

Hon. Theodore R. McKeldin, Mayor of Baltimore (continued)

this field has been preempted by Congress until such time as it may affirmatively indicate its consent to State legislation on the subject, in that this subject was one requiring uniformity of treatment, and Congress had established maximum prices under its wartime powers.

In the view I take of the question, it is not necessary to determine this doubtful legal point. We may assume for the present purpose that the State has the power to establish maximum prices. The more important question from our point of view is whether the State has granted the Mayor and City Council of Baltimore power to deal with this subject matter. The Baltimore City Charter contains an elaborate enumeration of powers which have from time to time been interpreted by our Court of Appeals, but, broad as this enumeration is, it is the accepted rule of construction that a municipal corporation has only such powers as are expressly conferred upon it by the Legislature and as are necessarily implied from the powers so conferred. The subject is discussed by our Court of Appeals in the case of Baltimore v. Employers' Association, 162 Md. 124, and the principle is there reaffirmed that legislative power of the municipality will not be found by inference or implication, except where the alleged implied power is indispensable to the execution of an express power. I am convinced from the approach to this problem indicated by the Court of Appeals in the above cited case and in other cases construing our Charter, that authority to establish maximum prices for commodities and rentals, not having been expressly granted to the City, will not be implied as indispensable to any of the expressly granted powers.

Referring now to the particular draft of ordinance submitted to you, I think that a fair reading of it results in the conclusion that it intends to make criminal the violation of the schedule of prices established by the Office of Price Administration "in force and effect at the time of the occurrence of the violation." This, I take it, means that from time to time, as the Office of Price Administration revises its schedules, the permissible prices will be changed. Thus, by passing this ordinance the City Council would be delegating its legislative power to the Office of Price Administration. Such a delegation by a municipality to an arm of the Federal Government would be clearly unconstitutional, and in the Piskura case, above cited, such an attempted delegation to the Office of Price Administration was held to be an additional ground for declaring unconstitutional the Cleveland ordinance.

I realize that this particular objection to the ordinance as drafted might be obviated by declaring that the effective maximum prices shall be not those