

The Attempts to Regulate  
Chain Stores  
By Legislation.

by

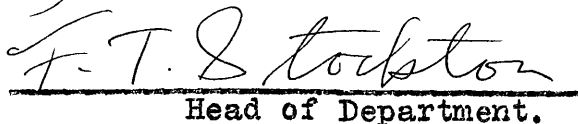
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## Outline.

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## Preface.

The chain store has become the subject of considerable study in the marketing field. In connection with the various viewpoints encountered in this field, I have been impressed with the amount of bitterness I have found among certain classes who are opposed to this type of merchandising organization. This phase of the subject gave me the desire to make a study of the attempts to legislate against the chain store, and to try to determine the motive behind such attempts, together with the probability of the success of these efforts.

My study has been only of legislation and I have made no effort to set forth my ideas of the economic desirability of such legislation. My conclusions are only as to the possibility of framing laws of such a nature that they will affect chain stores and yet exempt the independent merchant. These conclusions are based upon decisions handed down by the courts that have been called upon to pass upon the constitutionality of such laws when enacted.

This work is divided into two sections. The first section deals with anti-chain store laws which have been enacted, contesting litigation on these laws, and

the final disposition of them. The second section deals with bills which were introduced in the various state legislatures but which failed to become laws. Especial attention has been paid to the bill introduced in the Kansas Legislature of 1931, through the attendance of legislative sessions and open committee meetings, and through discussion of the bill with many of the legislators who were active both for and against its passage.

My information has been compiled through examination of the cases in law as affecting the final disposition of anti-chain store laws, examination of the documents of the various state legislatures, correspondence with the attorney-generals of the states in which anti-chain store laws have been passed, and correspondence with legal authorities and members of state legislatures who are particularly interested in this type of law. Certain magazine and newspaper articles have also been found helpful in the gathering of this information.

Dean Stockton, Mr. Axe, Mr. Kissick, and Mr. Teviotdale, of the School of Business, have given me very valuable aid in this work.

## Anti-Chain Store Legislation.

Development of Legislation. Anti-chain store legislation has held a rather important place on the programs of many of our state legislatures since 1927. Prior to that time little interest was shown by legislative bodies in this matter. The increasing growth of chains in many lines of industry, together with the growing distress of a great many independent merchants, who believed the chains to be the cause of most of their troubles, caused a great mass of bills to be presented before the state legislative bodies in an attempt to correct the supposed evil. In 1925, only two such bills found their way into legislative consideration and yet, in 1929 sixty-three such bills were considered.

Three Types of Bills. Most of these bills have been patterned along somewhat similar lines and divided into three types. The first of these three, and the one most common, proposes a license tax to be levied on each unit owned or operated by the same proprietor, but providing exemption for the proprietor who operates a limited number of units. This limit has been set at various points; in some cases at five, in others at three, and in the later bills, at one. The second

type of anti-chain store bill is one which proposes a license tax on each unit operated, including the first, but with that tax graduated upward as the number of units under one proprietor increases. The third type of anti-chain store bill provides a gross sales tax, either graduated upward with volume of sales, or with an exemption for the proprietor who does a small volume of business.

The Purpose of Anti-Chain  
Store Legislation.

Disregarding for the time the number of units necessary to constitute a chain of stores, and remembering that most of the legislation is really aimed at the big, national chains, I find two reasons advanced for this type of legislation. The aims of the authors of these bills are; first, the regulation of the growth of chains of stores, and second, the raising of revenue. I have attempted to find which of these functions is the more important and believe that there may be a difference as to which is considered the more important, according to what state is being considered. Some bills frankly state that they are intended to keep down the menace of chain store growth in order to protect the independent merchant, while others claim as their sole purpose the raising of revenue. The courts have decided that the public interest is not so involved as to cause such laws to fall within the police power and

that they are, therefore, purely revenue measures.

Bills That Have Become Laws. Three states have shown a dogged determination to place anti-chain store laws on their statute books, as is shown by the fact that each of them has enacted a second such law after their first attempts had met with adverse judicial action. These states are North Carolina, Georgia, and South Carolina. North Carolina and Georgia passed such laws in 1927 and repeated in 1929. South Carolina enacted her first anti-chain store law in 1928 and the second in 1930. Pennsylvania and Maryland were apparently satisfied when their first laws met with judicial disapproval, and Indiana has needed no second attempt to pass a valid law.



## Anti-Chain Store Laws of 1927.

The First Laws The first real attempt to legislate to be Enacted. against chain stores came in 1927. As the result of legislative action of that year, five laws were enacted that could be classed as anti-chain store. The state legislatures taking this action were those of North Carolina, Maryland, Georgia, Pennsylvania, and Michigan. New Mexico enacted an occupational tax law in 1927 which is classified by some as anti-chain store legislation. This law does not have the characteristics of an anti-chain store act and, after studying its provisions, I doubt that it was intended as such by the New Mexico legislature. This law will be further considered in a section dealing with gross sales tax laws. The North Carolina, Maryland, and Georgia laws were frankly anti-chain while the Pennsylvania law was aimed at the chains in a more roundabout manner through the restriction of ownership. The Michigan law was drawn up in such a manner as to resemble the one passed in Pennsylvania, but, in the Michigan act, the provisions were less drastic and the law failed to draw the fire of contesting litigation. There is little doubt that this law was aimed at chain drug stores and as it stands now, the statute would prevent corporations which did not conduct drug stores within the state at the

time the law was passed, from establishing stores in Michigan.

North Carolina The North Carolina law of 1927 was one Law of 1927. of the first such laws to be placed on the statute books. It reads as follows:

"Section 162. Branch or Chain Stores. That any person, firm, corporation, or association operating or maintaining within this state, under the same general management, supervision or ownership, six or more stores or mercantile establishments, shall pay a license tax of \$ 50 for each such store, or mercantile establishment in the state, for the privilege of operating or maintaining such stores or mercantile establishments."<sup>1</sup>

The constitutionality of this law was disputed by a group of chain stores which included the Great Atlantic and Pacific Tea Company, J. C. Penney Company, G. R. Kinney Company, and the L. B. Price Mercantile Company. The case was heard by the Superior Court of Wake County, North Carolina in Great Atlantic and Pacific Tea Company v. Doughton. This court found the act to be null and void, and ordered that the monies collected under the act should be returned. The case was then appealed by the defendant to the Supreme Court of North Carolina and was heard by that court on May 3, 1928. A decision was rendered by the Supreme Court on October 10, 1928 and this decision affirmed the judgment of the lower court.<sup>2</sup> Attorneys for the chain stores contended

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1. North Carolina Public Laws 1927, Chapter 80, Sn. 162.

2. Great Atlantic and Pacific Tea Company v. Doughton. 196 N. C. 145; 144 S. E. 701.

that this law was in contravention of section 3 of article 5 of the Constitution, which provides that taxation shall be by a uniform rule. They also claimed the law was in violation of section 1 of the fourteenth amendment to the Constitution of the United States, in that it deprived the plaintiffs of the equal protection of the law. The Court upheld the contentions of the plaintiffs in the following statement:

"The classification made in the Statute, by which a license tax is imposed upon retail merchants, who maintain or operate, under the same general management, supervision or ownership, six or more stores or mercantile establishments and by which other retail merchants, who maintain or operate a less number of stores or mercantile establishments than six are exempt from such a tax, cannot be held as founded upon a real and substantial difference between the two classes. The classification attempted for the purpose of imposing a license tax upon merchants falling within one class, and exempting merchants falling within the other class, is, we think, under the authorities, clearly arbitrary, and if enforced would result in depriving merchants, who are within the first class, of the equal protection of the laws of this State. It is immaterial that persons, firms, corporations or associations, liable under the terms of the statute for a license tax, are designated therein as owners of chain stores. Their business differs from the business of other merchants, not taxed by the statute, only in matters of detail and methods of buying and selling merchandise. No question of public policy with reference to chain stores is presented on this record. The statute whose validity is challenged by the plaintiffs, was enacted by the General Assembly solely for the purpose of raising revenue; it is so admitted by the parties to this action; there is no suggestion in the statute, or upon the facts disclosed at the trial to the contrary. The license tax imposed by this statute and paid by the plaintiffs, who under the admitted facts are included within the class made liable for a license tax, is illegal, for the reasons that the statute is in violation of the Constitution, both of this State and of the United States."<sup>3</sup>

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3. Great Atlantic and Pacific Tea Company v. Doughton.  
144 S. E. 701. Page 705.

The Maryland Law of 1927. The 1927 Maryland law was the most drastic of any of the acts of 1927 directed against chain stores. This law applied only to Allegany County, in which Cumberland is located. The law was as follows:

"Section 1. Be it enacted by the General Assembly of Maryland, That on and after June 1, 1927, it shall be unlawful within Allegany County, Maryland, for any person, firm, association, or corporation, its servants or agents to establish, own, operate, set-up or cause to be established, owned or operated either directly or indirectly, under trade name for the sale of any brand of goods, wares, merchandise, more than five mercantile or other stores for the sale of goods, wares, or merchandise, commonly, known as chain store or chain stores for the sale or retail of any goods, wares, or merchandise; any person, firm, association, or corporation, its officers, agents, consignees or servants violating the provisions of this Section shall be deemed guilty of a misdemeanor upon conviction before the Circuit Court of Allegany County, and shall be fined not less than Five Hundred(\$ 500.00)Dollars for each and every offense, all fines imposed under this section shall be paid over to the County Commissioners of Allegany County for the use of the public school system of Allegany County.

