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integration is the only feasible means to obtain equal educational opportunity. This doctrine collides head-on with the social impossibility at present of achieving this goal. Whether other courts will be flexible enough to explore alternative solutions, instead of following the precedent of Hobsen v. Hansen, with its inherent rigidity, might have an important bearing on the ultimate means employed to solve the educational crisis in the urban schools.

There has been no attempt to formulate answers to the issues raised in the case, except to suggest that the courts not narrow their inquiry to the integration question alone. While few educators would deny that integration should be an important goal of any educational system, if techniques and programs are developed which prove to be effective within the different locales, the court should reconsider before condemning them as discriminatory, merely because integration is not an end result.

Neill G. McBryde

Constitutional Law—Governmental Regulation of Surface Mining Activities

Surface mining in the United States has affected 3.2 million acres of land. Of this total, 2.0 million acres need varying degrees of treatment to alleviate a range of environmental damage both on-site and off-site. About 20,000 active operations are disturbing the land at a rate estimated in excess of 150,000 acres annually. Data submitted by the surface mining industries indicate that, in 1964, the amount of land partially or completely reclaimed was equivalent to only 31 percent of the area disturbed in that year. Surface mining activities are expected to expand rapidly in coming years. By 1980, it is expected that more than 5 million acres will have been affected by surface mining.

Some damage from surface mining is inevitable even with the best mining and land restoration methods. But much can be done to prevent damage and to reclaim mined lands.¹

I. INTRODUCTION

In an operation having the magnitude of surface mining in the United States, the relationship existing between this activity and the general public and the degree of control to be exercised in the

¹ *Strip and Surface Mine Study Policy Comm., U.S. Dep’t of the Interior, Surface Mining and Our Environment* 104 (1967).
The public’s interest are of paramount importance. The rapidly increasing population, the expansion of suburban areas, and the recognized need for area-wide control of land uses are on a collision course with the desirability of exploiting our natural resources, particularly the numerous mineral resources found in North Carolina. This problem is exemplified by current surface mining practices and the probability that they will be increasingly utilized within the state.

Surface mining may be subdivided into the general categories of strip mining and quarrying. While these two methods differ technically, the legal problems involved in their regulation are similar. Strip mining is accomplished from the surface of the earth and is generally performed by stripping off the earth, known as overburden, which lies over the mineral, and then by removing the mineral uncovered beneath the overburden. Open-pit is synonymous with quarry, and quarrying involves a large opening in the earth from which rock, sand or ores are taken. The term “quarry” is not properly applicable to the comparatively slight excavation made primarily for construction. Both strip mining and quarrying entail the removal of a large volume of surface “waste” material with a resulting piling of this material at a nearby location and an excavated opening or openings which accumulate water if not refilled with the waste or other substance. Both operations are characterized by noise, dust, and extensive use of mechanical equipment.

That a person’s property shall not be taken except by due process of law and that he is entitled to equal protection of the laws are guarantees afforded by the United States Constitution and the North Carolina Constitution. Into this area of historical rights

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2 Governmental controls over commercial mining practices extend to surface evacuation of ore and minerals and of sand and gravel, by the “open pit” and “strip mining” methods; to subsurface extraction of ore and materials; to air and stream pollution; to the processing plants where crushing, washing and mineral-gangue separation is accomplished; and to disposition of the gangue (non-commercial minerals and rock separated from the desired mineral). The scope of this comment will be limited to controls exerted over surface evacuations. Unless otherwise noted, no distinction will be stressed between excavations of ore and of sand and gravel. While regulations of strip mining methods are emphasized, some material deals with open pit methods, and it is believed that the problems encountered and the extent of permissible regulations of the two methods, relative to the excavation process, are essentially the same.

3 U.S. Const. amend. XIV, § 1.
4 N.C. Const. art. I, § 17.
stalks the police power as an inherent right of governmental units to provide for the public health, welfare, safety and morals of their citizenry. This power, while incapable of an exact definition or limitation, is relied on "to prohibit or regulate certain acts or functions of the populace as may be deemed to be inimical to the comfort, safety, health and welfare of society." Utilization of this power is the basis by which state and local government units will be in a position to cope with developing problems, relatively new to North Carolina but previously encountered in other states, attendant to surface mining activities.

There is no legal right to exploit natural resources wherever they may be found. This principle, in conjunction with the police power, furnishes the foundation for a governmental unit's endeavors to regulate mining activities. Development of controls over surface excavation practices has followed a familiar pattern of judicial and legislative reaction to the changing social and economical conditions created by an increasing population and urbanization. This involvement has progressed from earlier prohibitory legislation, closely scrutinized by the courts as an invasion of property rights, to the more recent utilization of zoning plans and direct regulations that are recognized as requisites for protecting the public interest. Both procedures are generally viewed as proper applications of the police power, subject to an ever present requirement of reasonableness. While the courts stand ready to oversee the reasonableness of legislation and to protect constitutionally granted rights, control of such mining activities is basically one for legislative concern.

Regulation of surface activities may be classified into direct regulations enacted by the state legislative bodies and having statewide effect, and local regulations enacted by the states' political subdivisions pursuant to the authority delegated by the states. The local regulations may be by direct control of particular conduct

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8 E.g., Township of Bloomfield v. Beardslee, 349 Mich. 296, 84 N.W.2d 537 (1957).
9 Blue Diamond Coal Co. v. Neace, 337 S.W.2d 725, 728 (Ky. 1960), where the court stated: "Short of that which is proved to be arbitrary, wanton, or malicious, the control of commercial mining practices is strictly a matter of legislative regulation."
where the activity is prohibited or the manner of conducting the activity is regulated, or through zoning legislation involving comprehensive regulation of land uses by districts and regulation of certain permitted conduct within the district. Both the direct and zoning controls may have the practical effect of prohibiting a desired usage.

