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Statutes—Constitutionality of Local Laws

The case of Orange Speedway v. Clayton\(^1\) held the session law\(^2\) which banned racing in Orange County invalid. The court ruled that this was a local act regulating trade in violation of the constitution.\(^3\)

A case which, although distinguishable, reaches a different outcome is State v. Chestnutt,\(^4\) which involved a broad regulation\(^5\) making Sunday racing under any circumstances a crime.\(^6\) In the Orange Speedway case the prohibition against promoting Sunday racing was coupled with insurance and permit requirements for weekday racing. Rather than a

prevent labor unions from restricting their membership on the basis of race if they so desire. However, some states by statute have forbidden all discrimination by labor unions on the basis of race, including restrictive membership clauses. See, e.g., New York Civil Rights Law § 43; New York Executive Law § 296(2). It has been held generally in industrial states that unions which restricted their membership to persons of a particular race could not enjoy the benefits of a closed or union shop contract, the closed shop being consonant with the closed union. See, e.g., the California cases: Thompson v. Moore Drydock Co., 27 Cal. 2d 595, 165 P.2d 901 (1946); Williams v. International Brotherhood of Boilermakers, 27 Cal. 2d 586, 165 P.2d 903 (1946); James v. Marinship Corp., 25 Cal. 2d 721, 155 P.2d 329 (1944); Bautista v. Jones, 25 Cal. 2d 746, 155 P.2d 343 (1944). Cf. Wallace Corp. v. NLRB, 323 U.S. 248 (1944).

In a novel decision the Supreme Court of Kansas held by judicial interpretation that unions may not restrict their membership on grounds of race or color, if the union serves as exclusive bargaining agent under a federal statute. In Betts v. Easley, 161 Kan. 459, 169 P.2d 831 (1946), is found the familiar railway situation of the Conley case where all employees, both Negro and white, were union members, but where they were segregated into separate locals. Petitioners complained that their lodge was under the jurisdiction of and represented by the white local and that plaintiffs could not attend white local meetings, vote on election of officers or selection of bargaining representatives, nor participate in the determination of union policy.

Petitioners did not allege that there was a discriminatory collective bargaining contract or that there had been any attempt on the part of the white local to discriminate in any way, other than their segregation, against Negroes. They simply complained that they were denied privileges of participation equal to those accorded to white employees. The court pointed out that in performing its functions as statutory bargaining agent, a labor union is not to be regarded as a wholly private association of individuals free from all constitutional and statutory restraints to which public agencies are subjected. They were unimpressed with the argument that the Negroes, by voluntarily joining the union, had consented to place themselves within the regulations of the union. They held that petitioners' segregation was arbitrary, fraught with potential danger to their rights, and a violation of their individual rights guaranteed by the fifth amendment in that plaintiffs were deprived of their liberty and property without due process of law. They pointed out that a state court has both the jurisdiction and the duty to enforce the Constitution of the United States.

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\(^1\) 247 N.C. 528, 101 S.E.2d 406 (1958).
\(^3\) N.C. Const. art. II, § 29 (1917). "The General Assembly shall not pass any local, private, or special act or resolution . . . regulating labor, trade, mining, or manufacturing . . . ."
\(^5\) N.C. Sess. Laws 1949, c. 177.
\(^6\) 241 N.C. at 403, 85 S.E.2d at 299. "The General Assembly, exercising the police power of the State, may legislate for the protection of the public health, safety, morals, and general welfare of the people; and Sunday observance statutes and municipal ordinances derive their validity from this sphere of legislative power."
sweeping and absolute prohibition of Sunday racing, it was directed primarily at commercial racing. The court held that such a prohibition amounts to a regulation of trade.

The court defined "trade" under the constitutional limitation as "any employment or business engaged in for gain or profit."

This is trade in its broadest sense as applied in many tax cases. Only two instances have been found where a local North Carolina act was held to be a regulation of trade. In both cases there were other reasons for denying the act's validity, and in one case the dissent argued for a more strict interpretation of the words "regulating" and "trade." The fact that "trade" is used in context with "labor," "mining," and "manufacturing" in the constitutional limitation supports this argument. The broad definition of "trade" applied by the court would include all these items. Thus it would seem that "trade" in the amendment was intended to be used in the restricted sense, since otherwise there is unnecessary duplication. A more appropriate definition of "trade" would be "the buying and selling, or exchanging, of commodities either by wholesale or by retail." Under this definition, auto racing and other service industries would not be included within the prohibition.

The court's determination that this is a local act is in line with recent decisions on the subject. However, the judicial history of article II, section 29 of the constitution indicates a change in thought on the part of our court. In early decisions, the court seemed eager to support the constitutionality of questioned legislation, and a finding that an act was unconstitutional came to be the exception rather than the rule. This resulted from the court's lack of a uniform definition of a local act and a rather strict interpretation of the subject matter covered by the prohibition.

The first case decided under the amendment held that an act authorizing the issuance of bonds for road purposes in a township

247 N.C. at 533, 101 S.E.2d at 410.


Taylor v. Carolina Racing Ass'n, Inc., 241 N.C. 80, 84 S.E.2d 390 (1954) (act also delegation of legislative power and grant of privilege and immunity); State v. Dixon, 215 N.C. 161, 1 S.E.2d 521 (1939) (act also in conflict with general licensing power and discrimination within class of real estate brokers).


