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Abraham C. Weinfeld
United States Department of Agriculture

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Fair Trade Laws and Other Minimum Price Laws Under the Defense Production Act Amendments of 1952

By ABRAHAM C. WEINFELD*

The Defense Production Act Amendments of 1952, approved June 30, 1952, provided for the addition of a new subsection to section 402 of the Defense Production Act of 1950, as amended,¹ to read as follows:

(1) No rule, regulation, order, or amendment thereto issued under this title [Title IV of the Defense Production Act of 1950, as amended] shall fix a ceiling on the price paid or received on the sale or delivery of any material in any State below the minimum sales price of such material fixed by the State law (other than any so-called 'fair trade law') now in effect, or by regulation issued pursuant to such law.

This provision is commonly referred to as the Bricker Amendment.² By delegations of authority from the President, the Office of Price Stabilization (OPS) became charged with the duty of establishing ceiling prices on commodities.³ One of the important questions arising in the interpretation of the Bricker Amendment is as to the difference between a "so-called fair trade law" to which ceiling prices of the OPS need not yield and a State minimum price law "other than a so-called fair trade law," to which OPS ceiling prices must yield. Another question relates to which *regulations* issued by State administrative agencies pursuant to State laws supersede OPS regulations establishing ceiling prices.

* J.D. 1920, University of Vienna; LL.B. 1926, Columbia University; Solicitor's Office, U. S. Department of Agriculture; formerly Branch Counsel, Office of Price Stabilization. The views expressed here are those of the writer and are not to be construed as those of the Office of Price Stabilization or U. S. Department of Agriculture.

¹ STAT. 296, 300; 504 U.S.C.A. App. 2102(1) (Supp. 1953).

² Introduced in a slightly different form on May 9, 1952, by Senator Hendrickson as an amendment to S. 2645, 82d Cong., 2d Sess. "Intended to be proposed by Mr. Bricker."

³ Sec. 402, 64 Stat. 798,803; 50 U.S.C. App. 2102; Ex. Order 10161, 15 F.R. 6105 (1950); Economic Stabilization Agency General Order No. 2, 16 F.R. 738 (1951).

LEGISLATIVE HISTORY

On February 5, 1952, Senator Maybank introduced S. 2594 to extend the Defense Production Act of 1950, as amended. On February 11, 1952, Senator Maybank introduced S. 2645 as the "Defense Production Act Amendments of 1952," to amend and extend the Defense Production Act of 1950, as amended, and the Housing and Rent Act of 1947, as amended. On May 9, 1952, Senator Hendrickson submitted an amendment to S. 2645, "Intended to be proposed by Mr. Bricker," to add a subsection to section 402 of the Defense Production Act of 1952, as amended, to read as follows:

(1) No rule, regulation, order, or amendment thereto issued under this title shall fix a ceiling on the price paid or received on the sale or delivery of any material in any State below the minimum sales price of such material fixed by the State law or regulation now or hereafter in effect.⁴

On May 27, 1952, the Senate Committee on Banking and Currency reported S. 2594, including in it the above amendment in modified form as section 105 of the reported bill. In the amendment as modified, the part following "State law" read: "(other than any so-called 'fair trade law') or regulation now in effect."⁵ With reference to that amendment, the Committee stated:⁶

ADJUSTMENT OF CEILINGS TO STATE
MINIMUM SALE PRICES (SEC. 105).

Prior to the passage of the Defense Production Act some States had enacted and enforced minimum price laws on some commodities. Ceiling price regulations interfere with the enforcement of some of these laws because Federal regulations prevail in event of conflict with State laws.

This new subsection, therefore, provides that ceiling prices for materials sold or delivered in any State shall not be below the minimum prices of such materials as fixed by that State's minimum price law which is now in effect. General so-called fair trade laws have been excepted from this amendment. Under this new provision the President shall adjust ceiling prices in a given State to make them

⁴ Note 2, *supra*.

⁵ S. Rep. No. 1529, 82d Cong., 2d Sess. 34-35 (May 27, 1952).

⁶ *Ibid.* 26-27.

not less than the level of prices established by such State's minimum price laws where it is shown that the ceilings are less than the minimum price level.

The House Committee on Banking and Currency, acting on a parallel bill on June 16, 1952, included the same proposed section 402(1) in section 108 of its version of the bill.⁷ The Committee's report contained a statement very similar to that in the Senate Report.⁸

Another version of the bill, as amended in the House of Representatives on June 26, 1952,⁹ substituted, for the part after "State law" in the amendment previously quoted from S. 2645, the following: "(other than any so-called fair trade law) enacted prior to July 1, 1952, or by regulation issued pursuant to such law."

