



6-1-1965

Book Reviews

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Recommended Citation

Paul Brindel & Carl F. Eiberger, *Book Reviews*, 40 Notre Dame L. Rev. 492 (1965).

Available at: <http://scholarship.law.nd.edu/ndlr/vol40/iss4/7>

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BOOK REVIEWS

PUBLIC REGULATION OF THE RELIGIOUS USE OF LAND. By James E. Curry.¹ Charlottesville, Virginia: The Michie Company, 1964. Pp. xxii, 429. \$12.50. This is the first definitive work of its kind, "an historical and critical analysis, in more-than-usual depth, of approximately 100 cases in which attempts to regulate the religious use of land have resulted in court decisions published in the official reports."² The preface continues: "So far as I know, no previous author has tried to bring so much of this material together. Because church and church school zoning cases are not usually classified as such in the various legal encyclopedias, digests, etc., that legal writers use as 'case-finders,' there is no certainty that I have found them all. If any are omitted they may be included in supplements."³

This book has been long needed. The author reminds us: "Church construction is 'big business' [over a billion dollars in 1960]. . . . As the number of new churches increased after 1949, so did the number of church zoning cases. There also ensued a heightened realization on the part of judges of the need for redefining the relative rights of churches and municipalities with respect to the control of religious land use."⁴

It was only 39 years ago that the first comprehensive municipal zoning ordinance was given validity by the Supreme Court of the United States in *Village of Euclid v. Ambler Realty Co.*⁵ In this "cornerstone of modern land use zoning," the Court did not pass directly on the validity of the sections excluding churches, but it did note their existence. Comments the author:

If the exclusion of churches from residential districts was as evil as the New York City planners of 1916 thought, the Supreme Court passed up an ideal opportunity to say so.

In spite of this early record, there has been what almost seems like a campaign of learned articles to convince lawyers and the courts that any exclusion of churches from a residential area is *ipso facto* invalid.⁶

In 1949 came the now famous *Porterville Mormon case*,⁷ which was denied a review by the Supreme Court of the United States. This was the first, and remains the only church zoning decision which sustained total exclusion of churches from residential zones by express provision, rather than by indirection through the use of such arguments as inadequate parking facilities, alleged discrimination and balancing of conveniences.

"This milestone in the development of church zoning law," as the author terms it, continues to influence the courts of California and other states. Of nine California cases covered in this book, only three were decided in favor of religious appellants. One of these was the epochal Piedmont school case⁸ which invoked the 1925 United States Supreme Court's decision in *Pierce v. Society of Sisters*.⁹ "The Piedmont case may have pointed the way to future determination based on religious liberty rather than property rights," comments the author.¹⁰

1 Member of the Bar of the District of Columbia, and of the Supreme Courts of the United States, Puerto Rico and Illinois.

2 Text at iii.

3 *Ibid.*

4 Text at 14-15.

5 272 U.S. 365 (1926).

6 Text at 26-27. Among the "learned articles" cited was Brindel, *Zoning Out Religious Institutions*, 32 NOTRE DAME LAWYER 627 (1957). This book cites the *Notre Dame Lawyer* more than any law school review, except one.

7 *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. City of Porterville*, 90 Cal. App. 2d 656, 203 P.2d 823 (1949), *appeal dismissed*, 338 U.S. 805 (1949).

8 *Roman Catholic Welfare Corp. v. Piedmont*, 45 Cal.2d 325, 289 P.2d 438 (1955).

9 268 U.S. 510 (1925).

10 Text at 311.

What of the future as county, city, town and village planning commissions, and their professional planning staffs in nearly every state, come up with "master plans" and initiate restrictive ordinances as to the sale of property, number of a householder's pets, limitation of paying guests, and what not? Few of these "planners" have any legal training, yet often they act in a quasi-judicial capacity. The author warns, "religious liberty, which is largely an individual right, must be carefully distinguished from the special status that some courts have bestowed on churches in consideration of the great public service they render."¹¹

And he closes with this constructive note:

The trend of future restrictive legislation depends on the success of voluntary action. If developers can be induced to provide suitable church sites in new subdivisions, and if church planners and church administrators choose and use sites carefully, with full regard for protection of the public interest, public action will be limited. If voluntary action is lacking, or inadequate, there will be increasing pressure for public controls.¹²

This monumental work is more than the years of research of one man. Two pages list those to whom the author acknowledges "deepest gratitude." The bibliography — books, periodicals, articles, public addresses and authors — covers seven pages. Cases are cross-indexed as to religious denominations (21 Catholic, 17 Jewish, 13 Jehovah's Witnesses, etc., states, municipalities, and case titles. A chronological index starts with the Holy Bible, Magna Carta and St. Thomas More, and concludes with eleven 1962 entries. In fact, the author believes that *Utopia* "may be the first book on city planning."¹³

