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Administrative Law—Power to Compel Production of Documents

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which may not be taken away except by due process.[29] In addition, in a case such as this, a hack driver's license being a condition precedent to his making of a living, it may be said that the driver has a property right in the license from this point of view.[30] Hence, in a proceeding to revoke the petitioner's license for alleged withholding of change from passengers, due process required a hearing, though the statute was silent.

In the instant case, a "hearing" was actually afforded the petitioner but it was found insufficient on several grounds. The court pointed out that no essential of a fair trial may be omitted at such a hearing. "The party whose rights are being determined must be fully apprised of the claims of the opposing party and of the evidence to be considered, and must be given the opportunity to cross examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal."[31] Here, the "hearing" consisted of a reading of a hack bureau memorandum and an identification of the driver by the complainants. No actual testimony was taken, no sufficient previous notification was given petitioner, and the "record" on which he was suspended was insufficiently set out.

Power to Compel Production of Documents

The power of investigating committees and commissions to compel the production of relevant documents and papers is reaffirmed in *Alexander et al. v. New York State Commission to Investigate State Agencies in Relation to Pari-Mutual Harness Racing.*[32]

Though the power of agencies to compel production of documents is not unlimited, it is quite broad. "The power to require a witness to produce books and papers is necessarily limited to a 'proper case' . . . [which] is ordinarily one where the books and papers called for have some relevancy and materiality to the matter under investigation."[33] Hence a subpoena duces tecum will be quashed ". . . only where the futility of the process to uncover anything legitimate is inevitable or obvious. . . ."[34] The majority of the court found the information demanded fell within this definition.

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29. *Wignall v. Fletcher,* 303 N.Y. 435, 103 N.E. 2d 728 (1952).
30. *Truax v. Corrigan,* 257 U.S. 312 (1921).
31. *Friedel v. Board of Regents,* 296 N.Y. 347, 352-353, 73 N.E. 2d 545, 547-548 (1947), *Heaney v. McGoldrick,* 286 N.Y. 38, 45, 35 N.E. 2d 641, 644 (1941), *Matter of Greenbaum v. Bingham,* 201 N.Y. 343, 347, 94 N.E. 853, 854 (1911).
32. 306 N.Y. 421, 118 N.E. 2d 588 (1954). The respondent Commission was established under section 6 of the Executive Law.
33. *Carlisle v. Bennett,* 268 N.Y. 212, 217-218, 197 N.E. 220, 222 (1935).
34. Judge Cardozo in *Matter of Edge Ho Holding Corp.,* 256 N.Y. 374, 382, 176 N.E. 537, 539 (1931).

Judge Dye agreed with this holding but felt the subpoenas were unreasonable in calling for documents as far back as 1946, four years before petitioners first came under investigation.

Validity of Administrative Regulations

Administrative regulations fell afoul of the displeasure of the Court of Appeals in two cases decided at the last term. In *Gulf Oil Corp. v. Joseph*,[35] the regulations involved were those of the Comptroller of the City of New York as to the allocation formula to be used in cases where a gross receipt cannot in its entirety be subjected to a local tax by reason of the Commerce Clause of the United States Constitution.

Whether or not a city or state may include in the measure of its gross receipts tax, imposed for the privilege of doing business in the city or state, a share of the receipts from interstate sales which is properly attributable and allocable to the doing of business within the city or state is a question on which the Supreme Court of the United States has split time and time again, answering now in the affirmative, then in the negative.[36] The Court of Appeals has determined the question in the affirmative and has upheld such levies.[37]

The statute in point provides that where a gross receipt cannot be taxed in its entirety due to the Commerce Clause prohibition, the City Comptroller shall establish an allocation formula so that just that portion of the receipt which is attributable to business done in the city should be taxed.[38] In carrying out this mandate, the Comptroller promulgated regulations establishing an allocation formula based on the proportion that property of the company within the city, wages and salaries paid within the city, and receipts attributable to city business, respectively, bear to these same factors in country-wide business.[39] These three factors are then averaged together and if the resultant average is above 66⅔%, it shall be reduced to that figure for purposes of allocation; if it is below 33⅓%, it shall be raised to that figure for purposes of allocation.[40] It was this latter provision that was objected to, petitioners' resultant average having been raised to 33⅓% from a lower actual figure. The court held that the use of

35. 307 N. Y. 342, 121 N. E. 2d 360 (1954).
36. See discussion in *Constitution of the United States of America—Analysis and Interpretation* (E. S. Corwin, ed.) 202-208.
37. *Olive Coat Co. v. McGoldrick*, 261 App. Div. 1070, 27 N. Y. S. 2d 471 (1st Dep't 1941), *aff'd* 287 N. Y. 769, 40 N. E. 2d 642 (1942).
38. NEW YORK CITY ADMINISTRATIVE CODE § RR 41-2.0(b), § B 46-2.0(b).
39. NEW YORK CITY COMPTROLLER'S REGULATIONS Art. 211-I.
40. *Ibid.*