The Conference Report referred to differences in the language used in the Senate and House versions, stated what language was finally adopted, and generally expressed the intent of the conferees.¹⁰

⁷ H. R. Rep. No. 2177, 82d Cong., 2d Sess. 37 (June 16, 1952).

⁸ *Id.* at 26. "STATE MINIMUM PRICES. The committee's attention has been directed to some cases where ceiling-price regulations interfere with the enforcement of State minimum-price laws. The amendment contained in section 108, therefore, provides that ceiling prices for materials sold or delivered in any State shall not be below the minimum prices of such materials as fixed by that State's minimum price law or regulation which is now in effect. Fair-trade laws have been excepted from the operation of this amendment. Under this amendment where it is shown that the ceilings are less than the minimum price level in effect in a State the President must adjust ceiling prices to make them conform to the provisions of the amendment."

⁹ 82d Cong., 2d Sess., S. 2594, p. 28, In the House of Representatives, June 26, 1952.

¹⁰ H. R. Rep. No. 2352, 82d Cong., 2d Sess. 20 (June 28, 1952). "STATE MINIMUM PRICES. The Senate bill contained a provision which would add a new subsection (1) to section 402 of the act under which no price ceiling for any material could be set in any State below the minimum sales price of such material fixed "by the State law (other than any so-called 'fair trade law') or regulation now in effect." The House amendment contained a generally similar provision which, however, in place of the language included in the above quotation marks would substitute "by any State law other than any so-called fair-trade law enacted prior to July 1, 1952 or by regulation issued pursuant to such law." The conference substitute retains the provision but in place of the quoted language above substitutes "by the State law (other than any so-called 'fair trade law') now in effect, or by regulation issued pursuant to such law."

"It was the intent of the conferees that this provision apply only to State minimum price laws which are presently enforced and in effect, and not to State minimum price laws which are not now enforced or which are dormant."

SO-CALLED FAIR TRADE LAWS AND MINIMUM PRICE LAWS OTHER THAN SO-CALLED FAIR TRADE LAWS

The legislative history does not shed any light on the line of demarcation between a so-called fair trade law and a minimum price law other than a so-called fair trade law. Obviously, however, the Congressional committees had in mind a group of State laws which fixed minimum sales prices and divided that group into so-called fair trade laws and *other* laws. Since minimum prices fixed pursuant to State fair trade laws were to continue subordinated to ceiling prices determined by the OPS, while minimum prices determined pursuant to *other* State laws were to supersede OPS ceiling prices, it is important to draw the line between these statutes as clearly as possible.

When the Bricker Amendment became law there existed several types of State price control statutes, and Congress presumably legislated with reference to them. An attempt will be made here to describe the main types and some variations of those types.¹¹

1. *Statutes prohibiting sales below cost.* Thirty States have statutes prohibiting sales below cost.¹² These statutes usually define the term "cost", including therein the "cost of doing business" which is expressed in percentages of the manufacturing cost in the case of a manufacturer, and of the invoice cost in the case of a retailer or wholesaler. There are also sales below cost statutes dealing with specific commodities like cigarettes,¹³ liquor,¹⁴ or drugs.¹⁵ At times, these provisions require the inclusion in the minimum price of a specified percentage as a mark-up, in addition

¹¹ This article is not based on an exhaustive study of all State statutes in this field, but the views here expressed may be helpful in forming an opinion as to a type or variation not here discussed. Consideration will be given to some State statutes which were held unconstitutional by State courts prior to July 1, 1952, and for that reason, as will appear hereinafter under "Administration of the Bricker Amendment," are not covered by the Amendment. Such a statute may be used as an illustration because this very kind of statute may have been held constitutional in another State or may not have been tested in the courts of other States.

¹² See Commerce Clearing House, 2 *Trade Regulation Service* 7503.

¹³ In about 14 States, for instance, Ark. Stat. 1947, 1951 Supp., secs. 70-601 to 70-613; 1935 Colo. Stat. 1950 Supp., ch. 48, secs. 302(14) to 302(27).

¹⁴ For instance, N.M. Stat. sec. 63-911 (1941).

