NOTES AND COMMENTS

CONSTITUTIONAL LAW

RECENT DECISIONS ON THE EXTENSIVE AND INTENSIVE ASPECTS OF THE GUARANTY OF FREE SPEECH AND FREE PRESS

Three recent decisions,[1] ranging from a ruling of an inferior court of Ohio to a judgment of the Supreme Court of the United States, once again present the question of the scope of the free speech and the free press guaranty in both its extensive and its intensive aspects. In one of these Cases acting under the authority of an ordinance which expressly conditioned licenses to motion picture exhibitors on a power of revocation if the exhibition was found to be immoral, indecent, or injurious to the public welfare, Cincinnati officials demanded a deletion of a portion of the motion picture "The Birth of a Baby" or discontinuance of its public exhibition. Thereupon, the American committee on Maternal Welfare, Inc., sponsors of the picture, and Special Pictures Corp., to which ownership of the picture had been transferred on its completion, filed a bill for an injunction based on the contentions (1) that the city's action constituted a violation of the right of freedom of speech and press, and (2) that the ordinance conflicted with state laws governing censorship of motion pictures, under which this picture had been approved. Though the plaintiffs had their remedy on the second ground, the first was refused.[2]

For this refusal, the Ohio common pleas court relied almost completely on the decision of the Supreme Court of the United States in *Mutual Film Co.* v. *Ohio Industrial Com.*,[3] involving the power of a state to establish a system of censorship for motion pictures. Though a violation of the Fourteenth Amendment was there alleged in the suit filed in the federal district court, the case was disposed of by the Supreme Court on an interpretation of the Ohio Constitution. The kernel of the court's reasoning, accepted with finality in the instant Ohio court, appears in the observation that: "It cannot be put out of view that the

[1] *American Committee* v. *Cincinnati*, 26 Ohio L. Abs. 533 (1938); *Commonwealth* v. *Kimball*, 13 N.E. (2d) 18 (Mass. 1938); *Lovell* v. *City of Griffin*, 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 660 (1938).

[2] *American Committee* v. *Cincinnati*, 26 Ohio L. Abs. 533 (1938).

[3] 236 U.S. 230, 35 S. Ct. 387, 59 L. Ed. 552 (1915).

exhibition of motion pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, nor intended to be regarded by the Ohio Constitution, we think, as part of the press of the country or as organs of public opinion." It is not easy to square such reasoning with the unquestioned immunity of the modern newspaper, but recently reaffirmed in *Grosjean* v. *American Press Co.*[4] It requires no citation of data to sustain the assertion that the publication of newspapers is just as much a "business pure and simple," the major purposes of news collection and dissemination being to build a circulation that will be attractive to advertisers. Judging from the language of the *Mutual Film* opinion, the differentiation that the Court was attempting to draw was more accurately one of the divergent extent to which films and newspapers operate as mediums of thought and organs of public opinion. This differentiation is reflected, not only in the opinion in the principal case, but also in that of *Pathé News* v. *Cobb*,[5] the only other decision which has been found that considers in its extensive aspect the scope of the constitutional guaranty of freedom of speech and press. In all three of the cases cited the motion picture business is grouped with the theatre, the circus, and other types of spectacles, and its quality as a medium of thought viewed as but incidental to its quality as a mode of entertainment. On the other hand, the newspaper traditionally has been regarded by the courts as an institution in which the expression of thought and opinion is the prime rather than the incidental function.

At the time the Supreme Court dealt with the issue, and as late as 1922, considerable basis existed for such a distinction; but that a court can stand on the same basis today, as the Ohio court has now attempted to do, is questionable. For, in the past fifteen or twenty years, the motion picture has graduated from the era of slapstick comedy and gushy romanticism to a period of wide use of the movie medium for instruction, expression of opinion, and propagandism. There is no dearth of factual evidence to the effect that today, far more than in 1915 or 1922, motion pictures constitute an organ for the expression of public opinion,[6] and

[4] 297 U.S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

[5] 202 App. Div. 450, 195 N.Y. Supp. 661 (1922).

