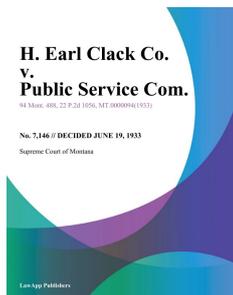


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H EARL CLACK CO V PUBLIC SERVICE COM EBOOKS 2019



Author: Supreme Court of Montana

Realese Date: Expected @@expectedReleaseDate@@

Injunction ? Oil and Gas ? Statute Declaring Petroleum Products Public Utility and Fixing Prices Invalid ? Penal Statutes must be Certain and Intelligible. Statutes ? Penal Act Creating New Offense must be Explicit ? Due Process of Law. 1. A penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties; the crime and the elements constituting it must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course is lawful for him to pursue; if the Act is so vague in its terms that men of common intelligence must necessarily guess at its meaning and differ as to its application, it violates the first essential of due process of law. Petroleum Products ? Chapter 184, Laws of 1933, Regulating Sale of Such Products and Prescribing Penalties Invalid, as too Ambiguous and Uncertain. 2. Held, under the above rule, that Chapter 184, Laws of 1933, relating to the price to be charged for any standard petroleum product, declaring such product to be a "public utility" and providing penalties for the violation of its provisions, is so ambiguous, uncertain, unintelligible and lacking in definition and substance that it is impossible for a seller of gasoline to know what conduct on his part will render him liable to its penal provisions, and therefore void. Statutes ? When Void as Incapable of Execution. 3. The rule that where a statute is so vague and uncertain in its terms as to convey no meaning, or if the means for carrying out - Page 489 its provisions are not adequate or effective, or if it is so conflicting and inconsistent in its provisions that it cannot be executed, the courts must declare it void and inoperative, held to apply to Chapter 184, supra. Petroleum Products ? Fixing Prices ? Invalid as Beyond Power of Legislature. 4. If it was the intention of the legislature in enacting Chapter 184, supra, to fix the price of petroleum products, it is ineffective, since a state legislature is without power to fix prices at which commodities may be sold unless the business is affected with a public interest, i.e., the business must be such as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public; legislative declaration may not cause that to exist, in this behalf, which the facts and the law deny. Same ? Products not "Public Utility." 5. Held, that if the legislature by the enactment of Chapter 184, supra, intended to declare standard petroleum products a "public utility," it failed of its purpose, such products, irrespective of their widespread use and notwithstanding the fact that they have become necessary and indispensable in carrying on commercial and other activities, not coming within the phrase "affected with a public interest." (See par. 4.)

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