

*Law School of Harvard University,
Cambridge, Mass.*

6 June 1928.

Dear Justice Stone:

Let me express to you my warm gratitude for your opinion in the New Jersey Employment Agency Case. I hope you won't mind my saying that I am confident that it will establish itself in history as one of the leading utterances upon the due process clauses. You have made clear, with an explicitness not to be found in any other opinion thus far, the real meaning of the decisions of the courts in these recent price-fixing cases, namely, that if price regulation is the only effective means of regulation, there can be no regulation at all – a proposition, as you so conclusively indicate, wholly without warrant either in the text or the implications of the Constitution. The Tyson Case was bad enough, and your dissent there proved how unwarranted. Not even the most loyal acceptance of the Tyson Case required the ruling in the McBride Case. As you so pungently put it, “ticket brokers and employment brokers are similar in name: in no other respect do they seem alike.”

One can't help wondering where all this will lead to. The decisions at this Term, and particularly during the last few months, give one just ground for fear that the due process clause will be used as an instrument of restriction upon the area of discretionary power of the States over local matters, and whatever may not be susceptible of curbing through the due process clause will be restrained by the requirement of “the equal protection of the laws.” The greatest hope against the persistence of the present attitude of the Court lies in the expression of powerful dissents. Therefore it is that I feel particularly grateful for your dissent in the New Jersey Case.

Very sincerely yours,

Felix Frankfurter

Hon. Harlan F. Stone.