

Constitutional Law—Local Law Prohibiting Itinerant Peddling on Streets Unconstitutional (Good Humor Corporation v. City of New York, 290 N.Y. 312 (1943))

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was a deterrent to burglars who, posing as canvassers, could ascertain whether the house was empty. The Supreme Court held that this manner of distribution of literature outweighed by far the nuisances which might result.¹⁶ Some means of identification can be required of a stranger, in order to establish his character, authority and purpose.¹⁷ The decision to exclude canvassers should rest with the homeowner alone, and not with the city—unless, of course, the individual specifically requests the city to take over his right of exclusion. There is no criterion by which to measure what is a reasonable restriction, and what is not. Each case rests on its own individual facts. In the long view, the Supreme Court is guided in its decisions by the belief that the right to disseminate religious literature freely is essential to the spiritual guidance and high moral standards of the citizens of a democracy.¹⁸

P. S. L.

CONSTITUTIONAL LAW—LOCAL LAW PROHIBITING ITINERANT PEDDLING ON STREETS UNCONSTITUTIONAL.—The plaintiff who is engaged in the business of selling ice-cream to consumers in the streets from refrigerated motor cars, tricycles and hand carts, seeks to enjoin the city of New York from enforcing an ordinance¹ which prohibits itinerant peddling except in enumerated circumstances. The plaintiff contended that the law was unconstitutional inasmuch as it was in violation of the Fourteenth Amendment of the United States Constitution and Article I, Sections 1, 6 and 11 of the New York

¹⁶ See note 15 *supra*. *Accord*, *Schneider v. State*, 308 U. S. 147, 162, 60 Sup. Ct. 146, 84 L. ed. 155 (1939); *Hague v. C.I.O.*, 307 U. S. 496.

¹⁷ See note 11 *supra*.

¹⁸ *Cantwell v. Conn.*, 310 U. S. 296, 310, 60 Sup. Ct. 900, 84 L. ed. 1213, 128 A. L. R. 1352.

¹ N. Y. CITY ADMIN. CODE § 435—14.0. Itinerant peddling prohibited. a. It shall be unlawful for any person to peddle, hawk, vend or sell any goods, wares or merchandise on any of the streets of the city. b. The provisions of this section shall not apply to: 1. Any person who operates and maintains a pushcart or other vehicle under an open air market license issued by the commissioner of public markets pursuant to the agriculture and markets law; or to—2. Any war veteran or any widow of a war veteran who peddles under a license issued pursuant to section thirty-two of the General Business Law; or to—3. Any adult blind person who operated under a license issued pursuant to section ten of the General City Law or by the commissioner of markets pursuant to section B36-89.0 of the code; or to—4. Any person who sells newspapers and periodicals; or to—5. Any person who owns and operates a farm in the city and who sells produce grown on such farm in the streets of the city; 6. Any person who violates this section, upon conviction thereof, shall be fined not more than ten dollars or imprisoned for not more than ten days, or both.

Constitution.² The city of New York maintained that the Local Law was adopted pursuant to powers conferred on the City Charter, and that the power over streets which the Charter has conferred on the City Council is such a power as the City Home Rule Law intended municipal legislative bodies to possess.³ From a judgment of the Appellate Division unanimously affirming a judgment of the trial court which had granted an injunction to the plaintiff and had declared the statute unconstitutional, defendant appealed. *Held*, judgment affirmed. Where not all peddling is subject to criticism, and discrimination is not impractical, prohibition rather than regulation is not justified. *Good Humor Corporation v. City of New York*, 290 N. Y. 312, 49 N. E. (2d) 153 (1943).

