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Sinkler: Constitutional Law
CONSTITUTIONAL LAW

HUGER SINKLER*

While the number of cases involving constitutional law, which do not also relate to other fields and are thus discussed elsewhere, are few, the cases in this category are extremely interesting.

Perhaps the most interesting of these is the decision in the case of the *South Carolina Highway Department v. Harbin*.¹ In this case the court held unconstitutional the so-called "point system" which had been established by the Highway Department as a basis for the revocation or suspension of driver's licenses. The court's holding resulted from its conclusion that the statute relied upon by the Highway Department to set up its system improperly delegated legislative power. The specific statute involved is Code Section 46-172.² This Section reads:

46-172. Suspension or cancellation of license. For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year. Any person whose license has been suspended, cancelled or revoked by the Department shall be notified of such suspension, cancellation or revocation in writing by the Department. Such notice shall be sent by registered mail to the last address furnished the Department by such person. Within five days thereafter such person shall return his license to the Department and the failure on the part of any person to comply with this provision shall be a misdemeanor and punishable as a violation of this chapter as herein provided.

Harbin successfully contended that the statute fixed no standard and laid down no intelligible guide to which the Department must conform but left the matter in the uncontrolled discretion of the Department which constituted an unconstitutional delegation of legislative power.

The question of when the powers that are basically legislative in nature may be delegated always results in perplexing problems. It is well settled that while the Legislature may not delegate its power to make laws, it may authorize an administrative agency or board to fill up the details by prescribing rules and regulations for the com-

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1. 86 S.E. 2d 466 (S.C. 1955).

2. CODE OF LAWS OF SOUTH CAROLINA, 1952.

plete operation and enforcement of the law. However, it has been repeatedly held that such a statute must declare a positive legislative policy and establish standards for carrying it out, and that rules and regulations must conform to the standards thus defined. In this case the court held that Section 46-172 did not set out standards which authorized the Highway Department to establish the system which it placed into effect, relating to the suspension of driver's licenses.

Viewed strictly from an academic standpoint, there can be not too much quarrel with the holding of the court. Obviously, legislative powers must be exercised by the legislative branch. However, when the appalling number of deaths on the highways of this State are computed every year, it is obvious that something must be done to alleviate highway fatalities. It seems to be pretty well demonstrated, at least as far as the public is concerned, that the point system evolved by the Highway Department had a beneficial effect in reducing highway accidents. Furthermore, the death rate has risen since the system was abandoned.

It is, therefore, to be hoped that the point system law enacted during the 1955 session of the General Assembly will have a beneficial effect. An examination of this statute indicates a careful compliance with the court's holding. While the Highway Department has been empowered to make rules and regulations for the administration of the new law, specific standards are established and a positive legislative policy has been announced.

Conflict of General and Special Legislation

The case of the *Town of Forest Acres v. the Town of Forest Lake*³ is of unusual interest. The case is a sequel to the case of the *Town of Forest Acres v. Seigler*,⁴ decided by the Supreme Court during 1953, and discussed in the *South Carolina Law Quarterly* last year.⁵

In the earlier case, the Town of Forest Lake unsuccessfully sought to annex a portion of the Town of Forest Acres. That attempt was defeated because of the failure to submit to the entire electorate of Forest Acres the question of whether its corporate limits should be reduced by the elimination of the area which sought to annex itself to Forest Lake. In the *Seigler* case, the court properly concluded that the applicable statutes meant that the voters of the entire town should have a voice in determining whether any portion of the town should be detached. The court stated that while it was true that

3. 226 S.C. 349, 85 S.E. 2d 192 (1954).

4. 224 S.C. 166, 77 S.E. 2d 900 (1953).

5. 7 S.C.L.Q. 156 (Fall 1954).

only in rare instances would the voters of a town agree to release a portion of its territories so as to permit annexation to another municipality, nevertheless, that was a matter for the Legislature and not for the courts. Evidently, those who sponsor the affairs of the Town of Forest Lake were not long in acting upon the suggestion made by the court, for promptly in the year 1954 there was enacted a special law relating to towns in counties with a city whose population, according to the 1950 census, was 85,000 or more. Quite obviously this related to Richland County and no where else. This statute provides that if the town, a portion of whose area was to be annexed, had outstanding no bonds or contractual obligations payable from taxes, and if the area of the town was owned by a corporation, that an annexation might follow a petition on the part of the owner of the area which wished to leave the first town and become a part of the second town. The statute provided that no election was to be required. The Town of Forest Acres attacked an annexation proceeding under this Act on the ground that the Act was unconstitutional as being a special law where a general law was applicable. The court sustained this contention. It noted that there was a statute which was a general law which did prescribe the method by which municipal corporations might extend their territories through annexation, and it held that the Act in question was a radical departure from the general law, without any rational basis for distinction. The court's decision is well reasoned. Obviously, the constitutional provision condemning special laws where a general law is applicable would have little meaning if an Act of this sort should be permitted to stand.

The court noted the contention of the Town of Forest Acres that the Act was violative of Section 1, Article 8, of the South Carolina Constitution, which provides the powers of municipalities within a given class must be similar to the powers of all other municipal corporations of that class. While the court did not see fit to pass upon this contention, it would appear that this position is equally well taken. Obviously, if a town in Richland County could annex in the manner provided for by the Act, it has been given powers which are not applicable to other towns of the same class elsewhere in the State.

Regulation of Public Utilities by the State

The case of *Atlantic Coast Line Railroad Co. v. The South Carolina Public Service Commission*⁶ relates to the validity and reason-

6. 226 S.C. 136, 84 S.E. 2d 132 (1954).

ableness of an order of the Public Service Commission requiring the Railroad Company to enlarge a certain railroad station platform. The Railroad Company contended that there was no need for a platform as large as that sought for. The Public Service Commission found against this contention, and the court's holding was to the effect that the Public Service Commission's order must be upheld unless it were conclusively established that its holding was clearly against the weight of the evidence. The court reached the conclusion that in this case the evidence was such that the holding could not be said to be clearly against the weight of the evidence.

The case here is not one of great importance, and it merely reiterates the well established rule that public utilities are subject to regulation through the exercise of the police power of the State. While it is perhaps true that the Railroad Company does not agree with the result of this case, it would seem that neither side could have any real quarrel as to the correctness of the law which was laid down.