[6] The American Committee on Maternal Welfare, Incorporated, was organized by some of the nation's leading gynecologists and obstetricians in 1919, for the purpose of promoting maternal and child welfare. It is composed of representatives of sixteen medical and welfare bodies including the American College of Surgeons, United States Public Health Service, American Medical Association, and Children's Bureau of the United States Department of Labor.

In June, 1936, a committee of five doctors was appointed by the American Committee of Maternal Welfare, Incorporated, to carry out the project of producing a picture based on the story of a young mother during the period of pregnancy and birth. That committee was composed of Doctor Fred L. Adair, of the University of Chicago; Doctor James R. McCord, of Emory University; Doctor Everett D. Plass, of the University of Iowa; Doctor Arthur L. Skell, of Cleveland, Ohio; Doctor Philip F. Williams, of the University

play an influential part in setting the tone of community life.[7] It is significant that in the principal case the production and presentation of the picture in issue was sponsored by a non-profit corporation formed for the purpose of promoting maternal and child welfare. Undoubtedly new impetus is by this presentation being given to the movement, already begun, to use the screen as a medium of opinion formulation. There is increasing moment today to the concession the Pathé News court felt obliged to make in 1922, namely, that although the motion picture was only incidentally a medium for thought propagation, it was, even so, more influential than the printed page, especially with the young and semi-literate.

A refinement of this distinction between the prime and incidental nature of the expression of public opinion was superimposed by the courts when the movie companies in *Pathé News* v. *Cobb, ante*, sought to employ it advantageously by challenging the censorship of news-reels. Unwilling to say that this form of motion picture presentation was essentially entertainment, the court drew a distinction between modes of expression, argumentative or conceptual in character and those that are descriptive or concrete. The essential thing privileged by the Constitution, stated the court, is not the news feature, but the right to publish

of Pennsylvania. The scenario was made by Doctor Fred L. Adair and Doctor Warren Cox, aided by Arthur Jarrett and Burke Symon, professional scenarists. The license agreement under which it would be shown provided expressly against abuses in its exhibition (taken from the opinion of Judge Gunn in the case of *Special Pictures Corporation* v. *Division of Motion Picture Censors* in the Circuit Court of the City of Richmond, Va., September 19, 1938). This is not the sole example of such a procedure. At the instigation of the Sentinels of America, the *Amateur Fire Brigade* was produced and shown free of charge in 1936. The American Legion is now supporting a picture in Hollywood which deals with Legion activities. Other examples exist. Even when organizations may not enter the field of production, they frequently exert tremendous influence on production by acting in various manners as pressure groups. In a publication of the Public Relations Department of the Fox West Coast Agency Corporation, reports are made of the nature of the reviews given by a partial list of organizations, providing reviewing services: Daughters of the American Revolution, The American Legion Auxiliary, California Congress of Parents and Teachers, Council of Federated Church Women, California Federation of Business and Professional Women's Clubs, National Society of New England Women, General Federation of Women's Clubs, National Board of Reviews, National Council of Jewish Women, and Women's University Club.

In the Bulletins on Current Films issued by the National Council for Prevention of War note the reference made in issue No. 59 of date Oct. 29, 1938 to a plan of Paramount Pictures to produce a film, tentatively called "Invasion," the story prepared by Captain Wm. F. Cox of the Chemical Warfare Division of the U. S. Army, depicting what happens when a peaceful country is made victim of a surprise attack; note the interpretations the writer gives to the movies' activities of the last war; and note the appeal he makes, too, for a pressure on the motion picture companies. See his classification on a military motif of current pictures in issue No. 58 of date Oct. 14, 1938. See in bulletins No. 55 and 56 of dates June 20, 1938 and July 7, 1938 the accounts of the pressure for and against the showing of "Blockade" and their effect on future plans for production. For other reference to the boycott see contemporary issues of *Life* magazine. *In toto*, the bulletins are indicative of pressures and counter pressures vieing for their particular views to be given force in motion pictures. The recognition would seem to be

one's sentiments, those decisions of the mind formed by deliberation, reasoning, thought, opinion, notion or judgment. So, those things privileged had not only to be primarily organs of opinion, but also primarily expressions of the opinion, as such. No sound basis for this distinction appears.

