The Florida Fair Trade Act: Constitutional or Unconstitutional?

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to pay his debts, while at the same time spendthrifts may be prevented from becoming public charges.

Recognizing the rightful place that this doctrine has acquired in the American juridical organization, it can be seen that there is an ever-present need for circumspect restraint of its growth by means of comprehensive legislation such as has been adopted by other states\(^3\) and through chary interpretation by the courts.

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**LEGISLATIVE NOTES**

**THE FLORIDA FAIR TRADE ACT: CONSTITUTIONAL OR UNCONSTITUTIONAL?**

*Florida Laws 1949, c. 25204*

Through the years man has attempted to steer the “Golden Rule” into the channel of his business experiences. A noteworthy portion of his energies has been directed toward the furtherance of “fair” trade practices free from undue monopolies or other practices restraining free and open competition. Especially in the United States, where supply and demand have usually determined price, has our economy been built on the ideal of free competition.\(^1\)

The plight of the small independent retailer became precarious when large manufacturers began to indulge in discriminatory distribution practices favoring more economical marketing techniques that were developed by department and chain stores. These conditions, in addition to sharp competition among the small retailers themselves, caused the concept of resale price maintenance to emerge into national prominence.\(^2\)

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In essence, resale price maintenance is "that system of distributing trade-marked articles by which the trade-mark owner fixes the price at which his trade-marked goods are to be sold by wholesalers and retailers irrespective of their individual contractual relations with the trade-mark owner." The most common device employed to effect resale price maintenance is the "vertical trade agreement," whereby the manufacturer of a branded or trade-marked commodity attempts to impose a stipulated resale price upon a distributor and all subsequent retailers.

Prior to the Sherman Anti-Trust Act of 1890, vertical trade agreements fixing prices of trade-marked goods were generally recognized as valid, at least when the agreement did not constitute common-law unfair competition. In the Dr. Miles case of 1911, however, the United States Supreme Court finally declared such a vertical trade agreement to be an unlawful restraint on trade under the Sherman Act. In an effort to obviate the undesirable result of this decision, several states enacted fair trade laws that legalized these vertical trade agreements and provided a method by which they could be enforced. These statutes, nevertheless, were largely

2 Other devices employed are: the rebate system, whereby a manufacturer agrees to allow a rebate to those who will maintain a price set by him, John D. Park & Sons Co. v. National Wholesale Druggists' Ass'n, 175 N. Y. 1, 67 N. E. 136 (1903); the agency system, whereby a manufacturer constitutes another his sole agent to sell his goods at a set price, Virtue v. Creamery Package Mfg. Co., 227 U. S. 8 (1913); and the refusal to sell to price cutters, United States v. Colgate & Co., 250 U. S. 300 (1919). All of these devices have been held legal.
3 Vertical trade agreements should be carefully distinguished from "horizontal" trade agreements. Horizontal trade agreements are made between persons of the same class, such as between manufacturers, or between wholesalers. These types of agreements are illegal under the Sherman Act of 1890. Old Dearborn Distributing Co. v. Seagram-Distillers Corp., 299 U. S. 183 (1936).
6 Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U. S. 373 (1911). The same result was indicated by earlier decisions under the Sherman Act. Scribner v. Straus, 210 U. S. 352 (1908); Bobbs-Merrill Co. v. Straus, 210 U. S. 339 (1908); In re Green, 52 Fed. 104 (C. C. S. D. Ohio 1892).
ineffective, since the vertical contracts remained illegal in interstate commerce under the decision in the *Dr. Miles* case.¹⁰

Constitutional doubts of these fair trade acts were increased when the New York Court of Appeals held the New York act unconstitutional as violating due process, denying equal protection of laws, and constituting an unlawful delegation of legislative authority.¹¹ In 1936, however, the Illinois and California courts held similar acts constitutional.¹² On appeal from these decisions, the United States Supreme Court affirmed them as valid under the Federal Constitution.¹³ On the strength of the Supreme Court decisions, the New York Court overruled its prior decision;¹⁴ and in the same year Congress enacted the Miller-Tydings Amendment¹⁵ to the

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¹³ Pep Boys v. Pyroll Sales Co., 299 U. S. 198 (1936); Old Dearborn Distributing Co. v. Seagram-Distillers Corp., 299 U. S. 183 (1936). The Court expressly ruled that the fair trade acts did not violate due process of law, deny equal protection of laws, nor constitute an unlawful delegation of power to private persons in so far as the United States Constitution was concerned. At page 192 of the *Old Dearborn* case Mr. Justice Sutherland stated:

> "It is clear that this section does not attempt to fix prices, nor does it delegate such power to private persons. It *permits* the designated private persons to contract with respect thereto. It contains no element of compulsion but simply legalizes their acts, leaving them free to enter into the authorized contract or not as they may see fit."

and on page 197:

> "As this court many times has said, the equal-protection clause does not preclude the states from resorting to classification for the purposes of legislation . . . . Enough appears already in this opinion to show the essential difference between trade-marked goods and others not so identified."


