

As the Commissioners have stated in their letter transmitting to the Congress the proposed legislation which has been introduced as H.R. 9806, they are of the view that the business of debt adjusting is of such a nature as to lend itself to grave abuses against distressed debtors, particularly those in the lower income brackets. The Commissioners, in their consideration of the problem created by the debt adjusters, recognized that even at best the practice works to the disadvantage of the debtor, since an additional debt is added to the debts he already finds burdensome. Further, in their consideration of the matter the Commissioners could find no economic justification for the so-called "service" which allegedly is provided by the debt adjusters. Accordingly, in the belief that the whole situation was one which could, and according to the articles by Miss Miriam Ottenberg in the *Star* last April, does, lead to grave abuses, the Commissioners determined to recommend that the practice be prohibited.

#### CONSTITUTIONALITY

With respect to the constitutionality of the proposed legislation, the Supreme Court of the United States, in the case of *Ferguson v. Skrupa* (372 U.S. 726, decided April 22, 1963), reversed the decision of a three-judge District Court enjoining the enforcement of a Kansas statute making it a misdemeanor for a person to engage in the business of debt adjusting except as an incident to the lawful practice of law, and held constitutional the type of law here under consideration. In *Ferguson*, the Court rejected the contention that the Kansas statute prohibiting the business of debt adjusting was in violation of the Due Process Clause of the Fourteenth Amendment (in the District of Columbia, the Fifth Amendment), stating that—

"\* \* \* the Kansas legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. \* \* \* We refuse to sit as a 'superlegislature to weigh the wisdom of legislation,' and and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.'"

The general tenor of *Ferguson* is that it is for the legislatures rather than the courts to decide on the wisdom and utility of legislation, and that the legislatures have the power to legislate against what are found to be injurious practices in the internal commercial and business affairs of the States (or the District of Columbia, as the case may be) so long as the laws do not run afoul of some specific federal constitutional prohibition or some valid federal law.

In *Ferguson* the Supreme Court also rejected the contention that the Kansas statute's exception of lawyers was a denial of equal protection of the laws to non-lawyers in violation of the Fourteenth Amendment, stating "Statutes create many classifications which do not deny equal protection; it is only 'invidious discrimination' which offends the Constitution." Pointing out that the business of debt adjusting gives rise to a relationship of trust in which the debt adjuster will, in a situation of insolvency, be marshalling assets in the manner of a proceeding in bankruptcy, the Court stated that if a State wants to limit debt adjusting to lawyers, the Equal Protection Clause of the Fourteenth Amendment does not forbid it.

The Commissioners, in addition to recognizing that lawyers in the course of their practice may find it necessary to engage in activities in the nature of "debt adjusting", also recognize that in some areas of the country nonprofit or charitable corporations or associations have performed a service to their communities by providing a debt adjusting service, at no expense to the debtor except for charges designed to cover expenses in connection with providing such services. In the belief that such a nonprofit service might be of use to those debtors seeking advice on how to manage their debts, without further increasing them, the Commissioners believe that the bill should also except from its application any such nonprofit or charitable organization which provides this kind of service.

I think, therefore, Mr. Chairman, that any question with respect to the constitutionality of H.R. 9806 has been resolved by the Supreme Court in *Ferguson* and that there exists no legal impediment to the enactment of the bill by the Congress if Congress finds that the potentiality of grave abuses inherent in the business of debt adjusting is such as to justify the enactment of legislation prohibiting it.