

provisions that deal with wages and hours of pay of cities and other governmental subdivisions; is that correct?

A That's correct.

Q Do these provisions inflict irreparable injury on the cities or on the other subdivisions of the state?

A I think I personally am not aware of any such [80] allegation.

Q Why don't they inflict injury, irreparable injury upon the cities or other subdivisions?

A I must assume they are equitable. They are subdivisions, of course, of the state.

Q So equitable –

A Even if there were inequities, I guess, would be my point. I don't suggest that there are.

Q So equitable regulation of hours and wages of city and other subdivisions of states, employees, don't inflict irreparable injury upon those subdivisions as long as they are equitable?

A I did not answer that way.

MR. CHARLES RHYNE: You are trying to draw a distinction between the federal government and the states now?

MR. DODELL: I am trying to ask questions and elicit answers.

MR. CHARLES RHYNE: I see what you are doing. I just want him to understand it.

THE WITNESS: I see it, too. I didn't answer the earlier question.

[81] BY MR. DODELL:

Q I don't want to misstate what you said.

A I said, number one, I was unaware of any such allegation. I spoke of equity and I spoke further it

wouldn't make any difference, anyway, because there are subdivisions of the state quite different than the relationship of the state to the federal government.

Q Is it your opinion that having had your whole working life in state government, that state provisions that regulate hours and wages of employees of cities and other governmental subdivisions inflict irreparable injury upon those cities and other subdivisions?

A No, sir.

Q It is your opinion they do not?

A That's correct.

Q And the reason for that is because they are equitable; is that what you have said?

A I did not say that. I am not aware of any allegation of any inequity, I said.

MR. CHARLES RHYNE: He also said that after all, a state can do what it wants to do with its own political subdivisions. They are part of the state. You [82] don't have a question of equity, really.

BY MR. DODELL:

Q Mr. Byrley, you are saying it doesn't matter if --

A I would say --

Q Let me just try to finish it.

You are saying it doesn't matter if the state regulation would inflict irreparable injury upon the state or the subdivisions, because the state or the subdivision is subordinate to the state?

A I am saying we do not have the Constitutional issue that is obvious and inherent and implicit in the question.

Q Well, Mr. Byrley, you can explain your answer, but it seems to me that you can try to answer the question. I think you already said it --

A I think it is hypothetical, as I have indicated.

MR. CHARLES RHYNE: He has answered it two or three times, really, the best anybody could answer such a question.

MR. DODELL: Thank you, Mr. Rhyne.

[83] BY MR. DODELL:

Q Now, why were those statutes thought necessary?

MR. CHARLES RHYNE: Now you are covering, Mr. Dodell, an enormous area of state law; and to have him explain why every enactment of a state relating to state personnel is necessary is a long, long story. Really I don't see that it is relevant to this lawsuit. He's not a lawyer; but if you insist upon an answer, I will let him answer the best he can.

MR. DODELL: Well, Mr. Rhyne, just to respond, I could have given an answer that would be shorter than your observation. It may not be accurate.

Could I suggest what it would be? Mr. Byrley can agree or disagree.

MR. CHARLES RHYNE: Okay.

MR. DODELL: Because the cities were not providing adequate wages or working conditions.

BY MR. DODELL:

Q Do you agree with that, Mr. Byrley?

A I don't agree or disagree. I am not qualified to answer the question. I understand the question. I am simply saying I am not qualified to answer it.

Q [84] You mean with 23 years, or your whole working life in state government, you can't express an opinion on that question why were these statutes deemed necessary?

MR. CHARLES RHYNE: Every one of them has a

different background, Mr. Dodell.

THE WITNESS: You find some with a Constitutional base, some with a statutory base. I worked with the legislature; and a given legislator, because of his feeling – not the body, his feeling of inequity, would seek, you know, to provoke Constitutional change, statutory change.

I don't feel qualified to give you the kind of answer that would satisfy you.

BY MR. DODELL:

Q Now we could find the page reference if we have to, in Mr. Pritchard's deposition, but Mr. Pritchard said that – and I am paraphrasing what he said, because I don't have the passage in front of me, that those statutes were merely politically motivated and without need.

Do you agree with that?

MR. CHARLES RHYNE: Each one of them was different.