Sherman Anti-Trust Act, which legalized vertical trade agreements in interstate commerce when legal in any state where the resale was made. Other states were quick to reap the benefits promised by these decisions; and today forty-five states have adopted "fair trade acts"\textsuperscript{16} that have been upheld in some fifteen states.\textsuperscript{17}

Florida's first fair trade law was enacted in 1937\textsuperscript{18} but was held unconstitutional in 1939 because of a defect in title.\textsuperscript{19} It was subsequently amended, however, to remove this objection.\textsuperscript{20} The Florida fair trade

\textsuperscript{16}All states but Missouri, Texas, Vermont, and the District of Columbia have adopted these acts in one form or another. For a list of the statutes see 3 Callman,\n\textit{The Law of Unfair Competition and Trade Marks} 1764, App. III (1945).

\textsuperscript{17}Pep Boys v. Pyroil Sales Co., 5 Cal.2d 784, 55 P.2d 194 (1936); Carroll v. Schwartz, 127 Conn. 126, 14 A.2d 754 (1940); Auto Rental Co. v. Lee, 35 Haw. 77 (1939); Seagram-Distillers Corp. v. Old Dearborn Distributing Co., 363 Ill. 610, 2 N. E.2d 940 (1936); PepsiCo v. Krauss Co., 200 La. 959, 9 So.2d 303 (1942); Goldsmith v. Mead Johnson & Co., 176 Md. 682, 7 A.2d 176 (1939); Weco Products Co. v. Sam's Cut Rate, 296 Mich. 190, 295 N. W. 611 (1941); Johnson & Johnson v. Weissbard, 121 N. J. Eq. 585, 191 Atl. 873 (1937); Bourjois Sales Corp. v. Dorfman, 273 N. Y. 167, 7 N. E.2d 30 (1937); Ely Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E.2d 528 (1939); Bristol-Myers Co. v. Lit Brothers, 336 Pa. 81, 6 A.2d 843 (1939); Miles Laboratories v. Owl Drug Co., 67 S. D. 523, 295 N. W. 292 (1940); Sears v. Western Thrift Stores of Olympia, 10 Wash.2d 372, 116 P.2d 756 (1941); Weco Products Co. v. Reed Drug Co., 225 Wis. 474, 274 N. W. 426 (1937).

\textsuperscript{18}Florida Laws 1937, c. 18395. See note 20 \textit{infra}.

\textsuperscript{19}Bristol-Myers Co. v. Webb's Cut-Rate Drug Co., 137 Fla. 508, 188 So. 91 (1939).

\textsuperscript{20}Florida Laws 1939, c. 19201, now Fla. Stat. §§541.01-08.

Section 541.03 provides:

"No contract relating to the sale or resales of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the State of Florida by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller;

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller;

(c) That the seller will not sell such commodity

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or
law was again held invalid in 1949 under the Florida and United States Constitutions in *Liquor Stores, Inc. v. Continental Distilling Corporation.*21 Within two months after this decision was rendered, the 1949 session of the Florida Legislature again amended the Florida fair trade law in an obvious effort to remove constitutional stumbling blocks.22 In its amended form it contains, in addition to its previous provisions, various findings of fact concerning the act and statements of its purpose. There is also a proviso permitting the attorney general to bring suit for the purpose of restraining enforcement of any resale price agreement when he finds that the trade-marked commodity covered by the trade agreement is not in free and open competition with other commodities of the same general class.23

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.”

Section 541.06 provides that such a contract shall not preclude resale in closing out the owner's stock for the bona fide purpose of continuing dealing in any such commodity; when the goods are altered, second-hand or damaged and notice of the fact is given to the public; or by an officer acting under an order of court.

