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BUSINESS LICENSING: THE CITY-STATE CONFLICT IN CALIFORNIA

The rapid growth of the California economy with the corresponding increase in business activity in market areas no longer definable by city boundaries has made business regulation an important concern of the state, cities, and businesses. Today, there are few commercial activities that are not to some extent subject to municipal or state control. This control most commonly takes the form of the enigmatic business license. The purpose of this Comment is to investigate the present function of the business license and to review recent developments in California case law relating to its use.

I

GENERAL POWERS OF CALIFORNIA CITIES

California municipalities are classified as either charter or general law cities depending upon how they were organized. By organizing under the procedure outlined in the constitution, a charter city accepts a constitutional grant of limited home rule freedom, which empowers it to enact all ordinances that relate to "municipal affairs," subject only to the restrictions and limitations found in

1 CAL. CONST. art. XI, § 6 directs the legislature to provide a method of incorporation for those cities electing not to adopt a freehold charter. "In 1883, the Legislature followed the mandate of Section 6 and adopted the Municipal Corporations Act providing statutory charters for six different classes of cities based on population (Stats. 1883, p. 93). In 1955 the Legislature dropped all numerical classifications and the Act presently provides for one class of city called a 'general law' city (Stats. 1955, Ch. 624). Thus, California cities are either chartered cities or general law cities. There are now 294 general law cities and 70 chartered cities. Keller, New Councilmen and the Law of Municipal Corporations in California, B-5 (1960) (unpublished advisory opinion by counsel for League of California Cities).

2 Prior to the ratification of California's constitution in 1879, charters were granted to cities by special state legislative enactments. Art. XI, § 8, of the constitution provided a new chartering method whereby a city with a population of 3,500 or more can elect a board of "freeholders" to frame the city charter. Ratification at a special or general election by a majority of qualified voters within the city constitutes an adoption of the charter as framed by the freeholders. A city which follows this method is termed a "freehold charter city." Those cities which had been granted "special" charters prior to 1879 were not required to change to a "freehold" charter and there may still be a few such cities in the state. In this Comment, "charter city" will refer only to the "freehold charter city."

3 City of Pasadena v. Charleville, 215 Cal. 384, 10 P.2d 745 (1932).

4 CAL. CONST. art. XI, § 6 provides that a charter city may enact "all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws." The term "municipal affairs" generally relates to those matters affecting the internal affairs of a city which are not of statewide concern. See Walnut Creek v. Silveira, 47 Cal. 2d 804, 306 P.2d 453 (1957). The courts, however, appear to use this term in two different contexts. "Municipal affairs" may be used to denote those matters consistent with the terms of the city charter, e.g., West Coast Advertising Co. v. San Francisco, 14 Cal. 2d 516, 95 P.2d 138 (1939), or it may refer to those areas where city enactments are deemed free from state legislative interference, e.g., Ex parte Braun, 141 Cal. 204, 74 Pac. 780 (1903). This discussion is concerned with the latter, narrower use.
its charter.  

A general law city, on the other hand, is one organized pursuant to statutory instructions and consequently it does not have the same measure of self-rule. Its corporate powers are limited to those granted by the California legislature and are always subject to withdrawal by that body. 

When there is a conflict between a state law and either an ordinance of a general law city or a "nonmunicipal affair" ordinance of a charter city, the state law will control and the ordinance will be invalid. Such a conflict is deemed to exist where a city legislates in a field already occupied by the state. While it is often difficult to determine when state legislation is intended to be exclusive, it is clear that state law is supreme when the legislature has expressly declared that there shall be no local regulation. When there has been no expression of legislative intent, the courts will critically examine the statute to determine whether the state has intended to occupy the field to the exclusion of municipal action. If an intent to occupy can be found, the ordinance will be held invalid because of the "inevitable conflict of jurisdiction which would result from dual regulations covering the same ground." 

