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Legislation and Administration: Constitutional Law -- Motor Vehicles -- Statutes Controlling Direct Dealer Selling Agreements -- Automobile Dealers Act, Pub. L. No. 1026, 84th Cong., 2d Sess.

H. Theodore Werner

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LEGISLATION AND ADMINISTRATION

CONSTITUTIONAL LAW — MOTOR VEHICLES — STATUTES CONTROLLING DIRECT DEALER SELLING AGREEMENTS. — AUTOMOBILE DEALERS ACT, PUB. L. No. 1026, 84th Cong., 2d Sess. (Aug. 8, 1956). A supplement to the federal anti-trust law was enacted to control the franchise agreements between automobile manufacturers engaged in interstate commerce and their dealers. The statute gives the dealer a cause of action in a United States district court if the manufacturer terminates or fails to renew the distributive franchise without the exercise of "good faith." "Good faith" is defined as dealing in a "fair and equitable manner," free from "coercion and intimidation or the threats of intimidation or coercion." The only requirement the dealer must meet under the statute is that he has also dealt with the manufacturer in "good faith." U.S. CODE CONG. & AD. NEWS 6589-90 (1956).

Congress intended the law to give the dealer the right to a judicial determination of the presence or absence of "good faith" notwithstanding the terms of contract between the parties. The House Judiciary Committee report on the statute enumerated several policy reasons for the statute. Chief among them was the disproportionate economic position enjoyed by the manufacturer which prevents the dealer from bargaining effectively with him. Moreover, each dealer affects a substantial segment of his community's economy, and as a group, the dealers employ 668,000 persons. The committee reported that the unilateral franchise agreement established a maximum of rights with a corresponding minimum of liability for the manufacturers and that this constituted a primary source of the manufacturer's power over the dealer. H. R. REP. No. 2850, 84th Cong., 2d Sess., U.S. CODE CONG. & AD. NEWS 6720 (1956). Further, whenever a dealer was subjected to economic duress or intimidation he could obtain no redress in the courts, for they refused to add any requirement of "good faith" to the contract, insisting that the contract was complete in itself. *Bushwick-Decatur Motors, Inc. v. Ford Motor Co.*, 116 F.2d 675 (2d Cir. 1940); *Buggs v. Ford Motor Co.*, 113 F.2d 618 (7th Cir.), cert. denied, 311 U.S. 688 (1940); *Ford Motor Co. v. Kirkmeyer Motor Co.*, 65 F.2d 1001 (4th Cir. 1933).

The minority report had several objections to the act, the first being that the act imposed an unwarranted interference with the freedom to contract. Secondly, the legislation was said to be aimed at a special class, the automobile dealers, without including other dealers who operate under a franchise and without any apparent reason for such a distinction between franchised dealers. Thirdly, it was objected that the statute gives a cause of action to the dealer for a manufacturer's lack of "good faith,"

but does not give any corresponding right of action to the manufacturer against a dealer's lack of "good faith." Lastly, the minority insisted that the manufacturer will have to run the gauntlet of the federal judicial system to determine just what is meant by "good faith." H. R. REP. No. 2850, 84th Cong., 2d Sess., U.S. CODE CONG. & AD. NEWS 6728 (1956). An individual objection in addition to the committee report noted that the right to bring a suit on a contract on the ground that the party was not dealt with in "good faith" is an innovation for the American legal system, U.S. CODE CONG. & AD. NEWS 6732 (1956).

The state statutes governing this relationship have been of varied effectiveness. Three state statutes have been construed by the courts within a few months of the passage of the Automobile Dealers Act, with conflicting constitutional results.

In *General Motors Corp. v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956), the court held invalid a Colorado statute requiring an automobile manufacturer to refrain from cancelling or refusing to renew a franchise "without due regard to the equities of said dealer and without just provocation." COLO. REV. STAT. ANN. § 13-11-14 (8)-(10) (Supp. 1955). The court held that the test of guilt did not provide an ascertainable standard and therefore was a denial of due process of law. The argument that administrative regulation could overcome any defect in the standard was rejected because the statute did not provide a primary standard which the administrative body could use. The public policy argument was dismissed because the relative economic standing of the two groups could not be judicially noticed, the legislature had declared no specific intent, and there was no evidence to sustain the contention that it was a reasonable exercise of police power. Significantly, the Colorado statute provided penal sanctions and consequently a more definite standard was constitutionally required than in the case of a statute which grants a purely civil right of action such as the Automobile Dealers Act. See *Winters v. New York*, 333 U.S. 507, 515 (1948). Four other states have statutes governing this relationship which use the same standard as a criterion for cancellation of licences which was declared too vague in the Colorado statute, FLA. STAT. ANN. § 320.64 (8) (1943); NEB. REV. STAT. § 60-611 (10) (Supp. 1955); VA. CODE ANN. § 46-534 (3) (1950); WIS. STAT. 218.01 (3) (a) (17) (1955).

In *Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc.*, 142 F. Supp. 469 (D. Minn. 1956), a Minnesota statute requiring a "just cause" be shown for a termination or failure to renew a dealer's franchise was held constitutional. MINN. STAT. ANN. § 168.27 (14)

(3) (Supp. 1955). The court held that the fact that the statute involved only the direct selling agreements of automobile dealers did not make the statute private. It reasoned that a statute which alleviated an adverse economic condition threatening 1,400 automobile dealers in the state was directed towards a public purpose, since the same condition affected indirectly a substantial segment of the state's economy. The court made no comment as to the test to be applied in determining the legality of the termination, except to say it was a question for the jury whether a "just cause" was shown.

Where a Wisconsin statute made it grounds for revocation of the manufacturer's license if the manufacturer should cancel a dealer's franchise "unfairly" and "without due regard as to the equities of said dealer," WIS. STAT. 218.01 (3) (a) (17) (1955), the court upheld it as a valid exercise of the state's police power and therefore a proper basis for civil suit by the dealer. *Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488, 71 N.W.2d 420 (1955). In a four to three decision, the majority held that the statute was an expression of public policy, the promotion of fair dealing being a legitimate exercise of police power by the legislature. The minority reasoned that the statute did not affect a public interest, finding nothing injurious to the public welfare in a manufacturer's termination of a dealer's franchise. Inequality of bargaining power is present in many contractual relationships but the law does not attempt to equalize them by impairing the basic right of contract. 71 N.W.2d at 425.

Although the decisions are few and the applicability of the police power theory open to serious question, the weight of authority, at least where the statutes only provide a civil rather than a penal sanction, upholds the constitutionality of these statutes even at the state level. One avenue of attack upon the state statutes will not be available against the federal act: the failure to provide a corresponding cause of action for the manufacturer because of a dealer's lack of good faith may be unequal protection of the law but this is not a constitutional defense to a federal statute, for, unlike the fourteenth amendment, the fifth amendment has no "equal protection" clause. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 401 (1940).

The Automobile Dealers Act does not invalidate any state statute unless the latter clearly is irreconcilable, Pub. L. No. 1026, 84th Cong., 2nd Sess. § 5 (Aug. 18, 1956), but the enactment should provide a basis for more uniformity in legal treatment of the distributive organization of the automotive industry.

H. Theodore Werner