NORTH CAROLINA LAW REVIEW

Volume 38 | Number 3 Article 6

4-1-1960

Administrative Law -- Constitutional Law -- Delegation of Nonjudicial Duties to the North Carolina Superior Courts

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NOTES AND COMMENTS

Administrative Law—Constitutional Law—Delegation of Nonjudicial Duties to the North Carolina Superior Courts

Milk Commission v. Galloway[1] inferentially raises a problem concerning the delegation of nonjudicial duties to the North Carolina Superior Courts. Galloway was a milk producer adversely affected by an order issued after hearing by the Milk Commission fixing the rates for hauling milk from producer to distributor in several counties. Galloway, who had received notice of the hearing, did not attend but appealed from the order to the superior court. Pursuant to the North Carolina Milk Commission Act,[2] that court heard the matter de novo and issued its own rate order which conformed to the Commission's order.[3] The North Carolina Supreme Court affirmed, holding the Milk Commission Act constitutional as applied.

It is well settled, since the leading case of *Nebbia v. New York*,[4] that a state legislature in the exercise of the police power can regulate the price of milk through an administrative board. The transportation rates in the principal case were an increment of the price of milk and thus within the area of regulation constitutionally granted to the Milk Commission.

The court in the principal case stated that the appellant attacked the power of the superior court to fix the transportation rates. An examination of the record on appeal, however, reveals that appellant's argument was not based on the theory that the superior court was exercising nonjudicial duties, but rather that the particular rates in question were not authorized by the act. The court noted the appeal provision of the act,[5] describing it as a "sedulous protection against abuse of power by the Milk Commission," and concluded, "[W]e hold that the Milk Commission, and the *Superior Court* on appeal, *had the power . . . to regulate and to fix transportation rates*"[6] for the hauling of milk in North Carolina.

[1] 249 N.C. 658, 107 S.E.2d 631 (1959).

[2] N.C. GEN. STAT. §§ 106-266.6 to -266.21 (Supp. 1959).

[3] Biltmore Dairies, distributor, had assigned its producers to routes served by its trucks and charged the producers for transporting the milk from the farm to the plant according to the average cost per cwt. on each route. The costs varied from about seventeen cents per cwt. to about thirty-one cents per cwt. depending upon the route. The average cost per cwt. for all milk transported was twenty-six cents. The orders of both the Commission and the court decreed that Biltmore in the future use the overall average cost per cwt. (here twenty-six cents) as the basis of its hauling charge to the producers.

[4] 291 U.S. 502 (1934).

[5] N.C. GEN. STAT. § 106-266.17 (Supp. 1959).

[6] 249 N.C. at 667, 107 S.E.2d at 638. (Emphasis added.)

This language of the court points toward two interpretations of the function of the superior court: first, that it is to guard against the abuse of power by the Milk Commission, and second, that it may itself fix rates and otherwise regulate the milk industry. Guarding against the abuse of power by an administrative board is a traditional function of the courts.[7] The fixing of rates is usually held not to be a judicial function.[8]

> A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind . . . .[9]

Nonjudicial duties in certain instances have been delegated to the courts both directly and indirectly. An example of the direct grant of nonjudicial duties to a court is found in *State v. Hurber*,[10] where a statute that authorized courts of record in West Virginia to hear proceedings for the revocation of beer licenses was found to give the courts legislative power and was declared unconstitutional. A direct imposition of a nonjudicial function such as deciding whether a beer license should be revoked is obvious enough. An indirect method of imposition where, as indicated by the principal case, the court's scope of review of administrative action is enlarged by statute is not so easily recognized. The Connecticut court, recognizing this latter type of imposition, has limited the review of administrative action to the single question: "Did the board act illegally?"[11]

Several states whose constitutional provisions concerning the separation of governmental powers are basically the same as those in the

[7] "The court has inherent authority to review the discretionary action of any administrative agency, whenever such action affects personal or property rights, upon a *prima facie* showing . . . that such agency has acted arbitrarily, capriciously, or in disregard of law." *In re* Wright, 228 N.C. 584, 587, 46 S.E.2d 696, 698 (1948). For a discussion of the function of the courts in reviewing administrative action see DAVIS, ADMINISTRATIVE LAW §§ 244-57 (1951).

[8] *But see* People v. Willcox, 194 N.Y. 383, 87 N.E. 517 (1909), where rate fixing was held to be a judicial function.