II. EARLY VIEWS

Early attempts to regulate surface activity were local legislations of a direct nature. The earliest were in the form of outright prohibitions directed at undesirable activities such as pig sties and livery stables. If found to be a nuisance per se, the activity could be regulated; but, if not, it was an unconstitutional taking of property in violation of the fourteenth amendment. This approach was relaxed in *Reinman v. City of Little Rock*\(^\text{10}\) where the United States Supreme Court upheld the state's finding that a livery stable was a nuisance in fact and in law, provided the state did not act arbitrarily or unjustly discriminatorily, and that a municipal ordinance forbidding the conduct of a livery stable within a designated area could not be enjoined. Early legislation prohibiting surface mining was viewed in respect to the public safety but was generally held to be an unconstitutional taking of property\(^\text{11}\) and to be a restriction that could not be imposed upon a legitimate business without compensation.\(^\text{12}\) This approach was predicated on use of the police power being justified only if the operation of a quarry or mine would result in injury to the person or property of another.\(^\text{13}\) Illustrative of this is *Ex parte Kelso*\(^\text{14}\) where a municipal ordinance prohibited the operation of rock quarries within designated limits of San

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\(^{10}\) 237 U.S. 171 (1915).

\(^{11}\) See Consolidated Rock Prod. Co. v. City of Los Angeles, 57 Cal. 2d 515, 370 P.2d 342, 20 Cal. Rptr. 638, appeal dismissed, 371 U.S. 36 (1962). The California Supreme Court discussed the earlier California cases and distinguished them in view of the more recent developments in comprehensive zoning.


\(^{13}\) Annot., 10 A.L.R.3d 1226 (1966).

\(^{14}\) 147 Cal. 609, 82 P. 241 (1905). While the court invalidated the ordinance as prohibiting quarrying, they did recognize the state's power to regulate the manner in which the quarrying operation was conducted, on the basis that uncontrolled quarrying may be performed in such a manner to occasion injury.
Francisco, irrespective of whether a quarry might cause injury to others. Holding the ordinance to be an improper use of the police power, the court emphasized that the use to which a person could put his property could not be interfered with or limited except to the extent that such use would definitely result in legal injury.

While outright prohibitions were generally unfavorably accepted, a regulation of the manner of conducting an activity was likely to be sustained if the court found the regulation to be reasonable, even if the practical effect of the regulation amounted to a prohibition. This judicial approach is exemplified by the landmark case, Hadacheck v. Sebastian.\(^{15}\) A Los Angeles ordinance made it unlawful to establish or operate a brickyard or brickkiln within designated areas. The petitioner owned a tract of land located within the designated area and containing a valuable deposit of clay used in the manufacture of bricks. He contended that, if required to manufacture his bricks at a location other than on the tract containing the clay deposit, the operation could not be economically conducted. The Supreme Court upheld the ordinance as a valid regulation of the manner in which the overall brickmaking process could be conducted. Recognizing that such a control could result in prohibiting the petitioner from mining his clay and that it would be an extension of the Reinman case, since the mining operation could not be conducted elsewhere, the Court insisted that the ordinance was only a regulation within the designated locality over the manufacture of the clay into bricks. It distinguished the Kelso case by viewing the ordinance as a control over the offensive effects of a commercial operation rather than as a deprivation of the mineral deposit.

III. Transition Stage

That a governmental unit could prohibit the uses of property without compensation, and without justifying it as being a common law nuisance or creating a risk of imminent injuries, was recognized for the first time by the United States Supreme Court in Village of Euclid v. Ambler Realty Co.\(^{16}\) A municipality's comprehensive zoning plan for regulating and restricting the location of commercial and residential structures, the lot area to be built upon, and the size and height of buildings was held to be a valid

\(^{15}\) 239 U.S. 394 (1915).

\(^{16}\) 272 U.S. 365 (1926).
exercise of the police power. In justifying the advent of such restrictions, the Court, speaking through Mr. Justice Sutherland, pointed to the increase and concentration of population as creating new problems requiring regulations that earlier would have been rejected as arbitrary and oppressive. This was accomplished, not by varying the meaning of constitutional guaranties, but by adjusting the scope of their application to meet the changing conditions within the field of their operation. The Court further emphasized that such ordinances, and all similar laws and regulations, must find their justification in some aspect of the police power, as it is asserted for the general public welfare, and that the line separating the legitimate from the illegitimate assumption of power is not capable of precise delimitation but varies with circumstances and conditions. The role of the judiciary in the zoning process was reiterated by the Court's statement: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

Of particular interest is the Court's acceptance that, in comprehensive regulations, some "innocent" activities may suffer the same fate as offensive activities, but the inclusion of a reasonable margin reaching innocent activities will not invalidate the controls.

The *Euclid* case stands as a milestone in the acceptance of a new innovation which places permissible limitations on individual rights. This raises a question as to why the courts differentiate between direct prohibitions and zoning controls that may, and often do, have the effect of a prohibition. While a direct prohibition is an outright regulation of a single or related group of activities, a prohibition fostered by zoning is an essential part of an overall comprehensive plan of uses within a designated district. The preferential treatment afforded zoning regulations by the courts seems to have its basis in the fact that a particular prohibition is only one cog in the comprehensive scheme, rather than a "one-shot" effort directed at an undesirable activity and uncoordinated with other controls that have been enacted or may be enacted in the future by the governmental subdivisions.

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18 See City of Elizabeth City v. Aydlett, 201 N.C. 602, 161 S.E. 78 (1931) where the court upheld a zoning regulation prohibiting the construction of a filling station after previously invalidating an ordinance directly prohibiting such construction.
Judicial acceptance of zoning legislation, rather than direct prohibitory legislation, as a constitutional regulation of property uses even though the particular use could not be conducted at another location, is illustrated in *Blancett v. Montgomery.* A municipal ordinance prohibited the drilling of oil wells within the corporate limits, and a general zoning ordinance classified the proposed drilling sites as residential. The trial court held the prohibitory ordinance to be invalid as unreasonable, arbitrary and discriminatory but did not make a finding as to the validity of the zoning ordinance. The Kentucky Court of Appeals reversed the trial court's results; and assuming, but without deciding, that the prohibitory ordinance was invalid, the court held the general zoning ordinance to be a valid exercise of the police power and not to be a taking of property without due process nor an abridgment of equal protection rights.

IV. REGULATION THROUGH ZONING

As a general proposition, the principles applied in the zoning of other industries and buildings are also applicable to the regulation of surface mining. The legislation must have a real or substantial relation to the police power goals, and its effect on the landowner should be considered. Since the *Euclid* case, a gradual accumulation of case law on zoning controls over surface mining activities has provided insights into the requisites for judicial acceptance of these regulations. While the courts' principal concerns are that the legislation be reasonable and not discriminatory and that the legislative bodies have discretion to act within these limits, the cases also reveal an influence derived from various aspects of zoning's relation to aesthetic considerations, non-conforming uses, and special use permits.