Section 2. And be it further enacted, That in addition to the license fees now imposed in Allegany County under general or local laws against the person, firm, or corporation set forth in Section 1, before said person, firm, or corporation mentioned in the preceding section and the limitations therein contained shall own, operate, or maintain any of said chain stores in Allegany County they shall first obtain from the Clerk of the Circuit Court for Allegany County a special license to be known as a chain store license and pay to said Clerk of the Court for each and every chain store operated by said individual, firm, or corporation, the sum of Five Hundred(\$ 500.00)Dollars per year, which said license shall be payable to and collected by the Clerk of the Circuit Court for Allegany County for the use of the County Commissioners of Allegany County in the same manner and form as traders' licenses are now issued, collected and payable. Any person, firm, association, or corporation owning and operating said chain store or stores in Allegany County, Maryland, after June 1, 1927, shall be deemed guilty of a

misdemeanor and upon conviction thereof by the Circuit Court of Allegany County shall in addition to said license fee herein stipulated to be paid be fined not less than Five Hundred(\$ 500.00)Dollars for each and every offense, said fine to be paid to the County Commissioners of Allegany County for the use of the public school system of Allegany County."<sup>4</sup>

The constitutionality of this law was argued before Judge Doub, of the Circuit Court of Allegany County, Maryland, on April 21, 1928. The Keystone Grocery and Tea Company was the plaintiff but this company was aided in the case by several other chain organizations. Judge Doub granted a permanent injunction against the enforcement of this law on the grounds that it violated the Fourteenth Amendment to the Constitution of the United States. Judge Doub said, "The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual or unnecessary restrictions upon lawful occupations". He also said, "Classes cannot be made", and "Equal protection is guaranteed".<sup>5</sup>

The Georgia The 1927 Georgia law is found in paragraph Law of 1927. 109 of the General Tax Act, Georgia Laws 1927. It reads as follows:

"Upon every person, firm or corporation owning, operating, maintaining or controlling a chain of stores

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4. Laws of Maryland 1927, Chapter 554, Page 1129.

5. Louis K. Liggett v. Baldrige. 49 S Ct. 57. Page 59.

consisting of more than five stores, the sum of \$ 250 for each store in excess of five. 'Chain of Stores' as used herein shall mean and include five or more stores owned, operated, maintained or controlled by the same firm, person or corporation in which goods, wares or merchandise of any kind are sold at retail in the State of Georgia. Provided, that the provisions of this paragraph shall apply to wholesale chain-stores as well as retail chain-stores, and in no event shall be construed to apply to persons, firms, or corporations engaged in the sale of gasoline, motor-oils, and kindred lines when not sold in grocery stores."<sup>6</sup>

An injunction was granted against the enforcement of this law by the Superior Court of Fulton County in January 1928, in Woolworth v. Harrison. No appeal was taken from this decision and this section of the law was amended by the 1929 legislature.<sup>7</sup>

The Pennsylvania Law of 1927. The 1927 Pennsylvania law is a supplement to the Pharmacy Regulatory Act of 1917. It was signed by the Governor of the state on May 13, 1927. This law makes no reference to chain stores, but strikes at corporation owned drug stores through the restriction of drug store ownership to licensed pharmacists. The law reads as follows:

"Section 1. Be it enacted, &c., That every pharmacy or drug store shall be owned only by a licensed pharmacist, and no corporation, association or copartnership shall own a pharmacy or drug store, unless all the partners or members thereof are licensed pharmacists; except that any corporation organized and existing under the laws of the Commonwealth or of any other state of the

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6. Georgia Laws 1927. General Tax Act. Paragraph 109.  
7. South Carolina House Bill No. 903. 1929.

United States, and authorized to do business in the Commonwealth, and empowered by its charter to own and conduct pharmacies or drug stores, and any association or copartnership which at the time of the passage of this act, still owns and conducts a registered pharmacy or pharmacies or a drug store or drug stores in the Commonwealth, may continue to own and conduct the same; but no other or additional pharmacies or drug stores shall be established, owned, or conducted by such corporation, association or copartnership, unless all the members or partners thereof are registered pharmacists; but any such corporation, association or copartnership, which shall not continue to own at least one of the pharmacies or drug stores theretofore owned by it, or ceases to be actively engaged in the conduct of a pharmacy, shall not be permitted thereafter to own a pharmacy or a drug store, unless all of its partners or members are registered pharmacists; and except that any person, not a licensed pharmacist, who, at the time of the passage of this act, owns a pharmacy or a drug store in the Commonwealth, may continue to own and conduct the same, but shall not establish or own any additional pharmacy or drug store, or if he or she ceases to operate such pharmacy or drug store, shall not thereafter own a pharmacy or drug store, unless he or she be a registered pharmacist; and except that the administrator, executor, or trustee of the estate of any deceased owner of a registered pharmacy or drug store, may continue to own and conduct such pharmacy or drug store during the period necessary for the settlement of the estate."<sup>8</sup>

The Louis K. Liggett Company asked that an injunction be granted, restraining the enforcement of this act but the court, consisting of three federal judges, refused to grant the plea. "The statute was held constitutional upon the ground that there was a substantial relation to the public interest in the ownership of a drug store where prescriptions were compounded. In support of this conclusion, the Court said that medicines must be in the

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8. General Assembly of Pennsylvania of 1929. Act No. 491.

store before they can be dispensed; that what is there is dictated not by the judgment of the pharmacist but by those who have the financial control of the business; that the legislature may have thought that a corporate owner in purchasing drugs might give greater regard to price than to quality, and that if such was the thought of the legislature the court would not undertake to say that it was not without a valid connection with the public interest and so unreasonable as to render the statute invalid."<sup>9</sup>

The plaintiff, the Louis K. Liggett Company, appealed the case direct to the Supreme Court of the United States and that court reversed the decision of the lower court. A part of the Court's opinion as delivered by Mr. Justice Sutherland follows:

"The claim that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance. This is not enough; and it becomes our duty to declare the act assailed to be unconstitutional as in contravention of the due process clause of the Fourteenth Amendment."<sup>10</sup>

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10. Louis K. Liggett Company v. Baldrige, 49 S Ct. 60.  
9. Chain Store Age. January 1929. Page 32.



The Michigan Law of 1927. The 1927 Michigan law was aimed at chain drug stores. It is found in Michigan

Public Acts, 1927. This law reads as follows:

"Section 1. Every pharmacy, drug store or apothecary shop shall be owned by a registered pharmacist and no partnership or corporation shall own a drug store, pharmacy or apothecary shop unless at least twenty five per cent of all stock is held by registered pharmacists, except that any corporation, organized and existing under the laws of the state of Michigan and empowered by its charter to own and conduct pharmacies, drug stores or apothecary shops and which, at the time of the passage of this act, owns and conducts a drug store or stores, pharmacy or pharmacies, apothecary shop or shops in the state of Michigan may continue to own and conduct the same and may establish and own additional pharmacies, drug stores or apothecary shops in accordance with the provisions of this article: Provided, that any such corporation which shall not continue to own at least one of the pharmacies, drug stores or apothecary shops theretofore owned by it, or ceases to be actively engaged in the practice of pharmacy in the state of Michigan, shall not be permitted thereafter to own a drug store, pharmacy or apothecary shop: And provided further, That any person not a registered pharmacist who at the time of the passage of this act owns a pharmacy, drug store or apothecary shop in the state of Michigan, may continue to own and conduct the same in accordance with existing laws and regulations: And provided further, That the administrator, executor, or trustee of the estate of any deceased owner of a pharmacy, drug store or apothecary shop, or the widow, heirs or next of kin of such deceased owner, may continue to own and conduct such pharmacy, drug store or apothecary shop in accordance with existing laws and regulations."<sup>11</sup>

This law resembles the Pennsylvania anti-chain drug store law but is so modified in its provisions that it has never been tested in the courts. The law, as it now stands, has no effect upon those firms which owned

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11. Michigan Public Acts, 1927. Number 359.

drug stores in Michigan at the time of the passage of the act, but it serves as a bar to the establishment of stores in the state by any corporation which did not operate stores in the state when the law was passed. "This act has not been amended, repealed or passed upon by the Supreme Court of Michigan."<sup>12</sup>

The New Mexico Law of 1927. While the New Mexico occupational tax law is sometimes classed with anti-chain legislation, I see little reason to consider it as such. This law does not actually tax anything, but merely makes possible the levying of a tax by the governing bodies of towns and cities. The law provides that governing bodies of towns and cities shall have power to impose an occupational tax on almost every type of business in existence. The enumeration of the various occupations which may fall under this tax is made in section 1 of the law. Section 5 is as follows:

"In the case of occupational taxes assessed under section 1 of this act, such tax shall not exceed one dollar per annum for each one thousand dollars gross volume of business done except that a minimum tax of five dollars may be levied hereunder and collected."<sup>13</sup>

In correspondence concerning this law, Mr. E. K. Neumann, Attorney General of the State of New Mexico, makes the following statement: "I might say that nearly every

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12. Paul W. Voorhies, Attorney General, State of Michigan.

13. New Mexico House Bill No. 185. 1927.

incorporated city, town and village in the state has imposed such a tax and is collecting same, at least in so far as it is humanly possible. In theory, of course; this tax is a regulatory one as well as a revenue raising measure, tho the latter is the most important from the municipality's standpoint, and I am afraid that the regulatory feature is almost lost sight of."<sup>14</sup>

Final Disposition Of the six laws passed by the legislatures of 1927, which have been looked upon as anti-chain store measures, four were declared invalid<sup>15</sup> by the courts and these four were the ones which were undoubtedly anti-chain in their provisions. The Michigan act remains a law, together with the New Mexico occupational tax act. The Michigan act was certainly aimed at chain drug stores but is so harmless as to fail to precipitate a legal battle. I believe this act could be defeated in the courts on the same ground as was the Pennsylvania anti-chain drug store law, namely, that mere ownership does not bear a reasonable relation to the public health. The New Mexico occupational tax act would, no doubt, stand the test of constitutionality.