II

THE NATURE OF THE BUSINESS LICENSE AND THE AUTHORITY TO LICENSE

A business license has been defined as a permit given by a governmental body to engage in a given activity; it is a franchise to carry on an occupation subject to the licensee's compliance with specified conditions. Customarily, the payment of a fee is required before the privilege represented by the license will be

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5 Abbott v. City of Los Angeles, 53 Cal. 2d 674, 3 Cal. Rptr. 158, 349 P.2d 974 (1960); In re Porterfield, 28 Cal. 2d 91, 168 P.2d 706 (1946); Pipoly v. Benson, 20 Cal. 2d 366, 125 P.2d 482 (1942); Biber Elec. Co. v. City of San Carlos, 181 A.C.A. 399, 5 Cal. Rptr. 261 (1960). If a charter city ordinance is within the sphere of "municipal affairs" it is completely free from state legislative interference. But if it encroaches upon an area of statewide concern or is of mixed concern to both city and state, a state general law, to the extent that there is a conflict, supersedes the charter city's action and controls the subject matter. Abbott v. City of Los Angeles, supra at 681-82, 3 Cal. Rptr. at 163, 349 P.2d at 979.

6 City of San Mateo v. Railroad Comm'n, 9 Cal. 2d 1, 68 P.2d 713 (1937). A general law "city is limited in the exercise of its powers by the constitution and general laws. It has only the powers expressly conferred and such as are necessarily incident to those expressly granted or essential to the declared objects and purposes of the municipal corporation. Its powers are strictly construed and any fair, reasonable doubt concerning the exercise of a power is resolved against the corporation.... [A]n ordinance adopted by a city organized under general law is subject to and controlled by general law." Hurst v. City of Burlingame, 207 Cal. 134, 138, 277 Pac. 308, 310 (1929).

7 CAL. CONST. art. XI, §§ 6, 11; CAL. GOV'T CODE § 37100.

8 E.g., Biber Elec. Co. v. City of San Carlos, 181 A.C.A. 399, 5 Cal Rptr. 261 (1960).

9 See Agnew v. City of Los Angeles, 51 Cal. 2d 1, 330 P.2d 385 (1958).

10 Pipoly v. Benson, 20 Cal. 2d 366, 371, 125 P.2d 482, 485 (1942) (dictum). If a jurisdictional conflict were allowed, a prosecution under a city ordinance would deprive the state of its criminal penalties because of the "double jeopardy" of the defendant. It is for this reason that a city regulation duplicating a regulation by the state will be held invalid. Thus, in Ex parte Stephen, 114 Cal. 278, 46 Pac. 86 (1896), a county penal ordinance enacted to enforce business license requirements was held void as in contravention of the general law of the state. "It undertakes to punish the same act—carrying on a business without having a license therefor—which is punishable under section 435 of the Penal Code [now CAL. BUS. & PROPR. CODE § 16240]." Id. at 282, 46 Pac. at 87. See also, In re Portnoy, 21 Cal. 2d 237, 131 P.2d 1 (1942); People v. Smith, 161 Cal. App. 2d 860, 327 P.2d 636 (1958).

11 9 McQuillin, MUNICIPAL CORPORATIONS § 26.01 (3d ed. 1950).

12 John Rapp & Son v. Kiel, 159 Cal. 702, 115 Pac. 651 (1911).

13 9 McQuillin, MUNICIPAL CORPORATIONS § 26.18 (3d ed. 1950).
granted. There may also be other requirements, such as the applicant’s meeting the qualifications prescribed for the particular trade or profession. The dual character of the business license—regulation of business and raising of revenue—has caused great confusion whenever an inquiry has been made into the nature of a given license. Often the issue has been oversimplified. Thus, it is said that if the sole purpose of the fee is to raise revenue for general and unspecified governmental uses, the enactment stems from the taxing power of the issuing body. Conversely, a license is said to be an exercise of police power when it is used to control the conduct and operation of a business and the fees are related to the expenses of administering the program. Under this approach it is assumed that there has been no regulation of business even though a city restricts business opportunities by requiring the payment of a fee as a condition precedent to obtaining a license, provided that the fee is intended solely to raise revenue.