19398 S.W.2d 877 (Ky. 1966).
20 The court stated: "As a general proposition a valid exercise of the police power resulting in expense or loss of property is not a taking of property without due process of law or without just compensation, nor does it abridge the equal protection clause of the Fourteenth Amendment to the Constitution of the United States." 398 S.W.2d at 881, citing 6 E. McQuillin, *Municipal Corporations* §§ 24.05-.06, (3d ed. 1949). *E.g.*, Marblehead Land Co. v. City of Los Angeles, 47 F.2d 528 (9th Cir.), cert. denied, 284 U.S. 634 (1931).
A. Prohibition of a Use

A well documented opinion of the power to prohibit a use is *Consolidated Rock Products Co. v. City of Los Angeles.* An ordinance established a comprehensive zoning plan for Los Angeles, restricting the plaintiff's property to agricultural and residential uses, but with provisions for a supplemental use district. A request for the supplemental use was denied. The trial court, after finding that dust from the proposed rock, sand and gravel quarrying would carry to nearby residences and sanitariums, denied injunctive relief to the plaintiff. Since the property was suitable only for gravel pit operations, the ordinance not only prohibited a desired use but also prevented any economical use of the property. Applying a test of limiting the legislative action only if it is unreasonable, arbitrary or discriminatory, the California Supreme Court found that reasonable minds could differ, in which case the court would not substitute its judgment for that of the legislative body, and that the ordinance was a valid exercise of the police power. Earlier California cases had indicated legislative authorities could not constitutionally prohibit the extraction of natural resources when they were the primary or preponderant value of the property. In rejecting this view, the court pointed to an extended line of cases upholding zoning ordinances that prohibited the removal of natural resources and refusing to distinguish between the prohibition of their removal and the prohibition of other uses.

As a basis for this approach, the court traced the history of prohibitory legislation from the period before comprehensive zoning, through its acceptance in *Village of Euclid v. Ambler Realty Co.* and into its more recent applications.

Attacks on zoning controls are often predicated on financial loss to the owner. This is particularly applicable to removal of natural products as a result of their immobility and the impossibility of conducting the industry at another locality. Although a comparison of values before and after the regulation is relevant, it is not

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25 Disagreement between the city planning commission and the city council relative to granting the plaintiff's application for a supplemental use is indicative of how reasonable minds may differ.
26 See cases cited 57 Cal. 2d at 529, 370 P.2d at 351, 20 Cal. Rptr. at 647.
27 272 U.S. 365 (1926).
conclusive in determining the validity of controls. A typical approach is that an exercise of the police power, either through zoning or direct prohibition that precludes what may be a more profitable use of the property, does not violate a person's constitutional rights if the exercise of the power is otherwise valid.

In *Consolidated* the court did not apply a test relating to the effect on the landowner, but relied on the "fairly debatable" effect quarrying had on contiguous property and the overriding principle of protecting the general public. Support for the position that the prohibition was not an unconstitutional taking without compensation was found in *Marblehead Land Co. v. City of Los Angeles* where the federal court upheld a comprehensive zoning ordinance prohibiting extraction of oil from lands in a residential zone. Additional support for this position is *City of Trussville v. Porter* involving a municipal ordinance zoning an area for "General Industry." The *Porter* opinion extended judicial acceptance of "legislative" action by upholding the delegation of authority to a building inspector to permit or deny quarrying based on his opinion of whether it would create objectionable conditions affecting a considerable portion of the city. The court upheld the inspector's denial of a permit and refused to enjoin what it found to be a valid ordinance even though it deprived people of a right to earn an income. This approach is traceable to the United States Supreme Court's statement relating to the police power in *Hadacheck v. Sebastian*.

It is to be remembered that we are dealing with one of the most essential powers of the government,—one that is the least

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30 E.g., Village of Spillertown v. Prewitt, 21 Ill. 2d 228, 171 N.E.2d 582 (1961); La Salle Nat'l Bank v. County of Cook, 60 Ill. App. 2d 39, 208 N.E.2d 430 (1965). But see East Fairfield Coal Co. v. Booth, 166 Ohio St. 379, 143 N.E.2d 309 (1957). While not discussing the removal of natural products, the North Carolina Supreme Court held in *City of Elizabeth City v. Aydlett*, 201 N.C. 602, 161 S.E. 78 (1931) that financial loss is not the test of the reasonableness of a zoning ordinance.
31 47 F.2d 528 (9th Cir.), cert. denied, 284 U.S. 634 (1931); accord, Blane ctt v. Montgomery, 398 S.W.2d 877 (Ky. 1966).
32 279 Ala. 467, 187 So. 2d 224 (1966); accord, Southern Rock Prod. Co. v. Self, 279 Ala. 488, 492, 187 So. 2d 244, 246 (1966) where the court stated: "Unquestionably a municipality has authority to pass zoning ordinances which regulate the use of private property and the authority to promulgate ordinances prohibiting the removal or crushing of rock from lands lying in certain areas or under certain conditions."
33 239 U.S. 394, 410 (1915) (citations omitted).
limitable. It may, indeed, seem harsh in its exercise, usually
is on some individual but the imperative necessity for its exis-
tence precludes any limitation upon it when not exerted arbi-
trarily. A vested interest cannot be asserted against it because
of conditions once obtaining . . . To so hold would preclude
development and fix a city forever in its primitive conditions.
There must be progress, and if in its march private interests
are in the way, they must yield to the good of the community.

Consideration of the prohibition's effect on the property owner
and the necessity for more than a passing acceptance of the legis-
lative determination that such a prohibition is needed find support
in Kane v. Kreiter\(^\text{34}\) where a township ordinance zoned an area as
agricultural, thereby preventing the strip mining of coal. Recogniz-
ing that the classification of uses must be reasonable, the court
further required that pre-existing vested rights be considered and
protected. It noted that the plaintiff's land was steep, hilly, run-
down and unsuited for farming and held the deprivation to be a
taking without due process in violation of the United States and
Ohio Constitutions. A frequent view is that incidental damage
resulting from zoning, such as a dimunition of land values, does
not violate due process unless the restriction practically or sub-
stantially renders the land useless for all reasonable purposes.\(^\text{35}\)

Efforts to establish a control as an exercise of eminent domain,
rather than of police power, as a basis for invalidating a zoning
regulation have been unsuccessful once the ordinance was found to
bear a reasonable relationship to the general public welfare. As ob-
served in Beverly Oil Co. v. City of Los Angeles,\(^\text{36}\) the very essence
of the police power, as differentiated from the power of eminent
domain, is that the deprivation of individual rights and property
cannot prevent its operation if its exercise is proper and the method
of exercise is reasonably within the meaning of due process.

