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Administrative Law and Procedure

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Survey of Ohio Law—1955

ADMINISTRATIVE LAW AND PROCEDURE

Administrative Authority

It is basic learning that an administrative agency or officer must act pursuant to the declared policy of the law in specific cases and in accordance with legally sufficient criteria and standards established by the legislature to govern administrative discretion. A Supreme Court decision¹ applied this fundamental principle in invalidating a municipal ordinance which failed to provide standards or criteria for the guidance of a zoning board of appeals.

This principle was also applied to Ohio Revised Code section 5123.23 by the court of appeals in holding that this section amounted to a delegation of legislative power.² The court declared that it gave the arbitrary and unrestricted power to an administrative officer to consent or not to consent to the admission of a person over 70 years of age to a mental institution without any guiding rules or standards, resulting in the delegation of legislative power and denial of equal protection of the law. When the agency or officer is acting under a law which established sufficient standards or criteria, wide latitude is accorded to the administrative authority to make regulations seeking to effectuate legislative policy. Two court of appeals decisions applied this rule in sustaining administrative rules and orders. The first case sustained an hours of closing regulation of the Liquor Control Board.³ In the other case Revised Code section 3311.22 and related sections were held to vest a discretion in a county board of education which is subject only to the limitations of unreasonable action and bad faith. The consolidation order was upheld as being within the discretion of the Board.⁴

Another court of appeals decision involved an interesting question relative to the power of the Board of Liquor Control to hold that the use of a pinball machine which allowed free games only was the use of a device which may or can be used for gaming or wagering in violation of Rule 53, Section II, Liquor Control Board, justifying the revocation of a permit of a certain class. In holding the license revocation order invalid, the court of

¹ *State v. Gottfried*, 163 Ohio St. 469, 127 N.E.2d 371 (1955). The dissenting judges agreed on the merits but felt that the writ of mandamus was not the appropriate remedy under the circumstances.

² *State v. Baber*, 97 Ohio App. 501, 127 N.E.2d 538 (1953).

³ *Gorman v. Board of Liquor Control*, 69 Ohio L. Abs. 510, 126 N.E.2d 34 (Ohio App. 1953).

⁴ *Smith v. Board of Education*, 97 Ohio App. 507, 127 N.E.2d 623 (1954).

appeals⁵ pointed out that the Board could not supply any omission in or improve the provisions of any statute and meet a situation not provided for by law since administrative rule making cannot be used to supplement or refine legislative policy.

Construction of Regulations

A court of appeals decision⁶ construed an indefinite and uncertain regulation (No. 14) of the Board of Liquor Control in harmony with the obvious purpose of the regulations of the board as a whole, applying the well-known rule of statutory construction that exceptions should receive a strict but reasonable interpretation. Thus the regulation which permits the transfer of a permit could not be permitted to enlarge the number of permittees in an area which by the application of other regulations was a closed or "frozen" area.

Jurisdiction

A Supreme Court decision⁷ reaffirms the primary, original jurisdiction of the Public Utilities Commission to supervise and regulate public utilities and railroads and to require the furnishing of services required by law to the exclusion of any court of law, and also that the Supreme Court has exclusive revisory jurisdiction of the orders of the Public Utilities Commission.

Administrative law follows a rule of judicial administration in vesting exclusive jurisdiction in the first of two administrative bodies having concurrent authority to acquire jurisdiction. This rule was considered in the decision of the Supreme Court in *State v. Shaver*⁸ wherein a writ of mandamus was granted requiring the defendant Recorder of Hamilton County, to record the transcript of proceedings with reference to the incorporation of the Village of Blue Ash. It was held inapplicable because of the exist-

⁵ *Stickley v. Board of Liquor Control*, 69 Ohio L. Abs. 516, 126 N.E.2d 603 (Ohio App. 1954).

⁶ *Haynay v. Board of Liquor Control*, 57 Ohio Op. 469, 129 N.E.2d 841 (Ohio App. 1954).

