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## Constitutional Law - Police Power - Municipal Ordinance - Philadelphia Curfew Law

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## COMMENTS

### CONSTITUTIONAL LAW—POLICE POWER —MUNICIPAL ORDINANCE— PHILADELPHIA CURFEW LAW.

The City Council of Philadelphia recently passed a curfew ordinance which prohibits minors under seventeen from being in public places and private business or amusement establishments during certain hours of the day.<sup>1</sup> In the event of a violation it provides penalties against the child, against the parent, and against the proprietors of establishments who allow the minor to violate the curfew.<sup>2</sup> The purpose of this Comment is to examine the constitutionality of this ordinance. To attempt to do this in the abstract is difficult since a legislative enactment may be constitutional under one set of facts and not under another. However, the issues which may be raised concerning the constitutionality of this ordinance shall be considered, and a conclusion based on these issues will be presented. In this Comment the following questions will be discussed:

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1. "Section 3. Unlawful Conduct of Minors.

(a) It shall be unlawful for any minor to remain in or upon any public place or any establishment between the hours of ten-thirty (10:30) o'clock P.M. and six (6) o'clock A.M. of the following day, official City time, except that on Fridays and Saturdays the hours shall be from twelve (12) o'clock midnight to six (6) o'clock A.M.;

(b) The provisions of this section shall not apply to any minor accompanied by a parent, or a minor upon an errand or other legitimate business directed by such minor's parent, or to any minor who is engaged in gainful lawful employment during the curfew hours;

(c) Each violation of the provisions of this section shall constitute a separate offense."

Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

2. "Section 6. Enforcement and Penalties.

(a) Any police officer who finds a minor violating the provisions of this ordinance shall obtain information from such minor as to his name and address, age, and the name of his parent or parents. The minor shall thereupon be instructed to proceed to his home forthwith. . . . ;

(b) Any parent who shall permit a minor to violate the provisions of this ordinance after having received notice of a prior violation shall be fined not less than five (5) dollars nor more than one hundred dollars for each violation, together with judgment of imprisonment not exceeding ten days if any fine imposed, together with costs, is not paid within ten days of the date of imposition thereof;

(c) Any operator of an establishment and any agents or employees of any operator who shall violate the provisions of this ordinance shall be fined not less than twenty-five (25) dollars nor more than three hundred (300) dollars for each violation, together with judgment of imprisonment not exceeding thirty days if any fine imposed, together with costs, is not paid within ten days of the date of imposition thereof."

Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

- (1) Did the Council have authority to pass the ordinance?
- (2) Does their ability to regulate on "police" matters cover the ordinance at hand?
- (3) Is the legislation violative of the state or federal constitutional provisions guaranteeing rights of personal liberty?

## I.

## SOURCE OF POWER.

In 1929, the state legislature delegated a portion of its power to legislate by declaring that:

"The cities of the first class of this Commonwealth shall have the power to make all such ordinances not inconsistent with or restrained by the constitution and laws of this Commonwealth as may be expedient or necessary for the proper management, care and control of the city . . . and the maintenance of the peace, good government, safety and welfare of the city . . . and the exercise of the full and complete powers of local self-government in the matters of police. . . ." <sup>3</sup>

The first section of the Philadelphia ordinance declares that the increase in the crimes committed by minors has created a menace to the preservation of public peace, safety, health, morals, and welfare.<sup>4</sup> By this legislative finding, the council is indirectly saying that the purpose of the ordinance is to maintain the peace, safety, and welfare of the city. This ordinance is, therefore, self-declaratory of its intention to remain within the grant of power given to the city council. The state had the power to delegate its authority to legislate on this subject to the city council since the Pennsylvania constitution states:

"Cities . . . may be given the right and power to frame and adopt their own charters and to exercise the power and authority of local self-government, subject, however, to such restrictions as may be imposed by the legislature."<sup>5</sup>

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3. PA. STAT. ANN. tit. 53, § 3451 (Supp. 1954).

4. "Section 1. Legislative Findings.

