

the performance of the duties as herein imposed and a schedule of their disbursements in the premises. Upon application to the Clerk of this Court, the Commissioners or either of them will be furnished with a copy of this decree as their authority for their actions in the premises.

All other matters are reserved until the coming in of the Report of the Commissioners.

CONTINENTAL ASSURANCE CO. *v.* TENNESSEE.

APPEAL FROM THE SUPREME COURT OF TENNESSEE.

No. 117. Decided October 21, 1940.

Where a state statute imposes upon a foreign insurance company for the privilege of entering the State and doing local business a license tax measured by a percentage of the premiums that will accrue and be paid to it on policies issued in the State, throughout the lives of such policies, the State may, consistently with due process, continue to collect such percentage on premiums which accrue from such policies after the company's withdrawal from the State, and which are paid to it at its office in another State. P. 6.

176 Tenn. 1; 137 S. W. 2d 277; 138 *id.* 447, dismissed.

APPEAL from the affirmance of a decree of the Court of Chancery of Davidson County, Tennessee, sustaining the right of the State to collect from the Assurance Company $2\frac{1}{2}\%$ of premiums paid to it by residents of Tennessee after its withdrawal from the State. The case came before this Court on the appellant's Jurisdictional Statement and the appellee's Statement in Opposition.

Messrs. Charles C. Trabue, Jr. and William P. Smith
were on the brief for appellant.

Messrs. Roy H. Beeler, Attorney General of Tennessee,
and *Nat Tipton* were on the brief for appellee.

PER CURIAM.

The State of Tennessee brought this suit to enforce payment of privilege taxes measured by premiums on policies of insurance issued while appellant was doing business within the State, but upon which the premiums were paid after its withdrawal from the State. Appellant contended that since its withdrawal it had transacted no business within the State; that the policyholders there had mailed their premiums on unmatured policies to the home office of appellant in another State; and that to hold it liable for the taxes demanded would deprive it of its property in violation of the Fourteenth Amendment of the Constitution of the United States.

The Supreme Court of Tennessee sustained the tax. It construed the statutory provisions to mean "that the tax is levied upon the right to do business in the state, measured by a percentage of annual premiums to the exclusion of all other taxes, the tax on the annual premiums to be paid throughout the life of policies issued"; that though "measured by two and a half per cent of premiums received on policies issued by the company while exercising its license from the state, the tax was levied upon the privilege of entering the state and engaging in the insurance business, and not upon the annual premiums"; and that the appellant "by its compliance with the statute adopted and agreed to the construction we have given it, and cannot now repudiate its provisions." 137 S. W. 2d 277.

This construction of the statute distinguishes the case from that of *Provident Savings & Life Assurance Society v. Kentucky*, 239 U. S. 103. There the question under the statute, as it had been construed by the state court, was whether the insurance company continued to do business within the State for the period under consideration, despite the fact that it had withdrawn from the State, merely because of the receipt of premiums after withdrawal. The

tax was not laid upon the privilege of doing business during the period that the company was actually within the State, the tax on that privilege being measured by the premiums received during the life of the policies. *Id.*, pp. 110, 111. The Supreme Court of Tennessee emphasized the point of this distinction in its opinion on rehearing. 138 S. W. 2d 447. Compare *State v. Insurance Company*, 106 Tenn. 282, 333-335; 61 S. W. 75.

The appeal is dismissed for the want of a substantial federal question.

Dismissed.

REPUBLIC STEEL CORPORATION v. NATIONAL
LABOR RELATIONS BOARD ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

No. 14. Argued October 17, 1940.—Decided November 12, 1940.

1. The National Labor Relations Board, having ordered the reinstatement with back pay of employees found to have been discharged or denied reinstatement in violation of the National Labor Relations Act, and having directed the employer to deduct from the back pay such amounts as were received by the employees from governmental agencies for services performed meanwhile on work relief projects, was without authority further to require the employer to pay over to the governmental agencies the amounts so deducted. Pp. 9, 12.
2. The National Labor Relations Act is essentially remedial. The provision of § 10 (c) authorizing the Board to order "such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act" is remedial, not punitive. Affirmative action to effectuate the policies of this Act is action to achieve the remedial objectives which the Act sets forth. It is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. Pp. 10-11.

The reasons assigned by the Board for the requirement in question—reasons which relate to the nature and purpose of work