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of what expert accountants called it.[49] He stated that the amount of the reduction was immaterial, for either the price was cut or it was not cut. The Act made no provision for a reasonable reduction of the purchase price, he said.

Free competition is a major concept of free economy. It is therefore submitted that legislative or court controls should not be imposed on a business practice unless that practice presents a clear and present threat to the well-being of our internal trade system. The legitimate use of trading stamps is but one of many forms of trade inducements that have long been customary and of wide-spread business usage. Restraints on the form of the trade inducement is unjust in that it disregards the substance of such a scheme, and labels it unfair because of its name.

Under the veil of fair trade legislation, the ordinary and customary usage of trading stamps should find protection. Since they were in use long before the adoption of such legislation, it should not be inferred that the founders of fair trade legislation intended to strike down a practice that had such wide-spread usuage and acceptance in the business world.[50] In like manner, statutes seeking to place uncustomary restraints on this business practice, should be held violate of those constitutional guarantees of freedom to live and work where one wishes, to earn one's livelihood in any lawful calling, and to pursue any lawful trade or occupation.[51]

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THE BONA FIDES OF CONSCIENTIOUS OBJECTOR CLAIMS

So long as there is a draft of military manpower in this country under the present statutes,[1] there will be cases which require the courts to rule on the various aspects of the claims of conscientious objectors to military service. The last three to five years have seen an increasing number of such cases, due perhaps to greater awareness of the privileges granted to conscientious objectors.

Historically, the conscientious objector has been handled in various

49. The expert witness was a C.P.A., and he testified that a cash discount was an agreement separate from a sale and constituted an unilateral offer by the vendor to pay something if the buyer would pay in cash, and there was no effect on the selling price.

50. Bristol-Myers Co. v. Picker, note 6, supra. The Act contained no implied exception (applicable to trading stamps or cash register receipts), merely because the practice prevailed before adoption of the Act, for price-cutting likewise prevailed, and the Act stopped that practice.

51. State v. Langley, note 31, supra. Blume, C.J., stated in connection with unfair competition legislation, that "The ordinary business is not conducted for the purpose of loss. The legislature has not undertaken to compel merchants to do anything out of the ordinary, but only what is usual and customary. It has merely attempted to have each merchant give a fair chance to the other and do business without evil intent."

1. Act of June 24, 1948, c. 625, 62 Stat. 604, as amended 50 U.S.C. § 450 (1952 ed.).

ways. The first time conscientious objectors could obtain relief on a national scale, aside from privileges granted by individual states for their militia,[2] was during the Civil War period. At that time both the United States and the Confederacy passed conscription acts. The Congress of the United States in 1863 passed a conscription act containing various provisions for exemption.[3] Although the conscientious objector as such was not mentioned in the Act, such objectors could obtain relief from military service under the provision permitting a substitute or the payment of a sum not in excess of $300.00.[4] The Confederacy provided only for substitution, a privilege which was later withdrawn as the tide of war began to run against the South.[5]

World War I brought into existence the first recognition of conscientious objectors as such. The Selective Service Act of 1917 allowed them exemption from combat service, but the exemption was limited to members of "any well-recognized religious sect or organization at present organized and existing. . . ."[6]

The Selective Service Act of 1940 provided for assignment of individuals, as well as members of religious groups, to noncombatant duties, and also provided for exemption from all military duty in the case of individuals who were opposed to military service of any kind.[7] This exemption consisted of assignment to civilian projects of "national importance under civilian direction."[8]

At the present time the law governing is the Selective Service Act of 1948, amended in 1951 to become the Universal Military Training and Service Act of 19 June 1951[9] (hereinafter referred to as "the Act"). Briefly the Act provides, that no person shall ". . . be subject to combatant training and services in the armed forces . . . who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, . . . Any person claiming exemption from combatant training . . . whose claim is sustained . . . , if he is inducted . . . under this title, shall be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to . . . noncombatant service, in lieu of such induction, be ordered .. . , subject to such regulations as the President may prescribe, to perform . . . such civilian work contributing to the maintance of the