Any justification of this distinction must be founded on the untenable proposition that the Constitutional Fathers guaranteed the right of free speech solely to provide satisfaction to the individual desiring to express his opinion. Whereas, more frequently it is emphasized that they intended this right to safeguard democracy by making freely available to the people, on whom the government rests, divergent opinions, beliefs, facts, and interpretations of facts. But even though this proposition were tenable, the distinction is impossible in fact, because opinion is as forcefully expressed through careful selection and organization of facts as through argumentation. The ideology which a newspaper supports is no more readily ascertainable from its editorial column than from the facts given prominence in its news columns, and the subtle expression of the latter may ultimately be of greater effect. The strict application of this refinement to newspapers would clearly result in the censorship of a great part of the materials relating to news reporting and news commentation, now published unchallenged.

made by all groups that one ideology is to be represented in greater frequency than its particular counter-ideology, and that this circumstance will have an important influence on the one to be accepted. Further, to exclude all is impossible.

It is a well known fact that large numbers of pressure groups including the American Legion, the American Civil Liberties Union, League for Peace and Democracy, the Catholic Church, Friends of Spanish Democracy and the D.A.R. make direct appeals to and seek to influence the decisions of the various censorship boards. To say that they are of no effect would seem to be highly unrealistic; to say of what effect would be speculative and dependent on personal analysis.

For a commending account of the activities of the Catholic Church, influencing production both directly and indirectly, see "Motion Picture Abuses," 21 Marquette L. Rev. 105, 113-117 (1937); for a criticism of such activities see Catholic Movie Censorship, *The New Republic*, vol. 96, page 233 (October 5, 1938).

[7] The Payne Fund Studies aimed at discovering the influence of motion pictures on children and investigated by a group of psychologists, sociologists and educators. Membership of the Committee on Educational Research of The Payne Fund was as follows: H. H. Thurstone, Frank W. Freeman, R. E. Park, Herbert Blumer, Philip M. Houser of the University of Chicago; George D. Stoddard, Christian A. Ruckmick, P. W. Holoday, and Wendell Dysinger of the University of Iowa; Mark A. Maynard and Frank K. Shuttleworth of Yale University; Charles C. Peters of Pennsylvania State College; Ben D. Wood of Columbia University; and Samuel Renshaw, Edgar Dale, and W. W. Charters of Ohio State University. For a short summary of the findings see "Motion Pictures and Youth": A summary by W. W. Charters, Director, Bureau of Educational Research, Ohio State University, published for the first time in 1933. For greater detail see the individual books separately published by the various members of the committee therein referred to and cited.

An article in *Harper's* for January, February, and March, 1938, "Business Finds Its Voice," by S. H. Walker and Paul Sklar indicates that business has given recognition to the importance of this influence.

A book entitled "Our Movie Made Children" by Henry James Forman published by the Macmillan Company 1933 has pointed popular attention to these facts.

But whatever basis in law once existed for the Pathé News distinction in 1922, today its validity is substantially impaired. *Lovell* v. *City of Griffin*[8] most recent of the Supreme Court's enunciations on freedom of speech and press, posed the question of the immunity of the modern pamphleteers. The Court's answer was unequivocal: "The press in its historic connotations comprehends every sort of publication which affords a vehicle of *information* and *opinion*."[9]

In the absence of cogent reasons for separate classification, the refusal to bring the motion picture within the purview of the free speech and free press guaranty would seem to rest entirely on its non-existence at the time the Constitution was formulated. It is on this important question that this latest judicial expression of the Supreme Court is, also, extremely significant. That policy of constitutional construction which limits a prohibition or a delegation of power to the conscious thought of its authors, though frequently professed,[10] has been also frequently criticized in recent discussion and avowedly discarded.[11] The method ignores the acknowledged nature of constitutions and the difference between active and latent intent.[12] Objection to this restricted interpretation has even greater persuasiveness when, as here, the courts are dealing not with questions which the formulators only partially foresaw, but with a question that they did not contemplate, even in a general way. Some precedent in this very field for not following this rule of construction already exists in those cases holding the censorship laws applicable to sound films which were non-existent at the time of the enactment.[13] Since the opinion in the case serving as the basic authority for denying immunity to motion pictures was written by Mr. Justice McKenna, who was himself among the most eloquent in criticising the older policy

[8] 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 660 (1938).