Whether the mining operation will constitute a common law

\(^{35}\) See Midland Elec. Coal Corp. v. Knox County, 1 Ill. 2d 200, 115 N.E.2d
275 (1953); East Fairfield Coal Co. v. Booth, 166 Ohio St. 379, 143 N.E. 2d
309 (1957). The East Fairfield court stated: "[W]e must consider the pro-
tective effect of the constitutional guaranties upon the owner of the land in
question; whether the power exists to forbid the use must not be considered
abstractly, but in connection with all the circumstances and locality of the
land itself and its surroundings." 166 Ohio St. at 382, 143 N.E.2d at 311.
\(^{36}\) Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Buhler
v. Racine County, 33 Wis. 2d 137, 146 N.W.2d 403 (1966).
\(^{38}\) 40 Cal. 2d 552, 254 P.2d 865 (1953).
nuisance is not controlling in determining the validity of a zoning ordinance, but the law of nuisances may be consulted for the helpful assistance of its analogies in ascertaining the reasonableness of the controls. A modification of this approach is advanced in *Kane v. Kreiter* where, in addition to considering the reasonableness of the prohibition, the court stated that the desired control would be valid only if it prohibited what would become an actual nuisance.

Aesthetic considerations are generally held to be insufficient, when unsupported by other factors, to sustain the zoning power although there is authority indicating the law in this area is not settled and that a solely aesthetic approach may have a definite relation to the public welfare. Aesthetics are usually an auxiliary consideration, with the validity of controls on mineral extraction supported by other considerations. The North Carolina Supreme Court has taken the position that aesthetic factors alone are insufficient to support use of the police power.

While needing support from other factors, aesthetics have played an influential role in decisions upholding zoning controls of mining activities. The court in *Town of Burlington v. Dunn* seemed to be swayed by aesthetic considerations of possible consequences in upholding a zoning ordinance preventing the removal of top soil from land within the town. They discussed the disagreeable dust and noise that would result from machinery removing the soil but considered, as more important, that a "desert" area would remain after removal of the top soil and that such an unsightly waste in a residential area would permanently depress the value of surrounding property. An interesting approach was taken by the court in *Midland Electric Coal Corp. v. Knox County* invalidating a zoning prohibition on strip mining of coal, where they

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89 58 Am. Jur. Zoning § 30 (1948). In Cromwell v. Ferrier, 19 N.Y.2d 263, 225 N.E.2d 749, 279 N.Y.S.2d 22 (1967), the court overruled prior New York cases and held that aesthetic objectives alone will support a zoning ordinance although the exercise of the police power should not extend to every artistic conformity or nonconformity.
91 State v. Brown, 250 N.C. 54, 108 S.E.2d 74 (1959). This case did not involve regulation of surface mining activities.
93 1 Ill. 2d 200, 115 N.E.2d 275 (1953).
distinguished the Dunn case by a casual remark that coal is not as plentiful as top soil.

Nonconforming uses may generally be continued irrespective of subsequently enacted prohibitions. In controls over mining and quarrying this is sometimes extended to permit continuance of the nonconforming use over the entire property in question and not restricted solely to the portion which was mined or quarried prior to adoption of the prohibition. Contrary to this position are the decisions which have found that the continued operations "vary" from the prior uses and therefore are not within the nonconforming uses doctrine. In De Felice v. Zoning Board of Appeals a change in the mechanical process for washing and screening sand prior to its removal from the sand pit was sufficient to prevent the altered process from being an existing use within the zoning classification. The Dunn court also refused to consider the removal of top soil as an existing use when the prior use was a gravel pit from which the top soil had been removed.

B. Regulation of a Use

Use of the zoning power to regulate, rather than to prohibit, surface mining activity has taken the format of applying a zoning classification to an area but permitting the extraction as a special use if a special permit is obtained. "Special use" is defined as a method of land use control where the zoning ordinance retains the usual residential, commercial and industrial zones, and in addition establishes special uses that are permitted if approved by a zoning board or governing legislative body. The government's ability to regulate specific onsite activities and to require other conditions to be fulfilled is treated in a subsequent discussion of state acts.

The general rule of reasonableness applies to the regulation and to the action of the agency issuing the special use permits. In La

45 130 Conn. 156, 32 A.2d 635 (1943); see Wilbur v. Newton, 302 Mass. 38, 18 N.E.2d 365 (1938).
SURFACE MINING ACTIVITIES

Salle National Bank v. County of Cook48 an ordinance zoning an area for heavy industry also provided for quarrying as a special use upon issuance of a permit by the county commissioners. The commissioners refused to issue a special permit for the quarrying of limestone. The court considered evidence of lower property values, pollution of wells, harmful effects due to the general noise, and the dirt and attractive nuisance qualities and held the commissioner's refusal to be reasonable and not arbitrary or capricious.49 Decrease in value of the zoned deposits was also considered to be an insufficient basis for invalidating the ordinance. However, refusal to issue a special permit was held to be an unenforceable regulation of quarrying in City of Warwick v. Del Bonis Sand & Gravel Co.50 where sand and gravel were being removed prior to the enactment of a zoning ordinance requiring a permit for continuation of the operation.

Powers delegable to a board in the issuance of a special permit were extended in Houdaille Construction Materials, Inc. v. Board of Adjustment51 where the court upheld the board's imposition of certain performance standards that were in addition to the standards required by the zoning ordinance. Although the company could meet the standards of the ordinance, the court further required it to meet the board's additional standards that were considered to be reasonable.

Dangers of infringement of equal protection rights are prevalent in the issuance or denial of special permits. Provisions for permitting a special use are likely to authorize inadvertent or arbitrary treatment of a specific operation that is not afforded other similar ones; and they are likely to authorize any given operation having essentially identical effects as non-permitted operations.