2. Note, 27 Wash. U. L.Q. 565, 567 (1942).
3. Act of March 3, 1863, c. 75, § 2, 12 Stat. 731.
4. Act of March 3, 1862, c. 75, § 13, 12 Stat. 733.
5. Note, 36 Minn. L. Rev. 65, 71 (1951).
6. Act of May 18, 1917, c. 15, § 4, 40 Stat. 78, 50 U.S.C.A. App. § 201 et. seq.
7. Act of Sept. 16, 1940, c. 720, 54 Stat. 885, 50 U.S.C.A. App. § 301 et. seq.
8. Act of Sept. 16, 1940, c. 720, § 5 (g), 54 Stat. 885, 50 U.S.C.A. App. § 301.
9. Act of June 24, 1948, c. 625, 62 Stat. 64, as amended 50 U.S.C. § 450 (1952 ed.).

national health, safety or interest as the local board may deem appropriate, . . ."[10]

The constitutionality of the Act has been settled to the point that it is no longer debatable.[11] The present interest lies in the various problems presented to the courts by the persons affected, who have requested judicial review of the decisions of draft boards.[12]

The courts in their considerations are not governed by any constitutional rights of the individuals, either expressed or implied. In *Uffelman v. United States,* the appellant complained that his "Statutory or Constitutional rights" were violated when the local draft board refused to hear two of the appellant's witnesses, because the board already had written statements of the testimony of the two men. The court in referring to this stated: "Nevertheless, a refusal by the local board to hear a registrant's proffered witnesses is not a violation of his constitutional or statutory rights. Proceedings before a selective service board are not a trial."[13]

Whenever a person chooses to resort to legal action rather than be inducted he can claim only limited rights,[14] and he must bring himself within the limits provided by the legislature, which cannot be extended to meet the individual case. For example, *United States v. Pomarski* presents a situation where the individual claimed a minister's classification, but it was found he worked full time as a janitor and only part time as a minister, therefore he did not fit into the requirements of the Act, which makes reference to "customary vocation" and "regular and customary vocation"; so his classification was denied.[15] Such person who fails to meet the limitations established cannot argue that he has been discriminated against when refused his conscientious objector classification.[16]

Congressional policy considers it more important to respect a man's belief than to draft him into the armed forces; hence if there is no evidence before the draft board which cast doubts upon registrant's convictions, and he has adduced some evidence to prove them, he is entitled to his exemption.[17] This is the basic principle governing the bona fides of claims of conscientious objection.

Most conscientious objectors' claims are based on religious beliefs, judging by the preponderance of the cases before the courts. Included in this group are (1) those who are against combatant service, (2) those against all military service, and (3) ministers' exemptions. The largest

10. Ibid.
11. United States v. Miller, 233 F.2d 171 (2nd Cir. 1956); United States v. Bolton, 192 F.2d 805 (2nd Cir. 1951).
12. Note, 10 Wyo. L.J. 208 (1956).
13. Uffelman v. United States, 230 F.2d 297 (9th Cir. 1956).
14. Ibid.
15. United States v. Pomorski, 125 F.Supp 68 (W.D. Mich. 1954), cert. denied, 350 U.S. 841, 76 S.Ct. 81, 100 L.Ed. 750.
16. United States v. Bendik, 220 F.2d 249 (2nd Cir. 1955).
17. Riles v. United States, 223 F.2d 786 (5th Cir. 1955); Williams v. United States, 216 F.2d 350 (5th Cir. 1954).

percentage of religious objector cases come from those groups that are opposed to all militiary training, for example the Jehovah's Witnesses, the Menonites and the Harsmanites. A statement of the sect's ideals and beliefs respecting military service must be available, in order to serve as a basis for classifying as conscientious objectors individuals who profess membership in the sect. An example of this is statements made by the governing body of Jehovah's Witnesses known as the Watchtower Bible and Tract Society, an incorporated body which publishes and voices the sect's purposes and activities and is recognized by the Selective Service.[18]

