regulations in the public interest, the test being whether or not the regulation goes further than throwing a reasonable safeguard around the exercise of the right." *Riley v. Chambers*, above.

The decision in the principal case is in harmony with the general attitude of the courts toward the regulation of this occupation which is well expressed by the *Payne v. Volkman* case, in which the court said, "Although such a statute is drastic we cannot say that it is unconstitutional."

H. V. C., '31.

CONSTITUTIONAL LAW—POWER OF CITY TO LICENSE SOFT DRINK PARLORS.—The proprietor of a grocery in Milwaukee was recently prosecuted under an ordinance of the city for selling flavored soda water, containing no alcoholic content, without obtaining the license required by the enactment. On appeal by the city from an acquittal in the court of first instance the issue was taken to the State Supreme Court, which declared the ordinance in question unconstitutional. *City of Milwaukee v. Meyer* (Wis. 1929) 224 N. W. 106.

By express provision in its charter the city had the power to regulate saloons, groceries and other places where spirituous, vinous or fermented liquors were sold or given away. Likewise, by state enactment, a license was required of all sellers of non-intoxicating but alcohol-containing liquors and beverages. The ordinance here involved was as follows: "No person, unless licensed [under state enactment] to sell non-intoxicating liquors, shall sell nonalcoholic beverages without a license to be granted by the common council in its discretion." Nonalcoholic drinks were defined as all flavored drinks commonly referred to as soft drinks, containing no alcoholic content. A license fee of five dollars per annum was fixed.

In declaring such an enactment unconstitutional the court seems to base its decision in the main upon the theory that an express grant of legislative power is a condition precedent to the validity of a municipal ordinance, and any attempted exercise of power must be brought within a reasonable construction of such a grant. That in itself is no doubt a valid position, but the application of that rule to void the ordinance here involved seems questionable at best. By statute the common council of the city was granted the power "to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language." Wis. Stat. (1927) sec. 62.11 (5). In view of this most general and liberal grant of power the holding of the court that the ordinance in question cannot be upheld as within the power of the common council seems erroneous. It would seem that the exercise of power by the council herein should be sustained as within a reasonable construction of the grant.

A much earlier case in the same jurisdiction was authority for the ruling

that an ordinance restricting the sale and giving away of lemonade, directed primarily at open air concessions, was void as an unwarranted interference with a harmless commodity. *Barling v. West* (1871) 29 Wis. 307. It seems to have been rather generally held that a general grant of powers is not enough to support an ordinance forbidding the sale of certain non-intoxicating liquors. Such legislation, unless it can be justified as tending to prevent offenses, or preserve the public health, morals, safety or general welfare, is usually held to be an invasion of private rights of property. *Chicago v. Netcher* (1899) 183 Ill. 104, 55 N. E. 707; *Tolliver v. Blizzard* (1911) 143 Ky. 773, 137 S. W. 230; *Westville v. Rainwater* (1920) 294 Ill. 409, 128 N. E. 492. But that is by no means conclusive authority for the decision in question. These enactments prohibited, or so restricted as to practically prohibit, the sale of the commodity itself, while this ordinance was a mere license requirement. In view of the modern thought regarding the necessity for regulations to protect the general health it is conceivable that opposite holdings might result today in some jurisdiction even in cases of restrictive ordinances.

A recent case which seems at first glance to be directly parallel, in facts and decision, with the one at bar, is found, on close examination, not to be authority in support of the Wisconsin decision. *Village of Kincaid v. Vecchi* (1928) 332 Ill. 586, 164 N. E. 199. The license required there was for those who "sold or gave away" soft drinks. The absurdity of such an inclusive enactment is apparent. And it is to be further noted that the statutory grant of powers in that case was much narrower than in the principal case. Ill. Rev. Stat. (Cahill, 1929) c. 24, secs. 46, 65, 66, 78, 91.

