

April 24, 1936.

Dear Justice Cardozo:

I have the following to suggest for your consideration in your opinion in the Guffey Coal Act cases:

Page 1: I think it would aid the casual reader in the understanding of your opinion if you inserted at the very outset a brief paragraph like the following:

“My conclusion is that the price fixing provisions in Part II of the Act are valid and enforceable, and are separable from the labor provisions of Part III, which, under the terms of the Act, may never be applied. As the suit assails the constitutional validity of the Act as a whole, and seeks to restrain the penalty imposed for non-compliance with its provisions and as the Act itself saves the right of petitioners to assail the labor provisions if and when they are sought to be applied, petitioners have failed to state or prove grounds for restraining the imposition of the penalty, of for judicial interference with enforcement of the Act, so far as enforcement can be said to be threatened or imminent.”

Page 4: In connection with your statement at the bottom of the page of the facts of the present case showing that prices of intrastate coal may be within the commerce power, would it not be well, in a sentence, to point out the distinction between this case and the Schechter case?

Page 8: At the end of the first paragraph, it might be well to say: “We cannot say in advance that the problem is more difficult than that of regulating the rates of interstate rail carriers which the Interstate Commerce Commission has solved successfully.”

Page 10: My recollection is that no penalties are imposed for the collective bargaining provisions. If I am right, would it be well to mention it?

Page 13:        Instead of the last phrase in next to the last line of the opinion, how would it do to substitute: “It will be time enough to consider those questions when, if ever, any regulation of hours or wages is adopted.” In this connection it seems to me that it would be well to point out somewhere in the opinion that with the price fixing provisions valid, the wages and hours provisions do not present a controversy even within the declaratory judgment statute. See what the Court said on that subject in United States v. West Virginia, 295 U.S. 463, 475.

Yours faithfully,

Mr. Justice Cardozo.