1973

Administrative Law/Legislation: Final Examination (January 1973)

William & Mary Law School

Repository Citation
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I. The State of Marshall has been one of the few states that regulates no occupation other than the traditional professions. In the last legislature, an act to do so was passed. Its first section provided:

Whereas, the state has experienced incompetence, excessive changes, lack of profession standards, failure to serve the public, a lack of professional sanitation and safety in many occupations and related harms, the following act is hereby enacted.

The third section provides:

The Occupational Licensing Board may regulate any occupation in the public interest, convenience and necessity.

The Occupational Licensing Board then passed a regulation setting maximum hours, maximum changes, and requiring "high standards of sanitation and safety" in barbering. It also established a Barbers Advisory Committee (whose members must be members of the Barbers Union) to aid in enforcement of the regulation and to advise further regulations. Marshall has no administrative procedure act, the act here at issue establishes no procedure and has no provision for judicial review. Stan Shortsbeer, who operates a discount barbershop in violation of the price and wage standards (and in probable violation of any regulation of safety and sanitation), wishes to know if he must comply. Advise him in full of any legal objections to the Act and/or regulations.

II. In its regular session of 1971, the State of Marshall's General Assembly creates a special committee charged with "studying all aspects of the establishment of a system of parimutual gambling on horseracing". It was given all authority of the General Assembly itself. Among its members were several opposed to parimutual gambling and other activities as well. Three of these, following the General Assembly practice, were authorized to conduct special hearings as a subcommittee. They called several witnesses among them Charles Quinn who owned a large nightclub. He was asked a series of questions dealing with illicit activities which he declined to answer. The chairman of the subcommittee then read the General Assembly resolution and repeated the questions. Quinn again refused to answer and was cited for contempt. Should he be convicted? What could the subcommittee do, given its authorization, to increase the likelihood of conviction?

III. Mary Allesch, a resident of the State of Wythe, was the mother of Frank Allesch, an illegitimate child. Mary Allesch was killed while employed at her job, which supported her and Frank. The Wythe Compensation Statute provides in part:

If the employee leaves any parent or parents, child or children, grandparent, grandchild or grandchildren, who at the time of injury were dependent upon the earnings of the employee, then a certain sum, not less in any event than one thousand six hundred fifty dollars ($1,650) and not more in any event than three thousand seven hundred fifty dollars ($3,750) goes to the dependent.

In Morrow an Industrial Commission, a 1912 case, the Supreme Court of Wythe held that Charles Morrow, the alleged (though never adjudicated) illegitimate child of Max Norrel could not recover under the same Compensation Act, a citing of both the Common Law distaste for illegitimacy and the lack of actual proof of paternity and declaring Charles Morrow to not be a child within the statute. In 1951, Wythe passed an act permitting an illegitimate child to inherit. In 1960, the Wythe Supreme Court permitted an illegitimate child
to sue his father for support, status "the harshness of the Common Law disabilities on illegitimate children has been restricted in this jurisdiction."
Frank sues for a lump sum payment.

(a) What result? Why?
(b) Would it matter if the Wythe constitution had a provision stating:

"No legal right shall be restricted, denied or abridged on account of sex and all persons shall be treated equally by the laws of the state without regard to sex"?

IV. The Constitution of Marshalls provides:

Article 4

Sec. 104. The legislature shall not pass a special, private, or local law in any of the following cases:

(1) Granting a divorce;
(2) Relieving any minor of the disabilities of nonage;
(3) Changing the name of any corporation, association, or individual;
(4) Providing for the adoption or legitimizing of any child;
(5) Incorporating a city, town, or village;
(6) Granting a charter to any corporation, association, or individual;
(7) Establishing rules of descent or distribution;
(8) Regulating the time within which a civil or criminal action may be begun;
(9) Exempting any individual, private corporation, or association from the operation of any general law;
(10) Providing for the sale of the property of any individual or estate;
(11) Changing or locating a county seat;
(12) Providing for a change of venue in any case;
(13) Regulating the rate of interest;
(14) Fixing the punishment of crime;
(15) Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the ratification of the constitution of eighteen hundred and seventy-five;
(16) Declaring who shall be lines between precincts or between counties.

The legislature shall pass general laws for the cases enumerated in this section.

In 1952, the General Assembly of Marshalls passed legislation stating that any city of over 100,000 population in the last preceding census may permit and regulate the sale of alcoholic beverages. Langsdale became a city of 101,000 in 1962 when it annexed Amesville, which had a population of 11,000 in the 1910 census. It thereafter forbade the sale of alcoholic beverages after 11:00 P.M., imposes a $500 fine for anyone selling thereafter. In 1914, Marshalls adopted an Alcoholic Beverage Act permit sale of alcoholic beverages until 12:00 midnight. No repeal of other statutes was included; however, the Supreme Court of Marshalls has consistently held state law repeals over local law if there is an irreconcilable conflict. In the 1966 compilation of Marshalls statutes, the 1964 act was totally omitted from the official code although the Alcoholic Beverage Commission provides copies to all former sellers of alcohol in cities over 100,00 and licensed sellers in smaller places. Before the 1967 General Assembly rectified this mistake, Alex Jones, formerly licensed in Langsdale, was arrested and fined $500 for violating the Langsdale ordinance by selling alcohol at 11:40 P.M. On appeal, what resulted?