The Council of the City of Philadelphia finds as follows:

(a) An emergency has been created by a substantial increase in the number and in the seriousness of crimes committed by minors against persons and property within the City of Philadelphia, and this has created a menace to the preservation of public peace, safety, health, morals, and welfare;

(b) The increase in juvenile delinquency has been caused in part by the large number of minors who are permitted to remain in public places and in certain establishments during night hours without adult supervision;

(c) The problem of juvenile delinquency can be reduced by regulating the hours during which minors may remain in public places and in certain establishments without adult supervision, and by imposing certain duties and responsibilities upon the parents or other adult persons who have care and custody of minors."  
Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

5. PA. CONST. art. XV, § 1.

Since there is no state statute directly in conflict with the ordinance, and since there is no apparent objection to concurrent jurisdiction in this exercise of the police power, it is clear that the city council of Philadelphia does have the authority and the power to legislate on this matter.

## II.

### THE QUESTION OF VAGUENESS.

The question of vagueness must be examined, for if the wording of a statute or ordinance is so uncertain that there are no ascertainable standards of conduct, the law will be declared unconstitutional.<sup>6</sup> In examining the language of the Philadelphia curfew ordinance one finds that it gives sufficient notice to all concerned. The terms used in the ordinance which might have given difficulty in construction are adequately defined in section two,<sup>7</sup> and, hence, there is no need for men of common intelligence to guess at the meaning of the ordinance. The ordinance is not open to the objection that it might punish without warning,<sup>8</sup> since there is a requirement of specific intent. This requirement of a specific intent is fulfilled as to the parents and proprietors by the use of the term "knowingly" in defining what shall be an offense by them.<sup>9</sup> And, since knowledge may be imputed when the means of acquiring knowledge exist,<sup>10</sup> this term, "knowingly,"

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6. *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

7. "Section 2. Definitions.

(a) 'Establishment' means any privately owned place of business carried on for a profit or any place of amusement or entertainment to which the public is invited;

(b) 'Minor' means any person under the age of seventeen (17) years;

(c) 'Official City time' means Eastern Standard Time except from the last Sunday in April to the last Sunday in September, it shall be Eastern Daylight Saving Time;

(d) 'Operator' means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment; and whenever used in any clause prescribing a penalty the term 'operator' as applied to associations or partnerships shall include the members or partners thereof and as applied to corporations, shall include the officers thereof;

(e) 'Parent' means any natural parent of a minor, a guardian, or any adult person, twenty-one years of age or over, responsible for the care and custody of a minor;

(f) 'Public Place' means any public street, highway, road, alley, park, playground, wharf, dock, public building or vacant lot;

(g) 'Remain' means to loiter, idle, wander, stroll, or play in or upon."

Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

8. *Screws v. United States*, 325 U.S. 91 (1945).

9. "Section 4. Unlawful Conduct of Parents.

(a) It shall be unlawful for any parent *knowingly* to permit any minor to remain in or upon any public place or any establishment. . . .

Section 5. Unlawful Conduct of Owners or Operators of Establishments.

(a) It shall be unlawful for any operators of an establishment or their agents or employees *knowingly* to permit any minor to remain upon the premises. . . ." (Emphasis added.)

Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

10. *Cohen v. Globe Indemnity Co.*, 48 F. Supp. 1, (E.D. Pa. 1941); *Smith v. Industrial Acc. Commission*, 174 Cal. 199, 162 Pac. 636 (1917).

will not tie the hands of the police. They will be able to prosecute those who should have known the law. However, even if parts of this ordinance could be construed as vague, it should be remembered that there is a presumption that a legislative act is constitutional.<sup>11</sup>

“All laws should be construed sensibly. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of such laws should prevail over its letter.”<sup>12</sup>

Since the ordinance should not be declared invalid on the question of vagueness, we shall next consider the extent of the “police power.”