¹⁵ For instance, Conn. Gen. Stat. sec. 960 (1939); La. Gen. St. Ann. sec. 3316.1 (Dart 1939).

to cost.¹⁶ These statutes expressly prohibit selling for less than certain prices, and the prices are computed in accordance with specified formulas. Therefore, these statutes are clearly minimum price laws. Whether they are minimum price laws other than fair trade laws will appear from the discussion of fair trade laws.

2. *Statutes fixing, or providing for fixing of, dollar-and-cent minimum prices.* Legislatures have fixed dollar-and-cent prices or dollar-and-cent minimum prices for some commodities and services, or have authorized State administrative bodies to do so. This form of price control has been applied to milk and other dairy products, foodstuffs, agricultural commodities, citrus, coal and fuel, and to services like barbering and cleaning and dyeing.¹⁷ Minimum differentials have been established for grades of butter-fat.¹⁸

The question may arise as to whether a dollar-and-cent price is a minimum price. It can be argued that when a definite price is fixed for a commodity, that commodity may not be sold for less and, therefore, a definite price is a minimum price. On the other hand, a definite price is not only a minimum price but also a maximum price, and Congress referred only to minimum prices in section 402(1) of the Defense Production Act of 1950, as amended. I incline to the view that a State law requiring definite prices should be considered a law requiring minimum prices for the purpose of the Bricker Amendment and that, therefore, OPS ceiling prices should yield to definite prices fixed by a State law. This view seems to me closer to the Congressional intent.

All these statutes discussed under "2" are minimum price laws. Whether they are minimum price laws other than fair trade laws will appear from the discussion of fair trade laws.

3. *Permissive Fair Trade Acts.* Fair trade acts provide "in substance that a contract for the sale of a trademarked, trade-named, or branded commodity which is in fair and open competition with other commodities of the same general class shall not be deemed in violation of law by reason of restrictions therein

¹⁶ For instance, Act 360 of La. Laws of 1938, held unconstitutional in *Schwegmann Brothers v. Louisiana Board of Alcoholic Beverage Control*, 216 La. 148, 43 So. 2d 248 (1949).

¹⁷ For a collection of such statutes, see Works Progress Administration, *State Price Control Legislation* (1940) 385-502.

¹⁸ *Id.* at 551.

upon the resale of such commodity at a price other than that fixed by the producer or vendor; . . . The avowed object of such legislation is the protection of trademark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trademark, brand, or tradename. . . .¹⁹ The statutes dealt with here are permissive; the producer or vendor may or may not enter into the contract which is protected by the statute. But for the fair trade act, the contract would generally be considered illegal as in restraint of trade. The object of fair trade acts is generally referred to as "resale price maintenance", and the acts are generally discussed under this heading. Fair trade acts permit vertical price regulation while sales below cost statutes provide for the control of prices along horizontal lines.²⁰

These statutes are generally known as fair trade acts and unquestionably fall within the category of "any so-called fair trade law" mentioned in the Bricker Amendment. The result is that OPS ceiling prices do not yield to prices specified in contracts protected by such statutes.

Of the 45 States which have fair trade acts,²¹ some have the so-called old type act and some have a more elaborate new type act which is a model proposed by the National Association of Retail Druggists. One of the differences is that the old type act deals with contracts which fix *the* price at which the buyer is permitted to resell while the new type deals with contracts providing that the buyer will not resell at *less than the* price stipulated by the seller.²² Some fair trade acts require fair trade contracts to contain provisions for minimum mark-ups in their resale prices.²³

¹⁹ 52 Am. Jur., *Trademarks, Tradenames, and Trade Practices* sec. 177.

²⁰ "Vertical price control refers to price restrictions applicable to different planes of the marketing process, such as a restriction imposed by manufacturers on retailers, while horizontal price control refers to price restrictions applicable to sellers on the same plane, for example, a price agreement between manufacturers or between retailers." Works Progress Administration, *State Price Control Legislation* (1940) XLVIII, n. 1.

²¹ Commerce Clearing House, *2 Trade Regulation Service* 7502.

²² For statutes of both types see 5 Callmann, *The Law of Unfair Competition and Trademarks* 2245-2249 (2 ed. 1950).

²³ For instance, the Kentucky Distilled Spirits and Wine Fair Trade Act, Ky. Acts, 1940, c. 13, p. 90; Ky. Rev. Stat. secs. 244.380, 244.390 (1948). This statute was held constitutional in *Reeves v. Simons*, 289 Ky. 793, 160 S.W. 2d 149 (1942). A substantially similar statute, Fla. Acts 1941, c. 21001, was held unconstitutional in *Scarborough v. Webb's Cut Rate Drug Co.* 150 Fla. 772, 8 So. 2d 920 (1942) rev'g. on reh. 150 Fla. 754, 8 So. 2d 913 (1942).