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14. E. K. Neumann, Attorney General, State of New Mexico.

Anti-Chain Store Law of 1928.

South Carolina While a majority of the state legis-  
Law of 1928. latures were idle during the year 1928,  
 South Carolina kept the chain store issue before the  
 public with her chain store license tax. This law was  
 as follows:

"Act 574. Section 24. Tax levied on mercantile establishments. That any person, firm, corporation or association operating or maintaining within this State, under the same general management, supervision, or ownership, five (5) or more stores or mercantile establishments, shall pay an annual license tax of One Hundred(\$ 100.00)Dollars, in addition to all other license fees or charges, for each store, or mercantile establishment in the State, for the privilege of operating or maintaining such stores or mercantile establishments: Provided, That the provisions of this paragraph shall not apply to persons, firms or corporations engaged in the selling of gasoline, motor oils and kindred fuels when not sold in grocery stores: Provided, further, That the tax herein provided shall apply to any person, firm or corporation which is controlled or held with four or more others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management: Provided, further, That every foreign corporation engaged in the chain store business upon the expiration of their current license, and/or upon taking out the first license to do business in this State, shall as a further condition for the privilege of coming into this State and doing business herein and when such chain store has five (5) or more stores within or without this State, pay to the South Carolina Tax Commission in addition to all other licenses and fees charged against them or it, an annual license tax of One Hundred(\$ 100.) Dollars for each separate store conducted, operated or established in this State."<sup>16</sup>

"The 1928 South Carolina law was declared unconstitutional by the Court of Common Pleas, Richland County, South Carolina on February 27, 1929, in the case of Southern Grocery Stores v. Query et al. No appeal was taken from this decision."<sup>17</sup>

Some eighteen state legislatures were in session in 1928 and of these, eight proposed anti-chain store laws. The South Carolina bill was the only one of this group to be enacted into law and it can be placed with the 1927 laws as one of the early experiments of the legislatures with this type of law. With a legal battle being waged to determine the constitutionality of the 1927 anti-chain store laws of Georgia, North Carolina, Maryland, and Pennsylvania, most of the legislative bodies were content to await the outcome of these contests before enacting laws of an anti-chain store nature.

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E. W. Simms, Legal Department, National Chain Store Association.

## Anti-Chain Store Laws of 1929.

Much Legislative Activity in 1929. The year 1929 saw great activity in the field of anti-chain store legislation. Most of the state legislatures were in session and some sixty-three bills were introduced in attempts to legislate against the chain store. Of this great mass of bills, only three became laws and two of these were the products of legislatures which had passed such laws in 1927, only to have them made ineffective by judicial decision. These two laws were enacted in Georgia and North Carolina. Indiana entered the field of anti-chain store legislation in 1929 with a license tax act which was unfavorable to the chain stores. The South Carolina legislature repealed the anti-chain store law it had enacted in 1928 and which had been found to be unconstitutional.<sup>18</sup>

The Georgia Law of 1929. The 1929 Georgia law is a modification of the 1927 law and was enacted as an amendment to that law. It is found in Paragraph 109 of the General Tax Act and reads as follows:

"Paragraph 109. Chain Stores. Under the police power of this State, the business of conducting chain stores and/or a chain of stores, for the selling of any kind of merchandise, hereby is classified as a business tending to foster monopoly; and there is hereby levied

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18. South Carolina House Bill No. 903. 1929.

upon each and every such person, firm or corporation, owning, operating, maintaining or controlling a chain of stores, consisting of more than five stores, the sum of \$ 50 for each store. 'Chain of Stores' as used herein shall mean and include five or more stores, owned, operated, maintained or controlled by the same firm, person or corporation, in which goods, wares, or merchandise of any kind are sold at retail in the State of Georgia. Provided, that the provisions of this paragraph shall apply to wholesale chain stores, and/or chains of stores as well as to retail chain stores; and provided further, that this tax shall apply to each and every chain of stores as herein defined, and said tax shall be paid by each store in any given chain, whether the same be owned, operated, and controlled by any person, firm, or corporation, or by any holding company or trustee, who holds the title and/or beneficial interest in the same, or in any units in any chains of stores, to and for the use and benefit of the owners of the entire chain of stores, or of any unit or units in the same."19

This law differs from the 1927 Georgia law in three ways. The bill attempts to make a legal ground for enforcing the law by specifying that this enforcement should come under the police power; the license tax was reduced from two hundred-fifty dollars in the 1927 law to fifty dollars in the 1929 law; and the 1929 law makes no attempt to exempt gasoline filling stations, while such stations were pointed out for exemption in the 1927 law. The F. W. Woolworth Company and others asked that an injunction be granted against the enforcement of this law but this action was dismissed in the Superior Court of Fulton County, on a demurrer by the state. An appeal was made to the Supreme Court of the

State and that Court held that the law was discriminatory, and therefore unconstitutional.<sup>20</sup> This decision was handed down on February 12, 1931. The finding of the Court was as follows:

"Under the above construction, the classification attempted to be made is founded on the difference between one who owns or operates more than five stores on the one hand, and one who operates five or less on the other, the act imposing tax on one operating six stores or more, and refusing to tax one who operates five or less stores. Such classification is arbitrary and unreasonable and is void because it is in conflict with article 7, of the Constitution of Georgia, Article 1 of the Constitution of Georgia and the Fourteenth Amendment to the Federal Constitution."<sup>21</sup>

"Another plaintiff operating five stores asked relief from the tax on the ground that it applied only to chains operating more than five stores. The terminology of the law itself was ambiguous, but the court, ruling for the plaintiff, held the interpretation giving the taxpayers the greatest protection must be taken."<sup>22</sup>

This ruling was made in the case of Mystyle Hosiery Shops Inc. v. Harrison.<sup>23</sup> This case was appealed from

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20. F. W. Woolworth Co. et al., v. Harrison, 156 S. E. 904.

21. Ibid. Page 905.

22. Journal of Commerce. Feb. 21, 1931. Page 9.

23. Mystyle Hosiery Shops Inc. v. Harrison, 155 S. E. 765.



the Superior Court of Fulton County, to the Supreme Court of Georgia after the lower court had decided against the plaintiff.

North Carolina The North Carolina law of 1929 is now Law of 1929. before the United States Supreme Court for final disposition. This law was upheld by the Supreme Court of North Carolina.<sup>24</sup> It is very similar to the North Carolina law of 1927 but was modified to meet what seemed to be the criticism of the court in declaring against the earlier act. The 1929 law reads as follows:

"Every person, firm or corporation engaged in the business of operating or maintaining in this state under the same general management, supervision or ownership, two or more stores or mercantile establishments where goods, wares and/or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator; Shall apply for and obtain from the commissioner of revenue a state license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license fifty dollars on each and every such store operated in this state in excess of one."<sup>25</sup>

The validity of this act was attacked by the Great Atlantic and Pacific Tea Company. Judge R. A. Nunn of the Superior Court of Wake County, North Carolina upheld as valid and constitutional, this law. The case was appealed to the Supreme Court of North Carolina and that court affirmed the decision of the lower court in

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24. Great Atlantic and Pacific Tea Company v. Maxwell, 154 S. E. 838; 199 N. C. 433.

25. North Carolina Public Laws 1929. Section 162, Ch. 345.

a ruling handed down September 17, 1930. In handing down the decision in this case, an explanation of the difference between this law and the one of 1927 was made by the court in the following statement: "A comparison of the statute involved in this action with that which we held void and unconstitutional in *Great Atlantic and Pacific Tea Company v. Doughton*, 196 N. C. 145; 144 S. E. 701, will disclose, we think, a vital and essential distinction between the two statutes. The tax imposed by section 162, chapter 80, Public Laws 1927, was not levied on chain-store operators, per se, as is the case in section 162, chapter 345, Public Laws 1929. In the former statute, the license was required, and the tax imposed upon every person, firm or corporation engaged in the business of maintaining and operating six or more stores, with an exemption from any tax of those who maintained and operated five or less stores. In the latter statute there is no exemption and no 'retroactive tax'. The tax is so imposed that merchants who are classified as branch or chain store operators are on an equality with respect to one store, with merchants who are not branch or chain store operators. Here is no discrimination, which as Clarkson, J., says in his concurring opinion in *Tea Company v. Doughton*, supra, is the vice of the former statute. In the latter statute the classification is made and the tax imposed

in accordance with the value of the privilege obtained by the license."<sup>26</sup> This case has been appealed and is now on the docket of the United States Supreme Court for argument and will probably be heard in the October 1931 term.<sup>27</sup>

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26. Great Atlantic and Pacific Tea Company v. Maxwell, 154 S. E. 838; 199 N. C. 433.

27. E. W. Simms, Legal Department, National Chain Store Association.

The United States Supreme Court

Upholds 1929 Law.

The Indiana Law of 1929. The Indiana law of 1929 holds a position of high interest in the field of anti-chain store legislation because of its having been approved by the United States Supreme Court as being constitutional and valid. This law differed from the Georgia and North Carolina laws of 1929 in that it attempted to meet the classification criticism by requiring each store to procure a license. The chain store was then made to carry a higher tax because this license fee was graduated upward as the number of stores under one management increased. The first part of the act provides for the method of collecting the tax. The schedule of license fees is found in section 5. This section reads as follows:

"Section 5. Every person, firm, corporation, association or copartnership opening, establishing, operating or maintaining one or more stores or mercantile establishments, within this state, under the same general management, supervision or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually and shall be in addition to the filing fees prescribed in sections 2 and 4 of this act.