### III.

#### POLICE POWER.

The police power of a state

“embraces a whole system of internal regulation by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others.”<sup>13</sup>

To determine if the exercise of the police power is reasonable, two tests are useful: (1) Is there an evil?; and (2) Do the means selected have a real and substantial relation to the object to be attained? There is an evil present in Philadelphia at the present time. There has been a substantial increase in the arrests of minors.<sup>14</sup> This fact is more appalling when it is realized that the increase in *serious* crime is the more pronounced. During 1953, arrests of boys under sixteen for the less serious offenses of truancy and trespassing rose 7.2 per cent, while arrests for more serious crimes such as murder, auto theft, and burglary increased 30.5 per cent.<sup>15</sup> In the first eight months of 1954 there were 4200 crimes

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11. Commonwealth *ex rel.* Elkin v. Moir, 119 Pa. 534, 49 Atl. 351 (1901); *Ex Parte* Spencer, 149 Cal. 396, 86 Pac. 896 (1906).

12. United States v. Kirby, 74 U.S. (7 Wall.) 278, 280 (1869).

13. COOLEY, CONSTITUTIONAL LIMITATIONS, 1223 (8th ed. 1927).

14. ANNUAL REPORT, CRIME PREVENTION ASSOCIATION OF PHILADELPHIA, 2, 3, 11, 13 (1953).

15. ANNUAL REPORT, CRIME PREVENTION ASSOCIATION OF PHILADELPHIA, 2 (1953).

committed by members of the seven to seventeen group. Some defend these figures by saying that only 2.5 per cent of the children of Philadelphia are delinquents. This is true if children of all ages are included, but among the thirteen to sixteen year old group, where most of the serious crimes are committed, the percentage is much higher.<sup>16</sup> Courts have held that there is enough "evil" in undue curiosity,<sup>17</sup> driving,<sup>18</sup> drinking,<sup>19</sup> and peddling<sup>20</sup> to sustain legislation restricting these actions. If courts have found an "evil" in these cases, they are very likely to find one in the Philadelphia juvenile delinquency situation.

Even though there may be a present evil, there must also be a reasonable relation between the legislation and the evil which is sought to be prevented.

"If therefore a statute purporting to have been enacted to protect the public health, public morals or public safety has no real or substantial relation to these objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."<sup>21</sup>

The legislative determination of the extent of its power is not final or conclusive, and the courts may determine if a reasonable relationship exists between the means used and the end to be accomplished.<sup>22</sup> It has been said, that in order to determine "reasonableness" the

"importance of public benefit which the legislation seeks to promote is to be balanced against the seriousness of the restriction of private right sought to be imposed. If a statute is directed to a public interest of minor importance and yet imposes serious restrictions on guaranteed rights, the conclusion that it is unreasonable may be required.

16. Statistics obtained from Councilman Paul D'Ortona during interview Feb., 1955:

Age	No. of Crimes
8	90
9	123
10	201
11	235
12	351
13	471
14	797
15	884
16	883
17	770

17. *Commonwealth v. Lovett*, 4 Clark 5 (Pa. 1831), 6 PA. L.J. 226; *Grand Rapids v. Williams*, 112 Mich. 247, 70 N.W. 547 (1897).

18. *Maurer v. Boardman*, 336 Pa. 17, 7 A.2d 466 (1939), *aff'd*, 309 U.S. 598 (1940); *State v. Hatfield*, 112 W. Va. 424, 164 S.E. 518 (1932).

19. *Premier-Pabst Sales Corp. v. Gross-Cup*, 12 F. Supp. 970 (E.D. Pa. 1935), *aff'd*, 298 U.S. 226 (1936); *McNulty v. Toopf*, 116 Ky. 202, 75 S.W. 258 (1903).

20. *Commonwealth v. Gardner*, 133 Pa. 284, 19 Atl. 550 (1890).

21. *Mugler v. Kansas*, 123 U.S. 623, 661 (1887).

22. *Harris v. State Board of Optometrical Examiners*, 287 Pa. 531, 135 Atl. 237 (1927).

