Florida Law Review

Volume 17 | Issue 1 Article 8

June 1964

Administrative Law: Judicial Review of Administrative Statutory Interpretation

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ADMINISTRATIVE LAW: JUDICIAL REVIEW OF ADMINISTRATIVE STATUTORY INTERPRETATION

Florida Dairy Farmers Fed'n v. Borden Co., 155 So. 2d 699 (1st D.C.A. Fla. 1963)

Florida Dairy Farmers Federation, an agricultural marketing co-operative association, brought an action to enjoin Borden Company and other dairy distributors from marketing certain dairy products. The Federation claimed that these products, which were made by combining powdered milk with water, cream, and syrup, constituted reconstructed milk in violation of Florida Statutes.[1] Respondents based their defense on an interpretation of the Milk Commission that this process was not in violation of statutory prohibition. The First District Court of Appeal declined to follow the agency's interpretation, and HELD, that the statute is intended to prohibit reconstruction of milk by adding water to milk products, thus distributors were violating the statute by marketing these products.

The court recognized that the administrative interpretation was of long standing and, although not binding, was to be accorded great weight. The court said, however, that it should not follow the agency interpretation when it is repugnant to the clear intent of the statute. The court did not go into the factual determinations made by the Milk Commission nor mention the agency's basis for its decision.

There is a valid distinction between statutory interpretation and administrative fact finding with subsequent application to statutory criteria.[2] As a necessary function of their operations, administrative agencies construe and apply statutes within their area of expertise. Administrative interpretation provides a practical method for agency application of the law and is an experienced judgment to which courts will often turn for guidance.[3] *Gray v. Powell*[4] is the leading case establishing the rule that courts, when reviewing an administrative application of a statutory term to undisputed facts, should affirm an agency's determination if it has a reasonable basis, rather than exercise independent judgment. This rule was supported in *NLRB*

1. "It is unlawful to sell recombined or reconstructed milk in the state." FLA. STAT. §502.01 (1963).

2. Problems involved in judicial review of issues of law are further developed in Note, 2 U. FLA. L. REV. 86 (1949).

3. Mabee v. White Plains Publishing Co., 327 U.S. 178 (1946); Skidmore v. Swift & Co., 323 U.S. 134 (1944).

4. 314 U.S. 402 (1941).

v. Hearst Publications[5] when the United States Supreme Court, although recognizing the reviewing court's power to interpret statutes when arising in the first instance, stated that the court should recognize a limitation on its function when the agency has initially determined the application of a broad statutory term. The court in *Florida Dairy Farmers* does not indicate that the expertise or initial decision by the agency had any effect on its interpretation of the statute. In *NLRB v. Highland Park Mfg. Co.*[6] the Supreme Court recognized its right to review a decision of the N.L.R.B. that determined that agency's jurisdiction to issue a collective bargaining order. In his dissent Mr. Justice Frankfurter recognized that the best source for determining the proper definition of a statutory term is the body to which the administration of the statute has been committed by the legislature.[7] Mr. Justice Douglas, in his dissent in the same case, recognized the need to rely on an agency's expertise and said that the test was "not whether the construction would be our own if we sat as the Board, but whether it has a reasonable basis in custom, practice, or legislative history."[8]

Although the power to interpret a statute has long been recognized as vested in the courts,[9] proper judicial use of administrative expertise and reliance upon an administrative interpretation of long standing does not divest the courts of this power.[10] Courts have frequently deferred to an agency interpretation when it has been followed by industry and has fulfilled society's needs.[11] The force of an interpretation of long standing is increased by the fact that the legislature has impliedly condoned it by not changing the statute.[12] The court in *Florida Dairy Farmers* did not go into the reasons for reversing the agency's interpretation and did not mention the agency's justification for its ruling. The inclusion of such information would at least give a basis for inferring why the court disagreed. The court did say, however, that the interpretation was contrary to the clear intent of the statute.

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5. 322 U.S. 111 (1944).
6. 341 U.S. 322 (1951).
7. 341 U.S. at 327.
8. 341 U.S. at 327-28.
9. NLRB v. Hearst Publishing Co., *supra* note 5; Sullivan v. Kidd, 254 U.S. 433 (1921).
10. Elliott v. Swartwout, 35 U.S. (10 Pet.) 137 (1836).
11. Sanford's Estate v. Commissioner, 308 U.S. 39 (1939); Bowen v. Johnston, 306 U.S. 19 (1939); State *ex rel.* Fronton Exhibition Co. v. Stein, 144 Fla. 387, 198 So. 82 (1940); State *ex rel.* Franklin County v. Lee, 137 Fla. 658, 188 So. 775 (1939).
12. Florida Industrial Comm'n v. Peninsular Life Ins. Co., 152 Fla. 55, 10 So. 2d 793 (1942).