The license fees herein prescribed shall be as follows:

1. Upon one store, the annual license fee shall be three dollars for each such store.
2. Upon two stores or more, but not to exceed five stores, the annual license fee shall be ten dollars for each such additional store.

3. Upon each store in excess of five, but not to exceed ten, the annual license fee shall be fifteen dollars for each such additional store.

4. Upon each store in excess of ten, but not to exceed twenty, the annual license fee shall be twenty dollars for each such additional store.

5. Upon each store in excess of twenty, the annual license fee shall be twenty-five dollars for each additional store."<sup>28</sup>

Section 8 of this act defines a store as follows:

"The term 'store' as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares, or merchandise of any kind, are sold, either at retail or wholesale."

The validity of the Indiana law of 1929 was challenged by Lafayette A. Jackson, owner of the Standard Grocery Company, an organization operating two hundred and twenty-five stores, all situated in the city of Indianapolis. The case was considered by Circuit Court Judge Sparks and District Court Judges Baltzell and Slick, in the District Court of the United States for the Southern District of Indiana. The Court found the "act in question is void and in violation of both the Constitution of the United States and the State of Indiana", and directed that a permanent injunction be issued in accordance with this opinion.<sup>29</sup>

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28. Indiana Acts 1929. Chapter 207, Page 693.

29. Jackson v. State Board of Tax Commissioners.,  
38 Federal, 2 nd., 652.

Parts of the text of the decision follow:

"The validity of the classification, as provided in Section 5 of the act in question, fixing the license fees to be paid by plaintiff and other owners and operators of stores or mercantile establishments within the State of Indiana, presents the main question to be determined by this court."

"Authority is given the State to enact laws which may be enforced in the exercise of its police power. The act in question cannot be sustained, however, upon that theory. It does not relate to the public health, the public welfare, the public morals or the public safety. If sustained, it must be solely as a revenue measure."

"Such fees are considered revenue and are collected by virtue of the laws conferring upon the State the power to tax its citizens for the purpose of raising revenue to support its institutions and otherwise defray the expenses and pay the indebtedness of such state. The legislature may classify property and occupations for this purpose. It may even select some property or occupation for taxation and omit others, so long as such classification is reasonable and not arbitrary."

"It cannot arbitrarily select a certain class of persons for taxation and justify its acts by calling it classification."

"All persons engaged in the operation of one or more

stores or mercantile establishments within the State of Indiana belong to the same class, for occupational purposes, as plaintiff, and should pay the same license fee, regardless of the number of stores owned and operated by them. Any other classification is arbitrary and is in violation of the constitutional rights of the plaintiff."<sup>30</sup>

This Case Carried to                      The Indiana Board of Tax  
the Supreme Court of                      Commissioners carried this case  
The United States.                      to the United States Supreme  
 Court on an appeal. The case was argued before that Court on March 5, 1931 and a decision was handed down on May 18, 1931. This decision reversed the judgment of the District Court and held the law in question to be constitutional and valid.<sup>31</sup> In reviewing the case, Mr. Justice Roberts in delivering the opinion of the Court says: "The bill charges that the graduation of the tax per store according to the number of stores under a single ownership and management is based on no real difference between a store part of such a group and one individually and separately owned and operated, or between the business transacted in them; that the number of stores conducted by one person bears no

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30. Jackson v. State Board of Tax Commissioners, 38 Federal, 2 nd., 652.

31. Decision No. 183, October Term, 1930. May 18, 1931. Citation not yet available.

relation to the public health, welfare, or safety, none to the size of the enterprise as a whole, to its capital, its earnings or its value; that the classification made by the statute is without basis in fact, is unreasonable and arbitrary, and results in depriving him of his property without due process, and denying him the equal protection of the laws.

In the court below appellants defended on the grounds that the statute was an exercise of the police power and was also a revenue measure which levied an ordinary occupation tax. They offered no evidence to sustain the first ground mentioned, and do not press it here. They now stand only upon the power of the legislature in prescribing an occupation tax, to classify businesses, so long as its action is not unreasonable and arbitrary. They say that the act fulfills the constitutional requirement that, in so classifying, the law-making body shall apply the same means and methods to all persons of the same class, so that the law will operate equally and uniformly, and all similarly circumstanced will be treated alike. The District Court held that the statute failed to conform to this standard."

The opinion of the Court then continues:

"The act adopts a different measure of taxation for stores known as chain stores, from that applied to



those owned and operated as individual units. Evidence was offered by the appellee intended to demonstrate that there are no substantial or significant differences between the business and operation of the two kinds of stores, such as would justify the classification, and by the appellants to prove the existence of such differences."

"The record show that the chain store has many features and advantages which definitely distinguish it from the individual store dealing in the same commodities. With respect to associations of individual stores for purposes of cooperative buying, exchange of ideas as to advertising, sales methods, etc., it need only be remarked that these are voluntary groups, and that series of independent units cannot, in the nature of things, be as efficiently and successfully integrated as a chain under a single ownership and management."

"The principles which govern the decision of this case are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades,

callings, or occupations. ... The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction."

"It is not the function of this Court in cases like the present to consider the propriety or justness of the tax, to seek for the motives or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified. Such differences need not be great."

"In view of the numerous distinctions above pointed out between the business of a chain store and other types of stores, we cannot pronounce the classification made by the statute to be arbitrary and unreasonable. That there are differences and advantages in favor of the chain store is shown by the number of such chains established and by their astonishing growth. More and more persons, like the appellee, have found advantages in this method of merchandising and have therefore adopted it. What was said in Metropolis Theatre Co. v. Chicago, *supra*, is quite applicable here:

" . . . The distinction obtains in every large city of the country. The reason for it must therefore be substantial, and if it be so universal in the practice of

the business it would seem not unreasonable if it be adopted as the basis of governmental action."

The Dissenting Opinion. Parts of the dissenting opinion as given by Mr. Justice Sutherland, follow:

"Upon the face of the statute the sole differentiation on which the graduated and rapidly mounting license fees depend consists in the number of stores operated. But the tax is imposed in respect of a single 'store', without regard to kind, value, size, amount invested, amount or character of business done, income derived, or other distinguishing feature. The number of stores is a collateral circumstance used only to determine the amount of the license fee to be exacted in respect to each of them. A retailer pays the same as a wholesaler; the owner of a small corner grocery, operated by him alone, the same as the owner of a large department store employing hundreds of clerks. . . . It is settled that the power of the state to classify for purposes of taxation is of wide range and flexibility; but that, while the difference upon which the classification is based need not be great, mere difference is not enough. Classification, to be legitimate, must rest upon some ground of difference having a reasonable and just relation to the object of the legislation. All persons similarly circumstanced must be treated alike. . . . I am unable to find in any of these circumstances,

or in all of them together, justification for a classification which results in distributing the burden of taxation with such evident inequality.

. . . A classification comparable in principle would be to make the amount of an income tax depend upon the number of sources from which the income is derived, without regard to the character of the sources or the amount of the income itself. . . . I am unable to discover in any of the prior decisions of this court, including those cited, anything, which in the light of the facts and circumstances herein set forth, lends support to the claim of validity for the classification here under consideration. . . . It may be that here the maximum tax of \$ 25 for each store, while relatively high, is not, if considered by itself, excessive; but to sustain it will open the door of opportunity to the state to increase the amount to an oppressive extent. This court frequently has said, and it cannot be too often repeated in cases of this character, that the power to tax is the power to destroy; and this constitutes a reason why that power, however moderately exercised in given instances, should be jealously confined to the limits set by the constitution."<sup>32</sup>

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32. All of these quotations are taken directly from a photostatic copy of the decision in this case, as furnished me by the West Publishing Company of St. Paul, Minnesota on May 20, 1931.

The Indiana case is settled and a pattern has been set after which chain store license laws can be drawn. The economic side of the question was considered quite fully in both the decision and the dissenting opinion and it is apparent that the final decision was made on the ground of ability to pay. The law, as enacted, is not severe enough to be damaging to anyone. It certainly cannot be called a regulatory measure but is strictly a revenue raising measure. I am not at all certain, however, that this will be the case with other laws which will be drawn to resemble this one. I see nothing to prevent the legislatures of the different states from introducing bills with scales of license fees graduated much more rapidly than the scale in the Indiana law. If this should be the case and if the Court continues to hold that equal treatment is being given with a scale of this kind, this type of law could be made not only regulatory, but also prohibitive. There is much truth in the warning of Justice Sutherland that "to sustain it will open the door of opportunity to the state to increase the amount to an oppressive extent."<sup>33</sup>

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33. Justice Sutherland in his dissenting opinion.

Present Status of  
the 1929 Laws.

The 1929 Indiana law has been approved by the United States Supreme Court and controversy over it would seem to be at an end. The North Carolina law of 1929 is now on the docket of the same court and will probably be argued at the opening of the October 1931 term. The 1929 Georgia law was declared unconstitutional by the Supreme Court of Georgia on February 12, 1931. Neither the law of North Carolina nor that of Georgia is similar to the Indiana law and I cannot see where the decision on the later law will be applicable to the first two. The Georgia and North Carolina laws each grant complete exemption from the tax to the independent merchant, although the two disagree upon who is an independent, while the Indiana law taxes every store. The North Carolina Supreme Court made a rather fine distinction in explaining the difference between the statute of 1927 and that of 1929, and it will be of interest to note whether this distinction can be seen by the United States Supreme Court or not.