Where the public benefit proposed is important, however, and the interference with private rights is slight, the statute will be sustained."<sup>23</sup>

In Philadelphia, 15 to 18 per cent of the complaints concerning juveniles were received after 10:30 P. M.<sup>24</sup> There is no statistical data giving the hours when the crimes were actually committed, but it is reasonable to assume that the percentage of crimes committed after 10:30 P. M. was greater than the 18 per cent figure. It is also to be remembered that the crimes which are committed at night are generally the more serious ones. Keeping the children home and off the streets could be found to bear a substantial relation to the problem of increased juvenile crime. Furthermore, in an interview, the originator of the curfew bill pointed to something more than a decrease in crime to demonstrate the effectiveness of the ordinance. Among other "results" cited were intangible ones such as the segregation of the children from unhealthy older influences, like the "easy money" crowd and the dope peddlers who are always looking for new victims.<sup>25</sup> Thus, it is apparent that the prevention of juvenile crime was not the sole object of this ordinance, but the child's general welfare was also considered.

#### IV.

##### PERSONAL RESTRICTIONS.

Unless there is some violation of the guarantees of freedom of action, due process, or equal protection of the laws found in the federal or state constitutions, the ordinance should be declared valid. We shall examine the three classes of people affected by this statute and see if there is an infringement of their constitutional rights.

##### The Proprietor.

Generally a person has a right to use his property as he desires. However, this right is not absolute. If the use to which the property is put creates an evil to the public, the regulation or prohibition of such uses by the state is valid.<sup>26</sup> It is thus widely held that the state or municipality may prescribe the hours during which a business which is affected with a public interest may operate.<sup>27</sup> Under certain conditions it may also

23. *Dederick v. Smith*, 88 N.H. 63, 68, 184 Atl. 595, 599 (1936); like language in *Gambone v. Commonwealth*, 375 Pa. 547, 550, 551, 101 A.2d 634 (1954).

24. Interview with Sergeant Wade Liles, Juvenile Aid Bureau, Police Department, Feb., 1955.

25. Interview with Philadelphia Councilman Paul D'Ortona, Feb., 1955.

26. *Barbier v. Connolly*, 113 U.S. 27 (1884); *Soon Hing v. Crowley*, 113 U.S. 703 (1885); *Crittenden v. Town of Booneville*, 92 Miss. 277, 45 So. 723 (1908); *Churchill v. Albany*, 65 Ore. 442, 133 Pac. 632 (1913).

27. See *Commonwealth v. Zasloff*, 137 Pa. Super. 96, 8 A.2d 801, *aff'd*, 338 Pa. 457, 13 A.2d 67 (1939); *Barbier v. Connolly*, 113 U.S. 27 (1884); *Soon Hing v. Crowley*, 113 U.S. 703 (1885); *McNulty v. Toopf*, 116 Ky. 202, 75 S.W. 258 (1903); *Crittenden v. Town of Booneville*, 92 Miss. 277, 45 So. 723 (1908); *State v. Briggs*, 45 Ore. 366, 77 Pac. 750 (1904); *State v. Sharpless*, 31 Wash. 191, 71 Pac. 737 (1903); *Mehlon v. Milwaukee*, 156 Wis. 591, 146 N.W. 882 (1914).

forbid certain persons from being served by such proprietors.<sup>28</sup> The Philadelphia ordinance even covers businesses not affected with a public interest; but regulation of such businesses is possible if the regulation is not aimed toward the business itself, but rather toward the manner in which it is being conducted.<sup>29</sup> The ordinance declares that a violation occurs when owners, their agents, or their employees permit a juvenile to remain in the establishment after the prescribed hours.<sup>30</sup> By the use of the term "knowingly," the council, as shown earlier, states that the act must be done with knowledge. Hence the proprietor cannot complain that his rights are transgressed without wrongful action on his own part or on the part of his agents. As to the proprietors, therefore, this ordinance appears valid.

