Wyoming Law Journal

Volume 18 | Number 1 Article 6

December 2019

Sunday Blue Laws

R. Bradford Laughlin

Follow this and additional works at: https://scholarship.law.uwyo.edu/wlj

Recommended Citation
R. B. Laughlin, *Sunday Blue Laws*, 18 WYO. L.J. 42 (1963)
Available at: https://scholarship.law.uwyo.edu/wlj/vol18/iss1/6

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

"Remember the Sabbeth day, to keep it holy.
Six days shalt thou labour, and do all thy work:
But the seventh day is the Sabbath of the Lord thy
God: in it thou shalt not do any work. . . ."[1]

This, the Fourth Commandment, may well be the very root of a certain area of legislation which recently has been subjected to exhaustive judicial scrutiny and comment. This area of legislation, commonly known as Sunday Blue Laws[2], concerns State regulation of business hours; specifically, forced closing of business doors on Sunday. The constitutionality of such laws is questioned on the ground that government by enactment of Blue Laws is in reality establishing a religion in violation of the First Amendment.[3] The First Amendment applies to States with the same force as it does to the Federal Government, under the "due process clause" of the Fourteenth Amendment.[4]

The original Sunday laws were concededly of religious character.[5] Soon after settlement of the colonies, Blue Laws appeared,[6] apparently fashioned after English Sunday legislation. At about the time of the First Amendment's adoption, each colony had some restrictive legislation aimed at Sunday labor.[7]

As it was some two hundred years ago, so today forty-nine of fifty States have such legislation of one sort or another directly regulating certain Sunday activities which otherwise would be innocent. Alaska alone has no such legislation.[8] Enactments in the forty-nine Blue Law States range from jurisdictions with few restrictions[9] to States with statutes exhaustive in scope[10]. Modern courts, however, have changed their outlook somewhat from the original religious cloak that surrounded these statutes. Today's courts find other reasons—other than religious—to uphold the validity of these statutes. Only once has a religious objection to these statutes been upheld by a trial court and the case not later reversed[11]

Ex Parte Newman presented a situation wherein a Jew was convicted

---

1. Exodus 20:8,9,10.
2. "A supposititious code of severe laws for the regulation of religious and personal conduct in the colonies of Connecticut and New Haven; hence any rigid Sunday laws or religious regulations." Black's Law Dictionary 4th ed., 1951.
3. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . ."
4. West Virginia State Board of Education v. Barnette, 319 U.S. 624, 87 L.Ed. 1628, 63 S.Ct. 1178, 147 A.L.R. 674 (1943).
5. 73 Harv. L. Rev. 729.
6. The first enactment of the Plymouth Colony in 1650 stated simply that "whosoever shall prophane the Lord's day by doing any servill worke or any such like abuses," shall either be fined or whipped. — The Compact, Charter and Laws of the Colony of New Plymouth, 92.
7. McGowan v. State of Maryland, 366 U.S. 420, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961).
8. Id., 6 L.Ed.2d at 469 (Appendix II).
9. E.g., Hawaii, Idaho, California, Iowa, Wyoming.
10. E.g., Connecticut, Maine, Maryland, Massachuetts, Pennsylvania, Rhode Island.
11. Ex Parte Newman, 9 Cal. 502 (1958).

of violating a California act of April 10, 1858 entitled "An Act to Provide For Better Observances of the Sabbath." Defendant's crime was the sale of merchandise from his clothing store on Sunday. The Supreme Court of California released the defendant on writ of habeas corpus, sustaining his contentions of the religious uncontitutionality of the Act. The Court definitely felt there was religious discrimination:

> In a community composed of persons of various religious denominations, having different days of worship, each considering his own as sacred from secular employment, all being equally considered and protected under the Constitution; a law is passed which in effect recognizes the sacred character of one of these days, by compelling all others to abstain from secular employment, which is precisely one of the modes in which its observance is manifested, and required by the creed of the sect to which it belongs as a Sabbath. Is this not discrimination in favor of the one?[12]

This was not a unanimous decision. Justice Field wrote a dissenting opinion the rationale of which has been adopted by modern courts. Herein was unfolded the general welfare school of thought: labor was going to be protected by these laws, and the moral and physical well being of society promoted. The same court three years later overrulled the Newman case,[13] and Justice Field's rationale was adopted.