In California, the state may grant licenses under its sovereign taxing and police powers, but a municipality has no inherent right to license and it must look to the state for authority. Both chartered and general law cities are authorized by article XI, section 11 of the constitution to enact regulatory ordinances that are not in conflict with general laws. The courts have interpreted section 6 of article XI to permit charter cities to license for revenue as a legitimate exercise of home rule freedom. The state legislature, although it may withhold the power to license for revenue from general law cities, has authorized them to so license, but has expressly restricted the exercise of this power by making it subject to and controlled by the general laws. Thus, general laws control the revenue and regulatory ordinances of general law cities, as well as the regulatory measures of charter cities.

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14 Id. at § 26.01.  
15 Ibid.  
17 "Whatever vested power the municipalities of the state enjoy they derive from the state Constitution and to the extent there permitted." City of San Mateo v. Railroad Comm'n, 9 Cal. 2d 1, 7, 68 P.2d 713, 716 (1937).  
18 "Any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws." Cal. Const. art. XI, § 11. The term "general laws" relates to all federal and California statutory provisions, as well as to the provisions of the United States Constitution.  
19 The early interpretation was that "[S]ections 11 and 12 of article 11 intended to give full power and authority to the local governments over the subject of licenses, whether for purposes of regulation or revenue, subject to be controlled by general laws." Ex parte Walter, 65 Cal. 269, 271, 3 Pac. 894, 895 (1884) (concurring opinion), cited with approval in Ex parte Mount, 66 Cal. 448, 6 Pac. 78 (1885). Language to the same effect may be found in In re Guerrero, 69 Cal. 88, 91, 10 Pac. 261, 263 (1886). But since the turn of the century it has been settled that § 11 does not constitute a grant of authority to enact revenue measures. Peppin, Municipal Home Rule in California: III, 32 Calif. L. Rev. 341, 343 (1944).  
20 E.g., Ex parte Braun, 141 Cal. 204, 74 Pac. 780 (1903).  
21 See text at note 6 supra.  
22 Cal. Gov't Code § 37100 provides: "The legislative body may pass ordinances not in conflict with the Constitution and Laws of the State or the United States." Since regulatory powers are controlled by art. XI, § 11, it would appear that this section was intended expressly to restrict the "municipal affairs" exception to charter cities and not to extend a similar freedom to general law cities.
III

HOW CONFLICTING LICENSES ARE RESOLVED

Today, state regulation of businesses by various licensing acts reaches almost all business and professional activities carried on in California. When both the state and a city have licensed the same occupation, the courts have often been required to decide whether the municipal ordinance is invalid because of a conflict between the two licenses. Since the state licensing acts generally contain no expression of the extent to which municipal licensing is to be precluded, the issue faced by the courts is whether the legislature has impliedly intended to occupy the field. By the mid-1940's it was settled that if both city and state granted a license and if the purpose of each license was to regulate business, a conflict existed and the city enactment was invalid. This was true whether a general law or charter city was involved. However, if a licensing ordinance of a charter city was intended to raise revenue and the state license was regulatory, courts avoided finding a conflict by the facile method of labelling revenue raising activities "municipal affairs."

23 Licensing regulations encompassing some thirty-two occupations may be found in the Business and Professions Code, Education Code, and Insurance Code. In 1957, additional licensing legislation was recommended for forty-nine occupations. Senate Interim Committee on Licensing Business and Professions, 1957 Report to the Legislature, Vol. 2, Appendix to the Journal of the Senate.

24 After the decisions by the supreme court in the two Agnew cases (see text at notes 42-47 infra), § 7032, relating to licensing of contractors, was added to the Business and Professions Code. It reads: "Nothing in this chapter shall limit the power of a city . . . to regulate the quality and character of installations made by contractors through a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other local laws necessary for the protection of the public health and safety . . . ."