Section 541.07 reads:

"Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this chapter, whether the person so advertising, offering for sale or selling is or is not a party to such contract, and whether the particular lot of such commodity so advertised, offered for sale or sold was or was not at any time sold to a party to a contract that stipulated the price of such commodity under the provisions of this chapter is unfair competition and is actionable at the suit of any person damaged thereby."

Section 541.08 provides:

"This chapter shall not apply to any contract or agreement between or among producers or distributors or (except as provided in subsection (3) of §541.03) between wholesalers, or between or among retailers, as to sale or resale prices."

21 So.2d 371 (Fla. 1949). The decision was rendered April 5, 1949, and rehearing denied May 27, 1949.

22 Florida Laws 1949, c. 25204.  
23 Section 1. Findings of Fact:

(a) It is hereby found, determined and declared that the public interests and general welfare of the State of Florida will best be served by permitting the maintenance of minimum resale prices of trade-marked, branded or named commodities which are in free and open competition with commodities of a like kind and quality; and

(b) It is found, determined and declared that without minimum resale price maintenance of trade-marked, branded and named commodities which are in free and open competition with commodities of the same general class,
II. The Liquor Stores Case

In order to consider the constitutionality of the 1949 Florida Fair Trade Act, it is necessary to review the Liquor Stores case in some detail.

Small retail merchants with limited purchasing power cannot survive the price wars or price cutting operations of large retail stores which, after forcing the small retailers out of business by such operations gain a virtual monopoly on the retail channels of commerce, contrary to the general welfare and public interest; and

(c) It is hereby found, determined and declared that predatory cutting of established prices of trade-marked, branded or named products, as a deceptive means of unfairly luring from competitive merchants their customers, and for other purposes, has been the most potent weapon to which the great and destructive trusts have resorted most frequently, thereby to weaken and destroy their smaller competitors financially unable to endure resultant losses. By such misleading practice there is established in the trading area affected a virtual monopoly of distribution interposed between the producer and the public, by which the monopolist may extort at will from the consumer, while dictating prices and product quality dilutions to the producer, all contrary to the general welfare and public interest of the citizens of Florida; and

(d) Such predatory price cutting is injurious to the general public as distinguished from a particular group or class thereof, and is also injurious to the good will and business of the producer and the distributor of commodities bearing a trade-mark, brand or identifying name; and

(e) Prohibiting the unfair and discriminatory practice of price cutting of trade-marked, branded or named commodities which are in free and open competition with commodities of the same general class produced or distributed by others will foster and encourage free and honest competition and will safeguard the general public against the creation or perpetuation of monopolies; and

(f) The public interest and general welfare of the State require the permissive or optional maintenance of minimum resale prices established in accordance with the provisions of this Act by producers or distributors of trade-marked, branded or named commodities which are in free and open competition, as a permanent public policy of the State, at all times, including period of deflation or inflation; and

(g) This Act is enacted as an exercise of the police power of this State, in order to serve the general welfare of the citizens of Florida, and with the further objective of preventing monopoly."

"Section 10. If after investigation, the Attorney General deems that any contract authorized by the provisions of this Act prevents competition in the manufacture, making, transportation, sale or purchase of commodities of the same general class or that the commodity covered by the contract is not in free and open competition with a commodity or commodities of the same general class produced or distributed by a competitor of the parties to said contract, he may bring an action in the name of this State to restrain the performance or enforcement of any such contract."

40 So.2d 371 (Fla. 1949).
tail. The plaintiff corporation, a liquor manufacturer, sold certain trade-marked whiskies to a distributor under a trade agreement not to resell below a minimum price fixed by the plaintiff. Defendants, who were retail liquor dealers, purchased some of these whiskies from the distributor with notice of the resale price agreement, but did not sign the agreement. Plaintiff brought suit under the Florida fair trade law to enjoin defendants from advertising and selling the whiskies bearing plaintiff's trademark at a price below the minimum set by the plaintiff. On denial of a motion to dismiss the bill on the ground that the Florida fair trade law was unconstitutional, the defendants petitioned for certiorari. The Florida Supreme Court held that the act was an invalid exercise of legislative police power in that it violated due process and equal protection of the laws, and constituted an unlawful delegation of legislative authority under the Florida constitution.

