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Administrative Law--Liquor Control--Permits within 500 Feet of a Church

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exceptions have been made by a few courts to allow the substantive statute of limitations to be suspended. In *Frabutt v. New York, Chicago, and St. Louis Railway,*[16] the statute of limitations was suspended in an action between citizens of countries at war. Once more the dictum supported the general rule, but an exception was made, allowing the action to be brought, because of the facts of the case. In *Scarborough v. Atlantic Coast Line Railroad,*[17] plaintiff delayed filing suit upon defendant's assurance that he would lose none of his rights under the FELA. Defendant was later estopped from pleading the statute of limitations. Pointing out that there "is no inherent magic in these words (substantive and remedial),"[18] the court refused to accept the idea that there should be any difference between the two types of limitations in respect to the application of estoppel.

In the instant case, the Supreme Court refused to follow the rule that substantive statutes of limitation cannot be defeated by estoppel. Apparently, this rule is now dead, at least with regard to cases under the FELA. The Court felt that the equitable maxim that "no man may take advantage of his own wrong" was of greater importance than any fine technical distinction between types of limitations. The Supreme Court felt that the spirit and not the letter of the law should control. The Court also felt it was clear that Congress did not intend for employers to avoid liability by delaying tactics such as alleged by plaintiff.[19]

The Supreme Court has thus destroyed what has been justly called a legalistic and narrow distinction.[20] The decision in the *Glus* case is in keeping with the principle that "statutes should receive a sensible construction, such as will effectuate the legislative intention and if possible, so as to avoid an unjust or absurd conclusion."[21] The Court has taken a laudable step toward allowing the FELA to operate unhindered by fine legal distinctions.

REESE TAYLOR

ADMINISTRATIVE LAW — LIQUOR CONTROL — PERMITS WITHIN 500 FEET OF A CHURCH

A restaurant applied to the Ohio Department of Liquor Control for a D-5 permit to sell beer and any intoxicating liquor at its place of business. The First Church of the Nazarene stood on a site three hundred and twenty-five feet from the restaurant and, pursuant to the provision

16. 84 F. Supp. 460 (S.D. Pa. 1949).
17. 178 F.2d 253 (4th Cir. 1949), *cert. denied,* 339 U.S. 919 (1950).
18. *Id.* at 259.
19. 359 U.S. at 234.
20. Maryland, to Use of Burkhardt v. United States, 165 F.2d 869 (4th Cir. 1947).
21. Lau Ow Bew v. United States, 144 U.S. 47 (1891).

of section 4303.26 of the Ohio Revised Code, was notified of the permit application. The objections made by the church to the permit application were based primarily on moral convictions against consuming intoxicating liquors and a fear of depreciation of the value of the church property if a permit were issued. The Director of Liquor Control finding these objections to be well-founded refused to issue the permit.

An appeal was taken to the Board of Liquor Control which, by a divided vote, affirmed the order of the director. The case was appealed to the Supreme Court of Ohio where the judgment was reversed and the cause remanded to the Director of Liquor Control with instructions to issue the requested permit.[1] The court based its decision on the ground that the objection of the church was "not sufficient, in itself, to provide the quantum of evidence required to support the denial by the director of the requested permit."[2]

The decision in *Corwin v. Board of Liquor Control* turned on the questionable interpretation of section 4303.26 of the Ohio Revised Code which provides in part as follows:

> No permit shall be issued by the department if the business specified in the permit applied for is to be operated within five hundred feet from the boundaries of a parcel of real estate having situated thereon a school, church, library, or public playground, until written notice of the filing of said application with the department has been personally served upon the authorities in control of said school, church, library, or public playground and an opportunity provided said authorities for a complete hearing before the Director of Liquor Control upon the advisability of the issuance of the said permit. . . .

Prior to this case the supreme court had never been faced with the problem of interpreting this section of the statute. Numerous lower courts had considered the issue and had held that the fact of a church being within five hundred feet of a proposed permit location constituted, per se, substantial and probative evidence to support the denial of a permit.[3] In such cases a church was required to do no more than object in order to prevail. Such an approach was thought to be in accord with sound public policy.[4]

However, as a result of the *Corwin* case, all such thinking and interpretations are cast aside. According to the supreme court:

> . . . a mere objection by the authorities in control of a church, school, library, or playground within 500 feet of proposed permit premises to

1. Corwin v. Board of Liquor Control, 170 Ohio St. 304 (1960).

2. *Id.* at 310.

3. Currier v. Board of Liquor Control, 150 N.E.2d 475 (Ohio Ct. App. 1957); Mullins v. Board of Liquor Control, 139 N.E.2d 870 (Ohio Ct. App. 1954); Codic v. Board of Liquor Control, 98 Ohio App. 388, 129 N.E.2d 650 (1953); Hermelin v. Board of Liquor Control, 120 N.E.2d 471 (Ohio Ct. App. 1953); Hanigosky v. Board of Liquor Control, 144 N.E.2d 351 (Ohio C.P. 1956).

4. Kroger v. Krebs, 139 N.E.2d 867 (Ohio Ct. App. 1953).