### The Parent.

The right of the parent to control the actions of his children is also not an absolute right.<sup>31</sup> When actions concerning the child have a relation to the public good, the state may step in and countermand the dictates of the parents. Because of this power, compulsory vaccination laws,<sup>32</sup> compulsory education laws,<sup>33</sup> laws demanding that an ill child be put under the care of a physician,<sup>34</sup> as well as far-reaching statutes such as the Pennsylvania Juvenile Court Act,<sup>35</sup> have all been upheld. The Philadelphia ordinance is not dictating to the parent an over-all plan of discipline. It is merely restricting the right of the parent to permit the child to be in public places after certain hours without adequate adult supervision. Remembering that the parent's right of control is a qualified right and that a good reason for the legislation exists, this is a legitimate action for the city council. The parents are fined if their children violate the curfew. In

28. *State v. Rosenfield*, 111 Minn. 301, 126 N.W. 1068 (1910); *Laughlin v. Tillamook City*, 75 Ore. 506, 147 Pac. 547 (1915); *State v. Baker*, 50 Ore. 381, 92 Pac. 1076 (1907); *Commonwealth v. Climenti*, 89 Pa. Super. 195 (1926); *But see City of Madisonville v. Price*, 123 Ky. 163, 94 S.W. 32 (1906).

29. *Commonwealth v. Gardner*, 133 Pa. 284, 19 Atl. 550 (1890).

30. "Section 5. It shall be unlawful for an operator of an establishment or their agent or employees knowingly to permit any minor to remain upon the premises of said establishment between the hours of ten-thirty (10:30) o'clock P.M. and six (6) o'clock A.M. of the following day, official time, except that on Fridays and Saturdays the hours shall be from twelve (12) o'clock midnight to six (6) o'clock A.M. . . ."

Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

31. *Ex Parte Alsdorf*, 142 N.J. Eq. 246, 59 A.2d 610 (Ch. 1948); *State v. Sonier*, 209 La. 138, 24 So.2d 290 (1945); *Commonwealth ex rel. Children's Aid Society v. Gard*, 362 Pa. 85, 66 A.2d 300 (1949).

32. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *French v. Davidson*, 143 Cal. 658, 77 Pac. 663 (1904); *Duffield v. School Dist.*, 162 Pa. 476, 29 Atl. 742 (1894).

33. *State v. Bailey*, 157 Ind. 324, 61 N.E. 730 (1901); *Commonwealth v. Edsell*, 9 Northptn. 93, 13 Pa. Dist. 509 (1903).

34. *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903).

35. PA. STAT. ANN. tit. 11, § 243 (Supp. 1954); *Commonwealth v. Brown*, 327 Pa. 136, 193 Atl. 258 (1937).

order for the parents to be violators, however, they must *knowingly* permit the child to frequent public places without legitimate reason. Hence, they, like the proprietors, are being penalized, not for the action of the child, but rather for their own neglect, which the home-rule municipality may regulate by appropriate legislation. In regard to the parent, therefore, the ordinance may properly be found valid.

#### The Child.

“As a general rule, legislatures don’t attempt to regulate the morals or habits of individual citizens. When a positive breach of law is reached or when the act of the citizen is such as to justify an implication of an intended breach of law, then the criminal law may interfere—but not till then.”<sup>36</sup>

In this ordinance, habits of individual citizens *are* being regulated. One of these habits is walking on the public streets. The right of locomotion is a precious one and safeguarded by both the federal and state constitutions.<sup>37</sup> A city may regulate the use of its streets,<sup>38</sup> but it may not do so in a way that interferes with the personal liberty of the citizen as guaranteed to him by our constitutions and laws.<sup>39</sup> It has been held that if the use of the streets is for a legitimate purpose, one can go where he pleases.<sup>40</sup> This legitimate purpose includes business or pleasure.

“One may have lawful business on the street even though he is there merely for exercise, recreation or any other proper purpose. . . . Officers have no right to compel and to account for his actions merely because he is on the street at an unusual hour.”<sup>41</sup>

Hence, it is clear that under ordinary circumstances the state may not prevent an individual from making use of the streets, nor may it interfere with one’s choice of companions.<sup>42</sup> Consequently, under proper circumstances the ordinance might encounter constitutional difficulties. It is apparent that one of the primary purposes of the ordinance is to prevent youths from roaming the streets after the prohibited hours, and, further, to put an end to the congregation of youths on street corners. However,

36. *St. Louis v. Fitz*, 53 Mo. 582, 585 (1873).

37. *Commonwealth v. Doe*, 109 Pa. Super. 187, 190, 167 Atl. 241, 242 (1933) (dictum).