Due Process. Three separate opinions, varying in their bases, rejected the contention that the statute was a reasonable exercise of police power in protecting the good-will attending trade-marked products. They rea-

26Fla. Const. Decl. of Rights, §§1, 12.
29Defendants' answer disclosed that plaintiff corporation was one of about forty subsidiary companies whose parent corporation, through the subsidiaries, controlled from 80% to 90% of all liquor in the United States. As an alternative ground for denying relief to the plaintiff, the Court found that the trade-marked whiskies involved were not in "free and open" competition so as to come within the terms of the statute. It was not, therefore, necessary to declare the statute unconstitutional. The Court has usually refused to declare a statute unconstitutional when the case could be disposed of on other grounds. Economy Cash & Carry Cleaners v. Cleaning, Dyeing & Pressing Board, 128 Fla. 408, 174 So. 829 (1937).
30Most of the cases upholding similar laws declare that the primary purpose of the statute is to protect the property right of a trade-mark owner in the good-will of his trade-marked product. Old Dearborn Distributing Co. v. Seagram-Distillers Corp., 299 U. S. 183 (1936); Pepsodent Co. v. Krauss Co., 200 La. 959, 19 Atl. 303 (1942); Goldsmith v. Mead Johnson & Co., 176 Md. 682, 7 A.2d 176 (1939); Johnson & Johnson v. Weissbard, 121 N. J. Eq. 585, 191 Atl. 873 (1937); Ely Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E.2d 528 (1939); Weco Products Co. v. Reed Drug Co., 225 Wis. 474, 274 N. W. 426 (1937). In Carroll v. Schwartz, 127 Conn. 126, 14 A.2d 754 (1940), the Court upheld the statute on the basis that it was to prevent "cut-throat" competition. Justice Barns, in the Liquor Stores case, 40 So.2d 371, 382 (Fla. 1949), stated, "The purpose of such price fixing was to prevent ruinous competition."
soned that in reality the act had the ultimate effect of a price-fixing statute designed to permit a small group to eliminate free competition effectively, especially in regard to those retailers who had not signed the price-fixing agreement.31 As such, since it interfered with the freedom to contract and to deal with one's own property as one sees fit, it could not be sustained as an exercise of police power32 unless economic conditions clearly necessitated such a measure in the interest of the public in general. The Court distinguished decisions in other states upholding similar laws, on the ground that they were decided upon an assumption of reasonableness without inquiry into that question. It took cognizance of the present economic conditions and concluded that in time of relative prosperity, when supply is not greatly disproportionate to demand,33 there was no basis on which the Legislature could predicate such an infringement of constitutional liberties, and that since the statute was in the interest of a limited number seeking advantages for themselves and not in the interest of the general public, it was an arbitrary and unreasonable exercise of legislative police power and, therefore, invalid.

Equal Protection of Laws. The rationale of the Court in this respect was that the statute was arbitrary and discriminatory, in that it placed trade-marked commodities in a position of advantage over non-trade-marked commodities when there was no real and substantial differentiation in fact between the two classes of commodities in relation to the purpose of the statute. Furthermore, to permit manufacturers of trade-marked commodities to fix prices while denying that right to manufacturers of non-identifiable commodities was to grant special privileges and immunities not contemplated by the guarantee of equal protection of the law in the Florida Constitution.34

Delegation of Legislative Authority. The Court assumed that the act was a price-fixing statute, and that such power could only be exercised by the Legislature or a duly constituted state agency properly limited in the

31See note 13 supra.
32See note 36 infra.
33At page 383 Justice Barns stated:
"The present conditions are now somewhat reversed as to those of 1939 and most of the preceding years. We now have a dearth of goods where we had an abundance in the '30's; and we have money without purchasing power, where money had a high purchasing power during the '30's."
34See note 13 supra.
exercise of its discretion; since no basis existed for price fixing by the Legislature, the same end could not be accomplished indirectly by delegating that power to private individuals.\textsuperscript{35}

The Florida Court has declared that price fixing is constitutional only when the subject of such price fixing is one affected with a public interest, either by virtue of the nature of the subject\textsuperscript{36} or by emergency conditions necessitating regulation in order to protect public health, safety, morals, or general welfare.\textsuperscript{37} Applying this principle, the Court has held a statute fixing prices for barbers unconstitutional because public health or welfare was not affected by price cutting among barbers.\textsuperscript{38} On the other hand, a statute giving a milk board power to fix prices was held constitutional because milk is a necessary commodity and the public health would be adversely affected if it were not properly regulated.\textsuperscript{39} The Court, over a vigorous dissent, likewise held price fixing in the laundry and dry cleaning business to be valid.\textsuperscript{40} Another statute that attempted to limit liquor retailers to a forty per cent minimum mark-up on the wholesale prices fixed by the liquor distributor was held unconstitutional, since its only purpose was to secure a profit for wholesalers and retailers when public necessity did not demand it.\textsuperscript{41}

The broad language in the opinions on the \textit{Liquor Stores} case indicates that the Court was holding the Florida fair trade law unconstitutional in

\textsuperscript{33}\textit{Ibid.}

\textsuperscript{34}\textit{E.g.}, Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 183 So. 759 (1938).

