

HICKINBOTHAM *v.* CITY OF LITTLE ROCK.

4885

305 S. W. 2d 844

Opinion delivered October 14, 1957.

[Rehearing denied November 11, 1957.]

CONSTITUTIONAL LAW—SUNDAY LAW ENFORCEMENT—DISCRIMINATION.—

Alleged discrimination in the enforcement of Sunday grocery store ordinance by grocery store operator, held not established by fact that certain business establishments other than grocery stores, which sold some items ordinarily carried in grocery stores, were permitted to remain open on Sunday.

Appeal from Pulaski Circuit Court, First Division; *William J. Kirby*, Judge; affirmed.

Kenneth Coffelt, for appellant.

O. D. Longstreth, Jr., City Attorney, and *R. W. Laster*, Assistant City Attorney, for appellee.

MINOR W. MILLWEE, Associate Justice. This appeal by defendant is from another in a series of convictions for keeping his grocery store open on Sunday in violation of Ordinance No. 10,206 of the City of Little Rock. On the undisputed proof of such violation on the date in question the Circuit Court directed a verdict of guilty and the jury fixed the punishment at a fine of \$25.00, the minimum under the ordinance.

Although somewhat weaker from defendant's standpoint, the proof offered in defense of the charge was similar to that adduced in *Taylor v. City of Pine Bluff*, 226 Ark. 309, 289 S. W. 2d 679, and *Hickinbotham v. State*, 227 Ark. 1032, 303 S. W. 2d 565. In those cases, as here, the defendants contended they were being arbitrarily discriminated against in violation of their constitutional rights because certain business establishments other than grocery stores, which sold some items ordinarily carried in grocery stores, were permitted to remain open on Sunday. We held such testimony, or the mere fact that someone else had committed the same offense, insufficient to establish purposeful discrimination in the enforcement of the Sunday law. Those cases are controlling here and the judgment is affirmed.

ROBINSON, J., dissents.