A comparison of the permissive fair trade acts on one hand and the minimum price statutes discussed under "1" and "2" on the other, indicates some distinctions between them. (a) Fair trade acts refer to trademarked, tradenamed, or branded commodities while those minimum price statutes refer to commodities irrespective of whether they are trademarked, tradenamed, or branded. (b) Fair trade statutes state expressly that they cover commodities which are in fair and open competition with other commodities of the same general class. The minimum price statutes discussed under "1" and "2" do not contain such statements. But those of them that deal with specific commodities like cigarettes, liquor, or drugs in fact deal with commodities which are in competition with others of the same general class. Therefore, applicability to commodities which are in competition with others of the same general class is not a distinguishing feature between these two groups of statutes. (c) Fair trade statutes let private individuals determine minimum sales prices while, by the statutes discussed under "1" and "2", the Legislatures determine prices or price formulas or leave determinations to State authorities. Consequently, a fair trade act helps maintain a minimum price level only after the owner of the brand has acted, has made a contract, while a minimum price statute described under "1" or "2" maintains a minimum price level without the need of any action by a private individual. (d) The control pursuant to a fair trade act is vertical (though if substantially all buyers are subject to it the effect may become horizontal) while control pursuant to those minimum price statutes is not vertical but is horizontal.

4. *Compulsory Fair Trade Acts.* Some statutes *prohibit* the sale of liquor in containers which bear labels stating the brand or name of the owner or producer except pursuant to a fair trade contract.²⁴ Others delegate discretion to State officials to prohibit sales of liquor except according to fair trade contracts.²⁵ With

²⁴ For instance, Ill. Rev. Stat. c. 43, secs. 196-204 (1947), held unconstitutional in *Illinois Liquor Control Commission v. Chicago's Last Liquor Store*, 403 Ill. 578, 88 N.E. 2d 15 (1949). This statute required the filing of the contract with the Liquor Control Commission as well as the filing of a schedule of consumer minimum resale prices.

²⁵ For instance, N. J. Laws 1938, c. 208, sec. 1, p. 492; N. J. Rev. Stat. 1937, 1938 Annual, 33:1-23.1; and rule 6 of Regulation 30 of the N. J. Department of Alcoholic Beverage Control. This statute was held constitutional in *Gaine v.*

reference to the four features discussed in the preceding paragraph, these statutes are like the permissive fair trade laws and clearly fall within the category of "any so-called fair trade laws" which do not receive the protection of the Bricker Amendment.

5. *Statutes against price discrimination.* These statutes prohibit discrimination between persons and localities in respect of the price of commodities.²⁶ Since they do not directly or indirectly fix minimum prices they need not be considered in connection with interpreting the Bricker Amendment.

6. *Summary and attempt to distinguish between the two groups.* The statutes so far discussed, generally cover the field of State price control from which Congress carved out the two groups of statutes mentioned in the Bricker Amendment. Those discussed under "3" and "4" are unquestionably fair trade acts within the meaning of the Amendment. Those discussed under "1" and "2" are minimum price laws which differ from the fair trade acts in three important respects, as to coverage of branded articles, as to determination of prices by State authorities or private individuals, and as to vertical or horizontal control. Under these circumstances, it seems reasonable to consider the statutes discussed under "3" and "4" as the "so-called 'fair trade laws'" mentioned in the Bricker Amendment, the statutes discussed under "1" and "2" as minimum price laws other than so-called fair trade laws, and the three distinguishing features as general guides, helpful in placing a particular statute in one or the other group.

7. *The Connecticut Liquor Price Posting Act.* In 1951, Connecticut passed an Act Concerning the Posting of Prices of Alcoholic Liquors.²⁷ Section 1 of this statute was incorporated in the Connecticut General Statutes as section 904b under a heading, "Fair trade; schedule of prices to be filed with commission". This section forbids an out-of-state shipper, manufacturer, or whole-

Burnett, 122 N. J. L. 39, 4 A 2d 37 (1939) aff'd on op. below 123 N. J. L. 317, 8 A 2d 604 (1939). A similar statutory provision, paragraph 12(b) of sec. 17 of the New York Alcoholic Beverage Control Law, 3 McKinney's N. Y. Cons. Laws (Edward Thompson Co. 1946) was held unconstitutional in *Levine v. O'Connell*, 275 App. Div. (1st Dept.) 217, 83 NYS 2d 672 (1949) aff'd without op. 300 N. Y. 658, 91 N.E. 2d 322 (1950). See note, "State Power to Regulate Price of Intoxicating Liquor", 14 A.L.R. 699, 701 (1950).