## Anti-Chain Store Law of 1930.

South Carolina      The South Carolina law of 1930 bears  
Law of 1930.      little similarity to the one enacted by  
the legislature of that state in 1928. It is, however,  
very much like the 1929 Indiana law. The 1930 act makes  
no attempt to classify owners of stores as chain store  
operators, or independents, but strikes at the chain store  
through a progressive license tax, graduated as to the  
number of stores owned by a single management. The law  
is as follows:

"Every person, firm or corporation or association engaged in the business of operating or maintaining in this State under the same general management, supervision, or ownership one or more stores or mercantile establishments where goods, wares and/or merchandise are offered for sale at retail, shall pay an annual license tax, in addition to all other license fees or charges, for each store or mercantile establishment situate in any incorporated city and/or town in this State, in accordance with the following schedule:

First store	\$ 5.00
Second store	10.00
Third store	15.00
Fourth store	20.00
Fifth store	25.00
Sixth store	30.00
Seventh store	35.00
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Thirtieth store	150.00

For each store, in excess of thirty stores, an annual tax of one hundred and fifty (\$ 150.00) dollars for each store: Provided, That the tax herein imposed shall not apply to gasoline filling stations."34

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34. As taken from a copy of this act sent me by the South Carolina Tax Commission.

"On July 18, 1930 an interlocutory injunction against the enforcement of the 1930 South Carolina chain store tax law was granted by the United States District Court for the Eastern District of South Carolina in the case of Southern Grocery Stores v. South Carolina Tax Commission. The appeal from this decision is held in abeyance pending the decision of the United States Supreme Court in the Indiana chain store case."<sup>35</sup> In answer to an inquiry regarding the present status of this law, the South Carolina Tax Commission, on October 28, 1930, said, "We wish to state that this law has been in litigation since its enactment and we have collected only \$ 15.00 on same."<sup>36</sup> This law is so much like the Indiana law in its provisions that it would seem sure of being upheld by the United States Supreme Court. The graduation in the scale of fees is more rapid and continues farther than does the one in the Indiana law but in view of the decision on that law, this would not appear to be a bar to validity. A test of the law in the Supreme Court will show whether a limit will be set as a maximum on a graduated scale of fees.

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35. E. W. Simms, Legal Department, National Chain Store Association.

36. B. A. Sullivan Jr., Assistant Director South Carolina Tax Commission, License Tax Division. October 28, 1930.



Final Disposition of the License  
Tax Type of Anti-Chain Store Law.

States Have Failed to Enforce Laws. Beginning with 1927 and running through 1930, each year has seen the enactment of some law designed to fix a license tax on chain store operators and at the same time, exempt the independent merchant from the tax. In 1927, North Carolina, Georgia, and Maryland passed such laws; in 1928, South Carolina produced the only law of this type; in 1929, Georgia and North Carolina passed their second such act, and Indiana joined these two with a law to curb the chains. The year 1930 found South Carolina making her second attempt to place a heavier license tax on the chains than was placed on the independents, by the passage of her second anti-chain store law. The laws of 1927 and 1928 are definitely out of the picture as a result of adverse judicial decisions. Three of the laws of 1929 and 1930 are now before the courts for decision as to constitutionality, and no revenue is being realized from any of them. The 1929 Georgia law was ruled unconstitutional by the Supreme Court of Georgia. The 1929 North Carolina law has been upheld by the Supreme Court of that state and is now before the United States Supreme Court for final disposition. An

injunction has been granted against the enforcement of the 1930 South Carolina law and further action has been delayed, pending the decision of the Supreme Court in the Indiana case. This law now seems to be in a very favorable position as regards constitutionality. The Indiana law of 1929 stands alone among this type of law as having received the approval of the United States Supreme Court.

Gross Sales Tax Laws as a  
Curb to Chain Stores.

The Reasons for a      The difficulty encountered in  
Gross Sales Tax.      framing a license tax which would  
apply only to chain stores and yet would stand under  
test in the courts, has caused legislators to turn to  
the gross sales tax as an anti-chain store weapon.  
This type of law is found in many different forms and  
in varying degrees of severity. Eight states now have  
such laws on their statute books, three of which can be  
classed as anti-chain. Such laws are now being tested  
in the courts of Mississippi and Kentucky, and should  
these laws stand, there is little doubt but that this  
type of legislation will become even more popular. In  
addition to the regulatory feature of these gross sales  
taxes, the fact cannot be overlooked that they are  
very efficient in the raising of revenue in a way that  
is not noticed by the voting public.

Gross Sales Tax      The legislature of Georgia has enact-  
Law of Georgia.      ed a gross sales tax law which  
provides for a

"tax upon the business of selling any  
tangible property, real or personal, at the rate of 2  
mills on the dollar or \$ 2 per \$ 1,000 of gross  
receipts."<sup>37</sup>

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37. Georgia Laws of 1929. Page 106.

The tax for wholesalers is one mill per dollar which, added to the retail tax, makes three mills per dollar. A deduction of thirty thousand dollars is allowed from the total gross receipts before the tax is computed, but, according to the instructions provided by the State Tax Commissioner, only one claim for exemption may be granted a taxpayer, regardless of the number of his stores. This provision definitely classes the law as anti-chain store.

Gross Sales Tax The Kentucky gross sales tax law Law of Kentucky. attacks the chain store in a somewhat different manner from that employed by the Georgia law. This law, after defining the words "retail merchant" and providing for the exemption of "those actually engaged in gardening or farming and selling garden or farm products raised by them in this State", says:

"Every retail merchant, as defined herein, shall pay an annual license tax for the opening, establishing, operating or maintaining of any store or stores, as defined herein, determined by computing the tax on the amount of gross sales as follows:

One-twentieth of one per cent of the gross sales of Four hundred thousand (\$ 400,000.00) Dollars or less; two-twentieths of one per cent on the excess of the gross sales over Four hundred thousand (\$ 400,000.00) Dollars and not exceeding Five hundred thousand (\$ 500,000.00) Dollars; five-twentieths of one per cent on the excess of the gross sales over Five hundred thousand (\$ 500,000.00) Dollars and not exceeding Six hundred thousand (\$ 600,000.00) Dollars; eight-twentieths of one per cent on the excess of the gross sales over Six hundred thousand (\$ 600,000.00) Dollars and not

exceeding Seven hundred thousand (\$ 700,000.00) Dollars; eleven-twentieths of one per cent on the excess of the gross sales over Seven hundred thousand (\$ 700,000.00) and not exceeding Eight hundred thousand (\$ 800,000.00) Dollars; fourteen-twentieths of one per cent of the excess of the gross sales over Eight hundred thousand (\$ 800,000.00) Dollars and not exceeding Nine hundred thousand (\$ 900,000.00) Dollars; seventeen-twentieths of one per cent on the excess of the gross sales over Nine hundred thousand (\$ 900,000.00) Dollars and not exceeding One million (\$ 1,000,000.00) Dollars; one per cent on the excess of the gross sales over One million (\$ 1,000,000.00) Dollars."<sup>38</sup>

The anti-chain feature of this law is easily seen when it is considered that an organization having sales of one hundred thousand dollars will pay only fifty dollars tax, while an organization having sales of one million dollars, or ten times that of the smaller concern, will pay a tax of three thousand and fifty dollars or sixty-one times as much as the tax on the smaller organization. The tax on the second million dollars of sales will be ten thousand dollars which rate will be twenty times as high as the tax paid by the concern with sales of less than four hundred thousand dollars. Some idea of the amount of revenue that might be raised under this law can be gained when it is considered that the Great Atlantic and Pacific Tea Company has sales of sixteen million dollars annually in Kentucky while Kroeger Baking Company's sales amount to fourteen million dollars annually in that state.<sup>39</sup>

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38. Kentucky Acts 1930. Page 476.

39. The Nation. 130:544-5, May 7, 1930.

Kroeger Baking Company and the J. C. Penney Company have asked that the State Tax Commission be restrained from collecting this tax. "Arguments were made as to the validity of the law before a Three Judges Federal Court at Frankfort, Kentucky, February 14, 1931. The order was for a temporary injunction restraining the State Tax Commission from collecting said tax. About forty firms are now protected by the restraining order issued at the February Court."<sup>40</sup>

The Mississippi Privilege Tax. The Mississippi law levies a tax of one quarter of one per cent on the gross income of those "who sell any tangible property whatsoever, real or personal." Wholesalers are required to pay one-eighth of one per cent on gross income. This law then goes on to make itself anti-chain, and to very probably make itself unconstitutional by saying:

"Upon every person operating more than five stores in this state, at which goods are sold at retail, there is levied an additional tax equivalent of one quarter of one per cent of the gross income of all such stores."

A temporary injunction was issued against the enforcement of this law by decree of three Federal Judges acting upon the petition of the J. C. Penney Company.<sup>41</sup> "A lower court had already declared it unconstitutional because of its inclusion of a clause which provides for

40. James W. Cammack, Attorney-General of Kentucky.  
March 31, 1931.

41. The Business Week, October 8, 1930. Page 12.

the imprisonment of those who fail to pay the tax."<sup>42</sup>  
The appeal from the United States District Court of Mississippi holding the law to be unconstitutional is now on the docket of the United States Supreme Court for argument and will probably be heard at the opening of the October 1931 term.<sup>43</sup>

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42. Chain Store Age, November 1930. Page 29.