[9] Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226 (1908) (Holmes, J.). See also Administrative Procedure Act § 2(c), 60 Stat. 237 (1946), 5 U.S.C. § 1001 (1958).

[10] 129 W. Va. 198, 40 S.E.2d 11 (1946).

[11] "On an appeal from an administrative board . . . the function of the court is to determine whether or not it acted illegally . . . . Where upon an appeal the court hears evidence it is solely for the purpose of determining that question . . . ; even where a statute required that an appeal should be tried de novo, we held that the court should make an independent inquiry into the facts but only for the purpose of exercising that function." Jaffe v. State Dep't of Health, 135 Conn. 339, 353-54, 64 A.2d 330, 337-38 (1949).

North Carolina Constitution have considered the problem of delegation of nonjudicial duties to the courts. There is a wide diversity of opinion, however, as to what duties may be delegated to state courts. In the field of local government it has been held that courts may be empowered to grant certificates of incorporation to municipalities,[12] determine the existence of facts which would warrant the creation of a water district,[13] erect and divide political subdivisions,[14] and appoint persons to investigate county and municipal affairs.[15] Whether the foregoing functions may be classified as judicial is seriously doubted. On the other hand, courts cannot be authorized to determine if the annexation of an area was in the public interest or convenience,[16] or to fix, within certain limits, the salaries of the court's medical officer, probation officer, and secretarial staff.[17] In the field of utility regulation it has been held that the courts could not fix rates,[18] or otherwise regulate utilities;[19] yet one decision has intimated that courts can perform these duties.[20] It is generally held that courts may not issue licenses for the operation of a business;[21] however, it was held constitutional for the lower Georgia courts to grant liquor licenses.[22]

When called upon to exercise a nonjudicial function, some courts have felt constrained by the exigencies of the particular case to perform the inappropriate duty. For example, in *In the Matter of Town of Chesapeake*[23] many towns had been incorporated by the West Virginia circuit courts under a statute that authorized those courts to issue a certificate of incorporation upon the petitions of local citizens. The appellate court recognized that the circuit courts were performing patently nonjudicial duties; however, it upheld the statute on grounds of public policy to avoid rendering doubtful the legal existence of many towns.

[12] In the Matter of Town of Chesapeake, 130 W. Va. 527, 45 S.E.2d 113 (1947).
[13] Culley v. Pearl River Industrial Comm'n, 234 Miss. 788, 108 So. 2d 390 (1959).
[14] In the Matter of Borough of Pottstown, 187 Pa. Super. 313, 144 A.2d 623 (1958) (Court of Quarter Sessions had performed this function since the earliest days of the Commonwealth.).
[15] Massett Bldg. Co. v. Bennett, 4 N.J. 53, 71 A.2d 327 (1950).
[16] Ritche v. City of Brookhaven, 217 Miss. 860, 65 So. 2d 832 (1953).
[17] State *ex rel.* Richardson v. County Court of Kanawha County, 138 W. Va. 885, 78 S.E.2d 569 (1953).
[18] Public Serv. Comm'n v. City of Indianapolis, 235 Ind. 70, 131 N.E.2d 308 (1956).
[19] Iowa-Illinois Gas & Elec. Co. v. City of Fort Dodge, 248 Iowa 1201, 85 N.W.2d 28 (1957).
[20] Florida Power Corp. v. Pinellas Util. Bd., 40 So. 2d 350 (Fla. 1949) (dictum).
[21] Langen v. Badlands Co-op. State Grazing Dist., 125 Mont. 302, 234 P.2d 467 (1951); Peterson v. Livestock Comm'n, 120 Mont. 140, 181 P.2d 152 (1947); State v. Hurber, 129 W. Va. 198, 40 S.E.2d 11 (1946).
[22] Carrol v. Wright, 131 Ga. 728, 63 S.E. 260 (1908).
[23] 130 W. Va. 527, 45 S.E.2d 113 (1947).

