

Cite as 412 S.W.2d 307

lawful occupation of the respondents, *Lawton v. Steele*, 152 U.S. 133, 14 S.Ct. 499, 38 L.Ed. 385 (1894).

The Courts should not hesitate to intervene to protect the property rights of a citizen when it is discovered from a record such as we have here that a Board has exceeded its powers under the guise of the exercise of the police power of the State. This Court in the case of *Houston & T. C. R. Co. v. Dallas*, 98 Tex. 396, 84 S.W. 648, 70 L.R.A. 850 (1905), in considering the exercise of the police power, has this to say:

"The power is not an arbitrary one, but has its limitations. It is commensurate with, but does not exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private property rights. As those needs are extensive, various, and indefinite, the power to deal with them is likewise broad, indefinite, and impracticable of precise definition or limitation. But as the citizen cannot be deprived of his property without due process of law, and as a privation by force of the police power fulfills this requirement only when the power is exercised for the purpose of accomplishing, and in a manner appropriate to the accomplishment of, the purposes for which it exists, it may often become necessary for courts, having proper regard to the constitutional safeguard referred to in favor of the citizen, to inquire as to the existence of the facts upon which a given exercise of the power rests, and into the manner of its exercise, and if there has been an invasion of property rights under the guise of this power, without justifying occasion, or in an unreasonable, arbitrary, and oppressive way, to give to the injured party that protection which the Constitution secures."

This Court supported its position with a quotation from *Lawton v. Steele*, 152 U.S. 133, 14 S.Ct. 499 (1894) which reads:

" * * * [t]o justify the state in thus interposing its authority in behalf of the public, it must appear—First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

In the case of *Smith v. Decker*, 158 Tex. 416, 312 S.W.2d 632 (1958), this Court held unconstitutional a statute which deprived citizens of the right to earn a living, a property right. In holding void the act there involved, we said:

"Appellants having a vested property right in making a living, subject only to valid and subsisting regulatory statutes, and being prevented from performing their business otherwise lawful but for the statute in question, we believe that we are permitted under the rule announced in *Kemp Hotel Operating Co. v. City of Wichita Falls*, [141 Tex. 90, 170 S.W.2d 217], supra, to order the issuance of the injunction. There it was stated that courts of equity may be resorted to for the purpose of enjoining the enforcement of a criminal statute or ordinance when same is void and when its enforcement invades a vested property right of the complainant."

The judgment of the Court of Civil Appeals should not only be affirmed, but this Court should go further and declare the rule unconstitutional.