43. E. W. Simms, Legal Department, National Chain Store Association.

## Attempted Anti-Chain Store Legislation.

Early Attempts Prior to 1927, very few attempts to curb at Legislation. chain stores by legislation had been made. No anti-chain store law had been enacted up to that date, and little attention had been paid to the subject. The anti-chain store forces had, however, become powerful enough by 1927 to secure the introduction of some twenty-one anti-chain bills in the various state legislatures, and to succeed in causing five of these bills to be enacted into laws. Chain Store Age says, in speaking of legislative action during the year: "Eighteen state assemblies considered anti-chain measures, yet such laws actually passed in but four."<sup>44</sup> In making this statement, Chain Store Age is not considering the 1927 Michigan Act as an anti-chain store act while I have classified it as such. The 1927 group of bills forms the foundation on which much of the later legislative action along this line was built. Due to the fact that only about one third of the state legislative bodies meet in the even numbered years, 1928 did not produce a great many bills of an anti-chain nature. Virginia, Mississippi, Rhode Island, Kentucky, and South Carolina were among the states whose legislatures

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44. Chain Store Age. June 1927. Page 56.



considered anti-chain store bills but South Carolina was the only state to enact one of these bills into law in 1928. The Virginia House passed an anti-chain store bill<sup>45</sup> but this bill was killed by the Senate. Section 1 of this bill was as follows:

"Be it enacted by the General Assembly of Virginia, That every person, firm, or corporation, engaged in the business of a merchant and operating, directly or indirectly, more than five stores in this State shall, in addition to the license imposed by law on merchants based on purchases, pay for each store in excess of five, the sum of two hundred and fifty dollars per year for each store so operated, the said sum to be assessed by the commissioner of revenue, and paid to the treasurer at the time, now or hereafter provided by law for the payment of merchants licenses in this State."

Section 3, of this bill was as follows:

"This act shall not apply to persons, firms, companies or corporations engaged in the sale of gasoline, motor oils and kindred fuels when not sold in grocery stores or stores of like character. The tax on motor vehicle fuels imposed by law shall be in lieu of the licenses fixed by this act."

The Kentucky House passed a bill<sup>46</sup> which would have imposed a license fee of two hundred and fifty dollars per annum on each unit operated in excess of five. This bill was never acted upon by the Senate. The Kentucky legislature also considered a bill<sup>47</sup> which would have required that all drug stores and pharmacies be owned by registered pharmacists. The Rhode Island

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45. Virginia House Bill No. 352. 1928.

46. Kentucky House Bill No. 596. 1928.

47. Kentucky House Bill No. 486. 1928.

legislature of 1928 considered a bill<sup>48</sup> which would have taxed each unit of a chain of five or more stores the sum of five hundred dollars per annum. A bill<sup>49</sup> before the Mississippi legislature of 1928 would have changed the usual base for determining a tax on chain stores by assessing a tax

"in the following amounts, to wit: Where such person, firm or corporation is doing business in three or more municipalities in this State for each municipality in excess of two, the sum of \$ 500".

This bill considered two or more stores under the same management as a chain.

Action by United States Congress. Agitation for legislative action had reached such a point by 1928 that a resolution<sup>50</sup> was approved by the United States Senate on May 3, 1928, by which the Federal Trade Commission was directed to "undertake an inquiry into the chain store system of marketing and distribution as conducted by manufacturing, wholesaling, retailing or other types of chain stores to ascertain and report to the Senate (1) the extent to which such consolidations have been effected in violation of the anti-trust laws, if at all; (2) the extent to which consolidations of such organizations are susceptible to regulation under the Federal Trade Commission Act or anti-trust laws, if at all;

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48. Rhode Island Senate Bill No. 25. 1928.

49. Mississippi House Bill No. 235. 1928.

50. United States Senate Resolution No. 224. May 3, 1928.

and (3) what legislation should be enacted for the purpose of regulating and controlling chain store distribution."<sup>51</sup>

Legislative Action     Anti-chain store legislation was  
in 1929.                     given a prominent part on the

program in many of the state legislatures of 1929.

Sixty-three bills were introduced in the various states with sixty meeting defeat.<sup>52</sup> Listed with the states actively engaged in trying to check chain store growth, or at least to realize a substantial revenue from this growth in 1929, we find Missouri, Ohio, Minnesota, Texas, Illinois, Maryland, Tennessee, Vermont, Wisconsin, West Virginia, Iowa, New York, Indiana, Georgia, and North Carolina. Of the bills introduced in the 1929 legislatures of these states, only those of the last three became laws. The ratio of laws enacted to bills introduced became smaller in 1929 than it was in 1927, but the actual number of bills introduced increased three times over. This is an interesting feature of such legislation, and indicates that while more individual legislators were active in the sponsoring of such bills, the legislative bodies, as such, were becoming more conservative in their attitude toward such bills. When the 1927 bills were introduced,

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51. United States Daily. May 7, 1928.

52. Chain Store Age. January 1930.

probably only a small percentage of the members of the various state legislatures gave any thought to the constitutionality of these laws when enacted. With adverse court decisions standing against the 1927 laws, many legislators began to question the possibility of framing a law that would stand when attacked. It would seem that the decision of the United States Supreme Court on the Indiana law, together with further decisions which should be handed down in the near future on the anti-chain store laws before that Court, should clarify the situation to such an extent that the volume of bills introduced will be diminished. Legislators will have something definite to copy in drawing bills of this nature instead of merely going by guess as they have in the past. A significant feature of the 1929 legislative agitation was the inclusion of many of the middle-western states in the list of those who considered anti-chain store bills. Minnesota, Wisconsin, and Illinois were especially active along this line with at least four anti-chain bills making their appearance in the legislatures of each of these states. Missouri, Texas, Indiana, and Iowa also joined the ranks of the agitators for this type of legislation, and while it would not be correct to say the scene had shifted to this section, we certainly can say there has been a spread to these states. Some of the most radical anti-chain

store bills as yet produced were considered in the legislatures of these middle-western states in 1929. The Missouri license tax bill<sup>53</sup> of 1929 prescribed a graduated license tax which, if passed and upheld, would have been not only regulatory, but prohibitive. The apparent aim of this bill was the disbarment from the state of chains of stores with more than four units. The schedule of license fees was as follows:

"Sec. 4. The fees for licenses for storekeepers to be paid to the secretary of state shall be:

For one location in the state	\$5.00
For a second location in the state	25.00
For a third location in the state	50.00
For a fourth location in the state	100.00
For a fifth location in the state	1,000.00
For a sixth location in the state	2,500.00
For a seventh location in the state	5,000.00
For each location over seven in the state	10,000.00"

The Wisconsin Assembly considered a bill<sup>54</sup> in 1929, which was meant to be a definite check on chain store growth in that state. This bill combined a gross sales tax with a unit license tax, and made both applicable only to chains of five or more stores. Section 1 of this bill, was as follows:

"Section 1. Two new sections are added to the statutes to read: 71.28 (1) There shall be assessed, levied and collected from every person, firm or corporation owning or operating, within this state, five or more retail stores or mercantile establishments selling or dispensing

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53. Missouri House Bill No. 744 and Senate Bill No. 710. 1929.

54. Wisconsin Assembly Bill No. 258. 1929.

groceries, meats, bakery products, fruits and vegetables, hardware, automobile supplies, furniture, dry goods, tobacco and cigars, or drugs, a tax equal to five per cent of the gross receipts of each such store."

The bill read as follows in Section 2, Paragraph 3:

"The annual license fee shall be five hundred dollars for each such establishment. If the license is issued subsequent to July first in any year the fee for the remaining part of that year shall be two hundred and fifty dollars."

Legislative Action In 1930, those legislatures which in 1930. did not convene in 1929 had a chance to consider anti-chain store legislation. Chain Store Age for July 1930 says: "Of the eighteen state legislatures in session this year, eight have produced nineteen anti-chain store bills, of which four became law."<sup>55</sup> Here we find Texas, Louisiana, Mississippi, Georgia, Kentucky, and South Carolina as the center of the agitation, with the last four of these passing laws which were designed to be damaging to chain store interests. Three of these laws were gross sales tax laws and in this, we again see an attempt by the anti-chain store interests to find a type of law that will be upheld by the courts and yet will fulfill the desire for regulation. An idea as to the aim of the Texas Legislature in 1930, can be gained by considering the

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55. Chain Store Age. July 1930. Page 44.

title to a bill<sup>56</sup> introduced the House of that state.

This title was as follows:

"An Act: To check monopolistic tendencies, to promote the general welfare of the state and the security of the economic welfare of the state, by the levy and collection of an annual license tax upon every person, firm or corporation engaged in the business of operating or maintaining in this state, under the same general management, supervision or ownership, one or more stores or mercantile establishments, where goods, wares and merchandise is offered for sale at retail."

The bill under this title would have assessed a graduated license tax on stores. The tax would have amounted to three dollars on the first store and would have progressed to five hundred dollars on each store in excess of twenty-four.

Legislative Action It has been impossible to determine in 1931. much about legislative action

along the anti-chain store line for the year 1931 as the records of the proceedings of the state legislatures for the present year are, as a rule, not yet available.

Chain Store Age for March 1931, says: "Anti-chain bills are before the legislatures of twenty one states"<sup>57</sup>

Listed in this group are Connecticut, Massachusetts, Vermont, Pennsylvania, Illinois, Indiana, Wisconsin, Kansas, Minnesota, North Carolina, Georgia, West Virginia, Alabama, Tennessee, Arkansas, Texas, Colorado,

56. Texas House Bill No. 14. 1930.

57. Chain Store Age. March 1931.

Arizona, California, Oregon, and Washington. Since the issue of this copy of Chain Store Age, I have received copies of two bills which were introduced in the 1931 Ohio Legislature. "To date no anti chain store laws have been enacted by any of the legislatures at their 1931 sessions, although the legislatures of Minnesota and Oregon adopted Resolutions for investigation of the chain store system."<sup>58</sup>

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58. E. W. Simms, Legal Department, National Chain Store Association. May 6, 1931.



