceeding, as provided by the statute, since the only protection afforded was to an individual and not to the public.[13]

In those cases in which the security provision has been unsuccessfully attacked, the courts have assumed that revocation of the license for failure to deposit the security is a valid exercise of the state's police power.[14] These courts simply reason that the security requirement furnishes an added protection to the public and better assures safety on the highway. But what these courts fail to appreciate is that the security is to be applied only for the benefit of the person injured. This is not the situation where, as in some states, public liability insurance is required as a condition to be met before a driver's license is issued. Such statutes clearly protect the public. Compensation is assured before the injury occurs. But the courts which have reasoned that the *public* is protected by a post-accident security deposit state the conclusion without considering this distinction.

People v. Nothaus is significant in that the court closely examined the security requirement of the Uniform Financial Responsibility Law and found it to be an improper exercise of the state's police power. The decision seems sound, for the security provision does not appear to be correlated with the protection of the public safety, health, morals, or welfare.

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13. In Colorado remedial legislation to provide due process of law as required by the Supreme Court's opinion in *People v. Nothaus* is being considered by members of the legislature. Letter From Jim R. Carrigan, Colorado Judicial Administrator, to the *Western Reserve Law Review*, October 19, 1961, on file in the Western Reserve University Law Library.

14. Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Sharp v. Dep't of Pub. Safety, 114 So. 2d 121 (La. Ct. App. 1959); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Rosenblum v. Griffin, 89 N.H. 314, 197 Atl. 701 (1938); Berberian v. Lussier, 139 A.2d 869 (R.I. 1958).