AMERICAN COLLEGE DICTIONARY 1283 (1954).

E.g., Day v. Comm'r's, 191 N.C. 780, 133 S.E. 164 (1926) (act authorizing bonds and tax for bridge invalid because it specified bridge at designated spot); Armstrong v. Board of Comm'r's, 185 N.C. 405, 117 S.E. 388 (1923) (act authorizing erection of tuberculosis hospital in Gaston County held invalid as local act relating to health).

Brown v. Road Comm'r's, 173 N.C. 598, 92 S.E. 502 (1917).
and the levying of a tax to pay them was not unconstitutional because it only provided the means for road construction. Such a tax measure was not an authorization of road work within the meaning of the prohibition. This decision was followed by a series of cases concerning acts authorizing bonds and taxes for roads and bridges in the various counties. In each of them the court said that the questioned act was only a tax measure giving the county the means with which to construct, and was not "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets or alleys . . . [nor] relating to ferries or bridges" as prohibited by the amendment. In addition, the acts were held not to be local because they applied uniformly throughout the county and the actual construction to be done would be at places determined at the discretion of the county boards. As late as 1940 the court held in *Fletcher v. Collins* that an act allowing Buncombe County to organize any territory in the county into a school district upon petition by ten per cent of the voters was not a prohibited local act because the legislature left the determination of where the districts were to be established to the discretion of the county board.

Within the past decade there has been a new approach by the court in interpreting the amendment. Acts have been held to be "local" on the basis of the area to which they applied without regard to the discretion granted to the county, and the prohibited subject matter has not been interpreted in such a narrow sense. The first indication of this came in 1939 in *State v. Dixon*, which held a real estate tax applicable to only one third of the counties in the state to be a local law regulating trade because it was "one operating only in a limited territory or specified locality." The only reason given for this determination was that under the theory of *In re Harris*, the question of whether a law is local depends upon the facts and circumstances of each particular case. No attempt was made to distinguish those earlier cases which had held

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14 Road Comm'rs v. Bank, 181 N.C. 347, 107 S.E. 245 (1921); Board of Comm'rs v. Pruden, 178 N.C. 394, 100 S.E. 695 (1919); Martin County v. Wachovia Bank and Trust Co., 178 N.C. 26, 100 S.E. 134 (1919); Parvin v. Board of Comm'rs, 177 N.C. 508, 99 S.E. 432 (1919); Mills v. Board of Comm'rs, 175 N.C. 215, 95 S.E. 481 (1918).

15 The opinion of at least one member of the court as to "the importance of the decision of the Court in forwarding the good-roads movement of the State" is illustrated by State v. Kelly, 186 N.C. 365, 376, 119 S.E. 755, 761 (1923).

16 N.C. Const. art. II, § 29 (1917).

17 218 N.C. 1, 9 S.E.2d 606 (1940).

18 215 N.C. 161, 1 S.E.2d 521 (1939).

19 Id. at 165, 1 S.E.2d at 523.

20 183 N.C. 633, 112 S.E. 425 (1922) (act applicable to 56 of 100 counties held to be a general law).

21 Fletcher v. Collins, 218 N.C. 1, 9 S.E.2d 606 (1940); Board of Comm'rs v. Pruden, 178 N.C. 394, 100 S.E. 695 (1919); Parvin v. Board of Comm'rs, 177 N.C. 508, 99 S.E. 432 (1919); Mills v. Board of Comm'rs, 175 N.C. 215, 95 S.E. 481 (1918).
acts which applied to only one county in the state to be general laws rather than local ones.

Dixon was followed in 1940 by a decision holding an act setting up a county physician and quarantine officer in Madison County to be of a local nature pertaining to health and sanitation and therefore unconstitutional. Within the past eight years, the court has held invalid acts allowing Winston-Salem and Forsyth County to consolidate their public health agencies and departments, prohibiting a county board of education from expending more than $2,000 for extending water or sewer systems to a new school, allowing construction and operation of toll roads and bridges in a five county area, and setting up a racing commission in Morehead City. All of these were found to be invalid under article 2, section 29 because they were local acts applicable only in a limited territory and were within the subject matter in which such local legislation is prohibited. It is interesting to note that the court relied on these recent decisions to support its position in the present case even though the amendment has been in effect since 1917. None of these cases attempts to distinguish the earlier cases with which they would appear to conflict.

In analyzing the principal case, one arrives at two conclusions. The first is that Orange County could successfully prevent Sunday racing by having the legislature pass an act similar to that passed for Wake County invoking the state police power to enforce such a ban. The second, and more important conclusion is that the court appears to have settled upon a more definite interpretation of this amendment. The cases decided since 1940 have been substantially uniform in holding that an act is local if it is applicable only to a limited area and the restricted subject matter has been broadened to include many areas which were formerly excluded. We can no doubt look forward to more decisions invalidating acts within this area.

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Taxation—Income Tax—Determination of Whether Corporate Withdrawals Constitute Loans or Dividends

The 1954 Internal Revenue Code defines the term "dividend" as "any distribution of property made by a corporation to its stockholders

Sams v. Board of Comm'rs, 217 N.C. 284, 7 S.E.2d 540 (1940).