[9] Italics are the writer's.

[10] Dissent of Chief Justice White in *Weems* v. *U. S.*, 217 U.S. 349, 54 L. Ed. 793, 30 S.C. 544 (1910); Mr. Justice Strong's opinion in 79 U.S. (12 Wall.) 457, 20 L. Ed. 287 (1870); Mr. Justice Black's dissent in *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 457 (1938) (in which he contends that the word "person" in the Fourteenth Amendment was not intended to include corporations); *Mattox* v. *U. S.*, 156 U.S. 237, 15 S. Ct. 337, 39 L. Ed. 409 (1895).

[11] Dissent of Mr. Justice Brandeis in *Olmstead* v. *U. S.*, 277 U.S. 438, 48 S. Ct. 564, 72 L. Ed. 944 (1928), in part stating . . . "this court has repeatedly sustained the exercise of power by Congress, under various clauses of that instrument, over objects of which the Fathers could not have dreamed." Therein cited in substantiation were: *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U.S. 1, 24 L. Ed. 708 (1877); *Northern Pacific Ry. Co.* v. *North Dakota*, 250 U.S. 135, 39 S. Ct. 502, 63 L. Ed. 897 (1919). And see *Brooks* v. *U. S.*, 267 U.S. 432, 45 S. Ct. 345, 69 L. Ed. 699 (1925).

[12] "Use by the United States Supreme Court of Extrinsic Aids in Constitutional Construction" by Jacobus ten Brock in 26 Calif. L. Rev. 664 (1938).

[13] *In re* Fox Film Corp., 295 Pa. 461, 145 Atl. 514 (1929); *In re* Vitagraph Inc., 295 Pa. 471, 145 Atl. 518 (1929) (Suppression of free speech was not there argued).

of judicial construction,[14] it seems altogether reasonable to assume the decision was not founded upon it. And, the language of the court in the *Lovell* case, in an opinion by the present Chief Justice, clearly implies a functional approach in terms of the basic purpose underlying the inclusion of this guaranty in the fundamental law. Difficulty on this score ought not, then, to exist, especially now that the talking picture technique aids in minimizing the physical dissimilarity between the motion picture medium and the older accepted media of expression. If this be so, and the earlier appraisal of this medium be no longer supportable in fact, the comprehension of the motion picture within the extensive scope of the guaranty would seem necessarily to follow.

The association in the legal mind of the motion picture with the theatre, the circus, and other spectacles, causing the former to share the latter's unfavorable moral connotation, tends to explain the ease with which judges paralleled the complete regulation of the theatre and the hesitancy which they showed toward making the extension urged upon them. The opinions, replete with references to evil charm and beguiling fascination, elaborate their potentialities for harmful influence. The standards of the followers of the "show business" are compared unfavorably with those of the newspaper personnel, in lack of discretion and restraint and in "appreciation of the business advantage of depicting the evil and voluptuous thing with the poisonous charm;" but valid or not, these considerations have no pertinency to the scope of the free speech and press guaranty in its extensive aspect.

For if only innocuous forms of expression are within it, the guaranty is a myth. Such considerations do have meaning, on the other hand, relative to the question of the intensive scope of the guaranty, for the determination of the pervasiveness of the protection accorded the media which fall within the guaranty involves a balancing of values: on the one hand, the political values inherent in unstifled expression; on the other, perhaps, the safeguard against disorder, obscenity or revolution. An analysis of the cases above discussed conveys the distinct impression that the courts have felt themselves faced with the alternative of bringing the motion picture within the orbit of the guaranty, and so endangering the constitutionality of existing censorship laws, or of leaving this medium of expression outside the range of protection and thus avoiding this danger; and that mindful of the factors above outlined, they have chosen

[14] "Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief, which gave it birth. This is peculiarly true of constructions. . . . " *Weems* v. *U. S.*, 217 U.S. 349, 30 S. Ct. 544, 54 L. Ed. 793 (1910).