Another factor has influenced courts which have accepted nonjudicial duties. Under the doctrine of separation of powers a spirit of co-operation must exist between the branches of government in order for the parts to function as a whole. At times, therefore, the courts have acted as legislative agents. In New Jersey the court did so by appointing persons to investigate corruption at the local level. In holding the delegation valid, the court stated,

> A legislative request . . . for the judiciary to act with respect to any particular subject matter is not to be lightly declined and such matters are to be passed upon . . . in the spirit of comity that should prevail between the three branches of government.[24]

It is difficult to ascertain North Carolina's position on the performance of nonjudicial duties by its superior courts. The only case directly concerned with this point, *In re Wright*,[25] held that the superior court could conduct a trial de novo in reviewing the discretionary suspension of a driver's license. The court recognized that the inherent authority of the courts in reviewing administrative action[26] had been enlarged by the provision for this statutory appeal and found "that the Legislature had full authority to impose this additional jurisdiction upon the courts . . . ."[27] Then the supreme court stated that this jurisdiction did not constitute a delegation of legislative or administrative authority and that the superior court could not substitute its discretion for that of the administrative body, thus implying that such a delegation would be invalid. The court held that discretion to revoke was not in the superior court which determined only whether the license was *subject to revocation.* If so, the superior court does not decide whether or not to revoke but affirms the administrative determination.

It is submitted that the Milk Comimssion Act, as interpreted in the principal case, may have unwittingly provided through the appellate process a procedure whereby nonjudicial functions are imposed on the superior courts. This cannot be reconciled with the constitutional separation of the legislative, executive, and judicial powers.[28] The superior courts are not the proper bodies for the regulation of an industry in the first instance, and the function should not be assumed on appeal. Neither comity between the branches of government nor the exigencies of regulating the price of milk require the imposition of such an inappropriate burden upon the crowded dockets of our superior courts. The General Assembly might well consider rewording

[24] Massett Bldg. Co. v. Bennett, 4 N.J. 53, 61, 71 A.2d 327, 331 (1950).
[25] 228 N.C. 584, 46 S.E.2d 696 (1948).
[26] See note 7 *supra.*
[27] 228 N.C. at 587, 46 S.E.2d at 698.
[28] N.C. CONST. art. I, § 8; art. II, § 1; art. III, § 1; art. IV, § 2.

the appeal provision of the Milk Commission Act[29] to prevent such an occurrence. The appeal provisions of the Virginia Milk Commission Act[30] limit the court to determining if the order appealed is within the discretion vested in the Commission, and if so, whether the Commission has exercised a reasonable discretion or the order is unreasonable or capricious. Legislative action would not be required, however, if the supreme court were to adopt the Connecticut court's concept of the purpose of a trial de novo on appeal from an administrative body[31] and limit the superior courts to the determination of the single question: "Has the Commission acted illegally?"

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Bankruptcy—Survival of Liability for Willful and Malicious Injury

The Bankruptcy Act[1] operates as a discharge or release of a bankrupt from all his debts which are provable in bankruptcy, except such as are excepted in the act, and has as its purpose to relieve the honest debtor from the weight of oppressive indebtedness with leave to start afresh.[2] Where the liability or debt is the result of a judgment arising out of automobile accidents the idea of discharge has met with considerable criticism. This criticism may be illustrated by the language of a New York case where it was said:

> If the court were permitted to do moral justice instead of legal justice it would refuse to discharge the bankrupt of the judgments. There are too many accidents resulting in judgments which are wiped out in bankruptcy. The practice has grown up wherein a person will negligently operate his automobile and then when a judgment for such injuries is rendered against him, will obtain the protection of the Bankruptcy Law by filing a voluntary petition in bankruptcy . . . . Operators of automobiles may drive in a careless and negligent manner and go unscathed of justice by filing a petition in bankruptcy.[3]

Although liabilities which are the result of willful and malicious injuries to person or property are not dischargeable in bankruptcy,[4] the courts are by no means in accord as to what constitutes willful and malicious conduct. Most of the cases seem to lie between the areas

[29] N.C. GEN. STAT. § 106-266.17 (Supp. 1959).
[30] VA. CODE §§ 3-369 to -371 (1950).
[31] See note 11 *supra*.

[1] Bankruptcy Act, ch. 541, 30 Stat. 544 (1898), as amended by 66 Stat. 420 (1952), 11 U.S.C. §§ 1-1086 (1958).
[2] Williams v. U.S. Fid. & Guar. Co., 236 U.S. 549 (1915).
[3] Francine v. Babayan, 45 F. Supp. 321, 322 (E.D.N.Y. 1942).
[4] Bankruptcy Act ch. 541, § 17, 30 Stat. 550 (1898), 11 U.S.C. § 35 (1958).