

In order to determine whether particular acts fall within the scope of law practice, courts³³ and legislatures³⁴ have formulated definitions ostensibly for the guidance of those concerned with the problem. Such definitions are far too broad to be dependable. It has been suggested that the need is for a definition of law practice which will cover the field of activities that are *exclusively* legal without attempting to take in others which are *properly* legal, but also legitimate for other vocations.³⁵

It would seem that the actual holdings of the cases must be considered carefully with respect to the particular facts involved. Upon such an analysis it is clear that the overwhelming tendency is to extend the definition of law practice for reasons of public policy. The instant case follows the general trend of decisions, though the wisdom of the policy is yet a matter of controversy.³⁶

A. B. H.

CONSTITUTIONAL LAW—TAXATION—IMMUNITY OF STATE AGENCY FROM FEDERAL TAXATION—[United States].—The difficulty which governmental bodies have experienced in finding suitable revenue sources has naturally given rise to a tendency to limit the immunity of governmental agencies from taxation. The doctrine of *Collector v. Day*¹ was again limited by the United States Supreme Court in two recent decisions. In *Helvering v. Mountain Producer Corporation*² and *Helvering v. Barline Oil Co.*³ the

legal proceedings in order to force settlement of solicited claims; *The Bar Ass'n of St. Louis v. International Ass'n of Commerce, Inc.* (St. Louis Ct. Ct., Mo. 1937) No. 6013, Div. No. 3.

33. A definition of law practice often quoted is that pronounced in *Eley v. Miller* (1893) 7 Ind. App. 529, 34 N. E. 836: "As the term is generally understood, the practice of the law is the doing or performing services in a court of justice * * * But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured." See also *Clark v. Austin* (Mo. 1937) 101 S. W. (2d) 977, and *Paul v. Stanley* (1932) 168 Wash. 371, 12 P. (2d) 401.

34. In Missouri the "law business" is "the advising or counselling, for a valuable consideration, of any person, firm, association, or corporation as to any secular law or the drawing or procuring of or assisting in the drawing for a valuable consideration in a representative capacity, obtaining, or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever." (R. S. Mo. (1929) sec. 11692). In *State ex rel. Miller v. St. Louis Union Trust Co.* (1934) 335 Mo. 845, 74 S. W. (2d) 348, the mere naming of the corporation as executor, where no charge was made for drawing the will, was held a valuable consideration within the meaning of the statute.

35. *Ashley, Unauthorized Practice of the Law* (1930) 16 A. B. A. J. 558.

36. For an excellent discussion of the present and potential evils of unlawful practice of the law see *Swaffield, Unlawful Practice of the Law: The Profession's Responsibility in Relation Thereto* (1932) 5 S. Cal. L. Rev. 181. See also *supra*, notes 3 and 35. See dissenting opinion in *Liberty Mutual Ins. Co. v. Clark* (Boone Cty. Ct. Ct., Mo. 1938) 5 U. S. Law Week 643.

1. (1871) 78 U. S. 113, 20 L. ed. 122.
2. (1938) 5 U. S. Law Week 8.
3. *Id.* at 11.

court held that the federal government could tax the income of private corporations derived from oil and gas produced on land leased from the states of California and Wyoming. The majority opinion, written by Mr. Justice Hughes, expressly overruled⁴ *Gillespie v. Oklahoma*⁵ and *Burnet v. Coronado Oil and Gas Co.*,⁶ which had established the doctrines that the state could not tax the income derived by lessees of lands held by the federal government for Indian wards, and that the federal government could not tax income derived by lessees of school land owned by the state.⁷

It has long been recognized that the instrumentalities of one government cannot be taxed by the other so as to retard, impede, or burden the performance of governmental functions.⁸ Thus neither government can tax the bonds of the other;⁹ a state cannot place a tax on telegraph messages sent by officers of the federal government in the performance of their duties;¹⁰ sales made to the respective governments cannot be taxed;¹¹ state judicial officers cannot be compelled to pay income taxes to the federal government and vice versa;¹² and the federal government cannot tax income derived by an employee of a municipally owned street railway.¹³

On the other hand it has been held that either government may place a tax upon the property of the agent or instrumentality of the other government, provided there is not a direct or immediate impairment of the efficiency of the agency or the operations of the government.¹⁴ Thus a tax

4. Mr. Justice Butler and Mr. Justice McReynolds dissented.

5. (1922) 257 U. S. 501, 42 S. Ct. 171, 66 L. ed. 338.

6. (1932) 285 U. S. 393, 52 S. Ct. 443, 76 L. ed. 815.

7. The theory of the Gillespie case as expressed by Mr. Justice Holmes was that by taxing the lessee the state affected the freedom of the federal government in making advantageous contracts for its Indian wards. Ten years later the court adopted the corollary by denying the right of the federal government to tax the net income derived from school lands leased by Oklahoma to the Coronado Oil and Gas Co. Justice Brandeis in a dissenting opinion stated that the Gillespie case should be overruled.