The situation today is clearly in favor of the Blue Laws;[14] at least as long as their discriminatory features are not too conspicuous and not too arbitrary.[15] Religious overtones are present, however, and like it or not, regardless of this fact, as the 1961 decisions of the Supreme Court make clear, this legislation is withstanding the fire of judicial observation.

The first axiom applied by courts to skirt the religious implications is the rule that courts may not inquire into the policy which motivated the enactment of legislation, and that before a court may declare an act unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible.[16] From this springboard the laws are then sustained on the rationale of the police power of the State,[17] since they protect all persons from the physical and moral debasement which comes from uninterrupted labor,[18] and preservation of health and promotion of public welfare.[19]

Pursuing this line of thought further, the courts have assured us that

---

12. Id. at 507.
13. Ex Parte Andrews, 18 Cal. 678 (1861).
14. Supra, note 7. Gallagher v. Crown Kosher Super Market, 366 U.S. 617, 6 L.Ed.2d 536, 81 S.Ct. 1122 (1961); Two Guys from Harrison—Allentown v. McGinley, 366 U.S. 582, 6 L.Ed.2d 551, 81 S.Ct. 1135 (1961); Braunfeld v. Brown, 366 U.S. 599, 6 L.Ed.2d 563, 81 S.Ct. 1144 (1961).
15. Supra, note 7, 6 L.Ed.2d at 414.
16. State v. Kidd, 167 Ohio St. 521, 150 N.E.2d 413, 416 (1958).
17. State ex. rel. Walker v. Judge, 39 La. Ann. 132, 1 So. 437 (1887).
18. Hing v. Crowley, 113 U.S. 703, 710, 28 L. Ed. 1145, 5 S.Ct. 730 (1884).
19. Lane v. McFadyen, 259 Ala. 205, 66 So. 2d 83, 85, (1953).

a day of rest is needed—a break from the commercialized "hustle-bustle" of today's business world, which if unhindered would soon wear the moral fibre of our country down. Thus the Sunday laws are not an air to religion, but set aside a day of rest and recreation,[20] a day wherein the entire family may be together, enjoying a Sunday afternoon drive or family gathering. Sunday statutes are not an aid to religion; they are more of a knot tightly securing family unity.[21] These laws do not restrict religious beliefs or practices; they merely restrict activities on Sunday, which just happens to be the day the legislatures have picked for a day of rest. A person is safe from prosecution if he merely restricts his transactions according to the law, whether he is Jewish, Christian, or Moslem.[22]

But even with overwhelming court support, the statutes—all of the Sunday statutes—are subject to much emotional criticism and attempts at abolition. A Sunday statute forbidding the keeping open of shops and the doing of any labor, business or work on Sunday[23] will put a Jewish kosher market on a forced five-day week,[24] since Jewish law forbids labor from sundown on Friday to sundown on Saturday. The same is true of other faiths, notably the Seventh Day Adventists. This Sunday law entails an economic penalty upon the Jewish and Seventh Day Adventist merchants. It matters not that a large percentage of the market's business takes place on Sunday—the kosher market must be closed. Thus, the State is using its coercive power via criminal law in effect to compel minorities to observe a second Sabbath not their own. Like Banquo's ghost, the question as to whether or not the courts are preferring one religion over another will not down. If the courts are not "playing favorites" then it would be reasonable to assume that were Jews and Seventh Day Adventists to gain control of a state legislature and pass laws forcing otherwise innocent acts to cease on Saturday, or be criminally punished, the Court would sustain these; or enactments from a Moslem controlled legislature condemning otherwise innocent acts on Friday as criminal would be constitutional.[25] It has been observed that these laws of the State compel protesting citizens to refrain from conducting business on Sunday because the doing of those acts offends sentiments of their Christian neighbors.[26]

Thus it appears that these statutes have more serious effects than merely setting aside a day of rest. They cut deeply into the religious beliefs of many people; a complete severance of church and state is not effected.

