

Mr. William M. Kinnersley, Jr., Superintendent of Receipts (cont'd)

Pennsylvania corporation agreed to sell and deliver to them large quantities of coal of specified grades produced at its Pennsylvania mines. The coal moved by rail to Jersey City and thence by barge to the City of New York and was there delivered to the purchaser's plants or steamships. The Court held that the imposition of a tax by New York City on the purchases of the coal, measured by the sales price, and the requirement that the tax be collected by the seller, do not infringe the commerce clause of the Federal Constitution. The Court said at p. 45:

"Sec. 8 of the Constitution declares that Congress shall have power to regulate commerce with foreign nations, and among the several States. In imposing taxes for State purposes, a State is not exercising any power which the Constitution has conferred upon Congress. It is only when the tax operates to regulate commerce between the States or with foreign nations to an extent which infringes the authority conferred upon Congress, that the tax can be said to exceed constitutional limitations. See Gibbons v. Ogden, 9 Wheat. ;, 187; South Carolina Highway Dept. vs. Barnwell Bros., 303 U.S. 177, 185.

"Forms of State taxation whose tendency is to prohibit the Commerce or place it at a disadvantage as compared or in competition with intrastate commerce, and any State tax which discriminates against the commerce, are familiar examples of the exercise of State taxing power in an unconstitutional manner, because of its obvious regulatory effect upon commerce between the States. But it was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of State tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing the business. Western Live Stock vs. Bureau, 303 U.S. 250, 254. Not all State taxation is to be condemned because, in some manner, it has an effect upon commerce between the States, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce, which nevertheless fall short of the regulation of the commerce which the Constitution leaves to Congress."

The facts stated in the two hypothetical cases are skimpy, but it is obvious that they are not cases of isolated sales but are the results of solicitation in the City by means of advertisements and salesmen. The Valley Camp Coal Company is listed in the Baltimore Telephone Directory with local sales office at 2505 St. Paul Street.

Under the holdings of the above mentioned Supreme Court cases, it is clear that the Company would be required to collect the tax in both of the hypothetical cases without impairing its constitutional rights.

Very truly yours,

/s/ THOMAS N. BIDDISON
City Solicitor

/s/ W. THOMAS GISRIEL
Assistant City Solicitor