DePaul Law Review

Volume 1
Issue 2 *Spring-Summer 1952*

Article 13

Public Law - Illinois Liquor Control Act Credit Restrictions

DePaul College of Law

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."

the Fourteenth Amendment to the Constitution of the United States.[4]

The courts of Illinois have been quick to assert that seemingly arbitrary statutory classifications in regard to the commerce of liquor are in fact reasonable classifications. Thus, as recently as the May term, 1950, the Supreme Court of Illinois, in *Baim v. Fleck*,[5] held that a statute requiring the use of a container with a minimum capacity of one fluid ounce at the time of sale did not create an arbitrary classification, even though the statute exempted from its provisions sales made on boats and railroad cars. This same court[6] upheld an ordinance denying a license to sell liquor at retail in grocery stores and meat markets but permitting such a license in other retail establishments.[7]

The Supreme Court of the United States has upheld a Michigan statute prohibiting the licensing of a female as a bartender unless she was the wife or daughter of the male owner of a licensed liquor establishment.[8] It has also upheld a Kentucky statute restricting liquor shipments to common carriers and prohibiting transportation of liquor by contract carriers.[9]

In the immediate case, the Illinois Supreme Court made no reference to the construction placed by other state courts on similar liquor control statutes. The court did cite one Massachusetts case[10] which stated that the general purpose for imposing such credit restrictions in liquor control acts was to avoid the evils which result from the control of retail liquor dealers by manufacturers, wholesalers, or importers through the power of credit.

In a recent Rhode Island decision,[11] the court had before it the question of the constitutionality of certain credit restriction rules imposed by the Rhode Island Liquor Control Administration in accordance with that state's Liquor Control Act.[12] These rules[13] are very similar to the credit

[4] U.S. Const. Amend. 14: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of the law; nor deny to any person within its jurisdiction the equal protection of the law."

[5] 406 Ill. 193, 92 N.E. 2d 770 (1950).

[6] Great Atlantic and Pacific Tea Co. v. Mayor of Danville, 367 Ill. 310, 11 N.E. 2d 388 (1937).

[7] Other Illinois cases also in point are: Village of Kincaid v. Vecchi, 332 Ill. 586, 164 N.E. 199 (1928); Tarantina v. Louisville and Nashville R. Co., 254 Ill. 624, 98 N.E. 999 (1912); People v. Harrison, 256 Ill. 102, 99 N.E. 903 (1912). But cf. City of Chicago v. Netcher, 183 Ill. 104, 55 N.E. 707 (1899).

[8] Goesaert v. Cleary, 335 U.S. 464 (1948).

[9] Ziffrin, Inc. v. Reeves, 308 U.S. 132 (1939).

[10] Sullivan v. Cann's Cabins, 309 Mass. 519, 36 N.E. 2d 371 (1941).

[11] Sepe v. Daneker, 76 R.I. 160, 68 A. 2d 101 (1949).

[12] Rhode Island Public Laws (1940) c. 814, § 8.

[13] Rhode Island Liquor Control Administration Rules, Rules 53, 54. In substance the rules provide that no alcoholic beverages shall be sold by any manufacturer or whole-

restriction provisions of the Illinois Liquor Control Act. The Rhode Island court upheld the constitutionality of both the statute and the rules, giving as its reasons: (1) that the privileges and immunities clause does not include the business of selling intoxicating liquor; (2) that there is no property right in a liquor license; (3) that the rules are not discriminatory because they apply to all retail licensees.

The Connecticut Liquor Control Act[14] provides that no permitee shall borrow money or receive credit from any manufacturer or wholesaler for a period in excess of thirty days. In *State v. Zazzaro*,[15] the statute was attacked as discriminatory. Readily admitting that the statute was discriminatory, the Supreme Court of Connecticut insisted that the discrimination was not unconstitutional. The court stated that a law which is uniform in its application is not rendered invalid merely because of the limited number of persons who will be affected by it.

