RECENT CASES

Constitutional Law—Freedom of the Press—Validity of Municipal Ordinance Regulating Distribution of Printed Matter—[Federal].—A person distributing religious tracts was convicted for violation of a city ordinance prohibiting the distribution of "circulars, handbooks, advertising, or literature of any kind" without the permit of the city manager. On appeal from the Georgia Court of Appeals[1] to the United States Supreme Court, *held*, this ordinance was unconstitutional on its face, in that it impairs freedom of the press in violation of the fourteenth amendment. *Lovell v. City of Griffin.*[2]

In cases involving ordinances of this kind the problem is to reach a compromise between the exercise of individual rights and liberties on the one hand and the use of the police power of the state on the other. The individual rights here concerned constitute a particular phase of the constitutional rights of free speech and press, while the state desires to maintain order in streets and other public places.

The common municipal ordinances regulating distribution of handbills and other printed matter may be classified as follows: (1) those prohibiting any distribution of any type of literature; (2) those affecting the manner of circulating; (3) those affecting the distribution of certain kinds of publications.

Ordinances of the first type have been upheld by some state courts as within the valid police power of the municipalities enacting them for the protection of public health and safety;[3] but other courts have objected to them as being an unreasonable deprivation of liberty not warranted by the ends they seek to promote.[4] In some cases the broad language of the regulation has been limited by interpretation to fall within the second or third class.[5] It is the sweeping prohibitive character of this type of ordinance that the court attacks in the principal case: "Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship."[6]

The opinion in the instant case implies that ordinances of the second or third type would be upheld if restricted in their application with respect to time and place or if

[1] Lovell v. City of Griffin, 55 Ga.App. 609, 191 S.E. 152 (1937).

[2] 58 S.Ct. 666 (1938).

[3] *In re* Anderson, 69 Neb. 686, 689, 96 N.W. 149, 150 (1903) ("A police regulation obviously intended as such, and not operating unreasonably beyond the occasion of its enactment, is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the Constitution."); Milwaukee v. Kassen, 203 Wis. 383, 234 N.W. 352 (1931) ("It is the form of the matter distributed rather than its printed contents that is to govern."); Dziatkiewicz v. Maplewood, 115 N.J.L. 37, 178 Atl. 205 (1935).

[4] People v. Armstrong, 73 Mich. 288, 41 N.W. 275 (1889); City of Chicago v. Schultz, 341 Ill. 208, 173 N.E. 276 (1930).

[5] Coughlin v. Sullivan, 100 N.J.L. 42, 126 Atl. 177 (1924) (ordinance held to apply only to advertising, not to pamphlets containing matter of public interest, in this case criticism of the city administration); People v. Johnson, 117 Misc. 133, 191 N.Y.Supp. 750 (1921).

[6] P. 669.

they were limited to prohibition of means of circulation which may be regarded as inconsistent with the maintenance of public order, or contained other restrictions of this kind.[7] The question of permissible restrictions has sometimes been raised by other courts when interpreting ordinances of the second or third type. In a recent New York decision an ordinance was held reasonable which required a license of everyone engaged in "the business of bill posting and distributing." It was held that under such an ordinance only the business of bill posting could be licensed, while sporadic acts of distributing circulars would not fall under its provisions.[8] Other decisions have upheld ordinances which prohibited throwing of printed matter on porches, into yards, alleys, or sticking them on automobiles since such a way of distribution was likely to litter streets.[9]

Within the third type those ordinances are most frequent which prohibit the distribution of advertising matter only,[10] sometimes expressly excepting newspapers and publications printing news of general nature.[11] The value of such a distinction is open to doubt. What is news of general nature as compared with advertising matter? Is the announcement of a political meeting matter of general nature? A New Jersey court held it was advertising matter only.[12] In a recent Massachusetts decision pamphlets advocating a labor union were held advertising matter.[13] On the other hand, a Michigan court held that an ordinance was not reasonable if it included in its prohibition the circulating of "an invitation to a moral and Christian assembly of people gathered together for the public good."[14]

The instant case holding that handbills merit the same protection as newspapers is of practical importance to minority groups which might otherwise be materially hampered in advocating their doctrines.[15] The language of many municipal ordinances

[7] "The ordinance is not limited to 'literature' that is obscene or offensive to public morals or that advocates unlawful conduct. . . . . The ordinance is comprehensive with regard to the method of distribution. . . . . There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets." P. 668.

[8] City of Rochester v. Parr, 1 N.Y.Supp.(2d) 771 (City Ct. 1937).

