

SENATE No. 623

The Commonwealth of Massachusetts.

To the Honorable the Senate of the Commonwealth of Massachusetts.

We, the Justices of the Supreme Judicial Court, have considered the questions upon which our opinion is required by the order of June 16, 1919, a copy of which is hereto annexed, and respectfully submit this opinion.

Article L of the Amendments to the Constitution is in these words: "Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law." The words "regulated and restricted" do not confer power to prohibit utterly and without bound but only to establish reasonable limitations. This is the significance of the words of Amendment L in the light of its history, whatever may be the meaning of power "to regulate" in other connections. See *Gibbons v. Odgen*, 9 Wheat. 1, 189-193.

The precise phrase of Amendment L is followed in the crucial parts of House Bill No. 629 and House Bill No. 1062. They violate no other provisions of the Constitution. It is within the power of the General Court to authorize the enactment of ordinances or by-laws by cities and towns respecting matters of special and local interest. *Commonwealth v. Slocum*, 230 Mass. 180, 190. As we construe the meaning of Article L there is at any rate nothing contrary to the Constitution of the United States in these two bills. *St. Louis Poster Advertising Co. v. St. Louis*, 249 U. S. 39 Sup. Ct. Rep. 274. Whether limitations imposed pursuant to House Bill No. 629 and House Bill No. 1062 would

be repugnant to the Fourteenth Amendment of the United States Constitution is a question which does not arise until particular limitations have been enacted. Neither of these bills, if enacted, would be unconstitutional.

For the same reasons section one of House Bill No. 835 is not contrary to the Constitution. But the remaining sections of that bill are not in accordance with the Constitution. That bill is in substance an attempt to exercise the power of raising revenue by levying "a special betterment tax." The provisions of that bill do not constitute a betterment and cannot be the basis for assessing a betterment tax.

Section one of House Bill No. 1063, which is a definition of billboard, sign or signboard, is not unconstitutional. The second section of that bill vests an absolutely unrestricted power in the untrammelled discretion of boards of aldermen and selectmen as to the granting and refusal of licenses for the erection or placing of any billboard, sign or signboard as defined in section one. It includes all land within the Commonwealth whether "within public view" or not. It does not come within the terms of Article L of the Amendments or of other provisions of the Constitution. The remaining sections are ancillary to section two and fall with it. With the exception of section one, that bill, if enacted, would be unconstitutional.

Senate Bill No. 227 manifestly does not rest upon those provisions of Article L of the Amendments which relate to advertising on public ways and in public places, but upon that concerning advertising "on private property within public view." That bill prohibits entirely "advertising signs and devices within three hundred feet of a public building, public memorial, public way, park, playground or other public property", except such as refer to a business conducted within the building on which the advertising sign or device is placed. It is apparent that such prohibition includes advertising signs or devices hidden from public view by intervening obstructions and is not confined to those "within the public view." Legislation of that nature would be beyond the plain scope of the amendment and

hence unconstitutional. This consideration disposes of that bill. Other questions which might arise if it were not open to this fatal objection need not be discussed.

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The Commonwealth of Massachusetts.

SENATE, June 16, 1919.

Whereas, There are pending before the General Court certain bills providing for the regulation of advertising on public ways, in public places and on private property within public view, to wit, Senate Bill numbered 227 and House Bills numbered 629, 835, 1062 and 1063, copies of which are hereto annexed, and

Whereas, Grave doubt exists as to the extent of the powers of the Legislature in respect to the subject-matter of these bills, especially as affected by Article L of the Amendments to the Constitution, therefore be it

Ordered, That the opinions of the Honorable the Justices of the Supreme Judicial Court be required by the Senate on the following important question of law: —

Would any or all of said bills be unconstitutional in whole or in part, if enacted into law?

HENRY D. COOLIDGE,
Clerk.