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## Miscellaneous Regulatory Legislation: Trade and Commerce

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# MISCELLANEOUS REGULATORY LEGISLATION

## TRADE AND COMMERCE

*Melvin G. Dakin\**

The legislation which is described and commented upon in the following pages is not all to be found under the title of Trade and Commerce in the Revised Statutes. However, in one way or another, whatever the statutory classification, it is trade and commerce which are usually most deeply affected by the amendments noted below.

### ALLOCATION OF MARKETS AND PRICE-FIXING

With the repeal of the Fresh Strawberry Marketing Act<sup>1</sup> at the latest session, a legislative experiment in the field of strawberry marketing was officially abandoned. The thrust of this legislation had been to create a "one-desk selling agency" for the purpose of marketing the state strawberry crop.<sup>2</sup> However, the act failed in this purpose as a result of the courts' unwillingness to enjoin private agencies from participating also in the marketing of the crop.<sup>3</sup> While a substantial part of the 1961 crop was marketed through an agency selected under the act, inability to keep this as the sole agency meant abandonment of the act as a device to achieve a fairer deal for the strawberry growers. Nonetheless, the mere existence of this legislation may have had a salutary effect in eliminating some inequitable practices in the private strawberry marketing industry.

Another legislative attempt to improve the lot of agriculture now seems destined to survive. In 1962, when the legislature enacted the "Milk Audit" Law,<sup>4</sup> creating and authorizing a commission to fix minimum and maximum prices for milk and milk products, it cannily placed a time limit of four years on

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1. La. Acts 1964, No. 227, repealing LA. R.S. 3:481-488 (Supp. 1963).

2. LA. R.S. 3:483 (Supp. 1963).

3. Baton Rouge State Times, May 25, 1961, p. 3.

4. LA. R.S. 40:940.1-940.10 (Supp. 1963). See Dakin, *The New Milk Audit Law*, 23 LA. L. REV. 70 (1962).

the experiment.<sup>5</sup> Two years later, it has been persuaded to repeal this provision and thus to extend the law indefinitely.<sup>6</sup>

#### UNFAIR TRADE PRACTICES

A measure of protection for local produce growers is sought to be achieved by enacting a special sanction, consisting of a fine of \$100 to \$1,000, for falsely representing the agricultural products of other states as products of Louisiana.<sup>7</sup> Since discretion in the amount of the fine to be imposed is to be exercised by a district judge, absence of standards to guide the judge in fixing the amount of the penalty will probably not raise questions of unconstitutional delegation of power. Mislabeling of fresh fruits and vegetables by quality, grade, trademark or name, and place of origin is also made specifically unlawful but subjected only to existing penalties;<sup>8</sup> while the range of fines is lower in the general penalty provision applicable to the chapter, it includes also a provision for imprisonment for ten days to six months.<sup>9</sup> The sale of imported meats in competition with the domestic product is also sought to be hampered by a requirement that the origin of imported meats be displayed on warning signs utilizing four-inch letters. The special penalties range up to \$500 and ninety days' imprisonment for a second or successive conviction under this provision.<sup>10</sup>

Existing general provisions with respect to untrue or misleading advertising have been extended so as to cover specifically the false advertising of a liquidating or fire sale and to impose a time limit of sixty days on the duration of such sales where legitimate. The use of the term "wholesale" has also been limited to bona fide wholesalers. A wholesale sale is defined as one for the purpose of resale or, if not for resale, at a price at which retailers currently purchase the goods in question.<sup>11</sup>

"On the first day of the week, commonly designated as Sunday, it shall be unlawful . . . to sell . . ." The taboo on Sunday sales of liquor, clothing, building supplies, furniture, and appliances is now extended to motor vehicles and parts and to

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5. LA. R.S. 40:940.16 (Supp. 1963).

6. La. Acts 1964, No. 64.

7. LA. R.S. 3:502 (Supp. 1964).

8. *Id.* 3:417.1.

9. *Id.* 3:419 (1950).

10. *Id.* 51:613 (Supp. 1964).