[9] Philadelphia v. Brabender, 201 Pa. 574, 51 Atl. 374 (1902); Sieroty v. City of Huntington Pk., 211 Cal.App. 377, 295 Pac. 564 (1931); San Francisco Shopping News Co. v. South San Francisco, 69 F.(2d) 879 (C.C.A. 9th 1934); Goldblatt Bros. v. East Chicago, 6 N.E.(2d) 331 (Ind. 1937); Allen v. McGovern, 12 N.J.Misc. 12, 169 Atl. 345 (1933).

[10] Wettengel v. Denver, 20 Colo. 552, 39 Pac. 343 (1895); Almassi v. City of Newark, 8 N.J.Misc. 420, 150 Atl. 217 (1930); Commonwealth v. Kimball, 13 N.E.(2d) 18 (Mass. 1938).

[11] People v. St. John, 108 Cal.App. 279, 288 Pac. 53 (1930); Sieroty v. City of Huntington Pk., 211 Cal.App. 377, 295 Pac. 564 (1931).

[12] Almassi v. City of Newark, 8 N.J.Misc. 420, 150 Atl. 217 (1930) (handbills announcing mass meeting of the Communist party).

[13] Commonwealth v. Kimball, 13 N.E.(2d) 18 (Mass. 1938).

[14] People v. Armstrong, 73 Mich. 288, 41 N.W. 275 (1889).

[15] For comment see Time, p. 16 (April 11, 1938); Nation, p. 398 (April 9, 1938); New York Times, p. 1 (March 29, 1938).

will no doubt need revision in the light of this opinion.[16] Interpretations such as those mentioned above[17] by the Massachusetts and New Jersey courts including labor and political propaganda as advertising would seem contrary to the spirit of this opinion, as well as to the general principle indicated by a line of recent Supreme Court decisions stressing the importance of protection of civil rights and liberties.[18]

Constitutional Law—Jurisdiction over Land Owned by the United States—P.W.A. Housing—[Federal].—A contractor, erecting, under contract with the United States, a low-cost housing and slum-clearance project on land acquired by the United States for such purposes, was criminally prosecuted for failure to comply with municipal ordinances in relation to building permits and building inspections. *Held*, the contractor was not amenable to such ordinances, despite the Act of Congress of June 29, 1936[1] which provided that the the acquisition of land for housing projects "shall not be held to deprive any state or political subdivision thereof of its civil and criminal jurisdiction in and over such property, *or*[2] to impair the civil rights under the local law of the tenants or inhabitants on such property; and insofar as any such jurisdiction has been taken away from any such state or subdivision, or any such rights have been impaired, jurisdiction over any such property is hereby ceded back to such state or subdivision." *City of Oklahoma City v. Sanders.*[3]

The analysis of federal jurisdiction over land owned by the United States is contingent upon the type of ownership and the manner of acquisition of such land. The federal government may own land in much the same manner as a private owner, or as a sovereign for purposes connected with its governmental functions.[4]

If the ownership is merely of a proprietary nature the state has general governmental control over the property,[5] although it may not exercise eminent domain over[6] or tax such lands.[7] Moreover, the United States may pass legislation protecting its

[16] A recent decision upholding a Milwaukee ordinance has been attacked on the basis of the principal case. An appeal to the Wisconsin Supreme Court is now pending. Chicago Tribune, May 3, 1938, p. 7.

[17] See notes 12 and 13 *supra*.

[18] Powell v. Alabama, 287 U.S. 45 (1932); Mooney v. Holohan, 294 U.S. 103 (1935); Brown v. Mississippi, 297 U.S. 278 (1936); Grosjean v. American Press Co., 297 U.S. 233 (1936); De Jonge v. Oregon, 299 U.S. 353 (1937); Herndon v. Lowry, 301 U.S. 242 (1937).

[1] 49 Stat. 2026 (1936), 40 U.S.C.A. §421 (Supp. 1937).

[2] Italics added.

[3] 394 F. (2d) 323 (C.C.A. 10th 1938).

[4] Willis, Constitutional Law 258–259 (1936); 1 Willoughby, On the Constitution §251 (2d ed. 1929); 2 Story, On the Constitution c. XXIII (5th ed. 1891); 24 Calif. L. Rev. 573 (1936).

[5] 24 Calif. L. Rev. 573 (1936).

[6] Utah Power and Light Co. v. United States, 243 U.S. 389 (1916).

[7] Van Brocklin v. Tennessee, 117 U.S. 151 (1885); see also Surplus Trading Co. v. Cook, 281 U.S. 647 (1929); nor may a state tax any of the products which the federal government may have given a license to extract from such land, Willis, Constitutional Law 258 (1936) and cases therein cited.