



1958

Constitutional Law - Personal Liberty and Security - Curfew Ordinance Which Prohibits Minors under Seventeen from Being on the Streets during Certain Restricted Hours Is Void

John M. Orban

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Orban, John M. (1958) "Constitutional Law - Personal Liberty and Security - Curfew Ordinance Which Prohibits Minors under Seventeen from Being on the Streets during Certain Restricted Hours Is Void," *North Dakota Law Review*. Vol. 34 : No. 2 , Article 8.

Available at: <https://commons.und.edu/ndlr/vol34/iss2/8>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

It should be noted that North Dakota has not passed on this question. Since North Dakota has rules similar¹¹ to those in the main case, the problem comes into sharp focus since it will undoubtedly arise eventually in our own courts. It is submitted that the rule of the instant case expresses the more logical view of construction, and that which North Dakota should follow.

RALPH E. KOENIG.

CONSTITUTIONAL LAW — PERSONAL LIBERTY AND SECURITY — CURFEW ORDINANCE WHICH PROHIBITS MINORS UNDER SEVENTEEN FROM BEING ON THE STREETS DURING CERTAIN RESTRICTED HOURS IS VOID. — Appellant, aged 21, was about to be prosecuted under an ordinance which prohibited any person from assisting or encouraging minors under seventeen to violate a curfew ordinance.¹ Prohibition proceedings were initiated to prevent prosecution under the allegedly unconstitutional curfew ordinance.² The court held that the curfew ordinance was unconstitutional as an unlawful invasion of personal rights and liberties. *Alves v. Justice Court of Chico Judicial District*, 306 P.2d 601 (Cal. App. 1957).

Courts have repeatedly upheld legislation applicable to the protection and welfare of minors, but there exists only a few legal precedents construing curfew ordinances.³ In 1898 the Texas Court of Criminal Appeals⁴ held unconstitutional an ordinance enacted without express legislative authority.⁵ The court indicated that exceptions might arise which would necessitate the minor's violation of the ordinance, and as stated in their opinion, "... so numerous do they occur to us that they serve themselves to bring into question the reasonability of the law."⁶

deposition, and requiring a showing of good cause in the instance of discovery of written matters. This would be anomalous according to the view of the Brooks case. It should be observed that the North Dakota Rules have no specific requirement that good cause be shown as a prerequisite to discovery in either case. See N.D.R.Civ.P. 34(a).

11. N.D.R.Civ.P. 28(b); N.D.R.Civ.P. 34(a).

1. The court did not allude to the fact that the minor was married and emancipated from his parents' control.

2. Chico Municipal Code, § 684 "Subdivision (a). It shall be unlawful for any minor under the age of seventeen years of age to be in or on any public street, park, square or any public place between the hours of 10:00 o'clock P. M. and 5:00 o'clock A. M. of the following day, except when and where said minor is accompanied by a parent or legal guardian having the care and custody of said minor, or where the presence of said minor in said place or places is connected with and required by, some legitimate business, trade, profession or occupation in which said minor is engaged.

"Subdivision (b). Any person assisting, aiding, abetting or encouraging any minor under the age of seventeen years to violate the provisions of Subdivision (a) hereof shall be guilty of a misdemeanor . . ." (The court construed "business", in Subdivision (a), as employment and not just any legitimate activity.)

3. See, e.g., *People v. Walton*, 70 Cal. App. 2d 862, 161 P.2d 498 (1945).

4. *Ex parte McCarver*, 39 Tex. Crim. 448, 46 S.W. 936 (1898). The ordinance prohibited all persons under 21 from being on the streets after 9 P.M. unless accompanied by parents or guardian or unless such minor was in search of a physician.

5. North Dakota has no express provision which grants the power to enact a curfew ordinance. *But see*, N.D. Rev. Code § 40-0501 (1943).

