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# Constitutional Law -- Power of Administrative Officer to Revoke Driver's Permit -- Personal Fitness as Test

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### Constitutional Law—Power of Administrative Officer to Revoke Driver's Permit—Personal Fitness as Test

In a recent Virginia case a portion of an ordinance authorizing the chief of police to revoke the permit of any driver who "in his opinion" becomes unfit to drive was held void, since it failed to lay down any rule determining the fitness of the driver, and thereby delegated a power of arbitrary discrimination to the officer.<sup>1</sup>

The broad principle covering this type of cases is that an ordinance which vests arbitrary discrimination in an officer with respect to the practicing of an ordinary lawful business without preserving a uniform rule of action is unconstitutional.<sup>2</sup>

The decisions are by no means uniform as to what constitutes a sufficient rule of action. Any attempt to determine the sufficiency of the rule by reference to the words employed will result in hopeless confusion. However it has been held that when a general delegation of the power of determination follows specific delegations on the same subject the latter should be construed as limited to the field of the former;<sup>3</sup> also if the courts decide that a more detailed rule would tend to confuse rather than enlighten the officer, they will consider this as a factor favoring the sufficiency of the rule as laid down.<sup>4</sup> The courts themselves recognize the impracticability of reference to the wording alone as a standard, especially where personal qualifications are involved.<sup>5</sup> As a result they tend to uphold a seemingly arbitrary delegation of power to officials in this particular class of cases.

A review of those cases construing 'personal fitness' ordinances reveals that the courts resort to many factors outside the ordinance itself in determining whether or not it lays down a sufficient rule of action. There is a very apparent tendency to consider closely the public interest to be subserved in the granting or refusal of a particular license. As the occupation or business approaches the borderline of privilege wherein a license is fraught with danger to public interest<sup>6</sup> the courts uphold a wider range of discretion than when the

<sup>1</sup> *Thompson v. Smith, Chief of Police*, 154 S. E. 579 (Va. 1930).

<sup>2</sup> *Yick Wo v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. ed. 220 (1886).

<sup>3</sup> *Forman v. State Board of Health*, 157 Ky. 123, 162 S. W. 796 (1914).

<sup>4</sup> *Ex Parte Kreutzer*, 187 Wis. 463, 204 N. W. 595 (1925).

<sup>5</sup> *Hall v. Geiger-Jones Co.*, 242 U. S. 539, 37 Sup. Ct. 217, 61 L. ed. 480 (1916); *Ex Parte Kreutzer*, *supra* note 4.

<sup>6</sup> *Bizzell v. Goldsboro*, 192 N. C. 348, 357, 135 S. E. 50 (1926). (Clarkson, J. distinguishes between those occupations or activities in which the "right" to engage is a mere privilege and those activities in which the practitioner has

occupation is purely a matter of private interest, subject to only a limited degree of legislative restriction.<sup>7</sup> It is submitted that the present case was rightly decided since the individual has something in the nature of a vested right to drive his private car.

One court, in considering whether or not a certain ordinance imposed an arbitrary power in an officer, considered, among other factors, the hardship a refusal of the permit would impose on the applicant.<sup>8</sup>

The tendency of the courts to become more liberal in the construction of this type of statute can, to some extent, be attributed to the growing complexity of our administrative government, necessitating a grant of greater discretionary powers to local authorities.<sup>9</sup>

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### Constitutional Law—Taxation—Chain Store Tax

The recent case of *The Great Atlantic and Pacific Tea Company et al. v. Maxwell*<sup>1</sup> held valid under both state and federal Constitutions a statute<sup>2</sup> declaring every person, firm or corporation operating or maintaining two or more stores or mercantile establishments under the same general management, supervision, or ownership to be a chain store operator *per se*, and as such subject to a license tax, for the privilege of engaging in such business, of fifty dollars (\$50.00) on each and every store operated in the state in excess of one. The

a vested right); *Brunswick-Balke Co. v. Mecklenburg Co.*, 181 N. C. 386, 107 S. E. 317 (1921) (Operation of billiard parlor held privilege).

<sup>7</sup>In the following cases ordinances laying down apparently arbitrary powers of discrimination were held valid: *Sumner v. Ward*, 126 Wash. 75, 217 Pac. 502 (1923) (peddlers); *Minces v. Schoenig*, 72 Minn. 528, 75 N. W. 711 (1898) (gift, fire, and bankrupt sales); *State v. Cohen*, 73 N. H. 543, 63 Atl. 928 (1906) (dealers in junk); *Gundling v. Chicago*, 177 U. S. 183 (1900) (sale of cigarettes); *Clark v. McBride*, 101 N. J. L. 213, 127 Atl. 550 (1925) (employment agencies).

<sup>8</sup>*Matthews v. Murphy*, 23 Ky. L. Rep. 750, 63 S. W. 785, 786 (1901).

<sup>9</sup>*Leach v. Daugherty*, 73 Cal. App. 83, 238 Pac. 160 (1925); *Ex parte Kreutzer*, *supra* note 4.

<sup>1</sup>*The Great Atlantic and Pacific Tea Company et al v. Maxwell*, Commissioner of Revenue of North Carolina, 199 N. C. 433 (1930).

<sup>2</sup>"*Branch or Chain Stores*. Every person, firm or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores or mercantile establishments, where goods, wares, and/or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license fifty dollars (\$50.00) on each and every store operated in this State in excess of one." N. C. PUB. LAWS (1929), c. 345, §162.