\textsuperscript{35}\textit{E.g.}, Miami Home Milk Producers Ass'n v. Milk Control Board, 124 Fla. 797, 169 So. 541 (1936).

\textsuperscript{36}\textit{State ex rel.} Fulton v. Ives, 123 Fla. 401, 167 So. 394 (1936). The statute was amended in 1941, \textit{Fla. Stat.} §§476.01-33 (1941), and held constitutional in McRae v. Robbins, 151 Fla. 109, 9 So.2d 284 (1942). This decision seems to be a retraction from the \textit{Ives} case, \textit{supra}. Mr. Justice Whitfield, concurring specially in McRae v. Robbins \textit{supra} at 121, 9 So.2d at 290, urged the application of Section 30, Art. 16, of the Florida Constitution, giving the Legislature power to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or "performing other services of a public nature."

\textsuperscript{37}Miami Home Milk Producers Ass'n v. Milk Control Board, 124 Fla. 797, 169 So. 541 (1936). The decision rested largely on Nebbia v. New York, 291 U. S. 502 (1934); and the Court seemingly interpreted that case as supported by the "emergency" theory, referring on page 546 to the statute in question as "this confessedly emergency statute."

\textsuperscript{38}Miami Laundry Co. v. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 183 So. 759 (1938), Justice Brown dissenting.

\textsuperscript{39}Scarborough v. Webb's Cut Rate Drug Co., 150 Fla. 754, 8 So.2d 913 (1942).
its entirety and not merely in regard to the portion of the statute that attempted to bind those who had not signed such a price-fixing agreement. The Court predicated all its arguments against the Florida fair trade law on the assumption that it was a price-fixing statute comparable to those involved in other price-fixing cases.\textsuperscript{42} Once this assumption was made, it followed that the constitutional requirements of a price-fixing statute as set by the Florida Court were not met, since there was no public emergency requiring that competition be regulated in respect to trade-marked goods. Thus, if the Legislature cannot fix prices on trade-marked goods, the same end cannot be accomplished by delegating that power to private individuals, who then would be given special privileges that are denied producers of non-trade-marked commodities in substantially similar circumstances as far as price fixing is concerned. The Court did not, however, fully justify its assumption that the Florida fair trade law was a price-fixing statute in the usual sense of the term.

The statute, at least in so far as retailers who sign an agreement are concerned, is merely permissive and does not in itself fix prices on trade-marked commodities, nor does it delegate such power to a duly constituted state agency.\textsuperscript{43} A producer is not compelled to make such contracts, as was the case under an earlier Florida statute,\textsuperscript{44} nor is a wholesaler required to purchase goods subject to a price-fixing contract.\textsuperscript{45} It is difficult to see how a person can be deprived of free use of his property when he expressly agrees to a restriction on its use.\textsuperscript{46} The cases cited by the Court to sustain its position involved involuntary price-fixing statutes that were to be administered by a state agency.\textsuperscript{47} In one case the Florida Court expressly distinguished between voluntary and involuntary contracts fixing prices, and indicated that the former might be valid in the

\textsuperscript{42}See notes 38, 39, 40, 41 supra.
\textsuperscript{43}See note 13 supra.
\textsuperscript{44}See note 41 supra.
\textsuperscript{45}The "refusal to sell" by producers has been sanctioned, in the absence of any purpose to create a monopoly. United States v. Colgate & Co., 250 U. S. 300 (1918).
\textsuperscript{46}In Bon Ton Cleaners & Dyers v. Cleaning Board, 128 Fla. 533, 176 So. 55 (1937), the Court held that the appellants were estopped from insisting on the unconstitutionality of a statute permitting a board to fix minimum prices in the cleaning and dyeing business because they had signed an agreement with other parties in the area to observe the price-fixing rule. See Ingersoll & Bro. v. Hahne & Co., 88 N. J. Eq. 222, 228, 101 Atl. 1030, 1032 (1917). In respect to retailers who sign the price-fixing agreement, the statute merely confirms contracts that were generally recognized as valid before the statutes. See note 7 supra.
\textsuperscript{47}See notes 38, 40, 41 supra.
absence of any economic emergency.48 Other courts have held that such statutes are not price fixing but merely permissive in character.49 The Florida Court did not show that the Florida fair trade law, though permissive in form, had the same ultimate effect as a compulsory price-fixing measure.50

