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Constitutional Law - Right to Wages While Voting

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CASE NOTES

CONSTITUTIONAL LAW–RIGHT TO WAGES WHILE VOTING

Defendant was convicted of violating a Missouri statute[1] permitting an employee to absent himself from work for four hours, without a deduction of wages, for the purpose of voting at a general election. The employee's working hours were from 8:00 A.M. to 4:30 P.M. and his salary was based on an hourly wage. Defendant permitted employees to leave work at 3:00 P.M.;[2] however, such employees were only paid for the actual time they worked. In affirming the defendant's conviction by an eight to one decision, the United States Supreme Court held that the statute did not violate the due process and equal protection clauses of the Fourteenth Amendment or the contract clause of the Federal Constitution.[3] *Day-Brite Lighting, Inc. v. Missouri*, 72 S. Ct. 405 (1952).

The nation's highest Court considered this statute to be in the form of a minimum wage requirement, saying that although the purpose of the statute differed from minimum wage legislation insofar as it did not tend to protect the health and morals of the citizen, the Missouri legislature intended to safeguard the right of suffrage by the exercise of police power, which includes "political well-being." Prior decisions, said the court, have held that the police power is to apply to all public needs which gives the states power to legislate in the business-labor field within the broad limits of specific constitutional prohibitions.

[1] "Any person entitled to vote at any election in this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of four hours between the times of opening and closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty; . . . Any person or corporation who shall refuse to any employee the privilege hereby conferred, . . . or shall cause any employee to suffer any penalty or deduction of wages because of the exercise of such privilege . . . shall be deemed guilty of a misdemeanor. . . ." Mo. Rev. Stat. (1949) c. 129, § 060, formerly Mo. Rev. Stat. (1897) § 11785. Arizona, California, Illinois, Indiana, Iowa, Kansas, Minnesota, Nebraska, New Mexico, New York, Ohio, South Dakota, Texas, West Virginia, and Wyoming have similar statutes; Colorado and Utah allow no dockage unless the employee is paid by the hour. Six states authorize the absence of employees on election day but do not provide for payment of wages.

[2] The Missouri Court of Appeals held that the employee is not to be allowed a full four hours leave of absence, but should only be allowed to leave his place of employment at such time that he is assured four hours to vote. Since the polls were open from 6:00 A.M. to 7:00 P.M., the defendant was correct in permitting the employees to leave at 3:00 P.M. State v. Day-Brite Lighting, 220 S.W. 2d 782 (Mo. App., 1949).

[3] U.S. Const. Art. 1, § 10.

Justice Jackson, dissenting in the instant case, expressed the belief that this statute should not have been compared to minimum wage legislation; the mere fact that a state may compel payment of a wage for hours worked does not give it power to compel payment for hours not worked.

Besides the Missouri decision which was affirmed in the principal case, only a few states have decided the constitutionality of similar legislation. New York held such a statute to be constitutional[4] while Illinois[5] and Kentucky[6] declared unconstitutional that portion of the statute requiring the employer to pay the employee his wages while voting.

The Missouri court[7] was of the opinion that the legislature intended to secure free and open elections by requiring the employer not only to permit the employee to have an opportunity to vote, but also to exercise this right without a penalty or deprivation of wages. This legislative intent to prevent an employer's dominion over an employee's right to vote was considered, as *People v. Ford Motor Co.*[8] previously held, a furtherance of public welfare.

The Illinois case of *People v. Chicago, M. and St. P. Ry. Co.*,[9] decided in 1923, was the first case to construe a statute similar to the one in question. The court held that part of the statute requiring an employer to pay an employee for exercising his right to vote to be an improper exercise of police power because the statute was not regarded as one which promoted the health and safety of any employee. Since the employer delivered his property to the employee without justification or compensation, the court concluded that the former was deprived of such property without due process of law.

A Kentucky case, *Illinois Cent. R. Co. v. Commonwealth*,[10] expressly followed the *Chicago, M. and St. P. Ry.* case in declaring a similar statute unconstitutional. The court held that the statute required the employer group, rather than the general public, to maintain the public enterprise of voting. Since the law does not sanction public maintenance of private enterprise, neither should it necessitate private maintenance of a public enterprise.

[4] People v. Ford Motor Co., 271 App. Div. 141, 63 N.Y.S. 2d 697 (1946). A superior court of California has also declared a similar statute constitutional in Ballarini v. Schlage Lock Co., 226 P. 2d 771 (Super. Ct., Calif., 1950), but this case has not been reviewed in a higher court.

[5] People v. Chicago, M. and St. P. Ry. Co., 306 Ill. 486, 138 N.E. 155 (1923). Accord: McAlpine v. Dimick, 326 Ill. 240, 157 N.E. 235 (1927).

[6] Illinois Cent. R. Co. v. Commonwealth, 305 Ky. 632, 204 S.W. 2d 973 (1947), cert. denied 334 U.S. 843 (1948). Accord: International Shoe Co. v. Commonwealth, 305 Ky. 636, 204 S.W. 2d 976 (1947).

[7] State v. Day-Brite Lighting, 240 S.W. 2d 886 (Mo., 1951).