---

20. Supra, note 7, 6 L.Ed.2d at 413.
21. Ibid.
22. Ex Parte Caldwell, 82 Neb. 544, 118 N.W. 133, 135 (1908).
23. Such as Mass. Ann. Laws Ch. 136 § 5:
    Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity or charity, shall be punished by a fine of note more than fifty dollars.
24. Gallagher, Supra note 14.
25. State v. Grabinski, 33 Wash. 2d 603, 206 P.2d 1022, 1024 (1949).
26. Supra, note 14, dissenting opioion 6 L.Ed.2d at 525.

Examination of various state Blue Laws illustrates a variety of methods of effecting the desired results. Massachusetts has a most voluminous set of Blue Laws covering a wide variety of acts and then combining with these restrictions a complicated set of exceptions to the general prohibitions.[27] Other states appear to be somewhat more liberal and do not force such a generous helping of Sunday prohibitions upon its people. Colorado, for example, has no general, all inclusive Sunday statutes, yet does have in operation certain special regulations as to alcoholic beverages, automobile trading, barbering, boxing and racing.[28] Some States approach the situation from a local option point of view, with few statewide restrictions.[29] As we shall see, Wyoming falls into this latter class.

Generally speaking, exceptions to the Sunday laws will be found where the act in question may be considered a necessity or charity.[30] The definition of these terms is vague and it has been said as to "necessity" that it depends on what the general public in its ordinary modes of doing business regards as necessity.[31] Examples of acts of necessity would be a farmer feeding his animals[32] or work in a plant where continuous operation is a necessity for efficiency.[33] It appears that keeping grocery stores open is not a necessity.[34] "Charity" has been said by courts to be understood in its usual sense.[35] Thus, for instance, religious work would qualify, as would work for an educational institution or hospital.

As to persons observing a day other than Sunday as Sabbath, it cannot be said they fall under any general exception to the Blue Laws. In order to be excluded they must be expressly exempted from operation of the statute.[36] Connecticut is one state which does so provide for exemption for Sabbath observers of days other than Sunday.[37]

Wyoming Blue Laws are scarce. There are presently only two acts which are prohibited statewide on Sunday which on other days are innocent.[38] Prior to the 1961 legislative session Wyoming specifically provided for local option as to whether business would be forcibly closed on Sunday[39] and there was no question but that municipalities had been

27. Mass. Ann. Laws ch. 136, § 1-32 (1957).
28. Colo. Rev. Stat. §§ 75-2-3 (3), 13-20-2, 40-12-20, 129-1-16, 129-2-10, (1953).
29. For Example, Ark. Stat. Ann. (1947), Cum. Supp. § 19-2335 (1961).
30. Johnston v. Commonwealth, 22 Pa. 102 (1853).
31. Gray v. Commonwealth, 171 Ky. 269, 188 S.W. 354 (1916).
32. Edgerton v. State, 67 Ind. 588 (1879).
33. Natural Gas Products Co. v. Thurman, 265 S.W. 475 (1924).
34. State v. Hogan, 252 S.W. 90 (1923).
35. Burnette v. Western Union Telegraph Co., 39 Mo. App. 599 (1890).
36. Scoles v. State, 47 Ark. 476, 1 S.W. 769 (1886).
37. Conn. Rev. Stat. § 53-303 (1958).
38. Wyo. Stat. § 12-19:
All persons licensed under this Act except night clubs and trains holding a limited retail license shall close the dispensing room and cease the sale of both alcholic and malt liquors promptly at the hour of one o'clock a.m. each day and keep the same closed until six o'clock a.m. the same day except that such places shall close the dispensing room all day Sunday.
Wyo. Stat. § 33-112 "No boxing or sparring match shall be held on Sunday."
39. Wyo. Stat. § 15-160(11) (1957); The corporate capacity empowers the town council to prohibit "desecration of the Sabbath day, commonly called Sunday." (12) also "to close all places of business on the Sabbath day, commonly called Sunday."

