

Opinion No. 23-3676

February 21, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Stanley A. Foutz, Representative from Mora County, New Mexico.

House Bill No. 131 Providing Authority to Enter Premises About Coal Mines to Vend Fruit and Vegetables is Probably Constitutional.

OPINION

{*21} Whether or not House Bill No. 131 is constitutional, in our opinion, is a very close question.

This bill provides that "* * * all such persons vending or offering to vend such fruit or produce shall have free and uninterrupted access to all coal and other mining camps and settlements within the State."

We have examined some interesting authorities on the subject and have concluded the Bill is probably constitutional.

"The police power of this state is supreme over all corporations as well as individuals."

N.M. Constitution, Art. 11, Sec. 14.

Section 12, Art. 11, of the Constitution requires corporations to file an acceptance of the provisions of the Constitution. It further provides "that whether or not they file such acceptance, such corporations shall be subject to the provisions of this constitution and the laws of this State."

The police powers, now exercised by states with constitutions similar to ours, are far-reaching indeed. No one has doubted, of course, the power of the State to exercise control over the interests of order, peace and security. The principal resistance seems to arise when a state asserts the right to exercise the police power for the purpose of protecting or promoting its economic interests. It is said, however, the exercise of the police power over economic interests may be invoked for protection against fraud, protection against oppression and the promotion of economic liberty, public convenience and advantage, and compulsory benefits.

The police power sometimes comes to the relief of those who are economically and socially weak. It attempts to "temper the natural inequalities in the struggle of life."

It seems to be very generally held that the State may exact relatively small sacrifices from individuals for the common good.

You might add a proviso to the effect that no such fruit or produce vender may obstruct the free passage of roads, streets or {*22} other pass-ways, nor, is he authorized, by the provisions of this Act, to enter any mine for the purpose of vending such fruit or produce.