"Nothing contained in this section shall be construed as authorizing a city . . . to enact regulations relating to the qualifications necessary to engage in the business of contracting." Similar language revealing legislative intent is not found in other licensing acts.


26 Art. XI, § 11, supra note 18, applies to all cities; in addition, Gov't Code § 37100, supra note 22, and § 37101, supra note 21, control general law cities.


28 In the case of In re Groves, 54 A.C. 146, 4 Cal. Rptr. 844, 351 P.2d 1028 (1960), it was decided that there was no conflict between a general law city revenue ordinance and a state regulatory statute. Ex parte Jackson, 143 Cal. 564, 77 Cal. 457 (1904) and City of Redding v. Dozier, 86 Cal. App. 590, 206 Pac. 465 (1922), both dealt with general law city revenue licenses where the state had regulated the occupation, but in neither was the possibility of a conflict raised.

It is unsettled whether there is a conflict when the state licenses for revenue and the city, whether general law or charter, intends only to regulate.

Another possible area of conflict occurs when both a general law city and the state license for revenue. A general law city is empowered to license for revenue by Gov't Code § 37101, supra note 21, but when a general law city revenue measure conflicts with the general laws
Horwith v. City of Fresno, decided in 1946, was the first of five district court of appeal decisions marking a change in judicial approach which would culminate twelve years later in the two supreme court Agnew opinions. The factual situations involved in all of these cases were similar—in each a charter city attempted to license a state licensed contractor. As this line of cases progressed, the courts showed less and less concern with the question whether the city license was a regulatory or revenue raising measure, seemingly invalidating city licensing per se because it conflicted with the state licensing scheme.

In the Horwith case, Fresno required license applicants, in this instance an electrical contractor, to pay a fee and to submit to an examination by a local board for a determination of competency. It was held that the ordinance was an unconstitutional regulation because the state had already occupied the field. In the course of its opinion the court made a significant statement which was to have great effect upon later cases: “The state license implies permission to the licensee to conduct his business at any place within the state. This permission should not be circumscribed by local authorities.” In the next case, City & County of San Francisco v. Boss, the regulatory aspects of the city ordinance were less, but there was still held to be a conflict. The ordinance provided that a permit would be granted only if the applicant registered with the city as a state licensed contractor, paid a $10 fee, and a local bureau approved the application. If any facts in the application were found to be untrue, or if there was a showing that any rules or regulations had been violated, the permit could be denied. The court, noting that the fee was “not exacted solely for revenue” relied upon Horwith to invalidate the ordinance. In Agnew v. City of Los Angeles, the prospective licensee was required to submit to a brief examination, register with the city, post a surety bond, and pay a $100 fee. Although these licensing requirements were only minimal, the district court of appeal held the license to be regulatory and thus invalid because the legislature had intended that “licensing and regulation of contractors by the state shall be the only licensing and regulation in the

it may be invalid under § 37100, supra note 22. It is possible that a mere duplication of a state revenue license by a general law city license may result in the type of clash which § 37100 was meant to cover. It seems unlikely, however, that the state will have intended to occupy a revenue field to the exclusion of city enactments without a clear expression of legislative intent to that effect. A fair conclusion is that duplication of a state revenue license does not result in the invalidity of a general law city license.