The courts of the United States have always looked upon the liquor traffic as an evil to be tolerated but one to be strictly confined. In fact, from a study of the cases it seems that any act controlling liquor traffic will, except in rare circumstances,[16] be upheld as constitutional even though there is obvious class discrimination made in the statute. In almost any other field of commerce, such discrimination would be rejected as contravening the Fourteenth Amendment of the United States Constitution.[17]

In *Zukaitis v. Fitzgerald*,[18] a federal district court had before it a section of the Michigan Liquor Control Act[19] which provided that every sale of alcoholic liquor in state liquor stores and by specially designated distributors shall be for cash only. The act made no specific mention of credit restrictions in other relationships of the liquor industry, and thus to all appearances there was no arbitrary discrimination between classes. However, the Michigan court in this instance went one step further than the Illinois court; it held that the express provisions in the act as to retailers

---

saler to any retailer except for cash or on terms requiring payment by the purchaser within thirty days from the date of delivery, and that if the manufacturer or wholesaler knew that the retailer was in arrears for payment of alcoholic beverages, he could sell to such retailer for cash only.

[14] Conn. Gen. Stat. (1939) c. 89, § 968(e).

[15] 128 Conn. 160, 20 A. 2d 737 (1941).

[16] Johnson v. Yellow Cab Transit, 321 U.S. 383 (1944); State v. Jordan, 207 La. 78, 20 So. 2d 543 (1944); City of Chicago v. Netcher, 183 Ill. 104, 55 N.E. 707 (1899).

[17] State Board of Equalization of California v. Young's Market Co., 299 U.S. 59 (1936); State v. Wheelock, 114 Vt. 350, 45 A. 2d 430 (1946); Alexander v. Graves, 178 Miss. 583, 173 So. 417 (1937); Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 1 A. 2d 25 (S. Ct., 1938).

[18] 18 F. Supp. 1000 (S.D. Mich., 1936).

[19] Mich. Comp. Laws (1948) c. 436, § 16.

impliedly recognized an extension of credit in other relationships, and rendered void a regulation of the Michigan Liquor Control Commission which prohibited credit from a manufacturer to a wholesaler. The finding of such a "classification by implication" in the absence of an express classification by the legislature would seem to substantiate the argument that when the subject matter of the control is the liquor traffic, not only will the courts allow practically unlimited discretion to the legislature in curbing the traffic, but they will independently take affirmative steps to curb the liquor industry without much deliberation as to whether they are arbitrarily discriminating against certain classes.

It would seem then that plaintiff, Max Weisberg, in the instant case could not sustain a claim that the statute invaded the privileges and immunities clause of the Federal Constitution since the right to sell intoxicating liquor is not one of the privileges and immunities protected by the Fourteenth Amendment.[20] Also, since the right to a license to sell intoxicating liquor is not a fundamental right incident to citizenship,[21] he had no justification for calling on the equal protection clause of the Federal Constitution and Section 2 of Article II of the Illinois Constitution to enforce such a right.

The Supreme Court of Washington[22] has stated that the constitutionality of a liquor statute is scarcely debatable, the statute being but another form of regulation of the traffic in intoxicating liquors. This very reasoning, though it may seem harsh and radical, appears to represent the thinking of the United States courts today. A less stringent rule was laid down by a federal court[23] in a recent decision when it said that the state may impose more stringent provisions upon a person in the liquor business than against those engaged in other callings, but that this fact affords no justification for discrimination between those similarly situated who may be or may desire to become engaged in the calling of liquor.

If then, in the instant case, we take into account these general attitudes toward liquor control legislation, and the evils which result from the control of the retailer by the wholesale dealer through the power of credit, it seems clear that the imposition of such credit restrictions by the Illinois legislature is justified.

[20] State v. Wipke, 345 Mo. 283, 133 S.W. 2d 354 (1939); People v. Smith, 368 Ill. 328, 14 N.E. 2d 82 (1938).

[21] State v. Cummings, 178 Tenn. 378, 158 S.W. 2d 713 (1942); Wilkinson v. Murphy, 237 Ala. 332, 186 So. 487 (1939); O'Connor v. Rathje, 368 Ill. 83, 12 N.E. 2d 878 (1938).

[22] Lewer v. Cornelius, 72 Wash. 124, 129 Pac. 911 (1913).

[23] Glicker v. Michigan Liquor Control Commission, 160 F. 2d 96 (C.A. 6th, 1947).