

## Court Decisions on Challenged Laws

Sunday laws generally have been sustained by state and federal courts. The U.S. Supreme Court in 1896, and again in 1900, upheld the right of the states to regulate Sunday activities as a legitimate exercise of their police powers. In recent years the high court has refused on several occasions to consider appeals brought by convicted Sunday merchants who argued that they had been unfairly singled out for prosecution; the Court said in those cases that no “substantial federal question” was involved.

The question of whether Sunday laws may impair constitutional guarantees of religious freedom and separation of church and state was first brought to the Supreme Court a decade ago when two Jewish merchants appealed their conviction for breaking the New York Sunday law. The Court refused to act in that case, but recent lower court decisions have encouraged the expectation that the Supreme Court may yet see fit to rule on the issue of religious freedom in Sunday legislation.

A major development in such litigation occurred last May when a federal court by a 2–1 decision held the Massachusetts Sunday law unconstitutional because it did not give equal protection to those who observe different days of the week as the Sabbath. This was the first time any court had found a state Sunday closing law contrary to provisions of the U.S. Constitution. The defendants in the case, operators of the Crown Kosher Super Market in Springfield, Mass., had been convicted of doing business as usual on Sunday in violation of Massachusetts law, and the conviction had been upheld by the highest state court. The case engaged the active attention of Jewish and Seventh-Day Adventist organizations on one side and of Catholic and Protestant groups on the other.

Constitutionality of the new New Jersey and Pennsylvania statutes also is headed for Supreme Court consideration. The cases in both states are similar. Two Jewish merchants in Newark and two in Philadelphia, and stores in both states of the firm called Two Guys From Harrison, are challenging the validity of the laws. A New Jersey state court refused last December to grant the merchants an injunction—to save them from prosecution—while a similar case was pending before the New Jersey supreme court. A federal court in the same month held the Pennsylvania law constitutional. An appeal from that decision was filed in the U.S. Supreme Court on Feb. 12 by Two Guys From Harrison. Contending, among other things, that there was no reasonable basis for the Pennsylvania law's classification of prohibited and permitted activities, the appellants asked:

In what manner does a sale at retail differ from a sale at wholesale, justifying different Sunday treatment? If these are day-of-rest statutes, do not employees of wholesale establishments need a day of rest too? What is the distinction between commodities not listed in the act of 1959 as against those contained therein?

State courts have drawn fine lines of distinction between what is and what is not permissible under state Sunday laws. The Illinois supreme court held a local ordinance unconstitutional last November because the prosecutors failed to show that the Sunday activity disturbed the peace. The appellate division of the New York supreme court held it illegal last June 15 for the owner of a self-service laundry to keep it open on Sunday, but the same bench ruled three days later that no law was violated by a customer who operated a machine in a self-service laundry on Sunday.

The Connecticut supreme court in July 1958 upheld that state's Sunday law against a challenge on constitutional grounds brought by a storekeeper convicted of selling two candles on Sunday. The defendant asserted that the law was unfair because it did not ban the sale of antiques, but the court held that antique-buying was a recreational activity which could be constitutionally exempted from a ban on Sunday retailing.

Constitutionality of the Virginia law is being challenged by a shopping center that was fined \$20,500—the maximum of \$500 for each of 41 Sundays since it opened—by a county court in January. Payment of the fine has been suspended until the state supreme court acts. A similar attempt to test the constitutionality of the Virginia law failed last October when the state's highest court refused to hear an appeal from a store which had been fined \$100 for selling non-essential merchandise.

Merchants forbidden to sell on Sunday sometimes complain that drug stores which open on Sunday sell many articles not in the category of necessities. The Arkansas supreme court ruled in 1956 that a constitutional test on the basis of the article sold was not valid; the drug store which sold necessities could also sell non-necessities if this was essential to the conduct of the necessary business. The court said: "It does not necessarily follow that because a druggist sells a bar of soap on Sunday, the grocer has a constitutional right to do the same."

### **Main Issues in Sunday Law Controversy**

Issues in the Sunday closing law controversy are not clear-cut because attitudes toward it involve a mixture of religious convictions, commercial interests, and concepts of civil rights. It is contended in behalf of rigorous prohibitions on Sunday commercialism that the state has a right so to regulate commerce and labor as to protect one day of rest a week, and that it is justified in selecting Sunday because that is the day devoted by most citizens to worship and relaxation. Opponents of Sunday closing laws insist that they infringe the constitutional principle of separation of church and state; that they are unfair to persons whose religion bids them to observe another day of rest than Sunday; and that unavoidable exemptions result in unfair discrimination. These arguments are not new; they have been heard in periodic controversies about Sunday legislation since almost the beginning of the republic.

