Buffalo Law Review

Volume 11 | Number 1 Article 12

10-1-1961

Administrative Law—Traffic Order to Be Filed with Department of State

Buffalo Law Review Board

"[p]ublic policy forbids the sustaining of municipal action founded upon the vote of a member of the municipal governing body in any matter before it which directly or immediately affects him individually."[73] The resolution, therefore, were void, even though the vote of the mayor was not required for their passage.[74]

This policy of interpreting the conflict of interest statutes strictly was again followed in *DePerno v. Dulan*,[75] also decided this term. Respondent mayor dismissed petitioner from his position as Chairman of the Municipal Civil Service Commission based upon an alleged conflict of interest. The conflict arose because petitioner was also president of the Teamsters' local which represented employees in the Municipal Public Works Department. Immediately after respondent took office as mayor, the business agent of the local requested a meeting with him to discuss and negotiate an agreement concerning wages, hours and working conditions of the Public Works employees. Before any negotiations had taken place, petitioner notified respondent that the summary replacement of eighty-three Public Works employees with persons chosen by the Department head violated the Civil Service Law, and the rules of the Commission. Petitioner was thereupon dismissed.

The action was sustained in the Appellate Division,[76] but the Court of Appeals reversed holding that there was no conflict of interest. The Court held that the relevant statutes were applicable only to situations where city officers may have financial interest, direct or indirect, in a contract with the city concerning property or services.[77] Since in the present case no contract had been entered into or even negotiated the proceedings were premature. In dicta, however, the Court stated, and Chief Judge Desmond concurred on this point only, that these statutory prohibitions were not intended to embrace labor negotiations or agreements. Thus, even if there was a contract it would not give rise to a conflict of interest.

Bd.

TRAFFIC ORDER TO BE FILED WITH DEPARTMENT OF STATE

The defendant, in *People v. Cull*,[78] was charged with a violation of subdivision 4 of Section 56 of the former Vehicle and Traffic Law[79] for driving on a state highway in excess of the speed announced by the State Traffic Commission by a so-called "order." His conviction by a justice of the peace was reversed by the County Court[80] upon the ground, specifically raised by the defendant,

73. Pyatt v. Mayor & Council of Borough of Dunellen, 9 N.J. 548, 557, 89 A.2d 1, 5 (1952).
74. Beebe v. Board of Supervisors of Sullivan County, 64 Hun 377, 19 N.Y. Supp. 629, aff'd, 142 N.Y. 631, 37 N.E. 566 (1894).
75. 9 N.Y.2d 433, 214 N.Y.S.2d 434 (1961).
76. 11 A.D.2d 904, 205 N.Y.S.2d 1003 (2d Dep't 1959).
77. Supra note 68.
78. 10 N.Y.2d 123, 218 N.Y.S.2d 38 (1961).
79. Now N.Y. Vehicle and Traffic Law § 1180.
80. 26 Misc. 2d 668, 210 N.Y.S.2d 10 (County Ct. 1961).

that the Commission's "order" imposing the speed limitation had not been filed with the Department of State as required by a provision of the State Constitution.[81]

The State contended that the constitutional provision in question, which by its terms only refers to "rules or regulations," has no application to "orders" of the State Traffic Commission restricting the speed of motor vehicles. The State's attempted classification of the traffic law in question as an "order" raises a serious question as to the Commission's original authority to even adopt the speed limit. At the time (1954) the order was promulgated, former Section 95-C, subdivision 1, of Article 7 of the Vehicle and Traffic law authorized the commission to establish, on state highways outside of towns and villages, speed limits higher or lower than the statutory fifty mile maximum.[82] Section 95-h, however, only empowered the Commission to adopt such "rules and regulations" as it deemed necessary to carry out the provisions of that article.

Therefore, the Court was called upon to decide whether the State Traffic Commission had authority to establish a speed limit by order," rather than by "rule" or "regulation," and, second, whether, in any event, the so-called "order" amounted to a rule or regulation under the constitutional provision so that failure to file prevented it from being effective.