11. *Id.* 51:411.

servicing such vehicles in all places where they are sold.<sup>12</sup> What will be added two years hence?

#### HEALTH HAZARDS

The effects of Rachel Carson's "The Silent Spring"<sup>13</sup> have now touched our Commissioner of Agriculture and Immigration; he has been given authority to appoint an advisory committee from the pesticide industry and the Farm Bureau to assist him in formulating regulations for the application of pesticides.<sup>14</sup> He also now has the authority to appoint a Director of Agricultural Applicators and to license both aerial and ground "applicators"; pilots and supervisors of ground equipment must have permits.<sup>15</sup> Previous control extended only to the registration of pesticides with the Commissioner and the giving of certain guarantees. Licenses or permits issued may be suspended or revoked upon recommendation of a designated member of the advisory committee and after an opportunity to be heard; the conduct sought to be proscribed is primarily misrepresentation or suppression of information with respect to methods, elements of pesticides, and safety measures used.<sup>16</sup>

The legislature has also moved in on the problem of undesirable levels of "air contaminants" by creating a Louisiana Air Control Commission "to prepare and develop a general plan for the proper control of the air resources of Louisiana" and to promulgate rules and regulations to reduce such undesirable levels.<sup>17</sup>

The Commission contemplated should be thoroughly "blue ribbon," with three ex officio members drawn from the health, commerce, and agricultural agencies and with four appointed by the Governor from engineering, medicine, private industry, and municipal government respectively.<sup>18</sup>

No provision is made for public hearings incident to adoption and promulgation of rules and regulations;<sup>19</sup> however, full hearing procedures are provided for complaints of violations

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12. *Id.* 51:194.

13. Carson, *The Silent Spring* (1960).

14. LA. R.S. 3:1623 (Supp. 1964).

15. *Id.* 3:1625, 1626, 1629.

16. *Id.* 3:1631.

17. *Id.* 40:2201-2216.

18. *Id.* 40:2203.

19. *Id.* 40:2206.

and petitions for variance which are denied.<sup>20</sup> Recommendations for action may precede the issuance of orders and a period for voluntary compliance therewith must be given by the Commission.<sup>21</sup> All orders are subject to judicial review and the Commission may request judicial enforcement by injunction.<sup>22</sup> The validity of rules and regulations may be tested by petition for declaratory judgment.<sup>23</sup> Variances may be granted taking into account the progress which the persons requesting such variances are making toward the elimination of undesirable levels of air contaminants.<sup>24</sup> "Undesirable levels" are defined to mean "quantities and concentrations [of contaminants] . . . of such characteristics, properties and duration as to appreciably injure human life beyond inconvenience or in quantities and concentrations and of such characteristics, properties and duration as to materially injure or interfere with the reasonable use of animal or plant life or property."<sup>25</sup>

#### REGULATION OF NATURAL GAS

A modest thorn has been removed from the side of the natural gas industry by a constitutional and statutory amendment removing direct sales of natural gas to industrial users by producers, pipeline companies, and distributors from the jurisdiction of the Louisiana Public Service Commission.<sup>26</sup> To qualify for exemption, the natural gas must be for use as fuel or utilization in any manufacturing process. Coupled with the tax credits which are available to manufacturing establishments following passage of a constitutional amendment, a favorable atmosphere for natural gas-based industry would seem to be in the making.<sup>27</sup>

#### PROFESSIONS AND OCCUPATIONS

##### ATTORNEYS

At the last session, the legislature amended the provision authorizing the practice of law by natural persons and partnerships and extended the right to practice to a "professional law

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20. *Id.* 40:2208, 2211(D).

21. *Id.* 40:2204(A)(5).

22. *Id.* 40:2214.

23. *Id.* 40:2207.

24. *Id.* 40:2211(B).

25. *Id.* 40:2202(C).