After the person has established himself as a member of the sect, as indicated by his attendance at meetings or other manifestations, such as ministerial or church work, the draft boards and courts look further into his background. He must establish the bona fides of his belief; the first thing the draft board and the court look to is his sincerity of purpose.[19] Length of membership of the individual in the sect is a help in establishing sincerity, but standing alone is not enough to establish conscientious objector status. One who has just joined an organization may be as eligible as an individual who has belonged for a number of years. It is up to the court to show that there was insincerity, sham and fakery, to make a conviction for failing to be inducted stand. One individual who appeared sincere in his beliefs was denied his claim because he said he would work as a civilian employee of a military arm, and the court held that it was not a fraud on his part so he was allowed the conscientious claim.[20]

An interesting example of how far the courts will look into the bona fides of conscientious objector claims is *Remple v. United States*[21] which was decided in the 10th Circuit in 1955. Here the youth seeking conscientious status had attended a church academy, where he exhibited restlessness toward authority and discipline. He was convicted of disturbance of the peace and for speeding in his car. In the language of the court, these were not regarded as involving circumstances of serious moral misconduct so as to defeat his claim. Evidence that he had hunted wild game was held not to prove a lack of bona fides. The facts surrounding his objections to participation in war were found to be submitted in good faith, so he was entitled to the conscientious objector classification under the law. Another court held that a single conviction of drunkeness, and a later conviction for speeding, were not enough to show lack of religious sincerity and should not bar a conscientious objector classification. The good faith in the submission of the claim is the controlling factor.[22]

One court held that in order to sustain a claim for service exemption as a minister it was not necessary to have a formal college education or

18. United States v. Henderson, 223 F.2d 421 (7th Cir. 1955).
19. Riles v. United States, 223 F.2d 786 (5th Cir. 1955).
20. Goetz v. United States, 216 F.2d 270 (9th Cir. 1954).
21. 220 F.2d 949 (10th Cir. 1955).
22. Chernekoff v. United States, 219 F.2d 721 (9th Cir. 1955).

theological training.[23] This case was later distinguished in *Reese v. United States.*[24] The draft board in that case had asked the applicant if he had had a formal education, to which he replied he had not. He was denied his claim and he appealed on the ground that the question had set an illegal standard in determining the bona fides of the claim. The court held that such a question by the draft board is not an illegal standard. It has been held that the teachings necessary to support a claim for ministerial exemption can be obtained in the church and in the home of the individual.[25] The granting of the minister's exemption is based to a large extent on the amount of time spent in ministry. An individual who worked as a cement finisher 45 hours a week and as a minister 50 hours per month was denied a ministerial classification by the draft board, and the court refused to hold that the board was acting arbitrarily.[26]

One of the most important prerequisites to granting the claim of a religious objector is a belief in a Supreme Being and in avoidance of armed conflict.[27] The philosophical or political objector does not qualify; there must be a religious basis for the claim.[28] A primary reason for disallowing claims based only upon philosophical grounds is that such claims would be hard to prove and administer.[29] Conscientious objection to war refers only to wars fought between nations of the world—not to theocratic wars which are defined as was administered by the immediate direction of God.[30] The individual need not be a complete pacifist.[31] Courts have consistently held that a belief in the use of force in self defense and defense of family or members of the faith does not bar claims[32] even though the attacker might wear the uniform of a foreign power.[33] It is not necessary that the repugnance to war extend to duties connected even remotely with the prosecution of a war, for example a telegrapher on a railroad which carried troops was given exemption.[34] It is essential only that the claimant object to direct participation in war or military service.

