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Constitutional Law -- Bookie Wire Law Within the Police Power of the State and Not an Undue Burden on Interstate Commerce

CASES NOTED

CONSTITUTIONAL LAW — BOOKIE WIRE LAW WITHIN THE POLICE POWER OF THE STATE AND NOT AN UNDUE BURDEN ON INTERSTATE COMMERCE

Plaintiff filed a bill for a declaratory decree to secure a judicial determination of the validity of the newly enacted "Bookie Wire Law."[1] This statute regulates the lease and use of private wires by telephone and telegraph companies and declares it unlawful for any public utility to knowingly furnish to any person a private wire for the use, or the intended use, of disseminating information in the furtherance of gambling. The plaintiff maintained that the Federal Government by the passage of the Federal Communication Act[2] had pre-empted the regulation of such companies and that this act passed by the State of Florida was an unconstitutional burden on interstate commerce. The trial court granted the defendant's motion to dismiss. On appeal, *held*, that the statute was not in conflict with the power of the Federal Government over interstate commerce[3] and was within the police power of the state. Judgment affirmed. *McInerey v. Ervin*, (Fla. March 21, 1950).

The Supreme Court in *Cooley v. Board of Wardens*[4] held that the Constitutional grant of power to Congress to regulate interstate commerce[5] was not plenary and did not completely prohibit state regulation of this field. Rather, in the absence of congressional enactments, a state may regulate matters of local concern even though the commerce among the states may be inadvertently affected.[6] However, where Congress has acted under the commerce clause, any inconsistent state laws become inoperative.[7] Nevertheless, even in the face of federal enactments, a state may act where the specific problem sought to be controlled is left ungoverned by the national provisions.[8] So where the Food and Drug Act[9] prohibited the sale in interstate commerce of adulterated foods, a state was still free to prevent the exportation of immature citrus fruits, since the act had neglected to cover this subject.[10] The absence of a federal rule may in some cases be

1. Fla. Laws 1949, c. 25106, § 2.
2. 48 STAT. 1064 (1934), 47 U.S.C. § 151 (1946).
3. U. S. CONST. Art. 1, § 8, cl. 3.
4. 12 How. 299 (U.S. 1851).
5. See note 3 *supra*.
6. California v. Thompson, 313 U.S. 109 (1941).
7. Gibbons v. Ogden, 9 Wheat. 1 (U.S. 1824).
8. Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947).
9. 34 STAT. 768 (1906), *as amended*, 21 U.S.C. § 342 (1946).
10. Sligh v. Kirkwood, 237 U.S. 52 (1915).

an expression of a congressional desire for a state to enter the field.[11] Moreover, in a recent case the Court seemingly granted to a state the right to act under its police power even when Congress had entered the field, when such action was merely complementary or supplementary to the congressional regulation and did not conflict with the federal legislation.[12]

Although Congress has the power to regulate the transmission of telephone and telegraph messages over state lines as interstate commerce,[13] the Court has upheld state regulations that impose penalties on communication companies for the failure to meet certain prescribed duties already owed to the public.[14] A telephone or telegraph company is duty bound to refuse to render services,[15] or to discontinue them[16] when such services contribute to, or facilitate, gambling operations. Therefore, merely conducting these activities under the guise of interstate commerce does not hinder the power of a state in its efforts to protect the morals and welfare of the public.[17] In reality, a statute such as this affects commerce only to the extent that it deprives those employed in its violation of the fruits obtained from paving the way for unlawful enterprises.[18]

The mere creation of a federal agency and granting to it the right to control commerce does not in itself interfere with state regulation conducive to the public well-being.[19] The state's power to control the use of private wires should be circumscribed only when Congress acts to make this a matter of national concern or future events prove this to be a field demanding uniform federal regulation.

CONSTITUTIONAL LAW — FREEDOM OF SPEECH

Defendant was convicted by a New York Magistrate's Court for conducting a religious meeting on the public streets without a permit.[1] He had previously been issued a permit, which later was revoked after a hearing before the police commissioner wherein complaints were presented and proven that defendant had aroused animosity by violently

11. The Minnesota Rate Cases, 230 U.S. 352 (1912).
12. California v. Zook, 336.U.S.725 (1949), 4 MIAMI L.Q. 106.
13. Western Union Tel. Co. v. Speight, 254 U.S. 17 (1920).
14. Western Union Tel. Co. v. Crove, 220 U.S. 364 (1911); Western Union Tel. Co. v. Commercial Milling Co., 218 U.S. 406 (1910); Western Union Tel. Co. v. James, 162 U.S. 650 (1890).
15. Andrews v. Chesapeake & Potomac Tel. Co., 83 F. Supp. 966 (D. D.C. 1949).
16. Hamilton v. Western Union Tel. Co., 34 F. Supp. 928 (N.D. Ohio 1940).
17. State v. Stripling, 113 Ala. 120, 21 So. 409 (1897).
18. State v. Harbourne, 70 Conn. 484, 40 Atl. 409 (1897).
19. Missouri, Kansas & Texas Ry. v. Harris, 234 U.S. 412 (1914).

1. ". . . Any clergyman or minister of any denomination . . . may conduct religious services . . . in any public place or places specified in a permit therefor which may be granted and issued by the police commissioner. . . ." ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, § 435-7.0.