33 Id. at 448-49, 168 P.2d at 770.
35 Id. at 451, 189 P.2d at 35.
36 “In spite of the state law which authorizes a contractor holding a state license to contract anywhere in the state, this ordinance limits his right to contract in San Francisco [by requiring a permit] . . . which shall only be given him if the facts set forth in his application are found to be true by the city authorities.” Ibid.
The district court of appeal reached the same result on similar facts in Lynch v. City of Los Angeles. Because of confusing language in the Boss, Agnew, and Lynch cases, it was not certain whether the ordinances were being struck down because they imposed additional regulations in an area already occupied by the state or because the field of licensing was itself fully occupied, regardless of whether the city license was one for revenue or regulation. When the problem subsequently reached the supreme court in the two Agnew cases, it seemed that the latter approach was adopted. In Agnew v. City of Los Angeles, a licensee was required to pay a fee based upon the gross receipts of his business and to register with the city prior to obtaining a permit. A local board could review the application and had the power to deny the license. The supreme court held the licensing ordinance invalid, stating that while a city could impose a tax upon businesses, it could not impose a tax in the form of a license when the state had already licensed the same activity. As was pointed out by Justice Shenk in his dissent, the majority opinion seemed to invalidate a charter city licensing ordinance enacted solely to raise revenue. The second supreme court case, Agnew v. City of Culver City, held that a city could not enforce a municipal license with criminal penalties when the state had already granted a license, even though the licensing ordinance seemed to be intended only to raise revenue. It appeared that the court looked with disfavor upon any city measure, criminal or civil, which could be used to deny permission to do business when the applicant already possessed a state license.

As a result of the supreme court decisions in the two Agnew cases it seemed clear that a city could not require a license of any type from a state licensed businessman, and that the permission granted by the state to do business any-

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38 Id. at 616, 243 P.2d at 75.
39 114 Cal. App. 2d 115, 249 P.2d 856 (1952). There seemed to be confusion in these two cases as to the nature of the license fee. The city argued that it was merely a reasonable charge to cover inspection expenses and was a legitimate exercise of the police power. The court did not agree that the fee was reasonable and stated that the city did not intend to use the funds to defray regulation expenses. If the funds were used only for revenue purposes, it would appear that this was merely a revenue measure by a charter city, i.e., a “municipal affair.” Apparently this point was never raised or there were other regulatory aspects sufficient to constitute a conflict without regard to the nature of the fee.
41 51 Cal. 2d 1, 330 P.2d 385 (1958).
42 “Of course . . . a municipality may tax electrical contractors as other trades, professions and businesses are taxed. The fees in the present case, however, are exacted not as a business tax but as the price of a license that the city cannot require.” Id. at 7, 330 P.2d at 388 (emphasis added).
43 Agnew v. City of Los Angeles, 51 Cal. 2d 1, 9, 330 P.2d 385, 389 (1958). Justice Shenk based his argument upon what appeared to be the revenue raising purpose of the ordinance. He argued that it was a valid enactment in the area of “municipal affairs.”
45 In a prior appeal of this case a district court of appeal invalidated two separate ordinance provisions because of conflicts with the state licensing scheme. Agnew v. City of Culver City, 147 Cal. App. 2d 144, 304 P.2d 788 (1956). The first provision required applicants to pay a $100 fee to the city prior to the issuance of a license and was enforced by a misdemeanor penalty. The second provision directed applicants, after procuring a license, to undergo an examination as to their qualifications. The district court of appeal remanded the case to the trial court and after further findings there the city brought the present appeal to the supreme court to test the validity only of the first ordinance provision.
where within the state could not be circumvented by a local measure.46 However, in a 1960 decision, In re Groves,47 the supreme court retreated toward the pre-1946 view48 that a conflict occurred only when city and state licensing measures were both regulatory. In Groves, Palm Springs, a general law city, required businessmen to secure a permit and to pay a $100 fee in order to do business within the city. Petitioner, a state licensed manufacturer of dairy products, refused to obtain the permit and was convicted of a misdemeanor for violating the local ordinance. He argued that his state license gave him permission to do business in Palm Springs and that the city could not negate that permission by requiring an additional license. The court, speaking through Justice Traynor, rejected the petitioner's argument and sustained the conviction, holding that the city license was intended only to raise revenue and, as such, it was a valid business tax even though enforced by a license and by criminal penalties.49 The two supreme court Agnew cases were distinguished on the ground that the municipal licenses there were intended to regulate, not to tax.50 To reach the conclusion that there was no conflict between the state and municipal licenses,51 the court held that a general law city revenue license does not conflict with a state regulatory license. Cited as authority for this proposition were cases involving charter cities where the possibility of conflict was often not even in issue because of the “municipal affairs” exception.52 The court's reliance upon these cases may perhaps be interpreted to mean that they do not stand for the proposition that a revenue license is a “municipal affair” in the sense that there is freedom from legislative interference,53 but that where there is a revenue ordinance there is not sufficient regulation of the licensee to amount to a conflict with the state.54 The court did not indicate how much more regulation would be necessary before a city license would conflict with a state licensing act.55