²⁶ 52 Am. Jur., *Trademarks, Tradenames, and Trade Practices* sec. 175.

²⁷ Conn. Acts. 1951, No. 200, p. 205; Conn. Stat. secs. 904b to 906b (Supp. 1951).

saler permittee to sell any alcoholic liquor, the container of which bears a label stating the brand or the name of the owner or producer, unless a schedule of minimum consumer resale prices for each brand of alcoholic liquor has been filed with the Liquor Control Commission, except that written permission for such sale may be granted by the Commission for good cause shown. Such schedule is to be filed by the out-of-state shipper, manufacturer, or wholesaler who owns the brand if licensed by the Commission, or a wholesaler who is appointed agent for that purpose, or any wholesaler with the approval of the Commission if the owner of the brand fails to act. The prices remain in effect for a period fixed by the Commission, not to exceed four months. No permittee authorized to sell alcoholic liquor at retail for off-premises consumption shall sell at a price less than a minimum consumer resale price then in effect, unless written permission of the Commission is granted for good cause shown. Section 2, incorporated as Section 905b in the Connecticut General Statutes, authorizes the Commission to make regulations necessary to carry out the purposes of the Act; to permit changes in the schedules; to permit the sale, at a price less than the minimum consumer resale price, of damaged goods; and to permit the sale by a retailer of a brand for which a schedule has not been and cannot be filed, in order to avoid practical difficulties or unnecessary hardships.

In an attempt to determine whether this statute falls within one or the other of the groups of statutes referred to in the Bricker Amendment, the following should be considered: (a) When the first section of the statute was incorporated in the Connecticut General Statutes it was given a heading, "Fair trade". (b) In *Schwartz v. Kelley*²⁸ a Connecticut court stated that by this act the Legislature had chosen "to cope with certain aspects of liquor control, through the medium of resale price maintenance at the consumer level". The phrase "resale price maintenance" typically describes the objective of fair trade laws. (c) This statute has all the distinguishing features of fair trade acts, as stated under "6". It refers to branded articles; the determination of minimum sales prices is left to private individuals; and the statute's control is vertical. Being compulsory, the statute is similar to a compulsory

²⁸ Commerce Clearing House, Trade Regulation Reporter, 1952 Trade Cases, sec. 67,314 (Super. Ct. June 9, 1952).

fair trade act. (d) The fact that the Connecticut law speaks of "minimum consumer resale prices" is not a good argument against considering it a fair trade law because Connecticut has a typical fair trade law which also provides for "minimum consumer resale prices" and "minimum prices."²⁹ (e) It is proper to attribute to the Congress an intention to give effect to minimum prices established by State governments but not to minimum prices established by private individuals. Under all these circumstances, I believe that the Connecticut statute should be considered a fair trade law for the purpose of the Bricker Amendment.

ADMINISTRATION OF THE BRICKER AMENDMENT

On July 17, 1952, the Office of Price Stabilization issued General Overriding Regulation (GOR) 32 (17 F.R. 6538), entitled "Adjustment of Ceiling Prices for Materials to the Minimum Prices Fixed by State Laws". The issuance of this regulation was based on the view that Congress did not intend the Bricker Amendment to work automatically on the multitude of State statutes covered by it but that Congress wished OPS to regulate the application of the Amendment. This view was derived from the legislative history.

The report of the Senate Committee on Banking and Currency³⁰ stated that *the President should adjust* ceiling prices in a given State to make them not less than the level of prices established by such State's minimum price laws where it was shown that the ceilings were less than the minimum price level. According to the Conference Report,³¹ "It was the intent of the conferees that this provision apply only to State minimum price laws which are presently enforced and in effect, and not to State minimum price laws which are not now enforced or which are dormant." Obviously, a selection had to be made between State statutes which were and those which were not protected by the Bricker Amendment.

In GOR 32, OPS required dealers or State authorities to apply, submitting a certified copy of the applicable State law, a certificate that the law was enforced and in effect on June 30, 1952,

²⁹ Conn. Gen. Stat. secs. 6711, 6709 (1949).

