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Administrative Law—Police Commissioner’s Power to Impose Disciplinary Suspension Without Salary Not Limited by Code

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duties involved assisting in assembling and coupling freight cars, was found lying dead between the tracks in the railroad yard with his left hand partially severed. The coroner ordered an autopsy despite plaintiff's objections.

It is the duty of the coroner to "make inquiry into unnatural deaths occurring within the county as prescribed by law."³ Whenever a person has died suddenly "under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means" or that the person has committed suicide, the coroner must inquire into the cause of death.⁴ Whenever the coroner is authorized to make such an inquiry, he has the right to conduct an autopsy.⁵

At the trial, the jury returned a verdict for plaintiff in the sum of \$3,500 which was set aside by the trial judge who ruled as a matter of law that the coroner was justified in suspecting violence.⁶ The Appellate Division reversed and reinstated the verdict, ruling that on the record the reasonableness of the coroner's conduct was properly a question of fact.⁷ The rational basis of suspicion that a crime has been committed is the test; not merely "violence," which often is an element of an accidental death.

The Court of Appeals affirmed, holding that the question was properly one for the jury. While in most cases the court can readily determine as a matter of law whether the coroner had reasonable ground to suspect death by criminal means or suicide, when the circumstances disclose conditions which often accompany accidental death, there must be substantial reasons present to justify the need for an autopsy. Where the reasonableness of the coroner's conduct may be open to doubt, the question must be submitted to the jury.

Bd.

POLICE COMMISSIONER'S POWER TO IMPOSE DISCIPLINARY SUSPENSION WITHOUT SALARY NOT LIMITED BY CODE

The New York City Administrative Code confers discretionary authority upon an agency head to suspend a subordinate for a period not exceeding one month pending the hearing and determination of charges against him.⁸ If the subordinate is not subsequently removed, he is entitled to recover full salary for the period of suspension, less any fine which may be imposed.⁹ The salary of an office holder is incidental to his office and he is entitled to his entire salary as long as he possesses the title to the office.¹⁰ Thus, suspension from the performance of the duties of the office does not itself, without subsequent

3. N.Y. County Law § 662.

4. N.Y. Code Crim. Proc. § 773.

5. N.Y. Public Health Law § 4210.

6. 20 Misc. 2d 908, 189 N.Y.S.2d 704 (County Ct. 1959).

7. 10 A.D.2d 152, 197 N.Y.S.2d 679 (3d Dep't 1960).

8. New York City Admin. Code § 884-1.0.

9. *Ibid.*

10. *People ex. rel. Ryan v. French*, 91 N.Y. 265 (1883).

removal from the office, work a forfeiture of the right to the salary of the office during the period of suspension.¹¹

There are specific provisions of the Code relating to the Police Department, empowering the Commissioner to suspend members of the police force "without pay, pending the trial of charges . . . [but if] any member so suspended shall not be convicted by the commissioner of the charges so preferred, he shall be entitled to full pay from the date of suspension."¹² The Commissioner also is granted disciplinary power to impose a forfeiture of no more than thirty days' salary or suspension for an unlimited period.¹³

Brenner v. City of New York was a suit by members of the New York City Police Department to recover salary ranging from \$4,330 to \$6,230 withheld during the period of suspension following conviction by the commissions of the charges preferred and pending court trials which resulted in acquittals.¹⁴ The Court of Appeals held that suspension during this period was a proper exercise of the Commissioner's disciplinary powers, implying that the officer is relieved of duty during the interval. Suspensions, as a disciplinary measure not being limited by the Code, present a different question from suspensions pending trial. Thus, subsequent acquittal in this instance does not give a right to salary during the interim.

Three judges dissenting argued that the disciplinary powers of the Commissioner did not authorize a forfeiture of more than thirty days' salary and that plaintiffs' recovery would only be barred if, as provided by the Code,¹⁵ they had been removed from the police force. Suspension as a disciplinary measure would not of itself, without removal from the force, permit forfeiture in excess of the thirty day fine.

Bd.

AGENCY

AGENT LIABLE FOR UNAUTHORIZED REPRESENTATIONS THOUGH PRINCIPAL NOT LIABLE BY VIRTUE OF DISCLAIMER CLAUSE

Disclaimer provisions in contracts of sale have not been granted favorable disposition by the courts. In the majority of these contracts, the provision has been a dictated term of the contract resulting from a disparity of bargaining position between the parties. Consequently, such contracts have been held to be contracts of adhesion. However, where the disclaimer provision is a negotiated part of the contract, the courts will enforce it but will not allow the

11. *People ex rel. Flynn v. Woods*, 218 N.Y. 124, 112 N.E. 915 (1916); *Wardlaw v. Mayor, etc.*, New York, 137 N.Y. 194, 33 N.E. 140 (1893).

12. New York City Admin. Code § 434a-20.0.

13. New York City Admin. Code § 434a-14.0.

14. 9 N.Y.2d 447, 214 N.Y.S.2d 444 (1961).

15. *Supra* note 13.