8. *McCulloch v. Maryland* (1817) 17 U. S. 316, 4 L. ed. 579.

9. A state cannot tax bonds of municipalities of Indian Territory of Oklahoma. *Farmers and Mechanics Savings Bank of Minneapolis v. Minnesota* (1914) 232 U. S. 516, 34 S. Ct. 354, 58 L. ed. 706. State cannot tax United States bonds. *Northwestern Mutual Life Insurance Co. v. Wisconsin* (1927) 275 U. S. 136, 48 S. Ct. 55, 72 L. ed. 202. Federal government cannot tax municipal bonds. *Pollock v. Farmers Loan & Trust Co.* (1895) 157 U. S. 429, 15 S. Ct. 673, 39 L. ed. 759.

10. *Telegraph Co. v. Texas* (1882) 105 U. S. 460, 26 L. ed. 1067.

11. *Panhandle Oil Co. v. Knox* (1928) 277 U. S. 218, 48 S. Ct. 451, 72 L. ed. 857; *Indian Motorcycle Co. v. United States* (1931) 283 U. S. 570, 51 S. Ct. 601, 75 L. ed. 1277 (sale of motorcycle to state agency such as municipality for use in police force, held exempt from federal excise); *American-La France Fire Engine Co. v. Riorden* (C. C. A. 2, 1925) 6 F. (2) 964 (same for fire-engine).

12. *Collector v. Day* (1871) 73 U. S. 113, 20 L. ed. 122 (state judicial officer); *United States v. Ritchie* (D. C. Md. 1872) 27 Fed. Cas. 818, No. 16,168.

13. *Frey v. Woodworth* (1926) 270 U. S. 669, 46 S. Ct. 347, 70 L. ed. 791.

14. *Railroad Co. v. Peniston* (1873) 85 U. S. 5, 21 L. ed. 787; *Metcalf & Eddy v. Mitchell* (1926) 269 U. S. 514, 46 S. Ct. 172, 70 L. ed. 384;

on the net or gross income of an independent contractor has been held valid although the income is derived from a contract with the government.¹⁵ A tax on bank deposits by the federal government was held valid, although included therein were deposits of the state.¹⁶ A tax on the income derived by a state from liquor business into which it entered was held valid.¹⁷ Inheritance taxes have been upheld on bequests to both the federal and state governments.¹⁸ A tax on income derived by a person carrying freight, passengers, and mail by automobile was held valid even though the bulk of the income was derived from carrying the United States mail.¹⁹

The tendency in recent years has clearly been to restrict the doctrine that the power to tax involves the power to destroy²⁰ and to extend the competing doctrine that a nondiscriminatory tax which has only a remote and indirect influence upon the operations of the government should not be objectionable.²¹ This would seem to be particularly desirable where the taxes are levied upon the income of private enterprises and only remotely, if at all, affect the interests and operations of government.

In the light of this recent tendency in the law as well as sound tax doctrine, the holdings in the instant cases would seem to be as correct as they were inevitable. Where they will lead it is not necessary to determine, for "the doctrine of implied immunity must be practical and should have regard to the circumstances disclosed."²² Experience has shown that there is no formula by which *a fortiori* a line of distinction between immune and taxable governmental agencies may be plotted.

L. H. B.

CRIMINAL LAW—CONSTITUTIONALITY OF STATUTE PERMITTING APPEAL BY STATE—[United States].—In a recent case the accused, indicted for first degree murder, was found guilty of second degree murder. The state, acting pursuant to a statute¹ giving it a right of appeal similar to that exercised

Educational Films Corp. of America v. Ward (1931) 282 U. S. 379, 51 S. Ct. 170, 75 L. ed. 400.

15. Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514, 46 S. Ct. 172, 70 L. ed. 384 (net income); James v. Dravo Contracting Co. (1937) 58 S. Ct. 208 (gross income); Comment (1938) 23 WASHINGTON U. LAW QUARTERLY 280.

16. Manhattan Co. v. Blake (1893) 148 U. S. 412, 13 S. Ct. 640, 37 L. ed. 504.

17. South Carolina v. United States (1905) 199 U. S. 437, 26 S. Ct. 110, 50 L. ed. 261.

18. United States v. Perkins (1896) 163 U. S. 625, 16 S. Ct. 1073, 41 L. ed. 287; Snyder v. Bettman (1903) 190 U. S. 249, 23 S. Ct. 803, 47 L. ed. 1035.

19. Alward v. Johnson (1931) 282 U. S. 509, 51 S. Ct. 273, 75 L. ed. 496.

20. McCulloch v. Maryland (1817) 17 U. S. 316, 4 L. ed. 579.

21. Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514, 46 S. Ct. 172, 70 L. ed. 384.

22. Ibid.

1. Conn. Gen. Stat. (1930) sec. 6494: "Appeals from the rulings and decisions of the Superior Court or of any criminal court of common pleas, upon all questions of law arising on trial of criminal cases may be taken by the state with the permission of the presiding judge to the Supreme Court of Errors in same manner and to same effect as if made by the accused."