⁷ *Northern Ohio Telephone Co. v. Putnam*, 164 Ohio St. 238, 130 N.E.2d 91 (1955). Also as an incidental matter raised on an appeal from the Board of Liquor Control, the court of appeals had occasion to recognize that the Director of Liquor Control is vested by statute with exclusive authority to grant or refuse the issuance of permits for the sale of intoxicating liquor and beer. *East Toledo Social Club v. Board of Liquor Control*, 130 N.E.2d 238 (Ohio App. 1955).

⁸ 163 Ohio St. 325, 126 N.E.2d 915 (1955). The court considered that a permanent injunction against the first body acting on the petition for annexation left the second body, the Board of Trustees of Sycamore Township, free to exercise jurisdiction.

ence of a court decision to the effect that the first body (Board of County Commissioners) did not have a valid prior jurisdiction.

Hearing Before the Administrative Agency

1. Agency Power to Disqualify a Member for Bias or Prejudice

A Supreme Court decision⁹ raised an interesting question concerning the power of the Public Utilities Commission to pass upon qualifications of one of its members on grounds of bias or prejudice. The court held that the Commission did not have the implied power to so act. The reasoning of the court in its opinion suggests that such authority must come from express statutory provisions.

However, the Supreme Court proceeded in the course of exercising the revisory jurisdiction to examine the charge of prejudice on the merits and determined that in effect there was no prejudice inasmuch as all three members agreed on the facts.

2. Objections to Evidence

The Ohio Administrative Procedure Act¹⁰ permits a reviewing court to affirm an agency order supported by reliable, probative and substantial evidence.

A decision of a court of appeals¹¹ serves to emphasize the importance of objecting to inadmissible evidence at the time it is offered. In the case mentioned above an order of the Board of Liquor Control suspended a permit upon the basis of hearsay evidence as to violation, which evidence was received without objection from the licensee. This evidence was deemed to be relevant and probative and sufficient to sustain the order. It was held that the failure to object to the inadmissible evidence constituted a waiver which prevented the issue of inadmissibility from being presented on judicial review.

It should be noted that the Ohio Administrative Procedure Act, Ohio Revised Code section 119.09, does not establish a specific rule on the admissibility of evidence. It declares that the agency at an adjudicatory hearing shall pass on the admissibility of evidence, and a party may at that time make objections to these rulings of the agency thereon.

Rules of admissibility must be ascertained from specific statutes applicable to the agency, if any, or from the body of the rules of evidence applicable to court proceedings which are also deemed applicable to administrative proceedings.

⁹ Ohio Transport, Inc. v. Public Utilities Commission, 164 Ohio St. 98, 128 N.E.2d 22 (1955).

¹⁰ OHIO REV. CODE § 119.12.

¹¹ Derrick v. Board of Liquor Control, 98 Ohio App. 97, 128 N.E.2d 239 (1954).

Judicial Review

1. *Methods of Review*

The original jurisdiction of the court of appeals¹² or the Supreme Court¹³ may be invoked in appropriate cases through the use of quo warranto, mandamus, habeas corpus, or prohibition. Several cases reported during the year have had a highly restrictive effect on the availability of these remedies to review administrative action.

Because of their general applicability to so many agencies and officers, the views of the courts toward the exclusiveness of the judicial review provided by the Ohio Administrative Procedure Act are important. In *Green v. Ohio State Racing Commission*,¹⁴ a court of appeals decision denied an original writ of prohibition on the ground that Revised Code section 119.12 provides an adequate remedy at law. It indicated that the writ of prohibition is to be used with great caution and only where there is no other regular, ordinary and adequate remedy.

Likewise the writ of mandamus is circumscribed by important restrictions in reviewing administrative action. A Supreme Court opinion¹⁵ outlines the burden which a petitioner must sustain to use it successfully. The relator must show affirmatively: (1) that there is no plain and adequate remedy in the ordinary course of law, including equitable remedies; (2) that there has been a gross abuse of discretion on the part of the officer or agency and (3) that the relief sought is not merely to determine a controversy of a strictly private nature. An example of such a successful application was afforded by a mandamus against the Superintendent of Insurance.¹⁶

Equitable remedies in the civil courts will be unavailable where there is provided a statutory method of appeal to the courts from the administrative authority. The Supreme Court held¹⁷ that an injunctive remedy could not be used against an order of the county commissioners amending a zoning ordinance where there is a statutory right of appeal to the court of common pleas.