## Provisions of the Bills.

Provisions of the Bills Varied. Bills introduced in the legislatures of the various states during the period from 1927 to 1931 have provided for the assessment of taxes against chain stores in almost every conceivable manner. Many of these bills provided for a flat license tax on stores; others provided for a graduated gross sales tax, or a gross sales tax applicable only to chain stores. Other bills featured a combination of both the license tax and the gross sales tax while a few would make possible the absolute exclusion of the chain stores. The most popular type of proposed legislation on this subject has been in the shape of a straight license tax on each unit of the chain organization. The amount of this fee varied in the proposed legislation within rather wide limits. The most common amounts demanded were fifty dollars, one hundred dollars, two hundred fifty dollars, and five hundred dollars for each unit of the chain, or, in some instances, for each unit in excess of one, two, three, four, or five stores. A bill<sup>59</sup> proposed in the Illinois legislature of 1929, however, called for a license fee of five thousand dollars for each store in excess of

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59. Illinois House Bill No. 574. 1929.

three, and the 1929 Missouri legislature rejected a bill<sup>60</sup> with a scale of license fees graduated up, with the number of units in the chain as the deciding factor, from five dollars on the first store to ten thousand dollars for each store in excess of seven. The 1929 Ohio bill<sup>61</sup> assessed a license fee on all retail and wholesale stores, "said fee to be based upon and determined by the annual volume of business transacted in each store and the number of stores operated." This fee ranged from five dollars as a minimum to forty dollars as a maximum on the business with only one unit to as high as seven hundred fifty dollars per unit on a business with more than five units.

Various Sales Tax Bills. Various types of gross sales tax bills are found among the proposed legislation. Here again, we find a wide range of difference as to the severity of the tax. The West Virginia Senate considered a bill<sup>62</sup> in 1929 which called for a tax of three-fourths of one per cent of gross sales where ten or more stores are operated. This bill was unusually lenient both in the amount of the tax and in the dividing point between those who would escape and those who would pay.

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60. Missouri House Bill No. 744. 1929.

61. Ohio House Bill No. 340. 1929.

62. West Virginia Senate Bill No. 179. 1929.

The New York Senate considered a bill<sup>63</sup> in the same year which was far more drastic in its provisions. This bill would have imposed a tax on corporations operating two or more stores, as follows: Two per cent on gross sales of less than fifty thousand dollars, four per cent on gross sales from fifty thousand dollars to one hundred thousand dollars, six per cent on gross sales from one hundred thousand dollars to two hundred thousand dollars, and eight per cent on gross sales of more than two hundred thousand dollars.<sup>64</sup> A Vermont House bill<sup>65</sup> provided for a tax of five per cent on gross sales with a deduction allowed of the first four hundred thousand dollars of sales and so much of such sales "as represent the products of the forest, fields, mines, quarries and factories within the state."<sup>66</sup> These last two bills are very good illustrations of the two types of gross sales tax legislation proposed by anti-chain store factions.

Combined License and Sales Tax Bills. Minnesota and Wisconsin combined the idea of a license fee with that of a gross sales tax in some of their 1929 bills. The Wisconsin legislature considered a bill<sup>67</sup>

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- 63. New York Senate Bill No. 1644. 1929.
  - 66. Chain Store Age. March 1929, Page 84.
  - 64. Chain Store Age. April 1929, Page 56.
  - 65. Vermont House Bill No. 45. 1929.
  - 67. Wisconsin House Bill No. 258. 1929.

which provided for a five hundred dollar license fee for each establishment where five or more stores were under the same management and added to this a gross sales tax of five per cent on the sales of the same stores. The 1929 Minnesota legislature withstood a veritable barrage of bills patterned along this line, and combining a license tax with a gross sales tax. One of these bills<sup>68</sup> provided for a license tax of twenty five dollars on the first unit of an organization, fifty dollars each on the next four, one hundred dollars each on the next five, one hundred fifty dollars each on the next ten, and two hundred dollars each on all over twenty. This bill then demanded, in addition to the license fee, a gross sales tax amounting to one half of one per cent on the first five thousand dollars of sales, one per cent on the next five thousand dollars, one and a half per cent on the next fifteen thousand dollars, two per cent on the next twenty five thousand dollars, and three per cent on all over fifty thousand dollars. Another similar bill<sup>69</sup> provided for a license tax running from twenty five dollars each on the first four stores to two hundred dollars each on all over twenty stores, and with a gross

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68. Minnesota House Bill No. 305. 1929.

69. Minnesota House Bill No. 773. 1929.

sales tax added ranging from one-fifth of one per cent on sales up to two hundred fifty thousand dollars, to three per cent on sales of over two millions of dollars. A bill<sup>70</sup> introduced in the Minnesota Senate contained the same scale of license fees as did the first of these two Minnesota House bills but was more lenient in the matter of the gross sales tax on the lower levels of sales.

Various Restrictions Proposed in Bills. A considerable number of bills with various proposals for restriction are found among those which have been introduced. A majority of these bills made their appearances in 1929. A bill<sup>71</sup> was introduced in the 1928 Kentucky legislature with a view to restricting the growth of drug chains. This bill was patterned after the Pennsylvania anti-chain drug store law of 1927. A bill<sup>72</sup> introduced in the 1929 Wisconsin legislature, provided that "any person, firm, or corporation desiring to engage in retail trade of any kind, shall make application to the commissioner of banking for each location at which such business is conducted". The bill further provides that the commissioner of banking should pass upon the general desirability of having such a business established and should disapprove

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70. Minnesota Senate Bill No. 375. 1929.

71. Kentucky House Bill No. 486. 1928.

72. Wisconsin Assembly Bill No. 133. 1929.

the application for license if he believed that there was no justification for the organization of the business. A board of review was provided to which the decision of the commissioner of banking could be appealed. This board would consist of the governor, the secretary of state, and the attorney-general. Mr. Pahl, the author of this bill, apparently had great faith in the ability of the officers named in the bill to determine what particular business enterprise was justifiable in any certain part of the state.

Anti-Chain Activity Texas showed a great deal of activity along the line of attempted anti-chain store legislation in the 1929 and 1930 sessions of the legislature of that state. Both license tax and gross sales tax laws were proposed. A 1929 House bill<sup>73</sup> provided for a license fee of one thousand dollars for each store of a chain of three or more stores, and made possible the assessing of half of this amount in addition, by both county and city, which provision would have doubled the tax. Two bills<sup>74</sup> of the called sessions of 1930 proposed a graduated license tax starting at three dollars for one store and increasing to five hundred dollars each on all stores in excess of twenty four.

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73. Texas House Bill No. 601. 1929.

74. Texas House Bills Nos. 14 and 57. 1930.

Another bill<sup>75</sup> of the fourth called session of 1930 provided for a gross sales tax of two per cent on the sales of organizations with more than five stores.

Ohio Bills The 1931 Ohio legislature considered a bill<sup>76</sup> which would require firms dealing in cigarettes to pay a license tax, the amount of which depended upon the number of branches conducted by one management. This fee was graduated from one dollar for the single unit, to five hundred dollars for a store which was a part of a chain of more than ten stores. Another bill<sup>77</sup> considered by this legislature required a license fee of fifty dollars per store on all units from the second to the fifth, and a fee of one hundred dollars for each store in excess of five,

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75. Texas House Bill No. 73. Fourth Called Session. 1930.  
76. Ohio House Bill No. 313. 1931.  
77. Ohio House Bill No. 540. 1931.

## The 1931 Kansas Bill.

The Kansas Bill An anti-chain store bill<sup>78</sup> was introduced in the 1931 Kansas legislature by Mr. Baird, of Coffey County. This bill provided:

"Every person, firm, or corporation engaged in the business of operating or maintaining in this state, under the same general management, supervision, or ownership, two or more stores or mercantile establishments where goods, wares, or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator, and shall apply for and obtain from the secretary of state, an annual license for the privilege of engaging in the business of operating a branch or chain store, and shall pay for such license fifty dollars (\$ 50) on each and every such store operated in the state in excess of one. Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of the tax levied by the state."

This bill was referred to the committee on State Affairs and was reported out favorably by that committee. The bill then passed the House of Representatives with but three dissenting votes and was sent to the Senate. The bill was here referred to the committee on State and Federal Affairs. By this time the bill was causing some comment in the newspapers, and the general merchandising public was becoming interested in the meaning and intent of the proposed legislation. The Senate committee was being swamped with letters and telegrams from the owners of selling organizations who maintained from

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78. Kansas House Bill No. 360. 1931.



two to ten units each. As a result of this activity on the part of the merchants of the state, the Senate committee called an open meeting to be held for the purpose of discussing the bill. This meeting was held in the Supreme Court room at Topeka, Kansas, on Thursday evening, February 26, 1931. Senator Geddes of Butler County, chairman of the committee, presided over the meeting.

Representative Baird, the author of the bill, presented his arguments for the passage of the bill and was questioned by members of the Senate committee. Mr. Baird believed that a law, such as he proposed, would tend to discourage the spread of chain store growth in Kansas and he believed that such growth should be checked. He estimated that this bill, if passed, would bring in approximately seven hundred and fifty thousand dollars annually in taxes, but he believed the regulatory feature to be the important property of this type of legislation. Mr. Baird said his intention had been to tax the big chain store organizations owned by foreign corporations and that the bill had not been aimed at small operators, although it would certainly affect some of this class. He said that he had not anticipated that this bill would tax filling stations but that he now believed they would also fall within the list of those taxed. He believed that the fifty dollar

tax would be high enough to handicap the big operator and at the same time would not seriously injure the owner of the small chain. When questioned by Senator Geddes as to the effect of this tax on the consumer, Mr. Baird said he believed the revenue raised in this manner would relieve taxation on other sources enough to offset any burden on the buying public.