38. *Dunn v. Commonwealth*, 105 Ky. 834, 49 S.W. 813 (1899); *Shuck v. Borough of Ligonier*, 343 Pa. 265, 22 A.2d 735 (1941).

39. *St. Louis v. Glover*, 210 Mo. 502, 109 S.W. 30 (1908); *Shuck v. Borough of Ligonier*, 343 Pa. 265, 22 A.2d 735 (1941).

40. *Beail v. District of Columbia*, 82 A.2d 765 (D.C. Munic. Ct. App. 1951).

41. *Beail v. District of Columbia*, 82 A.2d 765, 767 (D.C. Munic. Ct. App. 1951).

42. *People v. Belcastro*, 356 Ill. 144, 190 N.E. 301 (1934); *Ex Parte Smith*, 135 Mo. 223, 36 S.W. 628 (1896); *St. Louis v. Fitz*, 53 Mo. 582 (1873).

in its regulation of the right of free locomotion, the curfew ordinance applies only to minors. It is true that "class legislation discriminating against some and favoring others is prohibited."<sup>43</sup> However, "legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, it is not within the [14th] amendment."<sup>44</sup> "Minors are a class founded on natural and extrinsic distinctions from adults and legislation peculiarly applicable to minors . . . looking to their proper protection is not invalid as class legislation."<sup>45</sup> The special classification of minors has a long history. In its inception, the jurisdiction over minors belonged to the king as part of his powers as *parens patriae* to protect his young subjects. This power was transferred to the Court of Chancery. Its jurisdiction is broad, comprehensive, and plenary. In legal proceedings of whatever nature in which the personal or property rights of minors are involved, the protective powers of a Court of Chancery may be invoked whenever it becomes necessary to fully protect such rights.<sup>46</sup> Because of the special power to regulate the actions of minors, many laws pertaining to them alone have been upheld on the ground that the classification was not illegal.<sup>47</sup> The ordinance does not regulate the actions of those children who are accompanied by adults or who are furthering some legitimate business.<sup>48</sup> This exemption is not arbitrary. It is necessary considering the purpose of the ordinance and the history of curfew laws.

## V.

### CURFEWS.

There is a long history to curfew legislation. In the beginning its purpose was to prevent fire in a period when most structures were made of wood. The term itself conveys this idea since it is derived from the French *couvrir feu*—to cover the fire. During the reign of Alfred there was an ordinance that Oxford inhabitants should retire at the tolling of the curfew bell, and there is evidence that this type of regulation was present in many European countries during the same period. William I enacted a curfew after his conquest to prevent nightly gatherings of the people of England. There was so much opposition to it that Henry I discarded it in 1103.<sup>49</sup> The abstract idea of a curfew is as repugnant to twentieth century Americans as it was to eleventh century Englishmen; but even

43. *Barbier v. Connolly*, 113 U.S. 27, 32 (1884).

44. *Ibid.*

45. *People v. Walton*, 70 Cal. App. 2d 862, 161 P.2d 498, 501 (1945); like sentiments expressed in *Commonwealth v. Fisher*, 27 Pa. Super. 175, *aff'd*, 213 Pa. 48, 62 Atl. 198 (1905).

46. *Richards v. East Tennessee V. & G. Ry.*, 106 Ga. 614, 33 S.E. 193 (1889).

47. *Ex Parte Weber*, 149 Cal. 392, 86 Pac. 809 (1906); *State v. Rose*, 125 La. 462, 51 So. 496 (1910); *Commonwealth v. Levi*, 44 Pa. Super. 253 (1910).

48. See note 1 *supra*.

49. BLACK, LAW DICTIONARY 457 (4th ed. 1951).

though there have been many curfews in this country, few have been contested.