6. *Ex parte McCarver*, 39 Tex. Crim. 448, 46 S.W. 936 (1898). The McCarver case cited several cases involving liberty of association and movement but it is submitted that since we now have several decisions construing curfew ordinances such an analogy is no longer a sound one as minors constitute a class which is distinct from adults. For curfew cases not necessarily pertaining to minors see, *Kiyoshi Hirabayashi v. United States*, 320 U.S. 81 (1943) (Curfew for Japanese-Americans during World War II held valid.); *City of Shreveport v. Brewer*, 225 La. 93, 72 So. 2d 308 (1954) (Ordinance which defined acting in a dangerous and suspicious manner included anyone who is found on the streets after midnight without a satisfactory explanation held in-

In 1945 a California court upheld a curfew ordinance which made it a crime for any parent, guardian or other person having custody and control of any minor under 18 years of age to permit such minor to "remain" or "loiter" upon the streets or public places between the hours of 9 P. M. and 4 A. M.⁷ It is interesting to note that the above ordinance originally made it a crime to allow a minor under 16 to "remain, stroll upon, use, loiter on or be upon any street . . ." etc. and that it was amended to read "remain" or "loiter" so as to narrow its purview.

A perusal of curfew ordinances enacted in several of the larger cities in North Dakota may serve to illustrate both desirable and undesirable features of such ordinances. One of the ordinances conspicuously fails to designate the hour of the day at which the minor may again depart from his dwelling.⁸ Some ordinances provide for exceptions for emergency or necessity situations⁹ but others do not.¹⁰ None of the ordinances studied apply if the minor is in the presence of his parents or guardian,¹¹ or if the minor is engaged in a lawful trade or occupation.¹² In none of the ordinances examined is an exception provided for a minor who is married or who is otherwise emancipated from his parents.¹³

It is submitted that to satisfy both legal and practical considerations the ordinance should provide exceptions if the minor is engaged in a lawful occupation, if he is on an emergency errand or one directed by his parents or guardian,¹⁴ if the minor is married¹⁵ or otherwise emancipated, or if he can show reasonable cause as to why the ordinance should not apply.¹⁶ The more recent ordinances prohibit merely loitering in lieu of total exclusion.¹⁷ City attorneys indicate that in most jurisdictions curfew ordinances may be justified as an exercise of the police power; however, the ordinance must be both reasonable and carefully drawn.¹⁸

JOHN M. ORBAN.

CRIMINAL LAW — INDICTMENTS AND INFORMATION — SUFFICIENCY OF UNIFORM TRAFFIC TICKET AS AN INFORMATION. — Defendant was issued a uniform traffic ticket which required him to appear the following day before a police justice. The defendant, on his plea of guilty, was convicted of operating a motor vehicle while intoxicated. The Court of Appeals of New York

valid.); *Mayor of Memphis v. Winfield*, 27 Tenn. (8 Humph.) 706 (1848) (Ordinance to keep Negroes off the streets after 10 P.M. held invalid.).

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

8. See Grand Forks Revised Ordinances, c. IX, art. 1, (1948).

9. See Fargo Revised Ordinances, c. X, art. 1 (1952); Jamestown, ordinance 141, § 1 (1953).

10. See Dickinson, ordinance 261, § 3 (1956); Grand Forks Revised Ordinances, c. IX, art. 1 (1948). See also Bismarck, ordinance 476, § 1 (1935); Devils Lake, ordinance 359, § 1 (1953).

11. *Ibid.*; Fargo Revised Ordinances, c. X, art. 1 (1952); Jamestown, ordinance 141, § 1 (1953).

12. Dickinson is an exception. See ordinance 261, § 3 (1956).

13. Another facet of curfew ordinances but beyond the province of this case is the culpability of parents or guardians if the minor violates the ordinance. Some ordinances make the parent or guardian responsible whether they have knowledge of the violation or not. Others employ what is considered to be the sounder approach, making the parents or guardians responsible only if they knowingly permit the ordinance violation.

14. See American Municipal Association, Curfew Ordinances, p. 2 (1948).

15. See Florida Children's Commission, Reports on Curfew Laws (1956).

16. See Albert Lea, Minn., ordinance 1293, § 1 (1955).

17. See American Municipal Association, Curfew Ordinances, p. 2. (1948).

18. See *op. cit. supra.*, n. 18.