cloaked with such power. The legislature, however, in 1961 repealed Wyoming Statute § 15-160[40] and thereby eliminated the specific power of municipalities to so legislate. The language of the substituted statute, however, does imply such municipal power,[41] thus the law in Wyoming today as to municipal Blue Laws probably remains essentially the same as prior to 1961.

Certain Wyoming cities exist under special charters, namely Cheyenne, Laramie, and Rawlins. Under the charters of each of these cities, the legislative body of the municipality is "authorized and empowered to enact ordinances" for regulation of "desecration of the Sabbath day commonly called Sunday."[42]

Despite the 1961 decisions of the U.S. Supreme Court, Sunday Blue Laws remain a definite problem in our society. minority groups are faced with economic pressure existent only because they are of a faith observing their Sabbath on a day other than Sunday. Alternative solutions have been suggested by commentators:[43]

1. Complete abandonment of the Blue Laws would alleviate the religious question herein presented, but with a possible seven day work week being forced upon some, American minds and bodies may become weary, with undesirable results.

2. Another possible alternative is the excluding of Sabbatarians from the forced Sunday closing, but the commercial advantage that would accrue to them in that the Sabbatarians would be the only businessmen to operate on Sunday may present problems far in excess of what is now faced.

3. A forced day of closing might be possible, with the particular day of rest being optional; that is, each individual would choose a day to be closed. This, however, presents a difficult enforcement problem. There would be more days to police and difficulties in observing who was in violation.[44]

It may well be there is no entirely satisfactory solution to the problem. If the legislatures must pick a day, Sunday is the most logical because the majority of people would choose it anyway.[45]

---

40. Wyo. Sess. Laws 1961, ch. 100.
41. Id. § 2 (12):
The cities and towns shall have the following powers which may be exercised by their governing bodies. . . . To license, tax and regulate any business whatsoever conducted, carried on or trafficked in within the limits of such city or town.
§ 12 (36) "In addition to the existing powers and to special powers herein granted, the governing body may make any provisions or regulations not in conflict with such powers as it may deem necessary for the health, safety, or welfare of the city; or such as may be necessary to carry out and make effective the provisions of this Act.
42. Wyo. Stat. §§ 15-653 (4), 15-686 (4), 15-724 (6) (1957).
43. 35 Conn. B.J. 528.
44. Supra, note 14, Braunfeld, 6 L.Ed.2d at 569.
45. Commonwealth v. Gehring Has 122 Mass. 40, 42 (1877).

On the whole, legislative permission to local governmental units to adopt Blue Laws on a local option basis seems the best (if not a perfect) solution. It has been observed that the recognition and enforcement of Blue Laws depends largely upon the sentiment in a locality and upon the attitude of the law enforcement agencies of that community.[46] Wyoming seems to have elected to do just this—to leave it to the individual communities. Though invested with this power, Wyoming municipalities have little legislation in this area,[47] and no one seems to object to the lack of restrictions. This approach may work well for Wyoming because of the sparse population and the character and racial make-up of Wyoming people. By and large, courts will not upset any reasonable exercise of legislative discretion in this area. Absent some palpable discrimination, a court will accept whatever solution the legislature, in its wisdom, may have adopted.[48]

R. BRADFORD LAUGHLIN

46. Supra, note 16 at 419.
47. Complied Ordinances of the City of Cody, Wyoming (1960); Code of the City of Riverton, Wyoming (1960); Code of the City of Sheridan, Wyoming, Ordinances of the City of Laramie, Wyoming.
48. People v. Friedman, 302 N.Y. 75, 96 N.E.2d 184, 185 (1950).