

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

On the same ground of public agency, neither appointment nor election to public office creates a contract in the sense of Article I, § 10, whether as to tenure, or salary, or duties, all of which remain, so far as the Constitution of the United States is concerned, subject to legislative modification or outright repeal.¹⁹⁸⁵ Indeed, there can be no such thing in this country as property in office, although the common law sustained a different view sometimes reflected in early cases.¹⁹⁸⁶ When, however, services have once been rendered, there arises an implied contract that they shall be compensated at the rate in force at the time they were rendered.¹⁹⁸⁷ Also, an express contract between the state and an individual for the performance of specific services falls within the protection of the Constitution. Thus, a contract made by the governor pursuant to a statute authorizing the appointment of a commissioner to conduct, over a period of years, a geological, mineralogical, and agricultural survey of the state, for which a definite sum had been authorized, was held to have been impaired by repeal of the statute.¹⁹⁸⁸ But a resolution of a local board of education reducing teachers' salaries for the school year 1933–1934, pursuant to an act of the legislature authorizing such action, was held not to impair the contract of a teacher who, having served three years, was by earlier legislation exempt from having his salary reduced except for inefficiency or misconduct.¹⁹⁸⁹ Similarly, the Court held that an Illinois statute that reduced the annuity payable to retired teachers under an earlier act did not violate the Contract Clause, because it had not been the intention of the earlier act to propose a contract but only to put into effect a general policy.¹⁹⁹⁰ On the other hand, the right a teacher whose position had become “permanent” under the Indiana Teachers Tenure Act of 1927, to continued employment was held to be contractual and to have been impaired by the repeal in 1933 of the earlier act.¹⁹⁹¹

Tax Exemptions: When Not “Contracts”.—From a different point of view, the Court has sought to distinguish between grants of privileges, whether to individuals or to corporations, which are

¹⁹⁸⁵ *Butler v. Pennsylvania*, 51 U.S. (10 How.) 402 (1850); *Fisk v. Jefferson Police Jury*, 116 U.S. 131 (1885); *Dodge v. Board of Education*, 302 U.S. 74 (1937); *Mississippi ex rel. Robertson v. Miller*, 276 U.S. 174 (1928).

¹⁹⁸⁶ *Butler v. Pennsylvania*, 51 U.S. (10 How.) 420 (1850). *Cf.* *Marbury v. Madison*, 5 U.S. (1 Cr.) 137 (1803) *Hoke v. Henderson*, 154 N.C. (4 Dev.) 1 (1833). *See also* *United States v. Fisher*, 109 U.S. 143 (1883); *United States v. Mitchell*, 109 U.S. 146 (1883); *Crenshaw v. United States*, 134 U.S. 99 (1890).

¹⁹⁸⁷ *Fisk v. Jefferson Police Jury*, 116 U.S. 131 (1885); *Mississippi ex rel. Robertson v. Miller*, 276 U.S. 174 (1928).

¹⁹⁸⁸ *Hall v. Wisconsin*, 103 U.S. 5 (1880). *Cf.* *Higginbotham v. City of Baton Rouge*, 306 U.S. 535 (1930).

¹⁹⁸⁹ *Phelps v. Board of Education*, 300 U.S. 319 (1937).

¹⁹⁹⁰ *Dodge v. Board of Education*, 302 U.S. 74 (1937).

¹⁹⁹¹ *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95 (1938).