26. LA CONST. art. VI, § 4; LA. R.S. 45:1163 (Supp. 1964).

27. LA. CONST. art. X, § 24 (Supp. 1964).

corporation.”<sup>28</sup> This is supposed to enable members of the legal profession to reap certain tax benefits by adopting the corporate form, particularly in the operation of pension plans and other “employee” benefits programs.<sup>29</sup>

#### DENTISTS

Recent amendments have injected a greater degree of democracy into the procedures for submitting to the Governor potential candidates for appointment to the State Board of Dentistry. Thus, pursuant to a 1964 amendment, “the licensed dentists of each congressional district” shall now, after appropriate notice, meet and nominate from their roster three members, of which one shall be appointed to the Board by the Governor.<sup>30</sup> This supplants a previous procedure under which names were submitted by the seven dental associations of the state and which in turn supplanted a procedure entitling the Governor simply to name the Board from the roster of the Louisiana Dental Society.<sup>31</sup>

#### PHARMACISTS

In 1956, the Louisiana Board of Pharmacy was authorized and directed to promulgate a code of ethics for the profession, a task in which it was to be aided by the Attorney General’s Office.<sup>32</sup> When such a code was prepared, the profession was directed to abide by it. In 1964, this code of ethics was promulgated as a statute by the legislature with sanctions for its violation consisting in denial, suspension, or revocation of a pharmacy license and in the further right of the Board to ask for injunctive relief to restrain violators.<sup>33</sup> Among the provisions of the new code, three are of particular interest. Section 1225(13) proscribes arrangements between pharmacists and physicians for compounding or dispensing of secret or coded prescriptions. Section 1225(14) proscribes arrangements for paid referrals by either pharmacist or physician, and Section 1225(21) proscribes the practice of medicine by a pharmacist.

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28. LA. R.S. 37:213 (Supp. 1964).

29. *But see* Proposed Income Tax Regulation § 301.7701(h), 28 Fed. Reg. 1375 (1963).

30. LA. R.S. 37:753 (Supp. 1964).

31. LA. R.S. 37:753 (Supp. 1963).

32. *Id.* 37:1207.

33. *Id.* 37:1225, 1228 (Supp. 1964).

## PHYSICIANS AND SURGEONS

The legislature stepped in to settle a local squabble in Baton Rouge over the hospital privileges of the medical staff of Stanocola, long-time medical center for employees of the local Standard Oil operation. A new provision of the statutes now makes it "unlawful for the governing body of a non-profit hospital to make the granting or denial of staff membership or professional privilege in the hospital depend solely upon certification, fellowship or membership in a . . . medical society."<sup>34</sup> Previously, by the simple expedient of refusing membership in the local medical society to Stanocola doctors, the local doctors accomplished their exclusion from hospital privileges.

## NURSING HOMES

Concern, probably emanating from the State Hospital Board, has prompted the creation of a Nursing Home Licensing Council "to study the needs of the state in relation to the establishment of minimum standards of maintenance and operation of nursing homes."<sup>35</sup> The Council may submit proposed rules and regulations governing nursing home operation to the State Hospital Board for review and approval and thereafter may adopt and promulgate them.<sup>36</sup> No sanctions are provided except the promise of future licensing contained in the title of the Council.<sup>37</sup> Five of the nine members of the Council will be ex officio members drawn from the State Departments of Hospitals and Public Welfare, the State Fire Marshal's Office, and the State Board of Health.<sup>38</sup>

## HOSPITALS

The ability of the State Board of Health to act more promptly in emergencies has been facilitated by authorizing the State Hospital Director to act as executive officer of the Board.<sup>39</sup> The State Department of Hospitals has also been designated as the sole agency in the state for implementing the National Mental Health Act and allied legislation and appropriate coun-

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34. *Id.* 37:1301.

35. *Id.* 40:2009.1.