[8] 271 App. Div. 141, 63 N.Y.S. 2d 697 (1946).

[9] 306 Ill. 486, 138 N.E. 155 (1923).

[10] 305 Ky. 632, 204 S.W. 2d 973 (1947).

The dissenting opinion in the *Ford Motor* case stated that the statute did not require the employer to contribute funds for the benefit of the general public but merely to enrich private individuals who give nothing in return.

The problem involved in construing the "pay-as-you-vote" statutes is whether the statute was enacted within the purview of a state's police power. In the exercise of police power, the statute must be passed for the protection of public welfare;[11] this means that the legislature must protect the public interest generally, not a particular class specifically.[12]

Before the principal decision, the proponents of the statute in question claimed that it would aid public morals. In reality, the statute may have had negative results as to the furtherance of these; a person should not enter the voting booth "feeling that he is an employee in his master's service and on the payroll at the time he is doing that which he should only do as a citizen."[13] Therefore, if the statute did not increase the public morals, public welfare ceased to be the object of such legislation, and, as the Illinois and Kentucky cases have held, the statute resulted in an improper exercise of police power.

However, in the principal case, the Court seems to depart from prior judicial determination of the problem through an examination of the statute's effect on public morals. The Court states, "... the purpose of the legislation ... is not the protection of the health and morals of the citizen."[14] In approaching the problem, the Court reasoned:

> The public welfare is a broad and inclusive concept. The moral, social, economic, and physical well-being of the community is one part of it; the political well-being, another. The police power which is adequate to fix the financial burden for one is adequate for the other.[15]

Justice Jackson, in a satirical manner, stated:

> I do not question that the incentive which this statute offers will help swell the vote; to require that employees be paid time-and-a-half would swell it still more and double-time would do even better. . . . Perhaps some plan will be forthcoming to pay the farmer by requiring his mortgagee to rebate some proportion of the interest on the farm mortgage if he will vote.[16]

However, Jackson goes further than mere satire for he considers getting out the vote to be the voter's or the state's business, not the employer's.

It is interesting to note that the statute in question was passed in 1897, at

[11] Hertz Drivurself Stations v. Siggins, 359 Pa. 25, 58 A. 2d 464 (1948).

[12] Lawton v. Steele, 152 U.S. 133 (1894).

[13] Dissenting opinion of Justice Vandeventer in State v. Day-Brite Lighting, 240 S.W. 2d 886, 901 (Mo., 1951).

[14] Day-Brite Lighting, Inc. v. Missouri, 72 S. Ct. 405 (1952).

[15] Ibid., at 408.

[16] Ibid., at 409.

a time when the average worker labored from ten to sixteen hours per day. The average worker today is employed eight hours a day while the polls are usually open from ten to fourteen hours. Therefore, modern working conditions coupled with the increased speed of transportation seem to antiquate the practical necessity for the type of legislation involved.

The probable effect of upholding the constitutionality of "pay-as-you-vote" statutes will be to increase the number of voters.[17] But the success of an enticement to vote does not seem to justify putting its cost on some other citizen.

PUBLIC LAW—ILLINOIS LIQUOR CONTROL ACT CREDIT RESTRICTIONS

The plaintiffs, Max Weisberg, a retail liquor dealer, and Stag Beer Corporation, an Illinois wholesale beer distributor, brought suit against the Illinois Liquor Control Commission seeking a declaratory judgment that the Illinois statutory prohibition on the sale of liquor on credit was unconstitutional.[1] On appeal by plaintiff Weisberg only, the Illinois Supreme Court upheld the constitutionality of the statute complained of. *Weisberg v. Taylor*, 409 Ill. 384, 100 N.E. 2d 748 (1951).

Plaintiff's main contention was that the credit provisions[2] of the Illinois Liquor Control Act were unreasonable and confiscatory in that they created an arbitrary and discriminatory classification against retail licensees in requiring them to buy beer for cash but permitting distributors to purchase the same on credit. The plaintiff asserted that such a class discrimination contravenes Section 2 of Article II[3] of the Illinois Constitution and

[17] In June, 1948, the United States Supreme Court refused certiorari for the Kentucky case which had struck down the "pay-as-you-vote" statute. The poor turnout of voters in the 1948 presidential election may have influenced the present decision in this presidential election year of 1952.

[1] Ill. Rev. Stat. (1949) c. 43, § 122.

[2] Ibid. The provisions of the statute pertinent to the constitutionality issues here involved are: (a) it is unlawful for any retailer to accept, receive, or borrow money or anything of value, or accept or receive credit from any manufacturer or distributor, except ordinary merchandising credit for a period not to exceed thirty days; (b) a retailer who is delinquent in his merchandising account for thirty days or more is forbidden from purchasing or acquiring alcoholic liquor, and a manufacturer or distributor is forbidden from knowingly granting or extending credit or selling alcoholic liquors to such delinquent dealers; (c) the purchase price of beer sold to a retailer must be paid in cash on or before delivery of the beer; (d) beer sold to distributors or importing distributors shall be paid for in cash on or before fifteen days after the delivery of the beer.

[3] Ill. Const. Art. 2, § 2: "No person shall be deprived of life, liberty or property, without due process of law."