V. In 1974, the President's Commission on Drugs and Drug Abuse determined that the use, sale and manufacture of drugs was without any doubt the single most socially divisive matter in the whole community. Most members of Congress, when interviewed by the press, unanimously agreed with the findings.
As would be expected, the report received an enormous amount of publicity. Those on the "right" declared that "at last we have a definite statement as to the effects of permissiveness in our society", and those on the "left" were sure that "this is just a device to permit the growth of a centralized power and abrogate constitutional freedoms." The wits of the country thought that the whole issue was merely a smoke screen.

Amidst all the furor, Congress rushed through strong legislation. This legislation implied that participation in the drug culture was unpatriotic in that it gave breath to a scourge which would destroy society.

It is difficult to pinpoint the exact reason for the rapid action by Congress, but it is thought that the upcoming election and the mood of the "Middle American" were relevant.

During the election campaign, a potential congressman, Wilhelm Buxby Sr., made inter alia the following remarks:

"... and there comes a time when personal belief must hold sway over what Congress states is for the public good. If my desire for the freedoms guaranteed to me in the great Constitution of this country is so strong that I am forced to disobey publicly those laws which I consider unjust, nationally stultifying and intellectually dishonest, then disobey I must. I am ready now to advise and I will be ready if elected to advise any person who feels threatened by those aspects of this piece of legislation [The Drug Abuse Act] which I believe are unconstitutional."

Two days after this speech Buxby was arrested pursuant to § 4 of The Drug Abuse Act and he was released on bail. He continued to campaign and was subsequently elected.

Between the time of election and the time when the new House was to sit, Buxby was convicted under § 4 of The Drug Abuse Act. He has appealed. He is at present still out on bail.

When the time came for Buxby to be sworn in, the Speaker of the House refused to administer the oath. He [the Speaker] said that "there is no place in our system of government for revolutionaries and libertines. It would be hypocritical for me to ask Mr. Buxby to uphold the laws of this country when he has publicly stated that he will pick and choose which laws he will obey. Furthermore, his mere presence in the Chamber lowers the status of the Congress in the eyes of the community at large." Buxby has appealed this decision by the Speaker to the Supreme Court of the United States.

The newspapers, sensing a sensation, have done an enormous amount of investigation and have come up with the following additional facts:

(a) When the bill was on the floor of the House, § 4 concluded with the words "... any dealer in drugs", but § 4 of the legislation that the President of the United States signed into law concluded with the words "... any licensed dealer in drugs."

(b) After a particularly fiery speech by the well known congressman Greg Willas, most of the House of Representatives rose and shouted that the motion be put. There appears to be no record indicating a call for a formal vote, although the House Reporter has noted that except for 27 members [named in the record] the whole House raised their voices in favor of the legislation.

You have just begun working in the office of a leading D.C. law firm named Grievous, Fault and Associates. As indicated, Buxby, who is a client of the firm, desires to appeal against both his exclusion from the House and his conviction under the new Act. A senior partner who is aware of your expertise in the field of legislation has asked you to prepare a memorandum
which will indicate to him the relevant issues both for and against what the facts raise. The senior partner has also indicated that he is worried that there may be a need for more facts. If you think such is the case, what facts are needed and why?

ACT No. 4276

WHEREAS, it has been proved that the use and sale of drugs has become common throughout the United States; and, whereas the use and sale of these drugs involves interstate commerce; and, whereas it has been proved that the effect of the use and sale of drugs has a deleterious effect on our society, be it enacted that:

§1. This Act is to be known as The Drug Abuse Act.
§2. This Act is to be interpreted in such a way as to give effect to the spirit of the legislation.
§3. Any person who permits an offense under this Act to take place on his property shall be guilty of an offense.
§4. Any person who buys, sells, uses or counsels or aids and abets the buying, selling or using of heroin, hashish, marijuana, LSD, amphetamines, or any other substance which is commonly known as a drug, is guilty of an offense except:

(a) Where the drugs are prescribed by a bona fide medical practitioner;
(b) Where the drugs are used for medicinal purposes;
(c) Where the drugs are sold by a licensed dealer in drugs.

§5. Any persons who suspect that an offense has been committed under this Act and who fail to report the incident or incidents to the law enforcement officials, shall themselves be guilty of an offense.