Paul Brindel, K.G.*

AN ANTI-TRUST PRIMER—A GUIDE TO ANTITRUST AND TRADE REGULATION LAWS FOR BUSINESSMEN. By Earl W. Kinter. New York, New York: The Macmillan Company, 1964. Pp. xviii, 316. \$7.95. Mr. Kintner in his prologue and Supreme Court Justice Tom Clark in the foreword in effect "review" this book summarizing what it is and what it is not, its purposes and uses. The title, "An Anti-Trust Primer — A Guide To Antitrust and Trade Regulation Laws For Businessmen," aptly describes this guide to the lawyer with a general practice and to the businessmen he serves in developing a basic understanding of the various laws generically termed "antitrust laws" with a detailed explanation of the relationship of these laws to common business practices.

The author has so well characterized his work that nothing would be better than to quote or paraphrase his own statements. "This book is not a comprehensive treatise of every phase of the antitrust and trade regulation laws" as such would necessitate many, many volumes.¹ And the author maintains his book is not designed to set forth the philosophic basis of such laws. However, as will be mentioned, the author does set forth a definite historical, economic and philosophical basis and rationale of his view of these laws and their role in government and business. This book is designed simply as a primer for the aware business executive and for the busy general practitioner who counsels businessmen. It was the author's hope "to state carefully every major premise of antitrust and trade regulation with meaningful examples of the application of the law to business practices."² The

11 Text at 335.

12 Quoted from WRITINGS OF FREDRICK H. BLAIR, JR. (Norton ed. 1963) in text at 336.

13 Text at 6.

* Knight of Galilee with Croix (Melkite Rite), Vatican Council correspondent, 1962-64. Contributor to numerous periodicals in this country and abroad.

1 Text at xv.

2 *Ibid.*

author very accurately states that the "propensity for elaborate footnotes has been ruthlessly suppressed."³

However, the author did not design the book to teach the businessman how to be his own antitrust lawyer. This "very idea is folly, because these laws are infinitely subtle and may appear in an infinite variety of guises."⁴ However, he did hope to heighten the businessman's awareness of these laws. His aim was not to convert the general practitioner into an antitrust specialist but basically to inform both him and his businessman client of these laws and the problems involved so that they may more intelligently use such a specialist.

This theme is echoed by Mr. Justice Clark in emphasizing that preventive measures should be undertaken by businessmen based upon a knowledge of principles of the antitrust laws and their application. He makes most interesting and candid statements:

The philosophy of the antitrust laws is that the freedom of every person to carry on the business of his choice is in the nature of a personal liberty as much as a property right. To preserve its free exercise is fundamental to our society not merely because of its private necessity but for its public consequence as well. . . .

The enactment of the antitrust and trade regulation laws is the answer of the Congress to this problem. . . . Presently those laws, as has been aptly said, are the guardians of the free enterprise system upon which the philosophy of our free world is based. This is not to say that the intent of these laws is to interfere in any way with the intelligent conduct of legitimate business operations. On the contrary, they protect such enterprises.

Nevertheless, we often hear the antitrust laws themselves assailed and their administration vilified. This is understandable, because the broad sweep that characterizes them tends to make for a vagueness and uncertainty that businessmen naturally detest. Indeed, astute lawyers after a lifetime of study of antitrust problems often do not know the answers. They come only from our Supreme Court and there only because of its finality in our judicial process. It is therefore little wonder that the businessman experiences considerable difficulty in translating these laws into terms of everyday business practice.⁵

The goal of this book is thus outlined, not to teach the businessman to be his own lawyer with the usual dire consequences, but to alert him to the dangers inherent in his everyday business practices, and to give the general practitioner counselling businessmen help in securing a ready, though preliminary, answer to the perplexing problem in this field of law. Mr. Justice Clark concludes that a real service will have been rendered both the businessman and his lawyer, who is not an antitrust specialist, if this book arouses their interest in the folklore of antitrust and makes them conscious of the technical applications and the breadth of requirements of such laws.

The author begins with a brief but thorough history and philosophy of the rise of free competition and the origins of government regulation. The various laws themselves are then summarized and discussed including the Sherman Act, Clayton Act, Federal Trade Commission Act and the Robinson-Patman Act. Each of the more serious problem areas and "prohibitions" is then considered. These include price-fixing, contracts, combinations and conspiracies, limitations on the resale market, boycotts and refusals to sell, exclusive dealings and tie-in arrangements, and then a very exhaustive and well illustrated consideration of the Federal Price Discrimination Law. What is particularly appealing about the book's whole approach is the simple explanations of very complex laws and their application to specific business practices. For example, under the Robinson-Patman Act the various price discrimination practices of a seller and the prohibition against buyers are lucidly set forth and illustrated. Likewise, the possible defenses by a seller are

3 *Ibid.*

4 *Ibid.*

5 *Id.* at vi.

clearly established. Antitrust law application to the patent and trademark monopoly field and to various license agreements, pools and use and market limitations benefit from this mode of presentation. Careful consideration is given to mergers and acquisitions, monopolization together with attempts, combinations and conspiracies to monopolize and interlocking directorates.

