Supreme Court of Wyoming ruled that the provision[18] constituted an "improper delegation of legislative power, offended due process protection and was beyond the police power of the state,"[19] all in violation of the Constitution of the State of Wyoming. As the court noted, the pendulum of state decisions has definitely swung from the constitutional to the unconstitutional side.[20]

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UNIFORM COMMERCIAL CODE

In Alaska, on April 16, 1962, the Uniform Commercial Code was signed into law and will become effective on December 31 of this year.[1] The Alaska version of the Code follows very closely the 1958 Official Text with only minor variations.[2] Recent months have also witnessed the legislature of Michigan enacting the Uniform Commercial Code, 1958 Official Text, effective January 1, 1964.[3] Kentucky, which passed the Code in 1960, has amended its laws to conform to the 1958 Official Text.[4] In Ohio the Code took effect on July 1, 1962, in accordance with its 1961 adoption.[5]

Undoubtedly, the most significant breakthrough with regard to the efforts of the National Conference of Commissioners on Uniform State Laws to obtain nation-wide adoption of the Code is the passage of the Uniform Commercial Code by the New York legislature. Effective in September, 1964,[6] the enactment represents the result of almost ten years of study by the New York Law Revision Commission which, as early as 1952, began taking testimony as to the wisdom of adopting the Uniform Commercial Code. In 1956 this commission made a voluminous report, and ultimately recommended that the Code be rejected at that time. Extensive recommendations were made by the Commission, many of which are directly reflected in the 1958 Official Text.[7] Mindful of the 1958 changes, the New York

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18 Wyo. Stat. Ann. § 40.14 (1957).

19 Bulova Watch Co. v. Zale Jewelry Co., — Wyo. —, 371 P.2d 409, 420 (1962).

20 Although decisions support this statement, several states have recently enacted corrective amendments to their fair trade laws. They provide that by accepting the goods with notice of the manufacturer's stipulations the dealer is deemed to have assented to the fair trade terms, and to have entered into an implied contract pursuant to those terms. Ohio Rev. Code Ann. §§ 1333.27 to .34 (Baldwin 1961); Va. Code Ann. §§ 59-8.1 to -8.9 (Supp. 1960).

In addition, Virginia recently eliminated the mandatory requirement that fair trade contracts contain a clause restricting the sale of the commodity, and replaced it with a provision authorizing a restriction on sales by the seller. Trade Reg. Rep., Pamphlet No. 31, p. 4 (May 14, 1962).

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1 Alaska Laws 1962, ch. 114.

2 Bulletin of the Permanent Editorial Board for the Uniform Commercial Code of the National Conference of Commissioners on Uniform State Laws.

3 Mich. Acts 1962, P.A. 174.

4 Ky. Rev. Stat. §§ 355.1-101 to .9-507 (1955).

5 Ohio Rev. Code §§ 1301-43 (Baldwin, 1962).

6 N.Y. UCC § 10-101 et seq.

7 For a full report of the degree to which the New York objections to the 1954 Official Draft were met by the 1958 Text, see the Report of the Association of the Bar of the City of New York on the Uniform Commercial Code, February 1, 1962.

State Commission on Uniform State Laws again met and in 1961 recommended the adoption of the 1958 Official Text.

In many ways it is unfortunate that there is such a large gap between the date of passage and the date when the New York Code takes effect, for, obviously, the absence of the Uniform Commercial Code in the nation's largest commercial state can only have a negative effect on the ultimate purpose of this law, *i.e.*, uniformity. However, in view of the more than fifty deviations in the New York version of the Code from the 1958 Official Text, it is desirable that substantially more uniformity between the two be developed prior to September, 1964. To this end, the Permanent Editorial Board for the Uniform Commercial Code of the National Conference is meeting with the Commission on Uniform State Laws of the State of New York. The prime task at this November conference will be to evaluate those sections of the two codes which presently differ in an attempt to effectively reconcile existing conflicts. It would be unfortunate indeed for the New York Code to go into effect in 1964 with any major variation from the then Official Text. Clearly, if there is to be a Uniform Commercial Code in existence in the United States, its greatest center of commerce must lead the way.

Within the New York Commercial Code there are several innovations which reflect changes in banking and brokerage procedures that have developed during the last five years in virtually all of our nation's large commercial cities. Four of these sections of the New York Code are especially necessary and, hopefully, will be incorporated into the Official Text by the American Law Institute.

The first is section 4-109. Traditionally, when a check is presented to a bank for payment the standard procedure followed by the bank involves such steps as verifying the signature, ascertaining that sufficient funds are available, and affixing a paid or other stamp to the check. These tasks have always been accomplished by clerks, but more and more electronic business machines are taking over. Hence, the law, which defines these steps as "posting," must take the electronic factor into account. This becomes especially important when one attempts to determine whether and when an item has been "finally paid," for Section 4-213(1)(c) of the Official Text of the Uniform Commercial Code uses the process of posting as one of the criteria for final payment.

The second desirable revision is to be found in the New York Code Section 4-204(3). It, too, reflects the effect of electronic banking on established procedure by permitting presentment of checks drawn on branch banks at electronic computer centers of the main bank—a new method which has developed in most United States commercial centers during the last few years.

Section 6-104(2) of the New York Code contains a third revision worthy of mention. Section 6-104 deals with the protection of creditors whose rights are jeopardized by a bulk transfer of a debtor. The Official Text, among other things, requires that the transferee demand of the transferor a list of all creditors. The situation may well be envisioned when the real creditors may be holders of an outstanding issue of bonds of which there is an indenture trustee, such as a bank or trust company. In this case, it may be impossible for the debtor to determine who his creditors are. The New York Code alters Section 6-104 of the Official Text to allow the debtor to furnish only the names of the indenture trustees. Thus, bulk transfers are facilitated without denying creditors their rights of protection.

The fourth and last innovation of note is Section 8-320 of the New York Code which allows for a central depository of fungible securities and eliminates the need for a physical delivery. In practice, a great number of the securities traded in the United States never leave the premises of the Wall Street brokerage firms. During the last five years, members of the major stock exchanges of the country have successfully developed procedures whereby trading takes place only on the books of the various firms, and physical delivery of the securities is omitted. A central depository is employed in some instances in much the same way that gold is traded on the international market. The Official Text requires that custody of the securities actually pass and does not allow for this simpler debit-credit system; hence, the transfer under this system is ineffective under the Official Text.[8] It is quite clear that the new technique is less costly, more efficient and, most important, much safer. No longer needed are messengers to run from one office to another with bundles of securities, and the problems of lost certificates are greatly reduced.

Certainly, New York will be a bellwether for the more than twenty states which will be considering the adoption of the Uniform Commercial Code in their next sessions. Highly critical will be the November meeting of the Permanent Editorial Board and the New York Commission, and, hopefully, it will bear fruit soon enough to allow for greater national uniformity.

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[8] UCC § 8-319(b).