

you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The East End Building and Loan Company, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4677.

OHIO RECOVERY ACT—H. B. NO. 705, 90TH G. A. UNCONSTITUTIONAL.

SYLLABUS:

Under the decisions of the Supreme Court of the United States, in Schechter et al. vs. United States, 79 L. Ed., 888, the Supreme Court of Ohio, in Divisional Code Authority vs. Riesenberg and Reams vs. Dusha, 129 O. S., 279, House Bill No. 705, of the 90th General Assembly is unconstitutional in its entirety.

COLUMBUS, OHIO, September 17, 1935.

HON. J. C. LUCAS, *Assistant Administrator, Ohio Recovery Administration, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication, requesting my opinion on the following questions:

“1. Did the Ohio Supreme Court, in a recent decision, declare the entire Ohio Recovery Act (H. B. No. 705) unconstitutional, or was only Section 3 of the Act affected by the court’s ruling?

2. Was the authority of the Ohio Trade Code Administration (the O. R. A.), to function as a division of the state government, terminated by that decision of the Ohio Supreme Court?”

Your questions involve a consideration not only of the decisions of the Ohio Supreme Court, in the cases of the *Divisional Code Authority No. 23, Retail Solid Fuel Industry et. al. vs. Ben Riesenberg, 129 O. S., 279,* and *State of Ohio, ex rel. Frazier Reams, Prosecuting Attorney vs. Edward Dusha*

et al., 129 O. S., 279, but also the opinion of the Supreme Court of the United States, in the case of *Schechter et al. vs. United States*, 55 Supreme Court, 837, 79 L. Ed., 888. These decisions have had the effect of declaring that all compulsory codes of fair competition, national or state, are unconstitutional. It is true that neither court has been called upon to pass upon every section of this act, and that only these sections dealing with the compulsory codes have been at issue. The question arises, then, as to whether any workable, enforceable sections of House Bill No. 705 remain after the provisions as to these codes of fair competition are eliminated.

This measure, popularly known as the Ohio Recovery Act, is an enabling act in Ohio. It is specifically stated in its title that its purpose is to cooperate with the Federal Government in the enforcement of the provisions of Section 1, of Title 1, of the National Industrial Recovery Act; and it is significant that no reference is made to any other portion of the National Industrial Recovery Act or of the Agricultural Adjustment Act. Now, if the delegation of power as defined in Section 1 of House Bill No. 705 is, as our Supreme Court has declared, an unwarranted delegation for its major purpose, how may it reasonably be claimed that it must not be so for all purposes? Although this precise point seems not to have received the attention of the court, it seems inconsistent to attempt to argue that the Supreme Court of Ohio intended to follow the reasoning contained in the Schechter case only up to a certain point, when all rights and remedies contained in House Bill No. 705, would depend for their validity upon the same legal principles.

No formal opinion was rendered in either the Riesenbergs or Dusha cases, *supra*, but in the journal entry in each case the judgment of the Court of Appeals is affirmed on authority of the Schechter case on the question of the delegation of legislative power.

The Schechter case decided, in addition to the fact that local sales of chickens in New York did not directly affect interstate commerce, that Section 3 of the National Industrial Recovery Act contained an unwarranted delegation of legislative authority; that the national act did not impose sufficient restrictions or set up the necessary standards for administrative guidance. Inasmuch as the policy provisions of the Ohio Recovery Act and the standards attempted to be set up in Section 3 (a) and (b) thereof, are practically identical with similar provisions in the national act, it seems clear that the entire objective of the Ohio Recovery Act was the enforcement of codes of fair competition, any other statutory provisions as to investigative functions and the like being inextricably interwoven therewith.

Under such circumstances, the courts have held that the entire act must fall. In considering whether unconstitutional provisions are severable from other provisions connected with those held unconstitutional, it makes no difference whether such provisions are contained in a single section of an act or in separate sections of an act. As stated in Cooley's *Constitutional Limitations*,

Eighth Edition, Vol. 1, page 362: "The point is not whether they are contained in the same section; for the distribution into sections in purely artificial; but whether they are essentially and inseparably connected in substance." This same author, at pages 362 and 363, lays down the following rule as to severability when an act has in part been held unconstitutional, which I consider applicable to the question here under consideration:

"And if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them."

The conclusion seems logical and inescapable that the Ohio Recovery Act as a whole, was affected by the decisions heretofore cited of our Supreme Court and rendered unconstitutional. The authority of the Ohio Trade Code Administration to function as a division of the state government was therefore terminated by these decisions.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4678.

APPROVAL, NOTES OF DOVER TOWNSHIP RURAL SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO, \$2,822.00.

COLUMBUS, OHIO, September 19, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4679.

APPROVAL, NOTES OF AUBURN RURAL SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO, \$1,591.00.

COLUMBUS, OHIO, September 19, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.