

Statutes forbidding or regulating the manufacture of oleomargarine have been upheld,<sup>344</sup> as have statutes ordering the destruction of unsafe food<sup>345</sup> or confiscation of impure milk,<sup>346</sup> notwithstanding that, in the latter cases, such articles had a value for purposes other than food. There also can be no question of the authority of the state, in the interest of public health and welfare, to forbid the sale of drugs by itinerant vendors<sup>347</sup> or the sale of spectacles by an establishment where a physician or optometrist is not in charge.<sup>348</sup> Nor is it any longer possible to doubt the validity of state regulations pertaining to the administration, sale, prescription, and use of dangerous and habit-forming drugs.<sup>349</sup>

Equally valid as police power regulations are laws forbidding the sale of ice cream not containing a reasonable proportion of butter fat,<sup>350</sup> of condensed milk made from skimmed milk rather than whole milk,<sup>351</sup> or of food preservatives containing boric acid.<sup>352</sup> Similarly, a statute intended to prevent fraud and deception by prohibiting the sale of "filled milk" (milk to which has been added any fat or oil other than a milk fat) is valid, at least where such milk has the taste, consistency, and appearance of whole milk products. The Court reasoned that filled milk is inferior to whole milk in its nutritional content and cannot be served to children as a substitute for whole milk without producing a dietary deficiency.<sup>353</sup>

Even before the passage of the 21st Amendment, which granted states the specific authority to regulate alcoholic beverages, the Supreme Court had found that the states have significant authority in this regard.<sup>354</sup> A state may declare that places where liquor is

<sup>344</sup> *Powell v. Pennsylvania*, 127 U.S. 678 (1888); *Magnano v. Hamilton*, 292 U.S. 40 (1934).

<sup>345</sup> *North American Storage Co. v. City of Chicago*, 211 U.S. 306 (1908).

<sup>346</sup> *Adams v. City of Milwaukee*, 228 U.S. 572 (1913).

<sup>347</sup> *Baccus v. Louisiana*, 232 U.S. 334 (1914).

<sup>348</sup> *Roschen v. Ward*, 279 U.S. 337 (1929).

<sup>349</sup> *Minnesota ex rel. Whipple v. Martinson*, 256 U.S. 41, 45 (1921).

<sup>350</sup> *Hutchinson Ice Cream Co. v. Iowa*, 242 U.S. 153 (1916).

<sup>351</sup> *Hebe Co. v. Shaw*, 248 U.S. 297 (1919).

<sup>352</sup> *Price v. Illinois*, 238 U.S. 446 (1915).

<sup>353</sup> *Sage Stores Co. v. Kansas*, 323 U.S. 32 (1944). Where health or fraud are not an issue, however, police power may be more limited. Thus, a statute forbidding the sale of bedding made with shoddy materials, even if sterilized and therefore harmless to health, was held to be arbitrary and therefore invalid. *Weaver v. Palmer Bros. Co.*, 270 U.S. 402 (1926).

<sup>354</sup> "[O]n account of their well-known noxious qualities and the extraordinary evils shown by experience commonly to be consequent upon their use, a State has power absolutely to prohibit manufacture, gift, purchase, sale, or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment." *Crane v. Campbell*, 245 U.S. 304, 307 (1917), citing *Bartemeyer v. Iowa*, 85 U.S. (18 Wall.) 129 (1874); *Beer Co. v. Massachusetts*, 97 U.S. 25, 33 (1878); *Mugler v. Kansas*, 123 U.S. 623 (1887); *Crowley v. Christensen*, 137 U.S. 86,