

The problem of providing adequate criteria for situations such as those involved in the invalid parts of the instant ordinance seems to border on the impossible since any formula relating off-street parking requirements to land uses must be sufficiently general to be applicable to diverse businesses and yet sufficiently specific to meet the needs of the particular business occupying the premises. The amount of traffic to two physically similar office buildings, for example, may vary greatly because of the particular nature of the business carried on within each building. This may also be true of the traffic of commercial vehicles to different buildings. Possibly one method, in the case of alterations to and expansions of existing buildings, would be to require an estimate of future traffic to the building based on an average of the present flow of traffic multiplied by a ratio of presently available floor space to future floor space, or some other similar mathematical comparing factor. Entirely new buildings would have to be compared to similar enterprises under like conditions. The difficulties of writing such formulae into zoning ordinances effectively is obvious; however, mathematical accuracy is not required,⁸ and the parking provision would probably be upheld, if there were at least some workable formula, not palpably unreasonable or illogical, by which the discretion of the administrator might be guided.

LAWRENCE J. KENNEY

Corporations—Executive Compensation—Deferred Compensation Unit Plans.—*Lieberman v. Koppers Co., Inc.*¹—A corporate stockholder sued to enjoin the continued operation of a "Deferred Compensation Unit Plan," on the ground that the capital gains provision of the plan was not reasonably related to the value of the services rendered by those included within it. Upon the death or retirement of a key executive, there was to be credited to his "unit account" an amount equal to the net increment in market value of one share of common stock, from the date the "units" were assigned, multiplied by the number of "units" assigned. Payment of the amount was to be made over a ten-year period following the executive's death or retirement. On cross motions for summary judgment, the Court of Chancery, New Castle, Delaware, held for the defendant; it cannot be said that appreciation of the market price of common stock is unrelated to the efforts of the individuals included within the plan.

*Berkwitz v. Humphrey*² is the only other case which has been litigated testing the validity of the so-called "unit" plans. It was concluded there that a plan, almost identical to the one in question, was *per se* invalid. It was reasoned that, since the market price of common stock is subject to many extraneous forces, i.e., fortunes of the economy, speculation, etc., there

⁸ Ibid. The Court allowed the approximate determination of the number of employees by a consideration of the floor space, the number of offices, and the purposes for which the building was constructed.

¹ *Lieberman v. Koppers Co., Inc.*, 149 A.2d 756 (Del. Ch. 1959).

² 163 F. Supp. 78 (N.D. Ohio, 1958).

is no reasonable relation between it and the value of a key executive's services.³ In the principal case, however, it was pointed out that earnings are the chief determinative factor of a stock's market price, at least in the long run. There being no question that an executive's services are related to corporate earnings, the court felt that it was unable to say that there is no relation between those services and the market price of the corporation's stock.

The latter view seems to be the better one. Compensation must be reasonably related to the value of an executive's services, but the determination of what is reasonable is usually left to the discretion and business judgment of the board of directors.⁴ In order to prevail, therefore, the plaintiff would have to show that a reasonable man would find the "unit" plan indefensible. Yet the "unit" plan is not unlike stock option plans which have found approval in the courts.⁵ The financial reward in each plan is identical, both being based on the increase of the market price of the corporation's stock. It is difficult, therefore, to understand why the "unit" plan is more unreasonable than a stock option plan. In the opinion of this commentator, the view expressed in *Lieberman v. Koppers Co., Inc.*⁶ is clearly justifiable.

CHARLES C. WINCHESTER, JR.

Criminal Law—Partnerships—Statutory Construction—*United States v. A & P Trucking Co. et al.*¹—The United States appealed directly to the Supreme Court, pursuant to 18 U.S.C. § 3731,² from rulings of the U.S. District Court of New Jersey dismissing two informations³ charging partnerships as entities with violation of 18 U.S.C. § 835 and 49 U.S.C. § 322(a).⁴ The basis of the dismissal in each case was that a partnership as an entity is not subject to criminal liability under the statutes. On appeal⁵ the Supreme Court, Harlan, J., unanimously held that there is nothing in the nature of a partnership as an entity to exempt it from criminal responsibility where Congress intended it to be so responsible. So holding, the court faced the further problem of whether or not Congress by these statutes intended partnerships to be criminally responsible. Traditionally partnerships qua partnership have been, and still are at common law, regarded

³ Id. at 86.

⁴ *Wyles v. Campbell*, 77 F. Supp. 343, 349-351 (D. Del., 1948); *Clamitz v. Thatcher Mfg. Co.*, 158 F.2d 687 (2d Cir., 1947); *Heller v. Boylan*, 29 N.Y.S.2d 653, 680 (1941).

⁵ *Wyles v. Campbell*, *ibid.*; *Clamitz v. Thatcher Mfg. Co.*, *ibid.*

⁶ *Op. cit. supra* note 1.

¹ 358 U.S. 121 (1958).

² A statute allowing the United States the right of direct appeal where an information is dismissed on the basis of statutory construction.

³ Informations numbered 252-56 and 261-56.

⁴ *A & P Trucking Co.* was charged with violating 18 U.S.C. § 835 and 49 U.S.C. § 322(a); *Hopla Trucking Co.* was charged with violating 18 U.S.C. § 835.

⁵ Both cases were consolidated for argument.