The opponents of the bill were then given the floor and it was soon apparent that the bill was being fought by the small chains of the state. No representative of the national chains took any part in the discussion and the largest chain represented was the Duckwall Stores, whose speaker described them as a Kansas owned and operated corporation with thirty-two units. Included in the list of those who spoke against the bill were the following:

- A. C. Carpenter, President of the Kansas Oil Men's Association.
- W. C. Gregg of the Duckwall Stores.
- R. R. Jackson of Bowersock Grain and Elevator Co.
- Clayton Cline of the Beatrice Creamery Company.
- Glenn Holm of the Glenn Holm Stores.
- A. W. Adt, Automobile Dealers of Kansas City, Kansas.
- E. E. Wood, Secretary, Southwest Lumbermen's Ass'n.

One of the most forceful arguments as to the economic undesirability of such a law as the one being discussed was presented by a representative of the Seymour Packing Company, a Kansas owned and operated organization. This Company is primarily a buying organization which handles produce. They buy from the farmers through scattered

outlying stations of small size. Many of these small stations are not self supporting merely as a purchasing unit and a few lines of feeds and other produce-raisers' necessities are being sold from these stations in order to aid in the overhead of the station. About three hundred such stations are operated by this company and should this anti-chain bill become a law, a tax burden of about fifteen thousand dollars would be added. This burden would mean the closing of a majority of these stations with the consequent destruction of the marketing facilities.

In speaking for the lumber industry in Kansas, Mr. Wood said there were one thousand and fifty six retail lumber yards in Kansas, of which sixty per cent were members of the Southwest Lumbermen's Association. He said six hundred thirty seven yards, owned by ninety-two firms, would be reached by this tax. Mr. Wood then introduced the managers of six small lumber chains located in various parts of Kansas. These men were from Waterville, Ottawa, Chapman, Wichita, Hiawatha, and Ashland. Mr. Fred Bronson, manager of the Rock Island Lumber Company, with headquarters in Wichita, said there were three hundred yards owned by the fifteen line yard companies in Wichita. He said that many of these yards could not be operated by independents as the margin of profit would be too small. This was evidenced by the

fact that six of his yards had made a smaller net profit in the last year than fifty dollars, the amount of this tax. As mentioned before, no representative of the National chains took any part in the discussion and it was charged by several of the speakers that the national chains would be glad to see the bill become law, as it would affect the small operator much more seriously than it would the big chains. This charge was refuted to some extent by the defenders of the bill when they showed (that) that the 1929 North Carolina law, which was worded almost identically as was the Kansas bill, had been attacked in the courts by nineteen of the big national chains. I believe the bill, if enacted into law, would have distressed small operators who are practically on the margin, to a greater extent than it would have hurt the national chains, yet I do not believe the national chains would have desired the passage of such an act, and I am confident the big chains would have immediately moved against such a law in court. The foes of the bill presented far the best argument and the bill was killed by the Senate committee. The situation in Kansas is, no doubt, rather typical of the situation in general so far as chain stores are concerned.

## Various Phases of the Subject.

What is a            One of the most confusing situations  
Chain Store.        found among the legislators is the fact that there is no agreement as to what conditions are necessary before a store becomes a unit of a chain system. Certain numbers have been picked upon by the lawmakers of the various states as representing their ideas of the number of units required to constitute a chain. There seems, however, to have been no basic facts on which to make these choices. Practically all seem agreed that six stores constitute a chain but there is little agreement as to whether six stores are necessary before a system becomes a chain. Three stores, five stores, and all over five stores, are definitions of a chain commonly found in proposed legislation. The North Carolina law which is now before the United States Supreme Court, and the Kansas bill of 1931 used two or more stores as their concept of a chain. There is a hope among the anti-chain forces that this classification will be found to be constitutional on the ground that a privilege is granted in allowing one management to conduct more than one store. If a chain can be defined, I think it must be on this last basis, and in classifying stores as chain or independent, we must count all with two or more places of business

as chains. However, when this division is made, we will find that many who are now most highly interested in fighting so-called chains will discover themselves as coming under that category. This was demonstrated very pointedly in the consideration of the 1931 Kansas bill when the owners of a few stores fought bitterly against being classed as chain store owners and to being given the same treatment as was given the national chains such as the Great Atlantic and Pacific Tea Company, and Kress Stores. The legislature of Georgia became so confused on this subject in their 1929 law that they classified as chains, organizations with more than five units and then in another part of the act, made the tax applicable to the owner of only five stores. This discrepancy in the law as passed was the cause of a suit to determine the meaning of the law.

For What Reasons are There are three reasons for the  
Bills Introduced. promotion of legislation of an anti-chain store type. The first reason is the desire to raise revenue. Legislative bodies are casting about for a method of raising revenue which will produce results and at the same time fail to antagonize the voting public. There is no doubt that huge sums could be raised with levies such as have been proposed in many of the anti-chain store bills and yet the public

would not resent the collection of the tax as they would if it fell directly on them and in a lump sum. The backers of the 1931 Kansas bill estimated that this law would produce three quarters of a million dollars annually if put into effect. This bill placed the license tax at fifty dollars on the unit and it can be readily seen that should this amount be increased to two hundred fifty or to five hundred dollars per store, the revenue raised would mount up rapidly. The second reason for such legislative action, and the one I believe to be behind most of the proposed bills, is a desire by the authors of these bills to curb chain store growth in the belief that this will aid the independent merchant. These men are sincere in their desire to eliminate what they believe to be a menace to individual enterprise. Some of them vision with horror the day when everything will be owned by chains and everybody will be working for someone else. There is a third reason for the proposal of this type of legislation and as I examine many of the bills proposed, I believe this is a rather powerful reason. This is the introduction of such bills for political reasons. I am inclined to think that the framers of many of these bills knew that such bills probably would not pass and that if they did become law, they could not possibly stand the test of constitutionality. Some of these

bills are so crude that they really show genius in the devising of documents with so many objectionable features and yet have something to wave in the air at a political meeting. In this case the state lawmaker feels no qualms of conscience as he knows he will hurt nobody in the long run except for the possible cost of litigation, and if it comes to that, the state and the chain store corporations will be the ones to foot the bill and again there is no reason for worry.

What Type of Law is Constitutional. State legislatures have been given the power to classify for the purpose of taxation but the courts have held that this classification must be made upon some reasonable grounds and that it cannot be arbitrary and without any just basis. This position taken by the courts has been responsible for the failure of most of the anti-chain laws to be enforceable. This situation is clearly outlined in the following portion of the decision in the test of the 1927 North Carolina anti-chain store law:79

"It will be observed from the authorities hereinbefore cited, that, while the power of General Assembly to make classifications, for purposes of taxation, is recognized, both by the Supreme Court of the United States, and by this Court, it is held by this Court



that such classification, when arbitrary, unreasonable and unjust, contravenes the provisions of Section 3 of Article 5 of the State Constitution, and by the Supreme Court of the United States that classifications subject to the same condemnation are in violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States."<sup>79</sup>

So long as this interpretation stands, I see no possibility of a license tax which exempts the owner of one, two, three, or any other number of stores and taxes those owning stores in excess of this number, to withstand the assaults of litigation. The recent decision of the United States Supreme Court in the Indiana case assures the constitutionality of the graduated license tax when applied to all stores. There is a question in my mind as to how high this tax could run before it would be considered unreasonable. There will, no doubt, soon be a test of this point as the South Carolina law of 1930 contains a graduated scale of license fees from five dollars on the first store to one hundred fifty dollars on the thirtieth store. The gross sales tax can also be used as an anti-chain tax and there is no doubt but that a gross sales tax of flat amount, with

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79. Great Atlantic and Pacific Tea Company v. Doughton, 196 N. C. 145; 144 S. E. 701.

or without an exemption of certain minimum sales, is constitutional and enforceable. Tax experts are outspoken in condemning such a tax but tax experts do not always succeed in impressing their opinions upon the lawmakers of the land.

Who Fights Anti-Chain  
Store Legislation.

The action of the Senate committee of the 1931 Kansas legislature in calling an open meeting for the discussion of the anti-chain store bill then before that committee, gave ample opportunity to study the forces aligned against this bill. As mentioned before, none of the national chain organizations took any part in this discussion, while owners of small groups of stores came from all parts of the state to fight the bill. This would lead one to believe that the big chain organizations were not interested in the bill, or possibly desired to see its passage. I do not think this was the case. I believe the national chains are reluctant to take a hand in such lobbying because of the possibility that interest shown by them might influence public sentiment in favor of the bill. However, when such a bill is enacted into law, the fight against this law is taken up by the national chains as is shown by the imposing array of such organizations aligned in the fight on the 1929 North Carolina law, after which the Kansas bill was patterned.

Conclusion. The misunderstandings and difficulties which have been encountered by anti-chain store legislation would seem to be cleared away by the decision of the United States Supreme Court in the Indiana case. Final decisions on the North Carolina and Mississippi laws should serve even more to remove differences of interpretation. We cannot, however, be sure that a permanent condition of understanding has been reached. Decisions of today may be influenced by many factors which may change in the future. This has been the history of judicial decisions as affecting the railroads and may well be the case in the chain store field. The decision on the Indiana law was far from a unanimous one, and a change of even one member of the Supreme Court might change the policy of that Court. With this in mind, it is hardly possible to predict that the controversy over anti-chain store legislation is at an end.

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