

ly the philosophy of the Tenth Amendment to the Constitution, which reserves to the States powers not subject to national authority, is intended to mean that States' rights and State responsibilities should be encouraged in the absence of a compelling need for Federal action?

This legislation contemplates a certain degree of exercise of police powers with the Federal government. Section 7 of S. 3132 would authorize the Secretary of the Interior to approve or disapprove State surface mining plans, apparently based on consideration for the public health and safety as indicated by the Congressional finding in Section 3 of the bill.

The police power is unquestionably reserved to the states—not held by them at the sufferance of the Federal government. The Supreme Court said in 1944, "The United States lacks the police power, such power being reserved to the State by this amendment."¹

We question whether the Federal Government has the prerogative to determine whether a State power is properly or improperly wielded, and whether the Federal government can impose its own authority just because it is "unhappy" with the way a State is exercising its powers.

When control of interstate commerce and exercise of police powers are passed back and forth between the Federal Government and the States like a basketball, this surely violates this Nation's concept of the separation of State and Federal powers. In fact, the Supreme Court has said that uniform operation of a Federal law is a desirable end, but it cannot be achieved at the cost of establishing overlapping authority over the same subject matter in State and Federal governments, nor by precluding state authority from executing State laws in a normal manner within state power.²

Even if we assume the Federal government may infringe on, or overlap, the powers of the State as this legislation proposes, a second major constitutional question arises. S. 3132 gives the Secretary of the Interior almost unlimited discretion to approve or disapprove State reclamation programs, and to formulate regulations in lieu of them. Section 7 of the bill binds the Secretary of the Interior only by such broad, loose terms as "adequate" and "inappropriate."

Under the bill, the regulations promulgated by the Secretary in lieu of State plans would have the force of law. Since the Constitution grants the power to legislate solely to the Congress, it is not unreasonable to assume this could be an unconstitutional delegation of power to the executive branch.

It would occur, moreover, in an unneeded cause. The States are doing an increasingly effective job of controlling the surface mining of coal, so far as that control is necessary, and their efforts should not be impeded by the unnecessary intrusion of the Federal Government.

With respect to the issue of the unconstitutionality of S. 3132, I will fall back on a phrase often used by John L. Lewis when president of the United Mine Workers of America:

"I do not propose an answer—I merely pose the question!"

By this I mean that I will not attempt to masquerade as a qualified constitutional lawyer by any categorical declaration with respect to the unconstitutionality of this legislation. I only hope that this question will receive the serious consideration of your committee and the Congress it deserves before going further down the legislative road to enactment.

The absence of demonstrated need to extend Federal control over surface mining raises further questions which have special meaning and significance for Congress and the Nation. These questions are:

What will be the cost of administration?

What manpower and personnel will be required?

What economic waste is inherent in the overlapping jurisdictions between State and Federal control agencies?

How much should the pursuit of "beauty" needlessly drain funds from the Federal treasury in the face of the higher priorities of housing, education, jobs, and the urgent problems facing both the cities and agricultural communities?

Since there is no overriding need for a Federal program to control surface mining, we believe that these questions must be answered.

We submit that the Congress has a high duty to assess and weigh the impact of the added costs of the enactment of S. 3132 on the already over-extended

¹ *U.S. v. Renken*, D.C.S.C. 1944, affirmed 147 F. 2d 905, *cert. denied*, 66 S. Ct. 44, 326 U.S. 734.

² *Davies Warehouse Co v. Bowles*, 64 S. Ct. 474, 321 U.S. 144, 1944.