36. *Ibid.*

37. *Ibid.*

38. *Ibid.*

39. *Id.* 40:2005.

cils have been created to take advantage of federal funds as they become available in this field.<sup>40</sup>

#### PSYCHOLOGISTS

Louisiana now has a State Board of Examiners of Psychologists appointed by the Governor from a list of nominees submitted by the Louisiana Psychological Association.<sup>41</sup> The applicant, to be certified by the Board as a psychologist, must hold a doctor's degree with a major in psychology, have two years of properly supervised practice, and must demonstrate professional competence by passing a Board-prescribed, written and oral examination in psychology.<sup>42</sup> However, for a period of two years, presently practicing psychologists may be certified without examination and without having achieved a doctorate.<sup>43</sup> The Board is authorized to deny, revoke, or suspend licenses for designated types of misconduct and its orders may be enforced by court injunction.<sup>44</sup> Failure to comply with the statute as to certification requirements is made a misdemeanor.<sup>45</sup> Psychology is defined as "the study and application of the principles of behavior . . . not to be interpreted as meaning 'psychiatry' which is that branch of medicine that diagnoses and treats disorders of the mind or psyche, especially psychoses but also neuroses."<sup>46</sup>

#### COSMETOLOGISTS AND BARBERS

Both the cosmetologists and barber acts were amended at this session, with fees charged by the boards and salaries of board members and officials being revised upwards.<sup>47</sup> Education and age requirements for cosmetologists have been raised slightly.<sup>48</sup> What constitutes a "teacher's training course" remains somewhat obscure.<sup>49</sup> The practice of barbering continues to be defined as the conduct of certain barbering operations "upon the human body above the seventh cervical vertebra for cosmetic purposes."<sup>50</sup>

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40. *Id.* 40:2013.

41. *Id.* 37:2353.

42. *Id.* 37:2356.

43. *Id.* 37:2357.

44. *Id.* 37:2360, 2362.

45. *Id.* 37:2361.

46. *Id.* 37:2352(5).

47. *Id.* 37:345, 377, 496, 516.

48. *Id.* 37:502.

49. *Id.* 37:503.

50. *Id.* 37:348.

We turn now from problems of regulating those who treat or cater to the needs of the human anatomy to the regulation of those who plan, build, and equip buildings and service equipment in which we live and work.

#### ARCHITECTS

An appropriate preamble has now been appended to the entire body of provisions regulating the practice of architecture, such preamble noting that the purpose of these provisions is "to safeguard life, health, and property and to promote the public welfare."<sup>51</sup> The rule-making power of the State Board of Architectural Examiners was first added in 1958.<sup>52</sup> Although such rule-making power was seemingly broad enough to include the power to make rules governing the regulation of proceedings before the Board, it was found necessary in 1964 to add detailed statutory provisions governing such proceedings;<sup>53</sup> in addition, all rules made by the Board must be formally promulgated and made available for inspection at the Board office.<sup>54</sup> An architect threatened with board action now has his procedural rights specifically safeguarded; conversely, however, the Board is now specifically armed with subpoena power and with authority to request court enforcement.

The University of Southwestern Louisiana has been added as an institution whose graduates are specifically eligible to take the Board's examinations.<sup>55</sup> Three years of practical experience under a licensed architect will be required as a prerequisite to taking the examination after July 1, 1968. After that date, the five years' experience acceptable in lieu of a diploma will be increased to eight years.<sup>56</sup> Persons who have passed a standard examination of, and who have been certified by, the National Council of Architectural Registration Boards may now be licensed to practice in Louisiana without further apprenticeship.<sup>57</sup>

#### CONTRACTORS

The new State Licensing Board for Contractors is composed

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51. *Id.* 37:141.

52. LA. R.S. 37:144 (Supp. 1963).

53. *Id.* 37:156.1.

54. *Id.* 37:144.

55. *Id.* 37:147.

56. *Id.* 37:148.

57. *Id.* 37:149.

of nine members rather than the original seven, and the appointive power of the Governor has been limited in that he must now make his selections from lists submitted by various segments of the construction industry.<sup>58</sup> The per diem for board members remains unchanged at \$50.00, but is now allowable only for board meetings. A 10¢ per mile allowance has been substituted for actual travel expenses of lodging and board.<sup>59</sup> The hand of an economy-minded administration would seem to have been at work here.