### **Opposing Attitudes on Regulatory Approach**

Tension over Sunday legislation first reached national proportions in the early part of the 19th century, when a controversy raged for 20 years as to whether Congress should forbid the opening of post offices for a time on Sunday. The Senate Post Office Committee finally submitted an adverse report on the proposed legislation in 1829 and defended its position by arguments which are still current in Sunday law debate. Such an act, the committee said, would "establish the principle that the legislature is a proper tribunal to determine what are the laws of God." This would "involve a legislative decision in a religious controversy and on a point on which good citizens may honestly differ without disturbing the peace of society."

By the middle of the 19th century, well-defined movements for and against civil sanctions on Sabbath-breaking had been formed. The American and Foreign Sabbath Union, founded in 1842, sponsored a National Sabbath Convention which was presided over by John Quincy Adams, The Lord's Day Alliance, still active in promoting Sunday laws, was organized 40 years later, The impetus for formation of these organizations came from

Protestant church leaders who saw a threat to traditional religious customs in expansion of Sunday railroad operations, publication of Sunday newspapers, and holding of entertainments on Sunday. The church leaders were apprehensive also about the influx of European immigrants whose approach to Sunday obligations differed from that of earlier comers.

On the other side were influential citizens who held the strong conviction that Sunday legislation constituted a sectarian invasion of civil and religious rights. The Senate Post Office Committee had warned in its 1829 report that "Extensive religious combinations to effect a political object are ... always dangerous." William Lloyd Garrison, in an appeal in 1848 for an American Anti-Sunday Law Convention, attacked the Sabbath Union as "animated by the spirit of religious bigotry and ecclesiastical tyranny ... [which sought] to crush ... the rights of conscience."

The Sunday issue came before Congress again in the 1890s. Sunday law supporters succeeded in conditioning an appropriation for the Chicago World's Fair on closing of the U.S. exhibit on Sunday. The same issue was raised in connection with federal grants for the St. Louis Exposition of 1904 and the Jamestown Exposition of 1907.

### **Religious Motivation in Sunday Regulations**

Opponents of Sunday laws contend that they violate constitutional provisions against interference with the free exercise of religion. Supporters of the statutes consider them primarily welfare rather than religious laws, or they attempt to justify them on the ground of protecting traditional customs of the majority of the people.

Sunday laws in the American colonies were unequivocally religious in purpose, being the product of a union of church and state authority. The religious justification lingered in the state laws and in court decisions upholding them, but in time the courts came to lay more stress on welfare aspects of Sunday legislation. The blend of religious and civil consideration was typified by a New York state court opinion in 1861:

The stability of government, the welfare of the subject, and the interests of society have made it necessary that the day of rest observed by the people of a nation should be uniform, and that its observance should be, to some extent, compulsory, not by way of enforcing the conscience of those upon whom the law operates, but by way of protection to those who desire and are entitled to this day. ... For a Christian people it is highly fit and proper that the day observed should be that which is regarded as the Christian Sabbath. ... The Christian Sabbath is, then, one of the civil Institutions of the state.

Ninety years later, the appellate division of New York's supreme court denied that that state's Sunday statute was a law "respecting an establishment of religion or prohibiting free exercise thereof" it said the law "does not set up a church, make attendance at religious worship compulsory ... nor in any way enforce or prohibit religion."

Despite such rulings, Jewish and Seventh-Day Adventist groups persist in pressing the issue of religious freedom. In his brief before the Massachusetts supreme court in the Crown Kasher Super Market case, the top legal representative of the American Jewish Congress, Leo Pfeiffer, said:

The origin of Sunday legislation is incontrovertibly religious. Legislatures never evidence any intent to change the religious motivation of such measures. ... Courts have consistently recognized the religious nature of Sunday legislation, ... Sunday law statutes

even today frequently use the phrase "the Lord's Day." Such designation ... can hardly be called secular. ... The legislative intent to aid religion by closing all roads other than those leading to church seems to us to be incontrovertible.

In a typical expression of Seventh-day Adventist opinion, an editor of the denomination's periodical *Liberty* stated: "The civil government has no more right to prescribe the manner of the observance of the Sabbath, or of the Lord's Day, than it has to prescribe the manner of saying the Lord's Prayer, of conducting the Lord's Supper, or of administering baptism."

