

June 22, 1965



Honorable Richard J. Rabbitt
Representative
8th District, St. Louis City
Room 407A, Capitol Building
Jefferson City, Missouri

Dear Mr. Rabbitt:

In your letter of May 10, 1965, you inquired as to the validity of House Bill No. 691 now pending before the Legislature.

The validity of House Bill No. 691 depends, in part, upon the authority of the Legislature to establish statutory presumptions of certain facts as a rule of evidence. Whether a statute which provides that the present physical condition of a member of a paid fire department is presumed to have been incurred in line of duty unless the contrary is shown by competent evidence is within the power of the Legislature to enact.

We have been unable to find any court decision in this state where the precise question now at issue has been ruled upon. There are several court decisions dealing with the authority of the Legislature to enact laws creating a statutory presumption of certain facts upon proof of other facts. One of the latest decisions is Borden Company v. Thomason, 353 S. W. 2d 735. In this case, the court was considering the validity of an act of the Legislature regulating the sale of milk and milk products. Among other points considered by the court was a provision of the statute that in the absence of evidence to the contrary, "the statutory presumption that a grocer's cost of doing business is 8% of the invoice price to the grocer."

In discussing the authority of the Legislature to enact rules of law governing presumptions, the court said l. c. 755:

"The applicable rule is well stated in City of St. Louis v. Cook, 359 Mo. 270, 221 S. W. 2d 468, 470, as follows:

"Giving a regard to due process, the power to provide such an evidentiary rule is qualified in that the fact upon which the presumption or inference is to rest must have some relation to or natural connection with the fact to be inferred, and that the inference of the existence of the fact to be inferred from the existence of the fact proved must not be purely arbitrary or wholly unreasonable, unnatural, or extraordinary. * * * And it is clearly beyond the legislative power to prescribe what shall be conclusive evidence of any fact. O'Donnell v. Wells, 323 Mo. 1170, 21 S. W. 2d 762 * * *. It is "only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed (or inferred), and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate." And see Mobile, J. & K.C.R. Co. v. Turnipseed, 219 U. S. 35, 31 S. Ct. 136, 137, 55 L. Ed. 78. Also see McFarland v. American Refining Sugar Co., 241 U. S. 79, 86, 87, 36 S. Ct. 498, 60 L. Ed. 899, and Morrison v. People of State of California, 291 U. S. 82, 88, 89, 54 S. Ct. 281, 284, 78 L. Ed. 664. In the Morrison case the Court said: 'The decisions are manifold that within the limits of reason and fairness the burden of proof may be lifted from the state in criminal prosecutions and cast on a defendant. The limits are in substance these, that the state shall have proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression.' And see Schwegmann Bros. Giant Super Markets v. McCrory, supra, 112 So. 2d 606, 617[6]."

In Tot v. United States, 319 U. S. 463, 87 L. Ed. 1519, the United States Supreme Court held Congress was without power to create the presumption sought to be created by the Federal Fire Arms Act, to wit: that from the prisoner's prior conviction of a crime of violence and his present possession of a firearm or ammunition, it shall be presumed (1) that the article was received by him in

interstate or foreign commerce, and (2) that such receipt occurred after July 30, 1938, effective date of the statute.

In discussing the matter of the authority of Congress to enact statutory presumptions, the court said, 319 U. S. L. C. 467:

"The Government seems to argue that there are two alternative tests of the validity of a presumption created by statute. The first is that there be a rational connection between the facts proved and the fact presumed; the second that of comparative convenience of producing evidence of the ultimate fact. We are of opinion that these are not independent tests but that the first is controlling and the second but a corollary. Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts."

Applying these principles of law to the Bill now under consideration, the validity of the Bill depends in part as to whether there is some rational connection between the facts proved and the facts presumed, i. e., whether there is a reasonable or rational basis for concluding that the physical impairment mentioned in said Bill has some rational connection with the employment. We believe this would depend primarily upon medical science and is beyond our authority to determine from the facts submitted herein.

In our research, we have found a decision of the Supreme Court of Florida, which considered a statute similar to the Bill now under discussion. In the case of City of Coral Gables v. Brasher, 120 So. 2d 5 (1960), a city policeman applied for his retirement benefits from the city based on a disability which he contended was incurred in the line of duty, his disability being a heart condition. The Retirement Board held he was entitled to ordinary retirement benefits because his condition was not the result of his employment and awarded him a smaller retirement benefit. On appeal, the Supreme Court of Florida considered the validity of a statute enacted in 1957 which is as follows:

"Section 1. Any condition or impairment of health of any and all police officers employed in the State of Florida caused by tuberculosis, hypertension, heart disease or hardening of the arteries, resulting in total or partial disability shall be presumed to have been suffered in line of duty unless the contrary be shown by competent evidence, provided, however, that such police officer shall have successfully passed a physical examination on entering into such service, which examination fails to reveal any evidence of such condition. Nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440, Florida Statutes, pertaining to Workmen's Compensation."

In discussing the constitutionality and validity of this statute, the court stated l. c. 9:

"This rule has been followed by this court in other cases which we do not consider necessary to recite. From these and other cases the courts have deducted the general rule that so long as there is a rational connection between the fact proven or to be proven and the ultimate fact presumed and the adverse party is given reasonable opportunity to proffer evidence and have a jury decide the facts in issue, there is no violation of due process or equal protection guaranteed by the state or federal constitutions. For an excellent annotation on the subject, see 162 A. L. R. 495."

It would appear that the decision of the Supreme Court of Florida cited above is some authority for holding that the Bill now under discussion does not violate the due process or equal protection clause of the state or federal constitutions.

Very truly yours,

NORMAN H. ANDERSON
Attorney General