Awarding authorities are made subject to criminal sanctions for issuing plans and specifications to non-licensed contractors or their representatives except in connection with the preparation of proposals to bid on projects financed with federal funds. Successful bidders on such projects must then be licensed by the Board.<sup>60</sup> Presumably, the federal authorities are less concerned with restricting bidding to contractors already licensed by the Louisiana State Licensing Board.

#### PLUMBERS

The composition of the new State Plumbing Board perhaps indicates the waning status of New Orleans as the number-one plumbing problem in the state as well as the progress in the organization of the trade. The New Orleans supervisor of plumbing is no longer an *ex officio* member of the Board; instead, the State Board of Health recommends a registered engineer and a plumbing inspector for membership on the Board. The other six members will be recommended by the contractors and by the journeyman plumbers through their respective state associations.<sup>61</sup> The Board's authority now extends to cities of 10,000 population and to water districts having a population of 25,000 or more as well as to all areas within one mile of the city or district boundary or within one mile of the facilities of such areas.<sup>62</sup>

The doing of "plumbing work" has now been promoted to practicing "the art of plumbing."<sup>63</sup> The Board is authorized to adopt tests of qualification without other guidance than that

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58. LA. R.S. 37:2151, 2152 (Supp. 1964).

59. *Id.* 37:2154.

60. *Id.* 37:2163.

61. *Id.* 37:1361.

62. *Id.* 37:1375.

63. *Id.* 37:1376.

contained in a section on definitions describing a journeyman plumber as one "who possesses the necessary qualifications and knowledge to install, alter, and/or repair plumbing systems."<sup>64</sup> Reciprocity is provided with other states by a system of "temporary working permits"; even without reciprocity, the permit may issue if "bona fide evidence shows that the applicant's past experience would be capable of protecting the public from defective plumbing."<sup>65</sup>

The act now contains authority for the Board to revoke or refuse to renew a license after notice and hearing; licensees may suspensively appeal the action of the Board to an appropriate district court for a trial de novo.<sup>66</sup> An interesting new development is the creation of an advisory committee of ten members appointed by the contractors and union members which has access to all board meetings and shall "advise the board upon the board's activities."<sup>67</sup> This would appear to indicate an atmosphere of something less than complete confidence in the Board among the members of this occupation.

#### RADIO AND TELEVISION TECHNICIANS

In 1958, the legislature adopted a pervasive statute providing for the licensing and regulation of "radio and television technicians" and "maintenance and repair service" rendered thereby. Since 1958, questions have evidently arisen as to whether the act covered maintenance and service of "second hand television sets to be used in the home." The 1964 amendments spell out specifically that such activity is covered and that persons engaging in such service must have a certificate of registration from the registration and licensing authority.<sup>68</sup>

#### STATE EMPLOYEES AND OFFICIALS

Effective with approval of a constitutional amendment, the legislature has enacted a Code of Governmental Ethics; drafting and submission of the Code was an important plank in the platform of the incumbent administration. The declaration of policy sets out certain inferences from experience which it seeks to implement: that "it is essential to the proper operation of demo-

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64. *Id.* 37:1377.

65. *Id.* 37:1369.

66. *Id.* 37:1378.

67. *Id.* 37:1379.

68. *Id.* 37:2302, 2303.

cratic government that public officials be independent and impartial; that governmental decisions and policy be made in the proper channels of the government structure; that public office not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government." The declaration of policy goes on to state as experience that "it is also essential to the proper operation of government that those best qualified be encouraged to serve the government . . . [and that] legal safeguards against conflicts of interests . . . be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and woman who are best qualified to serve it."<sup>69</sup>

#### EMPLOYEES

The Louisiana Commission on Governmental Ethics is charged with administration of the portion of the Code devoted to state employees.<sup>70</sup> The Code proscribes state employees from participating "in a transaction involving the state in which he has a personal substantial economic interest," nor shall he "receive anything of economic value, other than his compensation from the state . . . [including normal employee benefits provided by the state], for or in consideration of personal services rendered or to be rendered to or for the state."<sup>71</sup>