The vocation of selling soda water and soft drinks has been held a proper subject of police regulation because it affects the general health and welfare. *Kirby v. Paragould* (1923) 159 Ark. 29, 251 S. W. 374. The right of a municipal corporation to enact reasonable ordinances classifying soft drinks and to provide one license fee for those containing any per cent of alcohol, and another license fee for the sale of those containing no alcohol whatever has been recognized. *Bradford v. Kirby* (1911) 142 Ky. 820, 135 S. W. 290; McQuillan, MUNICIPAL CORPORATIONS (1928) III, 190. And it has been held also that the fact that an ordinance regulating the sale of beverages includes drinks outside those specified in legislative grants of power is not fatal to the enactment. *Chicago v. Murphy* (1924) 313 Ill. 98, 144 N. E. 802. The ordinance here would seem, in view of these holdings, to be valid.

A comparison of this decision with a few other recent decisions in similar, though not directly analogous, situations also indicates that the Wisconsin decision is to be questioned. Ordinance provisions requiring a license of theatres, dance halls and such places of amusement have been generally held to be within the police power of a city. *Bielecki v. City of Port Arthur* (Tex. 1929) 2 S. W. (2d) 1001; *City of Metropolis v. Gibbons* (1929) 334 Ill. 431, 166 N. E. 115. Public health has been held to justify regulation and license of laundries. *Ruban v. Chicago* (1928) 330 Ill. 97, 161 N. E.

133. State statutes imposing a license tax on soft drink retailers have been upheld. *Wingfield v. South Carolina Tax Commission* (1928) 147 S. C. 116, 144 S. E. 846. It is true that ordinances requiring a license for persons in certain occupations have at times been declared invalid, but such holdings seem to be based upon a specific conflict with statutory provisions or else qualified by the particular circumstances in issue. *City of Lubbock v. Magnolia Petroleum Co.* (Tex. 1928) 6 S. W. (2d) 80; *Case-Fowler Lumber Co. v. Winslett* (Ga. 1929) 149 S. E. 211; *People v. Hervieux* (App. Div. 1929) 236 N. Y. S. 129. C. V. E., '31.

CONTRACTS—MUTUALITY OF OBLIGATION IN ADVERTISING AGREEMENTS.—An advertising agency entered into three "contracts" with a publisher whereby the latter was authorized to publish certain advertising matter in its three newspapers. The space was to be used in one year from the date of the first insertion and to be paid for at a stated price. Both parties properly signed the "contracts." The agency never did furnish the copy and there was no first insertion. The publisher sued for damages for failure to perform. *Held*, that defendant, the advertising agency, was not required to make such insertion, was not bound by the "contracts," and that the so-called contracts could not be enforced for want of mutuality. *All Church Press, Inc. v. E. C. Harris Advertising Agency, Inc.* (1927) 36 Ga. App. 616, 138 S. E. 85

Mutuality of obligation is not an essential element in every contract since a promise by one person is merely one of the kinds of consideration that will support a promise by another. 6 R. C. L. 686, sec. 93. But where there is no consideration for a contract except the mutual promises of parties, the contract is not binding on one party unless it is also binding on the other. *Pope v. Thompson* (1920) 171 Wis. 468, 177 N. W. 607; *Bernstein v. W. B. Mfg. Co.* (1920) 235 Mass. 425, 126 N. E. 796; *Miami Coca-Cola Bottling Co. v. Orange-Crush Co.* (D. C. S. D. Fla. 1923) 291 F. 102; 1 Williston, CONTRACTS (1920), sec. 103e. Here the only possible consideration to support the promise of the publisher was a binding promise on the part of the advertising agency. But there was no such express promise in writing, and the court failed to find any grounds for implying one. The reasoning of the court is sound and certainly from the standpoint of the substantive law of contracts there is nothing startling about the decision. The case is followed by *Haverty Furniture Co. v. Lyon-Young Printing Co.* (1927) 37 Ga. App. 263, 139 S. E. 921.

The unenforceable "contracts" involved in the main case are thoroughly typical of advertising agreements being entered into every day. They were drawn without any regard to the incorporation of mutually binding promises, and they illustrate perfectly the "mutuality pitfall" which renders such agreements unenforceable. Though many details were provided for in the agreement it contained no binding promise on defendant to do anything. Publishers in particular should be interested to know that courts