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Statutory Construction

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The field of statutory construction saw no new players in the game during the period covered by this survey, but the old veteran principles of the past clashed in new and interesting plays.

Perhaps the most explosive situation presented during the period occurred in *Elliott v. Sligh.*[1] An Act of the 1957 General Assembly declared criminal the use, sale or possession of certain fireworks in any county containing a city of over 65,000 population. The Act applied only to Richland and Charleston Counties because of the limitation as to population. The Court declared the Act violative of Article III, Section 34, Subdivision IX, of the State Constitution, which prohibits the enactment of a special law in cases where a general law can be made applicable. Legislation expressed in general terms (as this was) but special in its application falls within the ban. The classification (here based on the population of the city within the county) must be based upon differences defined by the Constitution or held by reason of their nature to justify the diversity in the legislation. The evidence before the Court indicated that other counties in the State, such as Greenville, Spartanburg and Anderson, were not any different from Richland and Charleston Counties in so far as fireworks control was concerned.

In another case of considerable public interest, *Dean v. Timmerman,*[2] the Supreme Court declared invalid the portion of section 7 of the 1958 General Appropriation Bill which authorized the issuance of bonds for the construction of secondary roads selected from a list submitted by the respective county delegations. The provision was held unconstitutional as in contravention of Article I, Section 14, of the Constitution as an encroachment upon the powers of the executive branch. Upon the basis of its holding in the leading case of

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1. 233 S. C. 161, 103 S. E. 2d 923 (1958).
2. 234 S. C. 35, 106 S. E. 2d 665 (1959).

Bramlette v. Stringer,[3] and in due deference to the principle of *stare decisis*, the Court said that the legislative delegations should stay away from such matters and leave them to the executive branch. The Court went on to say that, pursuant to the established principle of partial unconstitutionality, the remaining portion of the section involved, which imposed an extra cent of tax on gasoline, should be permitted to stand since to do so would further the legislative intent expressed in the Act.

In perhaps the most difficult of the cases in the field, *Colonial Life & Accident Insurance Co. v. South Carolina Tax Commission*,[4] the Supreme Court considered at length the meaning of a 1950 Act imposing a tax of four and one-half per cent on "investment income" of certain insurance companies. Before reaching the merits the Court disposed of a contention relating to the contents of the record and a claim that the Act was invalid because the effect of it was not expressed in its title as required by Article III, Section 17, of the Constitution. The Court held, as to the title difficulty, that the title was defective but that the defect was cured because the Act had been incorporated into the 1952 Code in accordance with law. As to the interpretation of the statute itself, the Court stated that as a taxing statute it is not to be extended beyond the clear import of its language and any substantial doubt as to meaning should be resolved in favor of the taxpayer.[5] The Court also said that if the legislative intent is clear from the language, there is no occasion to resort to the rules of statutory construction.[6] Applying those principles, the Court said that "personal property" was not limited to tangible personal property but included intangible items such as shares or deposits in building and loan associations. Further, said the Court, such intangibles were "situated" at the domicile of the owner and therefore subject to tax, since the Legislature had used that word to mean taxable situs rather than physical location.

3. 186 S. C. 134, 195 S. E. 257 (1938).
4. 233 S. C. 129, 103 S. E. 2d 908 (1958).
5. Beard v. S. C. Tax Commission, 230 S. C. 357, 95 S. E. 2d 628 (1957).
6. Crescent Manufacturing Co. v. S. C. Tax Commission, 129 S. C. 480, 124 S. E. 761 (1924).

In the only other case decided during the period, *State v. National Postal Transport Association*,[7] the Court bolstered its decision that a foreign insurance company doing business as a fraternal benefit association was not subject to a penalty of ten dollars per day for failing to register as a foreign corporation by mentioning that the Secretary of State had apparently construed the penalty as inapplicable to the company for twenty years or more. Interestingly enough, in the *Colonial Life* case, *supra*, in which the Tax Commission changed its views after four years, the Court said that the Tax Commission could well have been wrong the whole time.

7. 234 S. C. 260, 107 S. E. 2d 763 (1959).