"Transactions involving the state" is defined to include any matter or proceeding which the employee, or former employee, knows, or should know, will be the subject of state action, or to which the state will be a party, or in which the state has a direct interest. "Things of economic value" is defined to mean "money or other things having economic value except food, drink or refreshments consumed by a state employee, including reasonable transportation and entertainment incident thereto, while the personal guest of some person."<sup>72</sup>

The Commission is authorized to exempt an employee or a transaction from the proscriptions of the Code "provided that the Commission shall make a determination in writing that under all the circumstances, the public welfare and interest in

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69. *Id.* 42:1101.

70. *Id.* 42:1119.

71. *Id.* 42:1112, 1113.

72. *Id.* 41:1111K, L.

such employee's participation exceeds the public interest in his disqualification."<sup>73</sup>

The head of any agency may of his own motion dismiss, suspend, or take other appropriate action against a current employee for violations of the act, or he may be ordered to do so by the Commission. Against a former employee or other person, the head of the agency or the Commission may impose conditions with respect to appearances before the agency or the conduct of business negotiations with such agency. The Commission may also cancel or rescind any state contract, obtained in violation of the Code, without contractual liability to the state.<sup>74</sup>

Employees or other persons alleged to be in violation of the Code have the right to a public hearing with written notification of charges to be provided at least ten days beforehand. The Commission is given full hearing powers and no disciplinary action may be taken against an employee or other person unless he has been found guilty of a violation at a public hearing. A current classified employee has the right to an appeal to the State Civil Service Commission.<sup>75</sup>

The Commission or an appropriate state legal officer may sue to recover an amount equal to the economic advantage enjoyed by an employee or other person as a result of a violation of the Code or may sue for a civil penalty of up to \$5,000 for transferring illegal payments to others.<sup>76</sup> Violations are also made misdemeanors subject to usual criminal sanctions for such offenses.<sup>77</sup>

#### OFFICERS

The Louisiana Board of Ethics for State Elected Officials is charged with the administration of that part of the Code proscribing certain conduct involving conflict-of-interest situations when engaged in by an elected official.<sup>78</sup> Such conduct includes the receipt of compensation for consultation on matters within the responsibilities of an official's department or in-

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73. *Id.* 42:1112E.

74. *Id.* 42:1121.

75. *Ibid.*

76. *Ibid.*

77. *Id.* 42:1122.

78. *Id.* 42:1144.

volving confidential data of that department. It also includes participation in any transaction involving the state or his agency in which he or designated related persons have a substantial personal economic interest of which he may reasonably be expected to know. Compensation may not be received by any official for assisting any person in any transaction with the state if the state is represented, directly or indirectly, in such transaction by the Governor unless a written statement, giving full details of the transaction, is filed with the Board.<sup>79</sup> The Board may exempt transactions from the Code in a written determination finding "that under all the circumstances, the public welfare and interest in such official's participation exceeds the public interest in his disqualification."<sup>80</sup>

Agency heads are required to keep a record of representatives appearing before them and to supply the Board with such record on the last day of each month.<sup>81</sup> The Board is authorized to investigate upon the sworn complaint of any qualified elector and may conduct private investigations utilizing the personnel of the Department of State Civil Service.<sup>82</sup> Full hearing powers are conferred upon the Board and if, after public hearing, it determines that an official has violated the Code, a copy of its findings is to be forwarded to the appropriate district attorney.<sup>83</sup> Upon conviction by an appropriate court, the official shall be deemed guilty of a misdemeanor punishable by fine or imprisonment or both.<sup>84</sup>

The Board is to consist of a member of the judiciary appointed by the Governor and two additional members elected by the House and Senate respectively. Members so elected may not be members of the respective chambers which elect them.<sup>85</sup>

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79. *Id.* 42:1143.

80. *Ibid.*

81. *Ibid.*

82. *Id.* 42:1144.

83. *Ibid.*

84. *Id.* 42:1145.

85. *Id.* 42:1144.