In 1898 a curfew law was passed in Texas which forbade those under twenty-one from being on the streets at night unless accompanied by a parent or guardian or in search of a physician. This was held invalid in *Ex Parte McCarver*.<sup>50</sup> The court looked into the reasonableness of the ordinance since it was passed under general powers. The same Texas court would not do this in the Philadelphia situation, since it stated that if the ordinance had been passed under an express grant of the legislature, the court would not be inclined to inquire into its reasonableness. One of the objections to the ordinance was that there was no provision made for legitimate errands or necessary business. This defect is cured in the Philadelphia ordinance. The *McCarver* case also held that the ordinance was paternalistic and that the prohibiting of those not doing wrong from using the streets was not a legitimate function of the legislature.<sup>51</sup> Considering the rise of juvenile delinquency, the number of children involved, and the seriousness of their crimes, the same arguments would not carry as much weight today. In 1898, perhaps the court was thinking of mere mischief. Today the legislature is thinking of felonies.

An ordinance of Juneau, Alabama, which forbade all idle or dissolute persons or those with no visible means of support from wandering around the streets after 11 P.M. was upheld.<sup>52</sup> There was little discussion of restrictions on personal freedom, the court merely holding that unless an ordinance is clearly oppressive and unreasonable it will not be declared void. However, such broad laws have often been declared invalid.<sup>53</sup> In 1945, Los Angeles had an ordinance similar to the present Philadelphia one. This ordinance made it a crime for any parent or guardian to allow a child under eighteen to remain or loiter on any street or public place between 9 P.M. and 4 A.M. the following day unless accompanied by one having custody of the child or unless the child had a permit.<sup>54</sup> The ordinance was held not to apply to those going to or from places of business or amusement. It was declared valid;<sup>55</sup> the court stated that minors are a special class, and, by way of analogy, compared this ordinance to uniform vaccination laws for school children. Since the Philadelphia ordinance forbids being on the street at all, as well as being in public amusement places, whereas the Los Angeles ordinance only forbade loitering, it seems that the Philadelphia ordinance is more strict. However, further amendments to the Los Angeles Municipal Code<sup>56</sup> forbid anyone under eighteen to visit poolrooms or to be in a dancing academy between 6 P.M.

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50. 39 Tex. Crim. 448, 46 S.W. 936 (1898).

51. *Ibid.*

52. *Guidoni v. Wheeler*, 230 Fed. 93 (9th Cir. 1916).

53. *People v. Belcastro*, 356 Ill. 144, 190 N.E. 301 (1934).

54. Los Angeles City Ordinance No. 3611 (Sec. 2), amended by Ordinances Nos. 4256, 4464.

55. *People v. Walton*, 70 Cal. App. 2d 862, 161 P.2d 498 (1945).

56. Los Angeles Municipal Code, Ordinance No. 77,000 (as amended to and including Ordinance No. 101085), Chapter 4, Art. 5.

and 12 midnight. They also regulate teen-age dances minutely and forbid moving picture managers from allowing anyone under fourteen to remain in the theater after 9 P.M. unless accompanied by a parent or guardian. If the parent or guardian requests in writing that his child be forbidden admittance at *any* hour, the manager is obliged to obey the request. Hence, although the basic curfew ordinance is less comprehensive than the Philadelphia one, the Los Angeles Code as a whole is more far-reaching, and significantly, none of the sections on juveniles have been declared unconstitutional.

A curfew has been in effect in East Moline, Illinois for several years.<sup>57</sup> Like the Philadelphia ordinance, it exempts from censure those minors accompanied by a parent or guardian, those on legitimate errands directed by one of the above, and those whose employment necessitates their being on the prohibited premises after the specified hour. East Moline, however, also exempts those who are "in an orderly manner actually on [their] way to or from the homes of friends, school or church entertainments or legitimate amusement houses."<sup>58</sup> The penalties for violation of this ordinance are strong and it allows the police officer to arrest the child without a warrant and hold him for a reasonable time. Although there have been several arrests and several cases in which the parents were fined, the constitutionality of the ordinance has never been questioned. It is believed by Mayor Olson of East Moline that its legality is not likely to be questioned since "public sentiment is behind it."<sup>59</sup> The Mayor also states, "The police here do not use the ordinance as a means toward wholesale arrests but rather use it to discourage unnecessary loitering and mischief making."<sup>60</sup>

In addition to viewing the Philadelphia ordinance literally, it must be remembered that judicial interpretation will play a great part when a case testing the validity of the ordinance comes before the courts. Two Philadelphia judges have already expressed their views on this subject. Judge Vincent A. Carroll, Associate Judge of Philadelphia Common Pleas Court No. 2, has said,

"It is my view, and I believe a sound legal view, that it is a matter of settled law, and it seems to me basic and fundamental, that in the police power of any municipality that there is included the power to enact a curfew law to protect against crime in the hours of darkness. . . . I do not think under any circumstances that a law of this kind would violate constitutional rights and I think it imperative."<sup>61</sup>

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57. East Moline Curfew Ordinance, originally passed Nov. 15, 1948, amended June 7, 1954.