The executive secretary of the New Jersey Catholic Conference urged a New Jersey legislative committee in 1958 to keep any reference to a religious objective out of the Sunday legislation then under consideration, lest its inclusion make the law constitutionally vulnerable. Other religious leaders have openly justified the religious import of Sunday laws. In a criticism of the federal court decision that found the Massachusetts law unconstitutional last year, Cardinal Gushing, Archbishop of Boston, expressed shock that "in the minds of many modern statesmen and jurists, Sunday has lost its religious significance and has thus lost the right to protection from profanation which has up to now been afforded by the law."

In our American tradition [the Cardinal said] Sunday has been ... a day of prayer and rest ... not ... a civic holiday. The laws ... reflect the belief of those who formulate them in a personal God and their acceptance of the age-old tradition that one day in seven should be set aside as the Lord's Day. It is extremely disturbing, therefore, to be confronted with this new trend of thought according to which Sunday is to become legally recognized [merely] as a day on which people may if they choose seek respite from their ordinary labors.

Opinions differ on whether discrimination against those who observe Saturday as the Sabbath is removed by limited exemptions accorded them in some state laws. A Seventh-Day Adventist spokesman has noted that the terms of the exemptions "compel one who observes the seventh day of the week to stand court trial and prove that he 'habitually abstains ... from following his usual occupation or business and ... devotes the day to the exercise of religious worship'." This is said to put a religious test on Saturday observers, thus denying the equality of all religions before the law.

Protestant clergymen, headed by the board chairman of the Protestant Council of New York City, joined Seventh-Day Adventists and Jewish rabbinical groups of the city in 1958 in support of a bill to exempt Saturday worshipers from the penalties of the Sunday closing law. The Catholic hierarchy opposed the measure and it was defeated. A similar bill has been introduced in the New York legislature this year. The Rabbinical Council of America on Feb. 10 appealed to all state legislators, New York's in particular, to adopt a "fair Sabbath law" that would exempt Saturday worshipers.

Opponents of exemptions in Sunday legislation point out that the laws do not prevent a Saturday observer from closing down his business on that day: they simply require him not to disturb the peaceful character of the day on which the majority makes its devotions. In rebuttal to this argument it is said that the law in effect imposes on the Saturday worshiper an obligation to keep his business closed two days a week, one day to meet the dictates of his conscience and another day in obedience to the religious beliefs of others.

## **Unequal Effects on Commercial Competitors**

Although religious arguments have been prominent in the debate on Sunday laws, commercial competition figures more and more in the pressure for and against them. Exemption of a large number of activities from the provisions of Sunday laws gives weight to the argument that the laws in effect do not protect the sanctity of Sunday; that they serve rather as an instrument of discrimination against particular business enterprises that incur the displeasure of a local pressure group.

In his veto message last year, Gov. Clyde of Utah said he was not convinced that a Sunday closing law would encourage young people to attend church, especially since the law allowed "beer halls" to stay open on the theory that they fell into the category of recreation. He was forced to the conclusion that "the major support [for the measure] comes from a group of retail merchants who are seeking by this means to regulate competition within their own industry." Effective enforcement would be impossible, the governor said, and "there would be widespread violations ... tend [ing] to breed general disrespect for the law."

A law journal noted recently that Sunday laws tend to go unenforced until there is agitation against particular stores by private interests, and "this inevitably leads to discriminatory enforcement." The result is that "The blue law becomes a weapon in an economic struggle, a use scarcely conceived of by the originators of this type of legislation."

## **Popularity of Sunday Afternoon Shopping Trips**

Some persons consider the current agitation to close down big Sunday stores a mere episode in a changing social picture. They think that a trend toward Sunday retailing on a large scale is inevitable. It is noted that many Sunday activities now widely tolerated—movies, baseball, pleasure travel—were once frowned on by custom and prohibited by law. The federal highway program is thought certain to encourage growth of roadside retailing.

There is some question as to the extent of public dismay at Sunday commercialism. Secular activities on Sunday afternoon have become widely accepted, and Sunday shopping has proved popular. In communities where movies are closed on Sunday, thousands are known to be viewing movies on television. Opponents of Sunday laws point out that consistency would require extension of bans on selling to television and radio commercials.

An increasing number of churchmen are taking the position of a Methodist minister in Atlantic City, who observed that the commandment to keep the Sabbath holy is personal and calls for no civil law. The clergyman maintained also that Protestants who put pressure on state legislatures "for our pet projects" have no grounds for challenging "the Roman Catholic hierarchy's political maneuvering."