THE WITNESS: Again I don't feel I can respond intelligently any more so than to the last question.

[85] BY MR. DODELL:

Q You can't answer that question?

A No, sir.

Q Just for the record, let me ask it again so we know what question you can't answer:

Were those statutes merely politically motivated and without need?

MR. CHARLES RHYNE: He says he can't answer it.

MR. DODELL: Fine.

BY MR. DODELL:

Q Do the wages that a state pays its employees and the terms upon which it pays its employees for overtime have

any impact on its tax rate?

A It is extremely doubtful in my judgment.

MR. CHARLES RHYNE: That's where it gets all its money.

MR. DODELL: Was that on or off the record, Mr. Rhyne?

MR. RHYNE: It can be on the record.

THE WITNESS: Would you repeat the question?

MR. CHARLES RHYNE: I am not sure he understood the question.

[86] BY MR. DODELL:

Q Do the wages that a state pays to its employees and the way in which it handles payment of overtime compensation to employees have an impact on the state tax rate?

A I see very distinctly a cause-effect relationship, and I think that's what it is.

Q In other words, if the wages are higher and if there's greater compensation for overtime, then the tax rate might go up?

A If other considerations brought about the tax increase. I think it works both ways.

Q [87] Now, do some states seek to attract new industry and new residents and for example, retirees?

MR. CHARLES RHYNE: You are speaking of the state itself as distinguished from groups within the state? You are talking about state government, for example?

MR. DODELL: Yes.

MR. CHARLES RHYNE: As distinguished from individuals promoting retiree developments and things like that?

MR. DODELL: State governments.

THE WITNESS: I think the state government per se, essentially no. If it were even partially yes, it is the most indirect – it would come in the most indirect form.

BY MR. DODELL:

Q Haven't you ever seen advertisements from the state of "X" or "Y" to consider relocating in that state?

A I might have seen one. I don't – again, I take your question as a very broad and generally attributable to states. I don't know of any one state that ever failed to do anything.

It is part of the system, as it were. My answer would stand as I gave it. I don't view this as any essential functions or one that is carried out for that matter, [88] except in such a negligible degree that it sounds inconsequential.

Q But you have seen advertisements from states that do attempt to attract industry? Was that part of your answer?

A I can answer that I can very clearly vividly recollect one state advertising for industry.

Q Which state was that?

A Mississippi.

Q Now, are tax rates one element that is relevant to the choice that may be made by an industry or an individual to locate in a particular state?

A Not in my opinion.

MR. CHARLES RHYNE: Let's shorten up these answers. Let's let it go at that. Just let it go. I think on these advertisements you are going to find the chamber of commerce pays for it but they have the governors' picture on it.

MR. DODELL: That is not testimony.

MR. CHARLES RHYNE: Well, I lived in this field all my life, I know what goes on.

MR. DODELL: That may be , Mr. Rhyne, but that [89] is not testimony and the court can't take judicial notice.

If you want to document it, I would be pleased to receive the documentation.

MR. CHARLES RHYNE: No.

BY MR. DODELL

Q Why would a state —

A With that exchange, I would like to add a footnote, I don't know who paid for the ad from Mississippi.

Q Why would a state that pays its employees relatively high wages and premium overtime pay be interested in defending the authority of another state to pay relatively lower wages and not to pay premium overtime pay?

MR. CHARLES RHYNE: That is a very “iffy” speculative kind of a question.

Do you understand that? It just doesn't seem to me that any state would be doing what you are suggesting, Mr. Dodell.

MR. DODELL: Well, I don't understand that, Mr. Rhyne. The complaint alleges that the Governors' Conference is filing this suit on behalf of all of its members, which are 50 states. So, it seems to me that according to the allegations of the complaint, there are states that are [90] doing that, if that allegation is correct.

MR. CHARLES RHYNE: There is no allegation in there that the states that pay high wages are defending states who pay low ones and all that kind of thing.

MR. DODELL: I think that is the effect of the lawsuit, Mr. Rhyne.

MR. CHARLES RHYNE: This is your interpretation.

MR. DODELL: That is why I think it is relevant.

MR. CHARLES RHYNE: Well, I don't, but if he thinks he wants to comment, go ahead.

THE WITNESS: No comment.