Considering these discriminatory aspects, the court in Town of Caledonia v. Racine Limestone Co.52 held that requiring a permit

48 60 Ill. App. 2d 39, 208 N.E.2d 430 (1965). The court also gave six guidelines for determining whether a zoning ordinance is valid or is invalid as a taking without compensation.
52 266 Wis. 475, 63 N.W.2d 697 (1954). Accord, Northern Ill. Coal Corp. v. Medill, 397 Ill. 98, 72 N.E.2d 844 (1947) where the ordinance was held to discriminate against strip miners unless it regulated everyone and every industry that endangered the public health or conservation in a manner similar to strip mining.
to operate a stone quarry in areas zoned as agricultural, but not requiring one for similar quarries in industrial zones or for other mining operations in agricultural zones, was an unreasonable classification and not germane to the police power objectives. The court emphasized that any ordinance which limits or restricts the right of a person to engage in a legitimate business must apply equally to all persons engaged in a like business where the circumstances and conditions are similar.

Zoning ordinances providing for a variance from the zoned classification are subject to rules similar to those pertaining to special uses. Discretionary refusal of a board to grant a permissive variance for sand and gravel removal in an agricultural-residential district was held in Calcagno v. Town Board\(^5\) not to be a taking of property without compensation when the court found the evidence insufficient to establish that the property met the criteria for a variance within the ordinance.

V. DIRECT PROHIBITIONS AND REGULATIONS (NON-ZONING)

Direct prohibitions and regulations, as distinguished from zoning legislation, have been upheld as a valid exercise of the police power where the restrictions exemplify a substantial and definite purpose to serve the public and the means adopted bear a reasonable relationship to the accomplishment of this purpose. Such controls are generally predicated on protection of the public safety. General prohibitions having no apparent basis for their action, particularly when left to the unrestrained control of a governing authority, are usually held to be invalid.\(^4\)

The requisite relationship to the public health and safety is demonstrated in Village of Spillertown v. Prewitt\(^5\) where a municipal ordinance prohibited strip mining of coal within the city. The ordinance declared the stripping method to be dangerous and hazardous to the person and property of the citizens and was predicated on the operation's proximity to houses where small children played and on the tendency of prior excavations to fill with water. Holding the operation to be an obvious danger to the public safety, the court refused to invalidate the ordinance as a taking of property without compensation or as violating due process. It found the

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\(^5\) 21 Ill. 2d 228, 171 N.E.2d 582 (1961).
ordinance, to be reasonable and the preclusion of the most profitable use of the property not to violate the owner’s constitutional rights.\textsuperscript{56}

The emphasis placed on protection of the public safety is apparent upon considering that the \textit{Prewitt} court, which took a liberal view when the public safety was obviously endangered, was the same court that earlier, in \textit{Midland Electric Coal Corp. v. Knox County},\textsuperscript{67} had adopted a strict approach and invalidated a zoning ordinance prohibiting strip mining upon a failure to find a substantial relationship between the prohibition and the preservation of the public health and safety. The \textit{Midland} operation was considered to have no detrimental effect on neighboring persons or properties, and the land was suitable for reclamation as agricultural.

Principal opposition to a mining prohibition is found in \textit{Pennsylvania Coal Co. v. Mahon}\textsuperscript{58} which held an attempt to prohibit coal mining within a city to be an unconstitutional taking without compensation. The value of \textit{Pennsylvania Coal} as precedent for this position is weakened by the United States Supreme Court’s subsequent recognition of comprehensive zoning and its necessarily prohibitory effect on commercial activities.\textsuperscript{59}

Validity of direct legislation as a proper use of the police power received substantial support in \textit{Goldblatt v. Town of Hempstead}.\textsuperscript{60} A city had grown around a sand and gravel quarrying operation and a 20-acre lake created by the excavations. A prior ordinance requiring a wire fence around the land and specific berm and slope requirements was complied with by the operator, but an attempt to prohibit the quarrying through zoning legislation failed when the operation was found to be a prior nonconforming use. An ordinance directed at regulation of the quarrying provided that no excavation could be made below two feet above the maximum ground water level, prior excavations below the water level must be refilled, and a permit must be obtained. The United States Supreme

\textsuperscript{57} 1 Ill. 2d 200, 115 N.E.2d 275 (1953).
\textsuperscript{58} 260 U.S. 393 (1922). Accord, \textit{Ex parte Kelso}, 147 Cal. 609, 82 P. 241 (1905); see note 12 supra and accompanying text.
Court upheld the city's attempt to enjoin the operation in violation of the ordinance despite the fact that it deprived the property of its most beneficial use and, in essence, amounted to a prohibition of the beneficial use to which the property had previously been devoted. Conceding that no set formula exists for determining where regulation ends and "taking" begins, the Court considered a comparison of values before and after the regulation to be relevant but by no means conclusive, and relied on their previously established rule that depriving property of its most beneficial use does not render an ordinance unconstitutional. Instrumental in the Court's decision was the legislative intent that the ordinance serve as a safety measure, and it was held to be a reasonable exercise of the city's police power.

Regulatory legislation may be considered a taking without compensation if it interferes with operations which do not injure others in their person or property or if the granting of permission to engage in the lawful activity regulated by the legislation is left to the unrestricted discretion of an administrative agency, thereby not insuring a reasonable relationship to the public safety and welfare.

VI. STATE REGULATIONS

Fortified by judicial acceptance of prohibitory and regulatory controls, by both zoning and direct legislation, as valid exercises of the police power, the more recent trend indicates an increasing role by the states through direct regulation of surface mining. This state role is in addition to the continuing local regulatory schemes. Early state controls were essentially limited to mine safety requirements, but these are being replaced or supplemented by state-wide regulations and an Interstate Compact which concentrate on rehabilitation of the disturbed land and protection of neighboring properties. A principal development is the interest of the federal government in this area. Identical bills are pending in the House of Representatives and the Senate. These bills would authorize the establishment of an office within the Department of the Interior

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62 Ex parte Davison, 321 Mo. 370, 13 S.W.2d 40 (1928).
for administration of their provisions and are directed to the "reclam- 
lation, acquisition, and conservation of lands and water adversely 
affected by coal mining operations." 65 They would require an op-
erator to obtain a permit, post a bond, preplan reclamation procedures, 
and report his progress. Provisions are also included for render-
ing financial and technical assistance to state and local agencies. 
Coverage of the bills extends to previously mined coal lands as 
well as to land to be affected by future strip mining of coal.