The Court recognized that no precise definition of the terms "rule" or "regulation" exist,[83] but felt that "there can be little doubt that it embraces any kind of legislative or quasi-legislative document which establishes a pattern or course of conduct for the future. The label or name employed is not important and, unquestionably, many 'orders' come within the term."[84] In fixing a speed limit on a state highway, the State Traffic Commission is quite plainly establishing a general course of operation to be effective for the future.

Therefore, despite the label attached to the speed limit by the Commission, it is by its inherent nature a "rule" or "regulation" within the meaning of both Section 95-h[85] and the constitutional provision requiring filing.[86]

The State made the further argument that since the public has notice of speed limits by means of highway signs and markers, the constitutional requirement does not apply to rules and regulations which establish such restrictions. The argument, however, runs afoul of the clear intent of the constitutional mandate for central filing with the Department of State.

The purpose of central filing is not only to give the motorist notice but

81. N.Y. Const. art. IV, § 8:
No rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission shall be effective until it is filed in the office of the department of state.

82. N.Y. Vehicle and Traffic Law § 1620, the successor statute to § 95-c, permits the commissioner to fix speed limits "by order, rule or regulation."

83. See Davis, Administrative Law Text 84-85 (1959).

84. People v. Cull, supra note 78 at 126, 218 N.Y.S.2d at 40.

85. Former N.Y. Vehicle and Traffic Law § 95-h.

86. Supra note 81.

also to provide him with a common and definite place to examine the contents of the rule establishing such limitation in order to determine its legality, effectiveness and accuracy. Therefore, judgment for defendant is to be affirmed.

Bd.

EDUCATION LAW INTERPRETED AS INCLUDING SUBJECT AREA TENURE CLASSIFICATION

In *Becker v. Board of Education, Etc.*[87] the Court was faced with the question of whether petitioner, a teacher, who had taught within the same school district for about six years, was entitled to "tenure" status within the meaning of Section 3013 of the Education Law.[88]

Petitioner had been appointed as an elementary teacher by respondent board in 1952. In the spring of 1955, the principal of the school where petitioner was employed and the district superintendent of schools both recommended that petitioner be granted tenure. Respondent, however, took no action on this recommendation but instead tendered to petitioner an appointment as a special teacher for another probationary period of three years, beginning July 1, 1955, which was two months prior to the time that her original probationary period as an elementary teacher was to terminate. Petitioner under the latter appointment taught kindergarten for two years and then accepted another probationary appointment as a secondary teacher. In 1958, the respondent board notified the petitioner that she would no longer be needed. In response to her dismissal, the petitioner brought the present proceeding to compel the Board of Education to reinstate her and to grant her tenure.[89]

The School Board has taken the position that petitioner, who has not officially been appointed to tenure status, is not entitled to tenure because she has never taught in one "area" or category of subject matter beyond the required three year probationary period.[90]

Petitioner, however, argues that since the Education Law makes no mention of this "area" or subject matter classification she is entitled to tenure even

87. 9 N.Y.2d 111, 211 N.Y.S.2d 193 (1961).
88. N.Y. Educ. Law § 3013.
89. N.Y. Civ. Prac. Act art. 78.
90. Matter of Feldbauer v. Board of Education, 65 N.Y. State Dep't Rep. 68 (1943); N.Y. State Educ. Dep't Law Pamphlet 11, "Tenure and salaries of Teachers," pp. 9-10:

> Tenure classifications naturally fall into divisions of secondary (grades 9-12) and elementary (grades 1-8) teachers, principals, supervisors, directors, etc. . . . A transfer from one position to another within the same tenure area does not affect the teacher's tenure rights and is at the discretion of the board of education. After a teacher has acquired tenure he may not be transferred to a position in a different tenure area without his consent.

Conversely, the Education Department has taken the position that continuing a teacher in service within the same "area" or category of subject matter beyond the three-year probationary period, with the acquiescence of the Superintendent, has the affect of a formal appointment of that teacher to tenure status. Geruso v. Board of Education, 71 N.Y. State Dep't Rep. 158 (1950).