

Weller Vs. New York

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Court : US Supreme Court

Decided On : May-25-1925

Appeal No. : 268 U.S. 319

Appellant : Weller

Respondent : New York

Judgement :

Weller v. New York - 268 U.S. 319 (1925)

U.S. Supreme Court Weller v. New York, 268 U.S. 319 (1925)

Weller v. New York

No. 349

Argued April 28, 29, 1925

Decided May 25, 1925

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ERROR TO THE COURT OF SPECIAL SESSIONS

OF THE CITY OF NEW YORK, STATE OF NEW YORK

SYLLABUS

1. A state law forbidding and penalizing the engaging without a license in the business of reselling theater tickets does not violate the Fourteenth Amendment. P. [268 U. S. 325](#) .

2. The provisions of the New York General Business Law, as amended, c. 590, 1922, requiring theater ticket brokers to give bond and obtain a license are separable and workable apart from those restricting the price at which the tickets may be resold, so that the validity of the former is independent of the validity of the latter. *Id.*

207 App.Div.N.Y. 337, 237 N.Y. 316, affirmed.

Error to a judgment of the Court of Special Sessions of the City of New York adjudging the plaintiff in error guilty of reselling theater tickets without a license, entered after successive affirmances by the Supreme Court, Appellate Division, and the Court of Appeals.

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MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

Chapter 590, New York Laws 1922, added eight sections, 167-174, to the General Business Law of the state. They are copied in the margin. [*](#) Section 168 directs:

"No person,

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firm or corporation shall resell or engage in the business of reselling any tickets of admission or any other evidence of the right of entry to a theater, place of amusement or entertainment, or other places where public exhibitions, games, contests or performances are held without having first procured a license therefor from the comptroller."

And 173 declares every violation of the inhibition shall be a misdemeanor.

By an information in the Court of Special Sessions, New York City, the District Attorney accused plaintiff in error of engaging in the business of reselling theater tickets without the license required by law. The evidence showed he was engaged in the business, and it was conceded he had never taken out a license or complied with Chapter

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590. His defense rested upon the claim that the statute is repugnant to the Fourteenth Amendment. The trial court adjudged him guilty and imposed a fine of \$25. This was affirmed by the Appellate Division and by the Court of Appeals. *People v. Weller*, 207 App.Div. 337, 237 N.Y. 316. In an extended opinion, the latter court upheld the challenged enactment, but said nothing of the

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possibility of sustaining the license provisions if those relating to resale prices were invalid.

Counsel for plaintiff in error now insists that the two provisions are inseparable; that those which undertake to establish resale prices are clearly invalid; and, consequently, the whole act must fall. On the contrary, counsel for the people maintain that the power of the state to require such licenses is clear, and that we need not determine the validity of the price restrictions.

It is not, and we think it cannot, seriously be urged that the state lacked power to require licenses of those engaging in the business of reselling theater tickets. The conviction and sentence were for failure to observe that requirement. In the absence of an authoritative announcement of another view by some court of the state, we shall hold this provision severable and valid. *Brazee v. Michigan*, [241 U. S. 340](#) . The statute itself declares (174):

"In case it be judicially determined that any section of this article is unconstitutional or otherwise invalid, such determination shall not affect the validity or effect of the

remaining provisions of the article."

If 172, which restricts resale prices, were eliminated, a workable plan would still remain. See *Dorchy v. Kansas*, [264 U. S. 286](#) .

The judgment of the court below is

Affirmed.

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" 167. *Matters of Public Interest.* It is hereby determined and declared that the price of or charge for admission to theaters, places of amusement or entertainment, or other places where public exhibitions, games, contests, or performances are held is a matter affected with a public interest, and subject to the supervision of the state for the purpose of safeguarding the public against fraud, extortion, exorbitant rates and similar abuses."

" 168. *Reselling of Tickets of Admission; Licenses.* No person, firm or corporation shall resell or engage in the business of reselling any tickets of admission or any other evidence of the right of entry to a theater, place of amusement or entertainment, or other places where public exhibitions, games, contests, or performances are held without having first procured a license therefor from the comptroller. Such license shall be granted upon the payment by or on behalf of the applicant of a fee of one hundred dollars, and shall be renewed upon the payment of a like fee annually. Such license shall not be transferred or assigned except by permission of the comptroller. Such license shall run to the first day of January next ensuing the date thereof, unless sooner revoked by the comptroller. Such license shall be granted upon a written application setting forth such information as the comptroller may require in order to enable him to carry into effect the provisions of this article, and shall be accompanied by proof satisfactory to the comptroller of the moral character of the applicant."

" 169. *Bond.* The comptroller shall require the applicant for a license to file with the application therefor a bond in due form to the people of the State of New York

in the penal sum of one thousand dollars, with two or more sufficient sureties, who shall be freeholders within the State of New York, conditioned that the obligor will not be guilty of any fraud or extortion, and will not exact or receive a price for any such ticket or evidence of the right of entry in excess of the price authorized by this article. The comptroller shall keep books wherein shall be entered in alphabetical order all licenses granted and all bonds received by him as provided for in this article, the date of the issuance of such licenses and the filing of such bonds, which record shall be open to public inspection. A suit to recover on the bond required to be filed by the provisions of this article may be brought by the comptroller or on the relation of any party aggrieved in a court of competent jurisdiction and in the event that the obligor named in such bond has violated any of the conditions of such bond, recovery for the full penal sum of such bond may be had in favor of the people of the state."

" 170. *Revocation of Licenses.* In the event that any licensee shall be guilty of any fraud or misrepresentation or shall charge for any ticket a price in excess of the price authorized by this article or otherwise violate any of the provisions of this article or any other law or local ordinance, the comptroller shall be empowered, on giving ten days' notice by mail to such licensee, and on affording such licensee an opportunity to answer the charges made against him, to revoke the license issued to him."

" 171. *Supervision of Comptroller.* The comptroller shall have the power, upon complaint of any citizen or of his own initiative, to investigate the business, business practices and business methods of any such licensee if in the opinion of the comptroller such investigation is warranted. Each such licensee shall be obliged, on request of the comptroller, to supply such information as may be required concerning his business, business practices or business methods."

" 172. *Restriction as to Price.* No licensee shall resell any such ticket or other evidence of the right of entry to any theater, place of amusement or entertainment, or other place where public exhibitions, games, contests or performances are given at a price in excess of fifty cents in advance of the price printed on the face of such ticket or other evidence of the right of entry. Every person, firm or

corporation who owns, operates or controls a theater, place of amusement or entertainment, or other place where public exhibitions, games, contests or performances are held shall, if a price be charged for admission thereto, print on the face of each such ticket or other evidence of the right of entry the price charged therefor by such person, firm or corporation."

" 173. *Violations; Penalties.* Every person, firm or corporation who resells any such ticket or other evidence of right of entry or engages in the business of reselling any such ticket or other evidence of the right of entry without first having procured the license prescribed and filing of a bond required by this article shall be guilty of a misdemeanor. Every person, firm or corporation who violates any provisions of this article shall be guilty of a misdemeanor."

" 174. *Constitutionality of Article.* In case it be judicially determined that any section of this article is unconstitutional or otherwise invalid such determination shall not affect the validity or effect of the remaining provisions of the article."