The non-signer clause, however, has been the most troublesome part of the fair trade acts from a constitutional standpoint. Although a statute is more nearly price fixing in character when it attempts to bind a person to the terms of a price-fixing contract to which he does not agree,51 the courts of other jurisdictions have interpreted the statute to permit a "condition" running with the sale of the trade-marked goods that may be compared to an equitable servitude.52 Apparently unwilling to give the statute a construction that might be constitutional, Justice Barns negatived this argument by stating that when a trade-mark owner sells his goods he concomitantly sells the trade-mark without any condition attached.

The Liquor Stores case will be an important landmark in Florida constitutional law. Previous decisions of the Florida Court might be interpreted as a deviation from the older and stricter application of due process to governmental regulation of business.53 The decision in this case, however, seems to indicate that the Florida Court will not now follow the current trend of the United States Supreme Court and other state courts in allowing the legislative branch a broader discretion in the regulation of business under a "liberal due process" theory.54

48Scarborough v. Webb's Cut Rate Drug Co., 150 Fla. 754, 775, 8 So.2d 913, 921 (1942).
49See notes 13, 17 supra.
50The Court may have felt that such price-fixing contracts are not in a real sense voluntary, since a small retailer is in a large measure wholly dependent upon large manufacturers for popular brands of goods, and retailers are at liberty to refuse to sell if such a contract is not signed. See note 45 supra. As the facts of the Liquor Stores case did not involve retailers who had signed a price-fixing contract, the Court was not bound by stare decisis to hold the statute unconstitutional in respect to "signers." If, however, the Court pursues its assumption that the statute was a price-fixing statute without reference to the non-signed clause in particular, to limit the Liquor Stores case to its facts would involve an abandonment of a large portion of the Court's reasoning in that case.
53See notes 38, 40 supra.
54Carroll v. Schwartz, 127 Conn. 126, 14 A.2d 754 (1940); cf. Lincoln Federal
**III. CONCLUSION**

The 1949 Legislature added a provision to the Florida Fair Trade Act that permits the attorney general to bring a suit in the circuit court to restrain performance of any price-fixing contract when he deems that the commodity covered by the contract is not in free and open competition with other commodities of the same general class.\(^5\) This provision does not constitute an unlawful delegation of legislative law-making power to the attorney general. An executive officer may be given the authority to declare that certain facts exist upon which a statute by its own terms is to operate.\(^6\) Furthermore, the power given to the attorney general is not to be final but is merely a power to bring suit in a circuit court, where the final determination is to be made. In reality this provision does no more than establish a procedure for the enforcement of the Florida antitrust laws,\(^7\) and does not remove the objection that the fair trade law was an improper delegation of legislative authority to private individuals.

The findings of fact concerning the act and the statement as to its purpose that were added to the Florida fair trade law by the 1949 Legislature\(^8\) present a more serious problem. Briefly, the law states that small retailers cannot survive price-cutting practices of large retail stores, and that unless minimum resale price maintenance is permitted the good-will of the trade-mark owner will be injured and retail commerce monopolized by a small group. It further declares that these practices will adversely affect the general public, both in times of deflation and inflation. Little is stated in the amendment that the Court did not consider in the *Liquor Stores* case and find insufficient to justify price fixing of the sort attempted. The decisive feature of that case was that present economic conditions do not warrant legislative interference in such a broad field of commerce when constitutional liberties are infringed. Since the prerequisite conditions for valid price fixing as set by the Florida Court do not exist, a declaration by the Legislature that such price fixing is in the public interest is not binding on the Court. The Court considered the Florida fair trade law on its merits from practically every angle. Whether the decision was in keeping with modern judicial policy is now immaterial; the Legis-

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\(^{5}\)See note 23 *supra*.


\(^{7}\)*Fla. Stat.* §§542.01-11 (1941).

\(^{8}\)See note 23 *supra*.

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*Labor Union v. Northwestern Iron & Metal Co., 69 Sup. Ct. 251 (1949); 2 U. of Fla. L. Rev. 298 (1949).*