47 54 A.C. 146, 4 Cal. Rptr. 844, 351 P.2d 1028 (1960).
48 See text at notes 24–28 supra.
49 “Whether or not state law has occupied the field of regulation, cities may tax businesses carried on within their boundaries and enforce such taxes by requiring business licenses for revenue and by criminal penalties.” 54 A.C. at 149, 4 Cal. Rptr. at 846, 351 P.2d at 1030.
50 “In the Agnew cases the license fees were not imposed solely for revenue purposes but as an inseparable part of a regulatory scheme excluded by state law . . . . In the present case, however, the city seeks to enforce its licensing ordinance against petitioner for revenue only, and as the Agnew cases expressly recognized, such taxation is not excluded because the state has occupied the field of regulation.” Id. at 150, 4 Cal. Rptr. at 847, 351 P.2d at 1031.
51 See note 28 supra for cases factually similar, but where the conflict question was not raised.
53 Ex parte Braun, 141 Cal. 204, 74 Pac. 780 (1903), is apparently contra.
54 This position is supported by In re Galusha, 184 Cal. 697, 195 Pac. 406 (1921).
55 To sustain petitioner's conviction, the court also had to hurdle a Palm Springs ordinance which expressly stated that the city criminal penalties did not apply to state licensees. The court reasoned that since it had been held in this state that a city ordinance is a state law (see Teachout v. Bogy, 175 Cal. 481, 166 Pac. 319 (1917)), the conviction could stand under Bus. & Prof. Code § 16240, which makes carrying on a business without a license “required by any law of this State” a misdemeanor. By means of this rather surprising reasoning the petitioner was held to have been properly convicted under the city ordinance. The holding would seem to introduce a new wrinkle into California's licensing law—henceforth, a city may enforce its revenue licensing ordinances by criminal penalties, but it is the state's criminal penalties which must be used. Cf. note 10 supra.
The Groves case was followed in a recent district court of appeal decision where a revenue license imposed by the city of Berkeley was sustained, even though it was applied to a state licensed contractor and was enforced by criminal penalties. The court distinguished the Agnew cases on the ground that there the license fees were a part of a regulatory scheme and not imposed solely for revenue.

IV

IMPLICATIONS OF CITY AND STATE LICENSING

The supreme court in the two Agnew cases and the Groves decision apparently took divergent views as to the effect of state licensing. The view in Agnew is that the legislature has intended to occupy the field of licensing to the exclusion of local licensing enactments. Groves, on the other hand, stands for the proposition that the legislature has entered, but not occupied, the field of business regulation through licensing, and that cities are not precluded from enacting licensing ordinances solely for the acquisition of revenue, even though they include a minimal amount of regulation. It is submitted that both of these views result in mechanical solutions without regard to the realities of the problem. In addition to deciding whether cities or the state should have the ultimate control over business licensing, other complex issues are involved relating to the cities’ needs for revenue, the detrimental economic effects on intercity or intrastate commerce, and the right to do business in local markets.