Mr. Kintner was General Counsel and later chairman of the Federal Trade Commission. For this reason, in addition to his other professional antitrust-law experience, he is well qualified to offer a book on these subjects. He spends fully half the book in the area of the Federal Trade Commission. As well as outlining what are unfair methods of competition and practice and procedure involved in this area, he also considers at length that "Wonderful World of Advertising." This is perhaps the most readable and interesting area to the layman. He first describes the basic philosophy of advertising, then he discusses various deceptive schemes. More importantly, these are related to the Federal Trade Commission's enforcement policies and guides. For example, advertisements using such terms as "big savings," "wholesale" and "factory-to-you" are evaluated as are endorsements, guarantees, non-disclosures, "free" goods and similar types of advertising met every day by the consumer. There is a thorough examination of methods to obtain ethical advertising for the good of the public, the economy, businessmen and the advertising industry itself. Much of this is based upon the author's conclusions from working in this area over many years, especially as Chairman of the FTC. Thus, his views have enhanced value for the insight into the operation and thinking of the Commission.

Another particularly informative area of the book is an outline of the various enforcement practices and procedures at Federal, State and private levels. Unlike the simplified explanation of antitrust statutes, this is more helpful information because it is usually not readily available to the general practitioner or to the businessman who wants to know how and why and who he is opposing. The various procedures of the antitrust division of the Department of Justice are set out at length and enforcement under state laws and by private individuals are adequately discussed. The latter is particularly topical in view of the great volume of triple damage, antitrust suits of the last few years in the electrical supply industry.

In using this handy and relatively short book it is not necessary to refer to footnotes for a full understanding of the textual sentences and neither is the reader disturbed by an abundance of such notes to ponder or plow through. However, a wealth of source material is available in a very long appendix. For the businessman there is a bibliography for each of the various chapters leading him to other sources if he wishes to go deeper into any particular subject. For the lawyer the principal cases are cited for each chapter for additional research should he desire. The main sections of the principal antitrust statutes are set forth. In connection with the discussion of unethical advertising, selected Federal Trade Commission guides are set forth to give practical aid to the businessman regarding such topics as deceptive advertising, price comparisons, suggested prices, tie-in agreements, guarantees, and "satisfaction or your money back" representations.

Addressing himself to the philosophy of the antitrust and trade regulation laws,⁶ Kintner reaffirms what he terms an article of faith, namely, that undue concentrations of power in governmental agencies or in private hands are inherently destructive of the aims of a free society. It follows that free competition is the only instrument which can in the long run produce maximum benefits for all.

Once committed to this philosophy it is possible to demonstrate that either unduly restrictive regulation or too free competition is wrong. These extremes should be avoided so that the public interest can be best served. Thus, the freedom to engage in competition is not a right but a privilege, a corresponding obligation

6 *Id.* at 223.

of which is fairness. The enforcement of the antitrust laws should not be characterized by hostility to business nor should the government allow business to go its own way without regard for the public interest in fair as well as free competition.

The readers, government regulatory agencies, businessmen and their respective attorneys are therefore asked by the author to recall that the basic principles of antitrust and trade regulation laws are aimed at preserving competition and not eradicating it. He believes that these laws actually favor competition and efficiency and are anti-competitive only in that they oppose unfettered competition, which must eventually destroy itself. Thus, antitrust laws were basically enacted to attack forces which would restrict the right to compete and give the public the means to avoid concentration of power whether in the hands of a private monopoly or a government regulatory agency.

Mr. Kintner calls for meaningful compliance with the laws as an overriding goal with a need for positive self-education on the part of the business community emphasizing the basic thesis that these laws are for their good and are not anti-business. Such compliance would mean that there would not be concentration on successful prosecution as an end in itself. The ultimate goal to promote the public interest should be accomplished through sensible enforcement from government agencies and departments, the courts and private actions, coupled with effective and enlightened self-regulation characterized by an attitude of respect, not resistance, toward the statute. Attorneys are encouraged to meet their responsibility in explaining to their respective clients the spirit as well as the letter of such laws. Fair enforcement activity would mean that compliance is not punishment but prevention of illegal practices inimical to basic American social and economic principles.

The book has been described in detail in order to best indicate its contents. It is a high quality, very easily read product. More important, a meaningful service has been rendered to the legal profession, particularly the general practitioner and those attorneys for governmental agencies involved with this type of work, and to the business community in a simplified explanation of a most complex and confusing area. This book goes a long way toward the goal of the author in developing a greater understanding of the antitrust laws so that there can be more respect for them by the business community and a fair, swift and consistent enforcement of them by regulatory agencies.

*Carl F. Eiberger**

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