

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

CONSTITUTIONALITY OF FLSA UPHELD IN MONTGOMERY WARD CASE

Informed of the decision handed down today by Judge William H. Holly in the U. S. District Court at Chicago, Illinois, upholding the constitutionality of the Fair Labor Standards Act, George A. McNulty, General Counsel of the Wage and Hour Division, said:

"We are, of course, deeply gratified at the decision which again affirms the constitutionality of the Act, brought into question by several employers against whom complaints of violations have been made.

"In the case of Montgomery Ward & Company, on which Judge Holly's decision was made, the facts are that, after we had received a complaint against the company, these events followed:

"(1) On April 12, 1939, the Administrator of the Wage and Hour Division issued a subpoena duces tecum against Montgomery Ward and Company directing them to produce records of wages paid and hours worked by their employees in the Kansas City establishment of the Company. On April 21 they appeared at the Chicago offices of the Wage and Hour Division, stated they refused to produce the records, and filed a motion to quash the subpoena on the grounds (a) that passage of the Fair Labor Standards Act was not a valid exercise of the power of Congress to regulate commerce between the States; (b) that the subpoena violated their rights under the Fifth Amendment to the Constitution in that it did not constitute due process of law; (c) that the subpoena also violated the Fourth Amendment to the Constitution in that it constituted an unreasonable search and seizure, prohibited in that Amendment.

"On August 15, the Administrator denied the Company's motion to quash the subpoena, and on August 17, Alex Elson, Regional Attorney of the Wage and Hour Division at Chicago, asked the District Court at Chicago to issue an order for the Company to produce these records.

"The Company opposed the order issued by Judge Holly on the same grounds and the issue was argued before him on October 9. At the conclusion of the argument Judge Holly reserved decision until today.

"Judge Holly's decision upholds the constitutionality of the Fair Labor Standards Act in every respect. First, he held that passage of the Act is a valid exercise of the power of Congress to regulate commerce among the States. Second, he held that issuance of the subpoena did not violate due process of law within the meaning of the Fifth Amendment to the Constitution; and third, he held that production of these records did not constitute an unreasonable search and seizure as prohibited in the Fourth Amendment to the Constitution."

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