The creation of the exemption for conscientious objectors has placed upon the local draft boards the task of determining the validity of these claims. Many are settled at the local board meetings and never appear on the court docket, but the increasing number that do appear indicates there is no hard and fast rule by which the cases can be decided. Each

23. United States v. Kezemes, 125 F.Supp. 300 (W.D.Pa. 1954).
24. 225 F.2d 766 (9th Cir. 1955).
25. Riles v. United States, 223 F.2d 786 (5th Cir. 1955).
26. United States v. Kinney, 125 F.Supp. 322 (E.D.Ill. 1954).
27. 50 U.S.C.A.. App. § 456(j).
28. United States v. De Lime, 223 F.2d 96 (3rd Cir. 1955).
29. United States v. Bendik, 220 F.2d 249 (2nd Cir. 1955).
30. United States v. Jessen, 212 F.2d 897 (10th Cir. 1954); United States v. Bortlik, 122 F.Supp. 225 (M.D.Pa. 1954); United States v. Fair, 122 F.Supp. 666 (M.D.Pa. 1954).
31. United States v. Close, 215 F.2d 439 (7th Cir. 1954).
32. United States v. Lauing, 221 F.2d 425 (7th Cir. 1955); Blevins v. United States, 217 F.2d 506 (9th Cir. 1954); Hinkle v. United States, 216 F.2d 8 (9th Cir. 1954).
33. Pitts v. United States, 217 F.2d 590 (9th Cir. 1954).
34. United States v. Moore, 217 F.2d 428 (7th Cir. 1954), petition for writ of certiorari granted on ground of refusal to take oath and not on point mentioned here. 348 U.S. 966, 75 S.Ct. 530, 99 L.Ed 753 (1955).

one that arises must be decided upon its individual facts and circumstances. Aside from the basic requirements of belief in a Supreme Being and in avoidance of war, which are necessary to support the claim, the individual's sincerity and personal conduct must be considered and a fair result reached. If the record discloses no abuse of these basic principles the court will approve the draft board's action. The conscientious objector must establish the bona fides of his claim, but the decided cases indicate that the courts have been quite liberal toward claimants in this respect.

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MUNICIPAL ASSISTANCE TO AN IMPROVEMENT DISTRICT

In 1953, the Wyoming legislature passed a statute which in essence allows a municipality to establish a revolving fund from cigarette and gasoline taxes, for the purpose of guaranteeing bonds issued by a local improvement district.[1] The constitutionality of the statute was questioned in *Banner v. Laramie*[2] on a number of grounds including the Constitutional debt limitation, the prohibition of giving aid to a corporation, and the fact that only a portion of the city's inhabitants are directly benefited. The court held that this statute did not violate the due process clause, and was not a debt under the debt-limitation and it was not aid to the type corporation which the Constitution prohibits. The purpose of this paper is to discuss the various plans by which a municipality can give assistance to an improvement district which has met the approval of the courts, and hurdles that must be overcome, before such assistance will be held valid.

Before a municipality can appropriate funds, there must be a public purpose for which these funds will be used. Many tests have been considered in defining a public purpose. Perhaps the test laid down by the Illinois court is most representative. It said, "Whether a tax or an appropriation is for a public or private purpose is to be determined by the course and usage of government, the object for which taxes and appropriations have been customarily and by long course of legislation levied and made, and what objects have been considered necessary to the support and for the proper use of the government, and whatever lawfully pertains to this purpose and is sanctioned by time and the acquiescence of the people may be said to be for a public purpose'."[3]

The term "public purpose" usually is given a liberal interpretation, and it is not necessary, in order for a use to be regarded as public, that it should be for the benefit of every citizen in the community. It may be for residents of a restricted area, but use and benefit must be common and not for particular persons, interests or estates.[4]

1. Wyo. Comp. Stat. § 29-2067 (1945).
2. Banner v. City of Laramie, 74 Wyo. 429, 289 P.2d 922 (1955).
3. Hagler v. Small, 307 Ill. 460, 138 N.E. 849, 854 (1923).
4. Briggs v. City of Raleigh, 195 N.C. 223, 141 S.E. 597 (1928).