AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Democratic Rights/Free Speech

**In re Anderson, 69 Neb. 686** (NE 1903)

*The state of Nebraska authorized cities to regulate and prohibit the distribution of handbills on public property, including streets, sidewalks and parks. Omaha adopted an ordinance forbidding anyone from distributing on public grounds any handbills or circulars or to employ anyone for that purpose. Sid and Si Anderson were arrested for distributing handbills on city sidewalks. They were convicted and jailed when they proved unable to pay the $2 fine. A suit was filed on their behalf and carried to the state supreme court, which upheld the conviction and concluded that the restriction on the distribution of handbills was a valid exercise of the police power and thus not a violation of the constitutional right to free speech.*

JUDGE POUND delivered the opinion of the Court.

. . . .

[I]t is evident that general distribution of printed matter in the form of dodgers, handbills or circulars to the public generally, or to considerable numbers of persons, is intended, and not a mere casual handling of one or more papers of that character to one or two individuals. So construed, we think, the whole ordinance is valid and constitutional. . . . [W]e need not consider whether some other or better means of meeting the evils aimed at might have been chosen. The legislature passed on that question and authorized the city to deal with the matter as it did. It is contended, however, that the ordinance is unconstitutional as being in contravention of section 5, article 1 of the state constitution, which provides that “every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives, and for justifiable ends, shall be a sufficient defense.” The ordinance in question is manifestly a police regulation intended to further the public health and safety by preventing the accumulation of large quantities of waste paper upon the streets and alleys, which might occasion danger from fire, choke up and obstruct gutters and catch-basins, and keep the streets in an unclean and filthy condition. A police regulation, obviously intended as such, and not operating unreasonably beyond the occasions of its enactment, is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the constitution. In all matters within the police power some compromise between the exigencies of public health and safety and the free exercise of their rights by individuals must be reached. The test in such case is whether the regulation in question is a *bona fide* exercise of the police power or an arbitrary and unreasonable interference with the rights of individuals under the guise of police regulation. The ordinance in question is clearly a valid police regulation. It has no reference to or connection with freedom of speech or of the press, and its plain purpose is, not to interfere with the publication of sentiments and opinions of individuals, but to promote the cleanliness and safety of the municipality. In *State v. Bair* (IA 1894) a statute imposing a license tax upon itinerant venders of drugs publicly professing “by writing or printing” to treat diseases. It was held that this act did not interfere with the constitutional right of freely speaking, writing or publishing one’s opinions. In *United States v. Newton* (DC 1891), an act of congress prohibiting persons from soliciting or receiving political contributions in any room or building officially occupied by any officer or employee of the United States was held applicable to private citizens as well as to public officers, and not to contravene the constitutional guaranty of free speech. . . . Similarly, a statute forbidding public meetings in a public park has been held valid as an exercise of the police power and not in contravention of the constitution right of free speech. *Commonwealth v. Davis* (MA 1897).

*Affirmed*.