Regulations at the state and federal levels will assume legal and 
practical difficulties of a more significant magnitude than have been 
encountered at the local levels. The most outstanding of these 
problems is affording equal protection to all affected operators. In-
herent in a more widespread control are the difficulties of treating 
all similar operations in an identical manner or of justifying any 
preferential treatment directed at a particular class as a reasonable 
classification. State regulations also face the problem of not being 
correlated within an overall comprehensive scheme of usage regu-
lations, and therefore encounter the judicial objections experienced 
by local direct prohibitions. The administration of a statewide 
enactment raises practical questions as to the requisite administra-
tive structure and the ever present dilemma of what authority may 
and should be delegated to various subordinate echelons. Offsetting 
these adverse aspects is the potential in a state structure for better 
trained and more competent professional personnel and for re-
search and development facilities.

At least nine states66 have adopted statewide enactments de-
digned to eliminate, or contain within acceptable bounds, the un-
desirable effects attendant with surface excavations and to reclaim 
the affected land. Characteristics common to all or to a majority 
of these legislative schemes include: (1) an application for a per-
mit must be filed; (2) the operator is required to post a performance 
bond to insure compliance with the law; (3) the operator must sub-

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65 Id.
66 ILL. ANN. STAT. §§ 180.1-13 (Supp. 1966); IND. STAT. ANN. §§ 46-
1501 to -1528 (Supp. 1967); KY. REV. STAT. §§ 350.010-990 (Supp. 1966);
Md. ANN. CODE art. 66C, §§ 657-674 (Supp. 1967); OHIO CODE ANN. 
§§1513.01-19 (Supp. 1966); PA. STAT. ANN. chap. 4, §§ 681.1-22 and chap. 
6, §§ 1396.1-21 (1966); TENN. CODE ANN. chap. 15 (Supp. 1967); VA. 
CODE ANN. chap. 15, §§ 45.1-162 to -179 (1967); W. VA. CODE §§ 22-2A-1 
to -14 (1966). The federal government and forty-six states regulate sur-
face mining on government owned or controlled lands, but this discussion 
will be limited to governmental controls exerted on privately owned lands.
mit with his application a description of lands to be mined, and periodic reports on the progress of the operation; (4) the disturbed area must be reclaimed within specified time limits; (5) the disturbed land must be graded to varying degrees; (6) performance bonds are held until the state concludes that the reclamation has met the requirements of the law; (7) failure to complete reclamation results in forfeiture of the bond and, in some cases, prohibits the issuance of new permits to the operator involved; and (8) criminal penalties are prescribed for operating without a permit or license. Three of the state laws regulate the surface mining of all minerals, six one state law applies to all minerals except limestone, marble and dimension stone, six one state law applies to clay and coal, and the remaining four apply only to coal. Seventy

Judicial testing of these state enactments is found in three leading cases decided during the period 1947-49. Of particular interest in all three is the courts' concern with equal protection of the rights of the operators and property owners. The Illinois act regulating strip mining of coal was challenged by seventeen coal companies in a successful attempt to enjoin its enforcement. The state pleaded its police power as the basis for the act; but the court, in examining the provisions, held that preservation of the public health was not the object and purpose of the regulation. This was predicated on the act's requirement that the land be restored to its original configuration, which would include the restoration of a mosquito breeding pond if one had originally existed, and that the final open cut could be left unfilled if there was insufficient material available for refilling, thereby leaving one open excavation for the accumulation of water. The court indicated it would find a reasonable relation to protecting the public health if the act required the elimination of all ponds and other sources for the accumulation of water. A conservation argument as justification for the requirement that the land be restored to a condition suitable for row crops, rather than reclaimed by reforesting or reseeding of the unleveled ridges as

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67 Illinois; Indiana; West Virginia.
68 Tennessee.
69 Kentucky.
70 Maryland; Ohio; Pennsylvania; Virginia.
71 The Illinois act, as well as those of Pennsylvania and Maryland, contained provisions essentially identical to the common characteristics discussed in the preceding textual paragraph. Selected provisions of these acts are reiterated only as they are pertinent to the courts' considerations.
72 Northern Ill. Coal Corp. v. Medill, 397 Ill. 98, 72 N.E.2d 844 (1947).
previously conducted by the individual operators, was rejected as a confiscation on the basis that the state cannot compel a private owner, at his own expense, to convert his land to what the state considers a better usage. The court further stipulated that, even assuming the act to be a valid protection of the public health, it was fatally defective as discriminatory against coal strip mining. A regulation preventing the creation of water-filled excavations and requiring contouring suitable for cultivation was held to be an unconstitutional discrimination against coal operators unless it applied equally to all operations leaving such excavations or land unsuitable for cultivation. The court reiterated that it is the method of mining employed, not the nature of the product removed, that produces the undesirable result, and the object of the legislation must be to prevent the use of that method. The Illinois law was subsequently amended to eliminate these objectionable features and to encompass the surface mining of all minerals within the State.

The Pennsylvania act regulated bituminous coal strip mining operations. In an action to enjoin enforcement of the act, the court upheld the legislature's authority to create a classification for regulation and would not subject this classification (bituminous coal miners) to judicial revision unless it was grounded on artificial or irrelevant distinctions rather than real distinctions. Sufficient evidence of real distinctions between bituminous coal operations and other mining operations was found, and the act was upheld as a constitutional exercise of the police power. One justice dissented on the basis of a violation of equal protection under the fourteenth amendment upon finding no material differences between persons subject to the act and persons similarly situated but not subject to it. The dissent failed to find sufficient distinctions to justify legislative regulation of bituminous coal operations while not regulating all persons engaged in open pit or strip mining. Coverage of the law has now been expanded to include anthracite and bituminous coal operations. A challenge to the registration fee as an unconstitutional tax, resulting from the non-uniformity of its application, was countered by treating it as a license fee for the privilege of mining; therefore it was not subject to the requirement of uniformity of taxation.

74 The non-regulated operations included limestone, shale, flint, clay, ganister, iron ore, and cannel coal.
The Maryland act regulating coal operations was the object of a suit for a decree to declare it unconstitutional and for injunctive relief to restrain its enforcement.\textsuperscript{76} This legislation was found to have a real and substantial relation to the police power with a purpose of preserving the public health and safety, but was held to be unconstitutional in violation of equal protection rights due to the exclusion of one county from its coverage. An increase in the cost of mining was considered to be immaterial. In answer to a challenge on denial of equal protection through the act’s non-coverage of limestone and slate quarries, the court, citing from \textit{Jeffrey Manufacturing Co. v. Blagg},\textsuperscript{70} upheld the state’s power to classify the subjects of legislation. Such classification was held to be within the equal protection clause provided it is not arbitrary or unreasonable. The dangers from limestone and slate quarrying were found to be considerably less than the dangers from strip mining of coal, therefore it was reasonable to exclude them from the act’s coverage. The court further upheld the delegation of authority to the Director of the Bureau of Mines, an administrative official, to set the required bond between statutory limits of 5000 dollars to 20,000 dollars and to decide the degree of refilling that would be required.