These cases indicate in effect that a statutory method of judicial review, if considered adequate, is likely to be held to be the exclusive method of review.

¹² OHIO CONST., ART. IV, § 6.

¹³ OHIO CONST., ART. IV, § 2.

¹⁴ 70 Ohio L. Abs. 485, 128 N.E.2d (Ohio App. 1954).

¹⁵ *State v. Industrial Commission of Ohio*, 162 Ohio St. 302, 123 N.E.2d 23 (1954).

¹⁶ *State v. Annat*, 68 Ohio L. Abs. 453, 123 N.E.2d 71 (Ohio Com. Pl. 1954).

¹⁷ *Eggers v. Morr*, 162 Ohio St. 521, 124 N.E.2d 115 (1955), holding that REV. CODE § 303.12 provides an adequate remedy. The mere inconvenience of having to resort to the statutory remedy was not considered adequate excuse for going into equity.

2. *Notice of Appeal*

A Supreme Court decision¹⁸ held that the notice of appeal as required by Revised Code section 5717.02 for appeals to the Board of Tax Appeals is essential to confer jurisdiction on the Board. The *time* limit for the giving of notice under the Ohio Administrative Procedure Act has been previously held jurisdictional also.¹⁹

3. *Scope of Review*

When a case is submitted solely on the record made in the hearing before the administrative agency, the reviewing court cannot go into matters happening after the hearing.²⁰

The evidence which the appellant sought to present was the subsequent bankruptcy of the licensee which vested his rights in the trustee. However, the Ohio Administrative Procedure Act makes it discretionary with the reviewing court whether a motion for admission of additional evidence will be granted.²¹

When a matter is left to the reasonable discretion of the Administrative officer, considerable weight will be given to the administrative determination of the officer.²²

When the basis of review is lack of evidence to support the administrative order, and the appeal comes under section 119.12, Revised Code, the Ohio Administrative Procedure Act, the reviewing court will affirm the order if it is supported by reliable, probative and substantial evidence.²³

One decision has held that the order must be sustained even though the administrative order is unduly harsh and most severe,²⁴ indicating that abuse of discretion is no longer a test on judicial review under the Ohio Administrative Procedure Act. Perhaps the court has overlooked the further statutory requirement that the order be in accordance with law.²⁵ A very cogent argument may be made for the proposition that an order

¹⁸ Lee Jewelry Co. v. Bowers, 162 Ohio St. 567, 124 N.E.2d 415 (1955).

¹⁹ See Survey of Ohio Law—1954, 6 WEST. RES. L. REV. 207 (1955).

²⁰ Assad v. State of Ohio, 70 Ohio L. Abs. 185, 127 N.E.2d 631 (Ohio App. 1952).

²¹ OHIO REV. CODE § 119.12.

²² Rothwell v. Linzell, 163 Ohio St. 517, 127 N.E.2d 524 (1955). The lower court and the dissenting Chief Justice felt that the facts indicated an abuse of discretion and the violation of constitutional rights.

²³ Codic v. Board of Liquor Control, 129 N.E.2d 650 (Franklin Com. Pl. 1953); Ganson v. Board of Liquor Control, 70 Ohio L. Abs. 242, 127 N.E.2d 890 (Franklin Com. Pl. 1953).

²⁴ Ganson v. Board of Liquor Control, 70 Ohio L. Abs. 242, 127 N.E.2d 890 (Franklin Com. Pl. 1953).

²⁵ OHIO REV. CODE § 119.12, 2d para. from the end. The existence of evidence to support a reasonable order does not in itself justify the issuance of an arbitrary one.