Cities depend upon licensing as a source of revenue. There is nothing wrong with allowing cities to tax businesses—after all, they should bear their proportionate share of the cost of government services. Although the business license is an effective tool to insure compliance with taxing measures, it may be questioned whether the advantages to be gained from such a method of taxation are not outweighed by the burden which may be imposed upon the commerce of the state. Unquestionably, under the present system in which almost all cities impose flat license fees, individuals who engage in occupations which depend upon market areas extending beyond municipal boundaries bear greater burdens than those who carry on a business within a single city. Take, for instance, two individuals in a similar occupation; one does the same amount of business with seven stores in a large city as the other does with seven stores in seven smaller suburban communities. If taxed upon the amount of business done, both would pay approximately the same amount in taxes. But if the tax is imposed through the use of a flat license fee, one individual may have to pay seven times more than the other. Of course, the restrictive effect of city licensing would exist whether or not the state has licensed. When the state has licensed, the question is whether the legislature has intended to relieve businessmen of oppressive local licensing or whether it recognizes the problems involved, but feels that city licensing should be permissive.

In Groves and the two Agnew cases, the supreme court was faced with the same

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58 In re Groves, 54 A.C. 146, 4 Cal. Rptr. 844, 351 P.2d 1028 (1960).
60 Both Agnew v. City of Los Angeles, 51 Cal.2d 1, 330 P.2d 385 (1958) and the Groves case agreed that a city could tax a business; they disagreed as to the method of taxation.
problem—that of speculating as to legislative intent. The *Agnew* cases apparently favored the restriction of city licensing authority because of possible burdensome economic effects, regardless of the resulting loss of revenue to the cities. *Groves*, on the other hand, seemingly endorsed a policy of allowing cities freely to raise revenue through the use of licenses even though they may inflict multiple burdens upon intercity commerce. In view of the statewide matters involved, it may be asked whether it is not more desirable to leave the final resolution of the problem to the legislature.

In spite of the *Groves* case, the better position would seem to be that municipal licensing powers should be restricted.61 The use of a flat rate tax disguised as a license fee discriminates against intercity businesses and is inconsistent with the goal of free movement in intrastate commerce.62 To assure cities of a continued source of revenue from licensing while removing the oppressive effects of the present day system, a two-pronged program may be suggested. The legislature should restrict the licensing authority of general law cities by allowing only those fees which are reasonably related to the amount of business done within the city.63 Such a statute would be of no effect as to the "municipal affairs" freedom of charter cities, but the courts, in response to legislative action, could recognize that in reality revenue licenses are no longer "municipal affairs."

Today, licensing, whether used to regulate or to acquire revenue, is of statewide concern since its impact reaches beyond city boundaries. When it is understood that revenue licensing by either a general law or charter city should be controlled—as regulatory licensing is now controlled—by general laws of the state defining the scope of municipal powers, the present unrealistic and oppressive system will give way to a program beneficial to the businesses of the state as a whole.

*Rondell B. Hanson*

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61 In the past, some courts have voiced disapproval of restrictive licensing by municipalities. "The general policy of the state is opposed to the raising of revenue by the collection of direct taxes as a condition precedent to the conduct of business." *In re Gritton*, 46 Cal. 2d 856, 858, 300 P.2d 7, 8 (1956). See also *Hill v. City of Eureka*, 35 Cal. App. 2d 154, 158, 94 P.2d 1025, 1027 (1939). "This public policy argument, while it does not result in a holding of lack of power to tax, does suggest that such tax ordinances must be scrutinized carefully . . . ." *Security Truck Line v. City of Monterey*, 117 Cal. App. 2d 441, 453, 256 P.2d 366, 374 (1953). "[T]he city of Redding may impose such a tax every other municipality in the state may impose a similar tax upon the same individual if he crosses its borders . . . . Even though the tax imposed by one city might not be burdensome additional levies by others could readily become so." *In re Porterfield*, 28 Cal. 2d 91, 117, 168 P.2d 706, 722 (1946) (license fee imposed upon a union solicitor).

62 There seem to be no constitutional or legislative provisions in California concerning the regulation of intrastate commerce, but in the interest of the economy of the state it cannot be doubted that commercial regulation should take place at the state level rather than allowing the cities to regulate on a piecemeal basis.

63 See *Arnke v. City of Berkeley*, 185 A.C.A. 931, 8 Cal. Rptr. 645 (1960), where the license fees were based upon the average number of people employed in the licensed business during the period in which the business was conducted within the city.