\textbf{VII. North Carolina}

Twentieth century developments in North Carolina have brought this state to the threshold where impending governmental control of surface mining activities has become a paramount public concern, particularly in selected areas of the state. Entrance of state and local legislative influence into this area has been minimal, but recent activities and legislation indicate a transitional period has been initiated.

A framework within which the state and local governments may operate is available. The North Carolina Constitution provides:

\begin{quote}
The General Assembly shall not pass any local, private, or special act or resolution relating to health, sanitation, and the abatement of nuisances; . . . regulating labor, trade, mining, or manufacturing . . . . Any local, private or special act or resolution passed in violation of the provisions of this section shall
\end{quote}

\textsuperscript{76} Maryland Coal & Realty Co. v. Bureau of Mines, 193 Md. 627, 69 A.2d 471 (1949).

\textsuperscript{70} 235 U.S. 571 (1915).
be void. The General Assembly shall have power to pass general laws regulating matters set out in this section.\textsuperscript{77}

Through this provision the General Assembly is authorized to enact statewide legislation within its police power but still subject to the guarantees of due process and equal protection afforded the individual and his property.\textsuperscript{78} There are presently no general regulations of surface mining activities of the nature discussed in this article, although the Interstate Mining Compact commits the state to establishment of a program for the conservation and use of mined lands.

Entrance of North Carolina in 1967 as a member of the Interstate Mining Compact\textsuperscript{79} is a milestone in the state’s recognition of the pressing problems facing its mining activities. The Compact represents the realization by its member states of the adverse and undesirable effects of mining on public and private interests, of the need for regulation, conservation and restoration, and of the state’s position of responsibility in protecting the interests of all affected parties. Each member state is committed to formulating and establishing an effective program for the use and conservation of productive mineral lands through the establishment of standards, enactment of laws, and continuation of currently effective schemes. This program must be directed to the protection of the public and individual landowners; to the conduct of mining in a manner designed to reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water; to the requirement for restoration and rehabilitation of mined lands; and to the abatement and control of land, water and air pollution. The Interstate Mining Commission has the function to study operations and techniques, make recommendations, gather and disseminate information, and cooperate with the federal government and any public or private entities having interest within the purview of the Compact.

\textsuperscript{77} N.C. CONST. art. II, § 29 (emphasis added).

\textsuperscript{78} U.S. CONST. amend XIV, § 1; N.C. CONST. art. I, § 17.

\textsuperscript{79} Ch. 946, [1967] N.C. Sess. Laws. The Compact is sponsored by the Council of State Governments and became effective upon enactment by four states. It provides for a Commission to be composed of a representative (the Governor or an alternate) from each member state and for an advisory body in each member state. The North Carolina advisory body will be an eleven-member "Mining Council" composed of state administrative officials, members of the General Assembly, representatives of mining industries, and representatives of nongovernmental conservation interests.
North Carolina’s commitment to a program designed to accomplish these purposes places the burden on the state to enact general laws or to delegate adequate authority to state agencies or local governments. Accomplishment of this through general laws creates the difficulties of statewide legislation over the entire surface mining industry or, as a minimum, over one particular industry, e.g. gravel quarry operations. The wide range of topography, cultivation and population density existing across the breadth of the state poses significant problems for any control that would be appropriate and acceptable under the various situations. Large variations of interests must be co-ordinated in the establishment of such controls. The need for regulation is also not as prevalent in certain areas of the state as in other areas where metropolitan centers are developing or where adverse mining practices have developed or will probably develop. North Carolina does not have a single extractive industry of essentially statewide import, as is found in several of the coal mining states, which warrants statewide regulation of the industry. These factors indicate that local controls would be more effective with incentive and assistance furnished by the state. To ensure the local governments’ ability to enact adequate regulations, they should be delegated both zoning and direct regulatory powers.

Local governments have only the regulatory powers delegated by the General Assembly. The power for both counties and municipal corporations to effectuate zoning controls has been delegated. “For the purpose of promoting health, safety, morals or the general welfare,” the boards of county commissioners and the legislative boards of incorporated towns are empowered to regulate and restrict “the location and use of buildings, structures, and land for trade, industry, residence or other purposes, except farming.” The statutes also enable the local bodies to provide for a board of adjustment to determine and vary the application of enacted regulations in harmony with their general purpose and intent and in accordance with rules contained within the regulations. The 1967 General Assembly amended both statutes to permit the local legislative bodies or boards of adjustment to issue special use permits or conditional use permits in accordance with procedures contained

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in the regulations and to impose reasonable and appropriate conditions and safeguards on the permits.\(^8\)

Powers of *direct* prohibition and regulation are furnished to municipal corporations "to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the people, and all nuisances and causes thereof."\(^8\) The county commissioners were delegated power "to prevent and abate nuisances, whether on public or private property; . . . to define, prohibit, abate, or suppress all things detrimental to the health, morals, comfort, safety, convenience and welfare of the people . . . ; and to make and enforce any other types of local police, sanitary, and other regulations . . . ."\(^8\) Due to the exclusion of forty-four counties from the coverage of this statute, the North Carolina Supreme Court held it to be a local act and therefore void under article II, section 29 of the Constitution.\(^8\) As a consequence of this ruling, any controls to be exerted by the county commissioners under the present enabling laws must be under their zoning authority.

Success of local governments in enacting zoning or direct controls will be aided by the position of the North Carolina Supreme Court that when an ordinance is enacted within the grant of power to the local body, there is a presumption that it is reasonable.\(^8\)

An example of the county commissioners' utilization of their zoning power is furnished by the recently enacted amendments to the Chapel Hill Township Zoning Ordinance.\(^8\) The ordinance previously permitted extractive uses in residential and industrial districts upon conformance with minimum restrictions, approval of a rehabilitation plan, and issuance of a permit by the County Planning Board.