the latter courses as embodying the lesser of two evils.[15] For the guaranty of free speech and free press has been increasingly emphasized as one of protection against previous restraint of the type involved in motion picture censorship by governmental boards. The implicit assumption that some form of censorship is necessary in the motion picture field in order to protect against morally undesirable pictures may well be challenged. The ever existing danger that censorship for moral purposes will serve as a cloak for censorship of political, economic, and social views,[16] together with the fact that recent years have demonstrated the power of organized public opinion to control the morals problem[17] constitutes a strong argument that with motion pictures as with other media, prior restraint of any type is inconsistent with a vitalized meaning of freedom of speech and press. Yet a contrary view is not devoid of reasonable basis. Though the action for liberal and the relative opportunity for open refutation render amenable to control the chief abuses of the newspaper and pamphlet, neither of these could provide a safeguard against immoral influences, once they were exerted. There would be no weapon open to those aggrieved except the one of organized drives for cleaner pictures.

That the Supreme Court is sensitive to the specific problem raised by consideration as to public morals is attested by its language in *Near* v. *Minnesota*,[18] where one of the recognized exceptions to the general rule against previous restraint, which is there enforced, is declared to be that of the enforcement of "the primary requirements of decency against obscene publications." Since the court was here probably thinking of the ruling in *Ex parte Jackson*,[19] dealing with governmental power over the mails, it is necessarily a matter of conjecture whether, were the motion pictures brought within the orbit of the guaranty, its peculiar problems would be deemed to justify a carefully delineated form of previous restraint. Nevertheless, two recent decisions, *Lovell* v. *City of Griffin*[20] and *Commonwealth* v. *Kimball*,[21] recently decided by the Supreme Judicial Court of Massachusetts, do cast considerable light upon the judicial problem of balancing the guaranty of freedom of expression

[15] Criticism, almost contemporary with the early decision, as to the choice of lesser evil may be found in a lecture on "Law of the Motion Picture Industry" delivered by Gustavus A. Rogers, LL.B., of the New York Bar in 1916.

[16] That such a change is a present fact may be the reader's inference from the facts suggested in paragraph two of footnote one.

[17] The extent of this effectiveness is suggested by a reading of the material cited in paragraph five of footnote one.

[18] 283 U.S. 697, 716, 51 S. Ct. 625, 75 L. Ed. 1357 (1931).

[19] 96 U.S. 727, 24 L. Ed. 877 (1877).

[20] 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 660 (1938).

[21] 13 N.E. (2d) 18 (Mass. 1938).

against public interests of the general type involved in the motion picture situation.

In the *Kimball* litigation, a garment worker engaged in distributing announcements of the presentation of a labor play was arrested and prosecuted under a municipal ordinance containing broad prohibitions against the dissemination in public places of posters, bills, or sheets of paper of any description containing advertising of any kind.[22] On appeal Massachusetts' high court construed the word "advertising" as not limited to commercial matter, found the case not within the exception provided for in the ordinance, and sustained the municipal legislation as a valid exercise of the police power. Following close on this decision, the Supreme Court of the United States, in the *Lovell* case, declared unconstitutional as a violation of the guaranty of free speech and free press an ordinance requiring the licensing of all distribution of circulars, handbills, advertising, or literature of any kind.[23] The existence of the licensing provision in addition to the broad, undifferentiated sweep of the ordinance's prohibitions tends to obscure the point on which the Court's decision may accurately be said to turn. The Court lays considerable stress upon the censorship factor, declaring that "whatever the motive" of this ordinance, "it strikes at the very foundation of the freedom of the press." If this factor was of itself decisive of the issue, the *Lovell* decision would indicate not only that the licensing device is no longer available to municipalities in the regulation of the distribution of literature, but, as well, that the Court might not tolerate the existence of any form of censorship in connection with the motion picture medium as a form of expression within the protection of the Constitutional guaranty.

On the other hand, such an interpretation of the Supreme Court's decision gives no effect to other paragraphs of the opinion, in which the Court emphasizes the complete absence in the ordinance of any limitations either on the kind of literature circulated or on the mode of distribution. "The ordinance is not limited to literature that is obscene or

[22] The terms of the ordinance were as follows: "No person shall distribute posters, bills nor sheets of paper of any description, containing advertising matter of any kind, whether printed or written, in any public street, highway, or public place; nor shall cause the same to be done by another."