The term "clear intent" has been used by Florida courts on several occasions,[13] but the meaning of "clear intent" remains a perplexing problem. Legislative history and the rules and canons of legislative interpretation are directed toward the discovery of intent, but, in the final analysis, it is apparent that the intent ascribed to a given statute is that of the court. The question whether statutory interpretation by an agency is in conflict with clear intent is, in each case, addressed to the judges, and frequently they disagree.[14]

What leads a court to determine that the clear intent is contrary to the agency's interpretation? It is a well recognized rule that a question of fact or application of a statute is within the scope of the agency's power, while a question of law or interpretation is within the power of the court.[15] The difficulty in this law-fact dichotomy is that there is no question of fact that cannot be labeled a question of law in order to provide review. If the issue is clearly within the realm of fact, it is nevertheless a simple matter for a court to say that it is merely safeguarding due process,[16] or is determining whether the supporting evidence is material[17] and thereby circumvent the established division of jurisdiction. Florida courts have held the door open for review by saying that it is judicial duty to determine the status of the law,[18] and they have similarly closed the door by saying that administrative construction should not be overturned unless clearly erroneous, and then only for the most cogent reasons.[19] Professor Davis in his text on administrative law[20] suggests that judicial review depends on such factors as the judge's confidence in the

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13. Southeastern Utilities Serv. Co. v. Redding, 131 So. 2d 1 (Fla. 1961); Bill Frey, Inc. v. State *ex rel.* Taylor, 127 Fla. 671, 173 So. 812 (1937); *Ex parte* Perry, 71 Fla. 250, 71 So. 174 (1916).

14. *E.g.*, Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947). It was clear to the majority that legislative intent was to include foremen in the term "employees." It was equally clear to the minority, however, that foremen were not included.

15. Flemming v. Mohawk Wrecking Co., 331 U.S. 111 (1947); United States Cas. Co. v. Maryland Cas. Co., 55 So. 2d 741 (Fla. 1951).

16. Carlson v. Landon, 342 U.S. 524 (1952); Campbell Sixty-Six Express, Inc. v. Delta Motor Line, Inc., 218 Miss. 198, 67 So. 2d 252 (1953); State *ex rel.* Pudget Sound Nav. Co. v. Department of Transp., 33 Wash. 2d 448, 206 P.2d 456 (1949).

17. NBC v. United States, 319 U.S. 190 (1943); Louisville & N.R.R. v. United States, 238 U.S. 1 (1915).

18. Green v. Hood, 120 So. 2d 223 (2d D.C.A. Fla. 1960); Green v. Wisner, 119 So. 2d 814 (2d D.C.A. Fla. 1960); L. B. Price Mercantile Co. v. Gay, 44 So. 2d 87 (Fla. 1950); Marion Mortgage Co. v. State *ex rel.* Davis, 107 Fla. 472, 145 So. 222 (1932).

19. Green v. Stuckey's, Inc., 99 So. 2d 867 (Fla. 1957); King v. Seamon, 59 So. 2d 859 (Fla. 1952); Gay v. Canada Dry Bottling Co., 59 So. 2d 788 (Fla. 1952).

20. DAVIS, ADMINISTRATIVE LAW §30.08 (1959).

agency's judgment, his feelings toward the cause involved, the character of the agency, the nature of the problems with which it deals, and public sentiment toward the agency. That which will influence, therefore, depends more upon which factors guide judicial discretion than upon judicial fidelity to a verbal formula. Florida courts, by the use of such verbal formulas, have created a twilight zone of reviewability. Too often hidden policy factors cause an artificial distinction where the court chooses to place it.

When the administrative interpretation has been in effect for a period of time, with implied legislative approval, the courts ought to be extremely hesitant to overrule the interpretation. If the courts do review, they should not feel inhibited in expressing the relevant underlying factors, but should avoid a summary handling of these cases in order to eliminate misunderstanding. It is suggested that the court in *Florida Dairy Farmers* could have contributed to a better understanding of the nature of judicial review in cases involving administrative interpretation of statutory provisions had it discussed: (1) the reasons behind the agency's interpretation, (2) the reasons for the court's disagreement, (3) the proper function of the agency in interpretation and construction of statutes, and (4) the legislative intent behind enactment of the statute. The Florida Legislature might further define the effect of an administrative agency's act of statutory interpretation and, in so doing, limit the effects of subjective factors in the process of judicial review. This problem, however, can best be solved by judicial adoption of a well defined, uniform policy of review.

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