BY MR. DODELL:

Q You mean you can't answer it? Just so the record is clear, we are going to have a transcript of this. I would like the record to be clear. You just don't choose to answer?

A It is not a matter of choice. I can't conceive of — it makes no sense to me, the question doesn't.

Q The question doesn't make any sense to you?

A No, sir.

Q Do you know whether all 50 governors support this lawsuit?

A [91] I don't know.

Q Could you explain the statement at the end of paragraph six of the verified complaint that the Conference brings this action on its own behalf and on behalf of its members?

A Can I explain that statement?

Q That is what I asked you.

A That is an action of the executive committee of the Governors' Conference.

MR. CHARLES RHYNE: All right. Now you have answered the question. I am trying to speed this up a little bit.

You have answered it, just stop there.

BY MR. DODELL:

Q Do you know whether — let me strike that.



And that is the entire basis of that statement, is that correct?

A Yes.

Q Have any governors indicated that they do not support this suit?

A No, sir.

Q On page nine of the complaint, in the last two [92] sentences the statements are made, "In providing these essential government services plaintiffs extensively used voluntary boards and commission whose members are not compensated —"

A I am sorry. I am not following.

Q This is the complaint, page nine. The last sentence in paragraph 16. The last two sentences.

A All right.

Q "In providing essential government services Plaintiffs extensively use voluntary boards and commissions whose members are not compensated or who are paid nominal compensation. The Act makes use of these voluntary boards, commissions, and workers financially impossible."

Now, the Act does not eliminate voluntary noncompensated boards, does it?

A I don't know.

Q Do you know whether the 1966 amendments resulted in a cutback of the government services that were covered by that Act?

A Would you repeat it again?

MR. DODELL: Would you read that back, please?

(The question was read as requested.)

[93] THE WITNESS: No, I don't know. I would like to — again, counselor, make an observation on the

previous question, where you asked me about the Act: Does it — and I will give — I gave you an “I don’t know.”

I should point out that it has been indeed several days, if not weeks, since I read that Act. There is a lot yet that I have to read. I think the question is really unfair almost to put any question to me, does that Act specifically allow this or that or anything else, particularly I would go back as I have done previously to the whole body, both of law and of regulations in the Department of Labor.

I think if I might respectfully indicate that it is somewhat unfair for me to be asked a question or no question in that respect.

BY MR. DODELL:

Q Well, there is no intention on my part to be unfair, Mr. Byrley.

A I understand.

Q I simply ask the questions that I think it is appropriate to ask.

MR. CHARLES RHYNE: You are not a lawyer. We understand that.

[94] MR. DODELL: I meant to say I didn’t mean to put you in a position that is unfair.

I would like about a five-minute recess to consult with my colleague.

MR. CHARLES RHYNE: Fine.

(Recess.)

MR. DODELL: We have nothing further, Mr. Rhyne, and Mr. Byrley.

Thank you very much.

THE WITNESS: Thank you, sir.

MR. CHARLES RHYNE: Let’s stipulate that without the depositions being signed, that they shall be filed with

the court right away, without either side waiving their right to make any corrections that they feel may be necessary and that may be either mutually agreed upon or presented to the court for decision.

We stipulate that the depositions and all the documents that have been marked and referred to here may be filed with the court for use of either party as they see fit.

MR. DODELL: Thank you very much for that.

Mr. Rhyne, can I just ask one thing? There is [95] a large volume of exhibits which we have not duplicated. Would it be agreeable to you to file the depositions and then as soon as we duplicate the exhibits file them? Would you want to withhold the filing of the depositions until we get the exhibit duplicated?

MR. CHARLES RHYNE: I would say we can furnish a set of our exhibits to the reporter so he can bind them right in with the record, at the time he files them.

MR. DODELL: You can do that now you mean? We still have to duplicate some of our exhibits.

MR. CHARLES RHYNE: All right. Suppose we furnish him our set of everything, and then you furnish yours when you can?

MR. DODELL: In the meantime, the depositions with as many exhibits as are there can be filed and we will supply the others as soon as possible.

(The documents referred to were marked as Joint Deposition Exhibits 4(a), (b), and (c), and 6(a), (b), and (c) for identification.)

(Whereupon the taking of the deposition was adjourned at 12:45 p.m.)

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