[23] The terms of the ordinance were: "Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

offensive to public morals or that advocates unlawful conduct. . . . It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving the molestations of the inhabitants, or the misuse or littering of the streets." If the undifferentiated character of the ordinance in these two respects was itself sufficient to make for invalidity, without the addition of the censorship feature, then the *Lovell* decision directly contradicts the judgment of the Supreme Judicial Court of Massachusetts; the fact that the *Kimball* ordinance was limited to distribution in public places, whereas the *Lovell* ordinance applied to any place whatsoever, would not seem a sufficient delimitation as to mode of distribution to satisfy the test indicated by the Supreme Court.

Except for a passing reference in one decision, the other state courts which have been faced with this question have been concerned, in their resolution of the validity of the ordinances before them, solely with the types of literature subjected to control. Newspapers, it may be contended with force, are in large measure advertising; clearly they, in terms of the Massachusetts ordinance, "contain advertising matter." However, no examples of an attempt to extend such ordinances to newspapers have been found and a number of cases seem either to have assumed[24] or to have directly held[25] that, if construed in such a way as to be applicable to newspapers, the enactments would be unsustainable. This view accords with the *Lovell* case, which by its specific allusion to that range of application has with finality ruled against its justification. On the other hand, though a type not specifically but only inferentially referred to by the Supreme Court as subject to municipal control, it would seem certain that commercial advertising is a thing the distribution of which cities could restrain. One state court has sustained an ordinance by delimiting its scope to this type of literature,[26] as the Massachusetts court refused to do.

In the *Kimball* case the court suggested the absence of any public habit of dropping in the street a particular class of material as a rational ground for excepting that class from the terms of the prohibition. This suggested distinction had, in its application to newspapers, been earlier used by the Wisconsin court to refute counsel's contention that the ordinance before the court was either intended to apply only to commercial advertising, in which case it was conceded to be constitutional, or extended to other literature including newspapers, and was thus invalid;

[24] *Milwaukee* v. *Kassen*, 203 Wis. 383, 234 N.W. 352 (1931).
[25] *People* v. *Armstrong*, 73 Mich. 288, 41 N.W. 275 (1899); *City of Chicago* v. *Schultz*, 341 Ill. 208, 173 N.E. 276 (1930).
[26] *People* v. *Johnson*, 191 N. Y. Supp. 750, 117 Misc. 133 (1921).

newspapers were distinguished as not a source of litter and the ordinance sustained in its applicability to other types of distributable material irrespective of content. Municipal power to prohibit distribution of other types, including the smaller-sized pamphlet, solely on the basis of their tendency to become a source of litter, is doubtful, however, in the light of the Supreme Court's great emphasis upon the vital necessity of protecting every sort of publication which affords a vehicle for expression. If the exercise of municipal power is to be constitutionally successful, it must at the least be directed to patently undesirable modes of distribution, to pamphlets or other material of obscene, offensive or dangerous character, or possibly to both. But the litigation which has so far developed on this matter of municipal control of distribution does not conclusively show that a city or state is powerless to subject the distribution of literature or the exhibition of motion pictures to a control reasonably related to the promotion of cleanliness in its physical or moral connotations.

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CORPORATIONS

LEGAL ASPECTS OF CO-OPERATIVE MEDICINE

In recent years there has been much interest in co-operative medical societies. Co-operative medicine is distinguishable from socialized medicine in that it is devoid of any financial aid from the government. It has been held legal for a nonprofit corporation to furnish members with medical services rendered by physicians under contracts with the corporation. *Group Health Association* v. *Moor et al.*, 24 F. Supp. 445 (July 27, 1938) noted, 7 Geo. Wash. L. Rev. 120 (1938). This case has been publicized as involving a question which has never before been decided by a court. The formation of such a society in Ohio raises legal difficulties. Several physicians may organize a partnership through which they offer their services to the members of a co-operative society. This would make possible the furnishing of specialized services. However, under such an organization there is liability on the individual physician for all acts done by a co-partner which are within the scope of the partnership contract. This may serve as a deterrent.

For the co-operative organization to incorporate would facilitate the administration of such a scheme. However, there are legal obstacles to such an organization. It is possible that the courts would hold that the corporation was engaging in the practice of medicine. Ohio G.C. 8623-3, which provides that a corporation for profit may not be organ-