As amended, the ordinance creates a Rural Industrial District (RID) providing for extractive uses, and a Rural Processing District (RPD) providing for extractive use processing. Extractive

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\(^8\) N.C. GEN. STAT. § 160-200(6) (1964).  
\(^8\) High Point Surplus Co. v. Pleasants, 264 N.C. 650, 142 S.E.2d 697 (1965). This statute was not amended by the 1967 General Assembly.  
\(^8\) Orange County, N.C., Chapel Hill Township Zoning Ordinance § 8 (1967).
uses are defined to include mining, quarrying, stripping, and other removal of natural resources for non-farming purposes and are permitted only in RID and RPD districts. Normal sand, gravel and quarrying removal and processing operations are permitted in the RID districts, but for other extractive uses only the removal operation is permitted in RID districts. Both situations are subject to special provisions.

An annual permit must be obtained for all extractive uses. Sand, gravel and quarrying operations may be under a Limited Extractive Use Permit issued by the County Board of Adjustment and subject to provisions similar to those existing prior to the amendment. All other operations must be under an Extractive Use Permit issued after a public hearing by the County Commissioners and on a recommendation by the County Planning Board. The Extractive Use Permit can be obtained only after an operations plan and program is submitted and approved, an operations bond is filed, a rehabilitation plan and program is submitted and approved, and a rehabilitation bond is filed. A fee of 150 dollars is charged for the application. Existing extractive uses must comply with the provisions of the ordinance. The operation plan must include a detailed topographic map showing estimated ultimate maximum depth and surface extent of the operation; provisions for a buffer strip of at least 200 feet; and provisions for testing and control to maintain pre-existing air, surface water, and ground water qualities. Strict noise and vibration limits are imposed. The rehabilitation plan must include a topographic map and an aerial photograph of the proposed excavation site and detailed plans for returning the site to the condition shown on the map and photograph. Rehabilitation includes regrading, replacement of the topsoil, re-fertilization, and vegetation replacement. Failure to comply with the plans, as approved, will result in forfeiture of the bonds and revocation of the permit.

The stated objectives of the Chapel Hill Township ordinance are to further the general welfare of all residents by safeguarding property values and to provide for residential, commercial and industrial growth in Orange County. The unique intermingling of industrial technology and research facilities with the advanced educational facilities in the area makes these objectives particularly applicable and, apparently, necessary. The avowed legislative
intent to further this growth and to protect property interests, with the interrelated aesthetic considerations of an "historical" surrounding, should provide an ample basis of reasonableness for the classification and regulation of land uses.

Certain difficulties may be encountered in the application of the ordinance. The provision for topographic rehabilitation to the original configuration presents the same objection that the court found in the Illinois act relative to requiring the reconstruction of a mosquito breeding pond, if one had previously existed. By requiring approval of the rehabilitation plan and providing for its modification by the County Commissioners, the ordinance is not forever fixed to this objective of the plan; it provides sufficient flexibility for a court to distinguish the Illinois difficulty. Testing for dust and noise qualities on all property lines and adherence to stringent standards in suppressing them appear to present problems of first impression relative to surface removal operations. There is a possibility that compliance with these requirements will make an operation economically unattractive, therefore the ordinance would have the effect of prohibiting a desired usage. This objection is countered by the majority approach of not invalidating a zoning control that prohibits a use, if it is otherwise within the police power. To the credit of this ordinance is its adoption prior to the influx of any sizeable new mining operation and its notification to any potential operator of the requisite quality standards for activities in the regulated districts.

The Chapel Hill Township Zoning Ordinance facilitates a comparison with the previously discussed benefits and detriments resulting from statewide regulations. An attempt to impose the above discussed quality control standards throughout the state would raise serious questions of equal protection for an operation in Guilford County as opposed to a similar operation in Brunswick County. It is hardly conceivable that the same noise level values could be reasonably imposed in both areas. A satisfactory and mutually beneficial compromise would be the use of local regulations, adopted and enforced at the city and county level, with state agencies and their professional staffs providing advisory, research and testing assistance. An additional consideration, and one of primary con-

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88 Northern Ill. Coal Corp. v. Medill, 397 Ill. 98, 72 N.E.2d 844 (1947).
89 See note 26 supra.
cern to many political and industrial factions, is that regulations at
the local level should tend to deter "big brother," be it the state or
federal government, from imposing its own influence and solutions
on the local scene.

WILLIAM H. THOMPSON

Constitutional Law—Legislative Election of a Governor

When the "one man, one vote" principle first arose in a case
concerning the county unit system in Georgia,\(^1\) the question asked
was how far it would be extended. The answer came quickly in
two historic decisions. The Court ordered that congressional dis-
tricts be approximately equal in population,\(^2\) and that both houses
of state legislatures be apportioned on the basis of population.\(^3\)
Yet these decisions raised more questions concerning what limita-
tions the Court would put on the "one man, one vote" maxim.
These questions were partially answered in *Fortson v. Morris*,\(^4\)
where the Court, with a vigorous dissent, did put a limitation on
the applicability of the "one man, one vote" concept,\(^5\) refusing to
use it to prevent the legislative election of a governor in which the
winning candidate might have been (and, in fact, eventually was)
the loser at the polls.

The case arose out of the 1966 race for Governor of Georgia.
Democrat segregationist Lester Maddox contested with conserva-

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\(^1\) Gray v. Sanders, 372 U.S. 368, 381 (1963): "The conception of political
equality from the Declaration of Independence, to Lincoln's Gettysburg
Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can
mean only one thing—one person, one vote."


\(^5\) Since *Fortson v. Morris* the Supreme Court has limited further the
application of "one man, one vote." In *Sailors v. Bd. of Educ.*, 387 U.S.
105 (1967), *aff'g* 254 F. Supp. 17 (W.D. Mich. 1966), the Court held that
"one man, one vote" was not applicable to the selection of a county school
board because the choice was not by an elective process, no election being
required because the offices were nonlegislative. In *Dusch v. Davis*, 387
U.S. 112 (1967), *rev'd* 361 F.2d 495 (4th Cir. 1966), the Court refused to
apply "one man, one vote" to the at-large election of a city council, where
there was a requirement that the members reside in certain boroughs. The
Court, however, did not reach the merits of applying "one man, one vote"
to local governments in these cases, or in *Moody v. Flowers and Supervisors
of Suffolk County v. Bianchi*, 387 U.S. 97 (1967), dismissed on jurisdic-
tional grounds.