WestVirginiaUniversity
THE RESEARCH REPOSITORY @ WVU

Volume 60 | Issue 3 Article 7

April 1958

Administrative Law--Scope of Judicial Review--Substantial Evidence Rule

J. O. F.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Administrative Law Commons, Courts Commons, and the Evidence Commons

Recommended Citation

J. O. F., *Administrative Law--Scope of Judicial Review--Substantial Evidence Rule*, 60 W. Va. L. Rev. (1958).
Available at: https://researchrepository.wvu.edu/wvlr/vol60/iss3/7

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

CASE COMMENTS

ADMINISTRATIVE LAW—SCOPE OF JUDICIAL REVIEW—SUBSTANTIAL EVIDENCE RULE.—Proceeding instituted under W. VA. CODE c. 11, art. 3, § 25 (Michie 1943), to reduce the assessed valuations of the taxpayer's properties. The county court sitting as a board of equalization and review upheld the assessed valuations. This order was affirmed by the circuit court. *Held*, affirming the circuit court, the Supreme Court of Appeals has jurisdiction to review valuations of property for tax purposes only when the administrative finding is not supported by substantial evidence or is so obviously wrong as to amount to a failure to take cognizance of the constitutional principles of uniformity of taxation. *In re Tax Assessments Against the Southern Land Company*, 100 S.E.2d 555 (W. Va. 1957).

Today it is universally accepted that courts may review administrative findings without violating the constitutional principle of separation of powers. However, the scope of judicial review remains a source of controversy. Generally speaking, the decisions of administrative agencies on questions of fact, where they have some reasonable support in the evidence, are final and binding on the court; but on questions of law, administrative decisions are not final even where they have some support in the evidence. *Botchford v. Comm'r*, 81 F.2d 914 (9th Cr. 1936); *Oak Lawn Cemetery v. Baltimore County*, 174 Md. 280, 198 Atl. 600, 115 A.L.R. 1478 (1938). The difficulty lies in the right of the courts to review administrative findings of questions of fact. The basic test for the determination of such right is the substantial evidence rule.

The term "substantial evidence" first appeared in the Federal Trade Commission Act § 5(c), which said, "the findings of the Commission if supported by substantial evidence shall be conclusive." 38 STAT. 719 (1914), 15 U.S.C.A. § 45(c) (1927). Since this act it has appeared in some eighteen other federal statutes as the standard for judicial review. Stason, *Substantial Evidence in Administrative Law*, 89 U. PA. L. REV. 1026 (1941). The vagueness of this statutory test has led to a variety of constructions ranging from the bare minimum of evidence required in the case of *Swayne & Hoyt, Ltd. v. United States*, 300 U.S. 297 (1937), to the requirement that the decision be supported by a preponderance of the testimony as seen in *NLRB v. Thompson Products, Inc.*, 97 F.2d 63 (6th Cir. 1938).

There have been many attempts by the courts to define precisely the test. Probably the most often cited is that substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938). As a result of dissatisfaction with the too restricted application of the substantial evidence test by the courts Congress sought to broaden its scope with the enactment of § 10(e) of the Administrative Procedure Act, 60 STAT. 244 (1946), 5 U.S.C. § 1009(e) (1952), which makes the reports of intermediate courts a part of the record for purposes of review. In the interpretation of this act in the case of *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951), the Court said that the new legislation allows consideration of evidence from which conflicting inferences can be drawn. Thus the courts are no longer precluded from review when they find substantial evidence on one side, if there is countervailing evidence on the other. Stated concisely, at its present stage of development, the doctrine as evidenced by the Supreme Court decisions is that substantial evidence should be construed to confer finality upon administrative determinations of facts when, upon an examination of the whole record, the evidence, including the inferences therefrom, is found to be such that a reasonable man might have reached the decision.

In West Virginia the initial appearance of the doctrine is found in the holding of the case of *Liberty Coal Co. v. Bassett*, 108 W. Va. 293, 150 S.E. 745 (1929). In *Crouch v. Wyoming Court*, 116 W. Va. 476, 181 S.E. 819 (1935), the court declared in the syllabus: "Where an assessment . . . appears to have been made without proper regard to requisite elements and to have been approved by the circuit court without substantial evidence to sustain the assessed valuation, the appellate court will reverse the circuit court's order and will remand the case for further proceedings." A tendency to broaden the scope of judicial review of questions of fact even further is seen in *Western Maryland Ry. v. Board*, 124 W. Va. 439, 21 S.E.2d 683 (1942), where the court declared in the syllabus, "this court will not reverse the order of a circuit court by which the valuation for taxation of a public utility's property was reduced on its appeal, except on error of law, or where the court's action was clearly not supported by a preponderance of the evidence." From the language of these cases and that of the principal case it is apparent that West Virginia is following the trend of the Supreme Court in the expansion of judicial review.

It is questionable whether this trend of expanding the scope of judicial review of fact determinations is actually desirable. Admittedly the right of appeal is essential as a check on administrative findings, but certain practical and policy considerations should not be overlooked in an overzealous desire to provide justice. Many administrative bodies are better qualified than the courts to find the facts in their particular field; also it is they who confront the witnesses and hear the testimony. Particularly is this true in the case of federal boards and commissions, such as the National Labor Relations Board and the Federal Trade Commission. As a matter of policy our administrative agencies will be relegated to uselessness if some degree of finality is not conferred upon their factual determinations.

I believe that the substantial evidence test is a sound approach to the present problem of review. However, the test in its present form will remain necessary only so long as our administrative bodies remain at a low level of competency. When and if such agencies achieve a high degree of competency this trend towards liberal review should subside and the real problem will have found solution.

J. O. F.

CONSTITUTIONAL LAW—FREEDOM OF SPEECH—ORDINANCE REQUIRING REGISTRATION OF UNION ORGANIZERS HELD VIOLATIVE.—*D*, a salaried labor organizer, went to the town of Baxley, Georgia, and there solicited membership in a union without first obtaining a "license" as provided by a city ordinance. *D* was arrested and tried by city officials under authority of the ordinance for soliciting without the license, she was convicted and a fine and imprisonment were imposed. The superior court of the county affirmed the conviction, the court of appeals affirmed the judgment of the superior court and the supreme court of the state denied certiorari. *D* appealed to the Supreme Court of the United States. *Held*, the ordinance of the town of Baxley, prohibiting solicitation of members for an organization without a permit and making it discretionary with the mayor and city council as to whether to grant a permit, without any definitive standards or other controlling guides, is invalid as abridging the guaranty of freedom of speech as secured by the Constitution of the United States. *Staub v. City of Baxley*, 78 Sup. Ct. 277 (1958).