

HOUSE No. 1855

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, March 15, 1915.

HON. CHANNING H. COX, *Speaker of the House of Representatives.*

SIR:— I have the honor to acknowledge receipt of an order, passed by the House of Representatives on March 3, 1915, requesting the Attorney-General to inform the House of Representatives whether or not in his opinion the bill printed as House No. 437, which provides for the regulation of the sale of newspapers and periodicals, would be constitutional if enacted.

The main purpose of the bill seems to be declared in sections 2 and 3. These sections are directed solely at news-dealers, news-agents and publishers of newspapers and periodicals. Section 2 appears to make illegal any agreement by persons engaged in such business which provides for the sale of two or more publications only in combination with each other. Any such agreement the natural effect of which is to deprive any person within the Commonwealth of the privilege of buying any newspaper or periodical separately and at its current price comes within the prohibition of the statute. All agreements to sell two publications only at a single price are rendered criminal even though the price set for the combination is substantially less than the sum of the usual prices of the single publications when sold separately. Thus many agreements between publishers and agents which are for the purpose of establishing so-called club rates, often most advantageous to the public, would seem to be rendered illegal.

Section 3 makes it unlawful for any person to offer for sale any combination of two or more publications at any price however low unless each publication is also offered for sale separately at its current price. Thus dealers in one kind of property are forbidden to sell their wares in combination when dealers in other kinds of property are permitted to sell their goods as they please.

Plainly, these sections, if enacted, would impair the freedom of contract and deny equal protection of our laws to certain of our citizens. Therefore, they come within the limitations of the Fourteenth Amendment of the United States Constitution and the Declaration of Rights of the Constitution of Massachusetts, unless they can be supported as reasonable regulations under the police power. This power is defined by Part II, Chapter I, Section I, Article IV of the Constitution of Massachusetts as the power "to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same."

Regulations enacted under this power, particularly those which impose burdens upon a limited class of our citizens, must be reasonably directed toward the preservation of the public health, the public safety, the public morals, and, to a more limited extent, of the public welfare. Under the guise of the police power the General Court cannot impose upon one class of our people special burdens which, when tested by sound reason, can be found to perform no reasonable service in advancing those fundamental public interests.

The publishing and the selling of newspapers and periodicals are not public callings. Persons engaged in those callings have the right to sell or to refuse to sell to whom they will. It is doubtful if the General Court would have any constitutional authority to regulate the prices at which such publications should be sold. They are not necessities of life, and no person has any inherent right or privilege to buy

them at any price singly or in combination. The bill discloses, and I am able to perceive, no reasonable basis for placing persons engaged in this business in a class by themselves, and imposing upon them special burdens not imposed upon persons engaged in the production, distribution and sale of other commodities. This classification seems to me to bear no relation to the public health, safety, morals or the general welfare within the meaning of the police power.

I therefore reply to your order that in my opinion, for the reasons above stated, the bill printed as House 437 would be unconstitutional if enacted.

Very truly yours,

HENRY C. ATTWILL,
Attorney-General.

