either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public. Such are the railroads, other common carriers and public utilities. (2) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary laws by Parliament or Colonial legislatures for regulating all trades and callings. Such are those of the keepers of inns, cabs and grist mills. (3) Businesses which though not public at their inception may be fairly said to have risen to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly."

Through application of this formula, the Court sustained state laws regulating charges made by grain elevators,[143] stockyards,[144] and tobacco warehouses,[145] as well as fire insurance rates[146] and commissions paid to fire insurance agents.[147] The Court also voided statutes regulating business not "affected with a public interest," including state statutes fixing the price at which gasoline may be sold,[148] regulating the prices for which ticket brokers may resell theater tickets,[149] and limiting competition in the manufacture and sale of ice through the withholding of licenses to engage in such business.[150]

In the 1934 case of *Nebbia v. New York*,[151] however, the Court finally shelved the concept of "a business affected with a public interest,"[152] upholding, by a vote of five-to-four, a depression-induced

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[143] Munn v. Illinois, 94 U.S. 113 (1877); Budd v. New York, 143 U.S. 517, 546 (1892); Brass v. North Dakota ex rel. Stoesser, 153 U.S. 391 (1894).

[144] Cotting v. Kansas City Stock Yards Co., 183 U.S. 79 (1901).

[145] Townsend v. Yeomans, 301 U.S. 441 (1937).

[146] German Alliance Ins. Co. v. Kansas, 233 U.S. 389 (1914); Aetna Insurance Co. v. Hyde, 275 U.S. 440 (1928).

[147] O'Gorman & Young v. Hartford Ins. Co., 282 U.S. 251 (1931).

[148] Williams v. Standard Oil Co., 278 U.S. 235 (1929).

[149] Tyson & Bro. v. Banton, 273 U.S. 418 (1927).

[150] New State Ice Co. v. Liebmann, 285 U.S. 262 (1932). *See also* Adams v. Tanner, 244 U.S. 590 (1917); Weaver v. Palmer Bros., 270 U.S. 402 (1926).

[151] 291 U.S. 502 (1934).

[152] In reaching this conclusion the Court might be said to have elevated to the status of prevailing doctrine the views advanced in previous decisions by dissenting Justices. Thus, Justice Stone, dissenting in Ribnik v. McBride, 277 U.S. 350, 359–60 (1928), had declared: "Price regulation is within the State's power whenever any combination of circumstances seriously curtails the regulative force of competition so