58. East Moline Curfew Ordinance, June 7, 1954, Section 1.

59. Letter from Charles Olson, Mayor of East Moline, Illinois, to Regina M. Ward, March 4, 1955.

60. *Ibid.*

61. *Hearing on Bill No. 718 Before Committee of the City Council of Philadelphia*, Nov. 24, 1954.

Judge Adrian Bonnelly of the Philadelphia Municipal Court is of the opinion that the state did not completely occupy the field of supervision of minors when they passed the Pennsylvania Juvenile Court Act.<sup>62</sup>

Judge Bonnelly advocated the adoption of the original bill and is definitely in favor of the curfew law.<sup>63</sup> When and if a borderline case comes before them, they would be more likely to preserve the ordinance since there is always a presumption of constitutionality. The severability clause<sup>64</sup> would also make it possible for them to strike down one section and still preserve the rest of the ordinance.

In deciding whether or not this ordinance is constitutional, it must be remembered that even if one were to propose a hypothetical case in which the facts would render it clearly unconstitutional, such a case is not likely to come before the courts. Even though the terms of the ordinance and the terms of the police directive are very clear,<sup>65</sup> there is the attitude of the police department and the proponents of the bill to be considered. Former Deputy Commissioner of Police of Philadelphia, Albert E. DuBois, has stated, "The ordinance is now law and our only job is to enforce the law."<sup>66</sup> However, the police department is not looking for wholesale arrests. Therefore if there is a school affair from which the child is returning, a permit may be obtained.<sup>67</sup> "Reasonableness" will be used to determine whether the adult violators "knowingly" permitted a minor to violate the curfew.<sup>68</sup> In addition to these facts, we must recognize that there is increasing evidence of a change in modern sociological considerations. There are in America today influential schools of thought which believe that criminal behavior is learned behavior and that environment is of the utmost importance;<sup>69</sup> that the community is at least as important as the individual;<sup>70</sup> that juvenile offenders should not be overpro-

62. PA. STAT. ANN. tit. 11, §243 (Supp. 1954).

63. See note 61 *supra*.

64. "Section 7. Severability.

The provisions of this ordinance are severable and if any provision shall be held illegal, invalid or unconstitutional, such illegality, invalidity or unconstitutionality shall not effect or impair any of the remaining provisions. It is hereby declared to be the intent of the Council that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision had not been included herein." Ordinance of Philadelphia City Council incorporating Bills Nos. 557 and 718. Approved January 26, 1955.

65. Procedural Directive (Temporary G) regarding violation of Curfew Ordinance-Effective 12:01 A.M., January 31, 1955.

66. Interview with former Deputy Commissioner of Police Albert E. Du Bois, Feb., 1955; confirmed as the still existing policy of the Commissioner's Office by Chief Inspector Albert J. Trimmer, Sept. 28, 1955.

67. Interview with Police Captain Harry A. Fox, Feb., 1955.

68. Interview with former Deputy Commissioner of Police Albert E. Du Bois, Feb., 1955.

69. NEW YORK COMMONWEALTH FUND, UNRAVELLING JUVENILE DELINQUENCY (1950).

70. Judge Vincent A. Carroll quoted J. Edgar Hoover as saying, "Rights of the individual are considered to be of the greatest importance until the activity of the individual comes in conflict with the rights and interests of others. Law enforcement officers must place community first, giving the individual importance a secondary consideration." *Hearing on Bill No. 718 Before Committee of the City Council of Philadelphia*, Nov. 24, 1954.