³¹ Note 10, *supra*.

and that it was currently in effect, and that the law had not been held invalid by any decision of any court of competent jurisdiction. Information was also required as to the minimum prices computed in accordance with State law and the method of their computation. Pursuant to GOR 32, a total of 13 special orders was issued raising the ceiling prices to conform with State statutes which prohibited sales below cost, on the theory that such statutes were minimum price laws within the contemplation of the Bricker Amendment. Of these 13 orders, 12 dealt with prices of cigarettes³² and one—for certain counties in Montana—with breakfast cereals, lard, canned milk, oleomargarine, shortening, and canned soup.³³ One letter-order was issued on the application of a Wisconsin dealer in smoking tobacco. OPS did not deny any application received pursuant to GOR 32.

The question came up as to whether the Connecticut Liquor Price Posting Act,³⁴ was a fair trade law or a minimum price law other than a fair trade law. OPS held that it was a fair trade law.

REGULATIONS ISSUED PURSUANT TO STATE LAWS

The Bricker Amendment subordinated OPS ceiling prices not only to a certain kind of law, but also to regulations “issued pursuant to such law”. According to the Conference Report,³⁵ the amendment was to apply only to “State minimum price laws which are presently enforced and in effect, and not to State minimum price laws which are not now enforced or which are dormant.” The words “presently” and “now” obviously refer to June 30, 1952, when the Bricker Amendment became law. The question may arise as to whether OPS is bound by State *regula-*

³² Special Order 1 for Ohio, issued October 1, 1952, 17 F.R. 8789; Special Order 2 for Maine, October 2, 1952, 17 F.R. 8847; Special Order 3 for Minnesota, October 13, 1952, 17 F.R. 9102; Special Order 5 for New Jersey, October 13, 1952, 17 F.R. 9103; Special Order 6 for Wisconsin, October 13, 1952, 17 F.R. 9104; Special Order 7 for New Hampshire, October 15, 1952, 17 F.R. 9166; Special Order 8 for Tennessee, October 27, 1952, 17 F.R. 9700; Special Order 9 for Kansas, November 13, 1952, 17 F.R. 10404; Special Order 10 for Pennsylvania, December 1, 1952, 17 F.R. 10858; Special Order 11 for “out of stock” sales by wholesale tobacco distributors in Montana, December 12, 1952, 17 F.R. 11332; and Special Order 12 for Connecticut, February 2, 1953, 18 F.R. 720.

³³ Special Order 4, issued October 13, 1952, 17 F.R. 9102, and Amendment 1, December 29, 1952, 17 F.R. 11817.

³⁴ Note 26, *supra*.

³⁵ Note 10, *supra*.

tions issued after June 30, 1952, pursuant to a law that was enforced and in effect on June 30, 1952.

It will be recalled from the legislative history that pursuant to the original version of the Amendment, OPS ceiling prices were to be subordinated to minimum sales prices fixed by any "State law or regulation now or hereafter in effect."³⁶ The Senate Committee on Banking and Currency wished to subordinate them only to any "State law . . . or regulation now in effect."³⁷ The House of Representatives desired to subordinate them to any law "enacted prior to July 1, 1952, or regulation issued pursuant to such law,"³⁸ and this view was in effect accepted by the Conference Report³⁹ and became law. It thus appears that the effectiveness of regulations issued after June 30, 1952, was clearly at issue. Therefore, the statutory language as finally adopted should be construed to mean exactly what it says. If the State law meets the requirements of the Bricker Amendment, OPS ceiling prices must be subordinated to regulations issued pursuant to such State law either before or after June 30, 1952.

This leaves a question open as to situations where State statutes give State authorities discretion to determine minimum prices according to broad and vague standards which do not enable a member of the public to *compute* a minimum price, and on June 30, 1952, there were no minimum prices in effect which had been determined by the State authorities. If the State authorities determine minimum prices after June 30, 1952, I would take the position that, generally speaking, OPS ceiling prices need not be subordinated to such minimum prices because the State law, though valid and on the statute books, had not been made operative by June 30, 1952; it was in effect dormant on that date. Of course, there may be variations in the provisions of those State statutes, and an examination of the statute involved would have to be made before a definite legal position could be taken in a particular case.

³⁶ Note 4, *supra*.

³⁷ Note 5, *supra*.

³⁸ Note 9, *supra*.

³⁹ Note 10, *supra*.