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Aliens and Immigration; Right-to-work Laws; Zoning Problems

POSTSCRIPTS

Aliens and Immigration

The Symposium on Immigration in the present issue of THE CATHOLIC LAWYER illustrates many of the problems facing migrants. An additional problem is discussed in a recent COLUMBIA LAW REVIEW note entitled, *Constitutionality of Restrictions on Aliens' Right to Work.*[1] The article states that the common-law right of an alien to work in the "common occupations of a community" has been severely limited by both federal and state legislatures. Several theories have been utilized by the courts to justify these legislative restrictions. These are: the state's proprietary interest over the subject matter of the occupation (*e.g.,* the taking of fish or game), and over the position itself (*e.g.,* government employment); the state's police power in businesses of an anti-social nature (*e.g.,* selling intoxicating liquors), and to make reasonable classifications in the interest of the public health, safety, morals, and welfare (*e.g.,* fire prevention measures); and the plenary control of the federal government over aliens, supported by the broad discretion granted to the government by the Supreme Court in determining personnel policy.

To contest the discriminatory legislation, the alien is usually faced with the presumption of constitutionality which attaches to a statute. However, the *Takahashi v. Fish and Game Commission*[2] decision, which limited the common property theory upholding such discriminatory legislation on the grounds of the states' proprietary interest over the subject matter, intimates that the force of the presumption in this area has been diminished.

The abolition of these arbitrary statutes is foreseen by an extension of the *Takahashi's*[3] reasonable relationship test whereby a statute in this area will only be upheld if its legislative purpose is reasonably related to the arbitrary classification imposed.

[1] 57 COLUM. L. REV. 1012 (1957).
[2] 334 U.S. 410 (1948).

Right-to-Work Laws

For readers of THE CATHOLIC LAWYER who recall the discussion of the *Morality of Right-to-Work Laws,*[1] a recent pamphlet entitled VOLUNTARY UNIONISM FOR FREE AMERICANS, authored by Father John E. Coogan, S.J., provides further information in this area. In the pamphlet Father Coogan points out that many abuses arise from the maintenance of the "union shop"; that employees, forced to join unions against their will, are deprived of the right to seek their own destinies through open and free contract between individuals, *viz.,* between employer and employee. The author indicates that Catholic workers are often forced to support ideologies which are alien to them,

[3] *Ibid.*
[1] See Coogan, *Can Nothing Be Said for State "Right-to-Work" Laws?,* 2 CATHOLIC LAWYER 314 (Oct. 1956); Cronin, *Right-to-Work Laws,* 2 CATHOLIC LAWYER 186 (July 1956); Falque, *The True Purpose of Right-to-Work Laws,* 2 CATHOLIC LAWYER 201 (July 1956); Fitzpatrick, *Morality of Right-to-Work Laws,* 2 CATHOLIC LAWYER 91 (April 1956); Fitzpatrick, *Morality of Right-to-Work Laws: Additional Comments,* 2 CATHOLIC LAWYER 308 (Oct. 1956); Kelley, *A Moral Study,* 2 CATHOLIC LAWYER 190 (July 1956); Morris, *Mr. Fitzpatrick on the Morality of Right-to-Work Laws – Comment,* 2 CATHOLIC LAWYER 183 (July 1956).

such as socialism and materialism. He asserts that "right-to-work" laws will not destroy unions, but merely force them to adopt policies which will be acceptable to the individual worker — force the unions to work for support, and to be responsible to their members. Father Coogan contends that, through these laws, unionism will be improved, dangerous concentration of power will be avoided, and the lot of the individual worker bettered. [Reprints of the pamphlet may be obtained by writing to the NATIONAL RIGHT TO WORK COMMITTEE, 1025 Connecticut Avenue, N.W., Washington, D. C.]

Zoning Problems

Various problems facing religious institutions because of zoning restrictions have been discussed in past issues of THE CATHOLIC LAWYER.[1] A recent article in the NOTRE DAME LAWYER on the problem of *Zoning Out Religious Institutions*[2] states briefly that in recent years, many municipalities have attempted to exclude religious institutions from restricted areas under local zoning regulations. Usually the arguments presented in justification of the exclusions are that these churches and schools would create traffic problems, noise, etc. The communities attempt to show that the regulations bear a substantial relation to public health, safety, or welfare. In many instances, however, the courts have rejected these arguments where it has been shown that the regulations interfere with freedom of religion. Apparently, the first amendment must take precedence over convenience.

In some municipalities, parochial schools have been excluded from residential areas where there are public schools. Some courts have held that the exclusion is justified, since public schools do not discriminate, whereas parochial schools do; other courts have decided that, since both private and public schools are subject to state regulation, there is no ground for distinguishing between the two.

In New York, some communities have attempted exclusion by indirection, *i.e.,* the zoning boards prohibit the erection of churches or schools in *particular* spots, although there are no provisions for exclusion from *districts.* The courts in New York have determined that exclusion from particular spots is arbitrary and unreasonable, and therefore invalid.

It may justly be said, then, that religious institutions occupy a favored position with respect to zoning regulations, since ". . . wherever the souls of men are found, there the house of God belongs."

[1] Brindel, *The Piedmont Case and Restrictive Zoning,* 2 CATHOLIC LAWYER 245 (July 1956); *Zoning Litigation,* 3 CATHOLIC LAWYER 277 (July 1957); *Zoning Restrictions,* 1 CATHOLIC LAWYER 153 (April 1955).

[2] 32 NOTRE DAME LAW. 627 (1957).