Generally, business and occupations are subject to regulation under the police power,⁴ but such regulation must not be unreasonable or arbitrary.⁵ It appears that the Local Law failed to meet these qualifications. The object of the law, as stated by the Committee on General Welfare of the New York City Council, was "to prevent unfair competition by itinerant peddlers with storekeepers who pay rent and various taxes, and it is in the interest of prosperity of the City and its inhabitants." However, the majority of the court did not deem this object to be broad enough to prohibit for the sole purpose stated, the use of the streets for a lawful business recognized by statute. Courts have repeatedly declared peddling to be a legitimate business.⁶ The city of New York alleged various harmful conditions which are the results of peddling in the streets of New York. Among the harmful conditions were the facts that some peddlers were not clean in their personal habits, some used fraudulent scales and measures, some offer their merchandise for sale in an unsanitary manner, and that in some crowded streets and especially at approaches to bridges, peddlers and peddlers' carts impede traffic. The plaintiff showed, and the city conceded, that the Good Humor Corporation conducted its business without any of the above mentioned evil practices. The court maintained that the harmful conditions in question could be dealt with by a rigid enforcement of ordinances and sanitary regulations, moreover it felt that a prohibition of peddling was un-

² N. Y. Const. Art. I, § 1. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

³ § 6—No person shall be deprived of life, liberty or property without due process of law.

⁴ § 11—No person shall be denied the equal protection of the laws of this state or any subdivision thereof. . . .

⁵ *City of New York v. Village of Lawrence*, 250 N. Y. 429, 165 N. E. 836 (1929).

⁶ *Cowan v. City of Buffalo*, 247 App. Div. 591, 288 N. Y. Supp. 239 (1936).

⁷ *See* 16 C. J. S. 556, § 188.

⁸ *Village of Stanford v. Fischer*, 140 N. Y. 187, 35 N. E. 500 (1893); *Collender v. Reardon*, 138 App. Div. 738, 123 N. Y. Supp. 587 (1910); *City of Buffalo v. Linsman*, 113 App. Div. 584, 98 N. Y. Supp. 737 (1906); *Robinson v. Wood*, 119 Misc. 299, 196 N. Y. Supp. 209 (1922).

reasonable, especially inasmuch as it did not appear that discrimination between the peddling which was useful, and that which was harmful, was impractical. In so holding, the Court of Appeals has extended the doctrine that peddling, unless it constitute an interference with traffic,⁷ cannot be prohibited by a municipal ordinance. It has been held that a city cannot by ordinance prohibit peddling in certain sections thereof when conditions in the restricted section are not dissimilar from those existing in many other areas and where the ordinance bears no relation to the welfare of the public but is designed for the convenience and interest of a special class.⁸ Hawking and peddling have long been subject to regulation.⁹ As such, the city of New York had the right to impose reasonable and just regulations, but did not have the right to impose a broad prohibition on a legitimate business. Moreover, the city of New York did not have the power to prohibit peddling as an incidental right of its power over the use of the streets granted it by the Home Rule Law, Section 11.

Three justices in a dissenting opinion written by Finch, J., contended that the Local Law was a reasonable regulation of a purely local problem and therefore constitutional. The minority view was that the Local Law did not force the peddlers and hawkers to abandon their trade but rather to confine themselves to the public markets where adequate facilities had been provided. The use of the facilities in the public market would result in proper supervision both as to the safeguarding of food and as to short weighting and other problems which at present are difficult to enforce. The decision in the principal case is an affirmation of the rule that peddling is a legitimate business and is subject to regulation but not prohibition.

T. K.

INSURANCE—TRUST AGREEMENTS—USE OF ACCUMULATION PRIOR TO AGREED TIME.—Widowed mother of three children seeks to have an alleged trust agreement set aside, so that interest being accumulated for three minor children may be used to pay for the children's education. Petitioner's husband was insured by five life insurance companies. By the terms of the policies, the benefits accruing on the death of the insured would be divided equally among decedent's three minor children. The rights of the beneficiaries were

⁷ *Bus Depot Holding Corp. v. Valentine*, 288 N. Y. 115, 41 N. E. (2d) 913 (1942).

⁸ *People v. Cohen*, 272 N. Y. 319, 5 N. E. (2d) 835 (1936); *People v. Klinge*, 276 N. Y. 292, 12 N. E. (2d) 161 (1938).

⁹ N. Y. Laws 1909, c. 26, § 20, subd. 13. Subject to the constitution and general laws of this state, every city is empowered to maintain order, enforce the laws, protect property and preserve and care for the safety, health, comfort and general welfare of the inhabitants of the city and visitors thereto; and for any of said purposes to regulate and license occupations and businesses.