Buffalo Law Review

Volume 9 | Number 1 Article 10

10-1-1959

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would only recommend himself and the Board, acting within its discretionary limits, refused to accept him. Petitioner brought a mandamus-type proceeding[30] to revoke the Board's appointment and Special Term granted the order.[31] The Appellate Division reversed,[32] and the Court of Appeals affirmed (4-3).[33]

The majority held that the Appellate Division had not abused its discretion in denying the writ. It agreed that issuance of the mandamus order could result in damage to the public interest in that it would cause a complete breakdown of the election machinery.[34] The dissent contended that this was not a real danger because the Democratic Chairman could be forced to submit a name other than his own, thereby, giving the Election Commission its required bi-partisan membership.

It appears that even if mandamus would be an appropriate remedy, some overriding factor may cause the Court to deny it.[35] This is true even where the order asked for is to prevent the derogation of a strict legal right.[36] This is a harsh rule and an appellate court should closely scrutinize the discretion to insure that it is not abused. In this case it seems that there was an abuse of discretion since the danger of public disorder did not appear to be well founded.

MANDAMUS TO REVIEW ELECTION PETITIONS

In *Mansfield v. Epstein*[37] the Court of Appeals held that two different procedures are available to review acts of the Commissioners of Elections where the acts complained of are ministerial and mandamus will lie. An order had been sought under Article 78 of the Civil Practice Act to compel the Ulster County Commissioners of Election to print appellants' names on the ballot for the forthcoming election. The petitions nominating the appellants had been rejected because the Commissioners were in disagreement as to their validity. The Supreme Court had considered the action as one under Section 330 of the Election Law,[38] which section gives the Supreme Court summary jurisdiction in election cases. This position of the Court, based on a decision that a mandamus order could not be directed to the Commissioners, was affirmed by the Appellate Division.[39]

The Court of Appeals reversed this determination and held that the Com-

30. N.Y. CIV. PRAC. ACT art. 78.
31. 17 Misc. 2d 164, 184 N.Y.S.2d 894 (Sup. Ct. 1959).
32. 7 A.D.2d 538, 185 N.Y.S.2d 669 (1959).
33. *Supra* note 28.
34. Petitioner asserted, in an action brought to restrain the Board of Elections from functioning when there is only one commissioner in office, that the board has no right to perform any of its duties until a representative of the Democratic party is properly appointed. If petitioner is correct in its assertion, it would cause a disfranchisement of the voters of Suffolk County.
35. For a discussion of the problem, see 4 BUFFALO L. REV. 334 (1955).
36. See Warehousemen's Ass'n of Port of New York v. Cosgrove, 241 N.Y. 580, 150 N.E. 563 (1925) where the court held that the remedy of mandamus may be withheld where the enforcement of a strict legal right would work unnecessary hardship.
37. 5 N.Y.2d 70, 180 N.Y.S.2d 33 (1958).
38. N.Y. ELECTION LAW § 330.
39. Mansfield v. Epstein, 7 A.D.2d 612, 178 N.Y.S.2d 812 (3d Dep't 1958).

missioners' power to examine independent nominating petitions to determine whether the required number of qualified voters have affixed their signatures thereto,[40] is reviewable under the summary jurisdiction of Section 330, and also reviewable in a proceeding initiated under Article 78. Thus, mandamus *can* be directed to the Commissioners of Election, since their power of examination of independent nominating petitions has been held to be ministerial,[41] and mandamus will issue to compel such ministerial acts.[42]

The Court, however, affirmed the denial of the relief sought because the same factual determination controlled in either a Section 330 or Article 78 proceeding. The lower court had found that the petitions had not been validly signed by a sufficient number of qualified voters as required by Section 138 of the Election Law.[43] Therefore, the appellants had failed to show a clear legal right to the relief sought,[44] and the invalidation of the nominating petitions was proper.

TOLLING OF STATUTE OF LIMITATIONS IN ARTICLE 78 PROCEEDING

Proceedings to review actions by administrative agencies must be commenced within four months after the matter to be reviewed becomes final and binding on the petitioner.[45] It has been held that such action does not become final and binding until the petitioner has received notice that he is aggrieved by the agency's action.[46]

In *O'Neill v. Schechter*[47] the Court faced the problem of when examinees in a civil service examination for patrolmen had such notice of the official key answers as to commence the four month period for challenging the answers. Petitioners brought this action seven months after the publication of the official answers. They claimed that they did not have notice that they were aggreived until they were allowed access to their own answer papers and that this action was started within four months of that time. In opposition, the respondent commission argued that statements contained on the examination paper informed petitioners of the necessity for making copies of their answers to enable them to challenge the official answers.[48]

The Court of Appeals reversed the dismissal of the petition by the Special

40. See N.Y. ELECTION LAW § 138.
41. Wicksel v. Cohen, 262 N.Y. 446, 187 N.E. 634 (1933).
42. Small v. Moss, 279 N.Y. 288, 18 N.E.2d 281 (1938); Schaffner v. Dooling, 258 App. Div. 735, 14 N.Y.S.2d 911 (2d Dep't 1939).
43. N.Y. ELECTION LAW § 138.
44. Combs v. Edwards, 280 N.Y. 361, 21 N.E.2d 353 (1939); Leitner v. New York Telephone Co., 277 N.Y. 180, 13 N.E.2d 763 (1938).
45. N.Y. CIV. PRAC. ACT § 1286.
46. Adamson v. Comm'r of Educ., 1 A.D.2d 366, 370, 371, 150 N.Y.S.2d 270, 276 (3d Dep't 1956) and cases cited therein.
47. 5 N.Y.2d 548, 186 N.Y.S.2d 577 (1959).
48. The examination made reference to copying answers at two places. The first page contained the statement "you may, for future reference, make a record of your answers in the question booklet and take the question booklet with you." The last page contained five paragraphs of directions for protesting answers. These instructions, however, were preceded by instructions implying that the protest instructions could be read after leaving the examination.