

COMMONWEALTH v. STONE

Cite as 155 A.2d 453

in the means it prescribes as to justify the exercise of the police power, is one for the judgment, in the first instance, of the law-making branch of the government, but its final determination is for the courts".

[2] Is budget planning, as defined in the act, against the public interest? It should be noted that the act does not specifically say that it is. The act does permit lawyers to do it if it is incidental to their general practice of law. The Commonwealth argues that the planner's activity in collecting and distributing the debtor's money "affords the budget planner the opportunity to defraud the public." The mere possibility, however, that one engaged in a lawful business may also engage in unlawful practices is no justification for prohibiting the business, if it be a legitimate one in the first instance. Practically every business and profession affords an opportunity for those engaging in it to perform reprehensible acts but this is no reason why persons should be denied the opportunity to engage in a lawful business. A similar contention was made by the Commonwealth but rejected by the Supreme Court in *Com. ex rel. Woodside v. Sun Ray Drug Co.*, supra, 383 Pa. at page 11, 116 A.2d at page 838, wherein the Court stated: "The contention of the Commonwealth when reduced to its essentials is that the common good or general welfare is protected by the prohibition of the sale of Malt-A-Plenty base as such to retailers because such sales create a possibility of confusing, defrauding or deceiving the public in that the retailer may sell the base as ice cream. As has been previously pointed out, *Commonwealth v. Crowl* [52 Pa.Super. 539] did not go that far. It merely sustained the legislation as

constitutional on the assumption that it prohibited the sale of such products as ice cream where such products have less than the minimum butterfat content. In such a case the deception or possibility of deception is obvious. If, in the instant case, there had been any evidence of sales of the Malt-A-Plenty base as ice cream, such sales could unquestionably be restrained."

In the instant case, it goes without saying that should any one engage in reprehensible practices as a business budget planner, the Commonwealth has a speedy and adequate remedy by criminal prosecution as well as other methods of legal restraint.

[3] In this connection we approve what Judge Homer L. Kreider so well said: "It cannot be denied that credit buying today is the keystone of economics in the consumer goods field. It is well known that millions of sales are made in the United States on the installment plan and that billions of dollars are involved in such transactions.¹ The public is constantly being urged to buy now and pay later and this seems to include almost everything from the cradle to the grave. This frequently results in persons or families over-extending themselves and their ability to pay for the many items they have purchased on credit. An unexpected cessation of employment or other untoward event may cause a drastic curtailment of installment payments and the consequent threat of repossession of the goods purchased on the time payment plan. When this melancholy moment arrives, the creditor may turn his claim over to a collection agency and thereby relieve himself to some extent of the stress and strain attendant upon the collection of the debt."²

"1. The enormous growth of installment buying is graphically set forth in the news letter of July 13, 1959 issued by Business News Associates, Inc., New York, wherein it is stated: 'Consumers hiked their outstanding instalment debt load by a seasonally adjusted \$443 million in May, the largest single monthly increase since September 1955 (at the peak of the last credit surge). Moreover, the increase

carried outstanding instalment debt to a record \$35 billion, topping the \$34.5 billion record set only a month earlier. New credit extended during the month spurred to more than \$4 billion on an adjusted basis, also setting a new record.'

[2] In *Com. v. United States Commercial Services, Inc.*, 179 Pa.Super. 395, 116 A.2d 745, the gist of the offense was that