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Administrative Law—Status of Veteran under Civil Service Law II

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denial of protection to private secretaries was construed to apply to all Section 13 secretaries, but added the qualification that it is not the title fastened to the position that will determine its status, instead, the nature of the duties will control. In *Mercer*, as here, the plaintiff performed clerical, supervisory, and managerial duties, hence Section 22 must be applied here as it was there. The Court restricted the scope of the *Mercer* holding in this case by explaining that its decision there properly involved Section 22 only, since Section 13 was not germane to the issue. But it is apparent that Section 13 was not in issue only because of the hoped for application of the *Glassman* holding which was not rejected but merely subjected to interpretive qualifications.

The decision, in effect, recognizes the distinction in terminology between the "private secretary" of Section 22 and the "Secretary" of Section 13. The holding would have possessed greater clarity had the Court expressly rejected the sweeping generality of the *Glassman* case and more precisely indicated that while a Section 13 secretary may utilize the protection of Section 22 if he performs clerical, supervisory, and managerial duties, if he has not these duties, then he is a "private secretary" within the meaning of Section 22.

STATUS OF VETERAN UNDER CIVIL SERVICE LAW II

New York's Civil Service Law, Section 22, subdivision 1,⁷⁷ provides, among other things, that no honorably discharged veteran of the armed forces shall be summarily removed from a Civil Service position. However, the same section excludes from this protection deputies of any official or department.

In *Behringer v. Parisi*,⁷⁸ petitioner, a veteran of World War II, was summarily removed from his position as District Administrator of the Albany District of the Workmen's Compensation Board, and brought an action under Section 22 for reinstatement. The Chairman, however, determined that petitioner was a deputy within the meaning of the section. When review of that determination was had under Article 78 of the Civil Practice Act the Court of Appeals held that a hearing was necessary to determine if petitioner was in fact a deputy within the meaning of Section 22, Subdivision 1.

Petitioner contended that in order to be termed a deputy a statute must have created his position and prescribed the attendant duties and that no statute had done so. The Court, however, could not agree with petitioner on this matter, stating that the requirement was not applicable to the term "deputy" but rather was meant to apply to the category "independent office" which had been made an exception to the law by the judiciary.⁷⁹

As recently as 1950, in *Heath v. Creagh*,⁸⁰ the Court stated that in order for one to be included in the concept of "deputy" there need be only a statute

77. The Civil Service Law has been revised, effective April 1, 1959. Section 22, however, has been substantially retained and appears in Section 75 of the revision.

78. 5 N.Y.2d 147, 182 N.Y.S.2d 147 (1959).

79. O'Day v. Yeager, 308 N.Y. 580, 127 N.E.2d 585 (1955).

80. 197 Misc. 537, 547, 96 N.Y.S.2d 247, 255, *aff'd* 276 App. Div. 948, 94 N.Y.S.2d 901 (4th Dep't 1950).

making the person a deputy with authority to take over and perform the duties of the principal officer or a statute authorizing the principal officer to delegate his duties and thereby to create a deputyship. Section 152 of the Workmen's Compensation Law meets the latter requirement,⁸¹ and thus the question remains as to whether petitioner was in fact one to whom a delegation of powers and duties, under Section 152, was made.

The Court's requirement that a full inquiry into the extent and types of duties delegated to petitioner was necessary before a decision could be reached as to whether or not petitioner was a deputy within the meaning of Section 22 is logical. Although the Chairman had enumerated many powers and duties as having been delegated to the petitioner, petitioner put the issue in doubt by his allegations that "these powers were not only shared by others but were restricted, narrowed, and subject to policy determinations of other officials of the board," thereby barring his position from being deemed that of "deputy."

SUMMARY SEIZURE UNDER SANITARY CODE

Appellant sought injunctive relief against seizure of its product, and a return of property already seized under authority of Section 135 of the Sanitary Code of the City of New York.⁸² The Court of Appeals, in a *per curiam* opinion, affirmed dismissal of the prayer for injunctive relief, but held that appellant was entitled to a return of the property already seized without any prior notice or any type of hearing.⁸³ While the Court stated that appropriate authorities should not be denied the right to confiscate in cases of misbranding, it prescribed the same procedural standards for making such confiscations as were established for like cases under Section 6815 of the New York Education Law.⁸⁴

Section 6815 provides, *inter alia*, that seizure of misbranded articles is to be effected by process or administrative order after petition or complaint.⁸⁵ Since expeditious confiscation of "dangerous" articles may be had on adminis-

81. Section 152 of the Workmen's Compensation Law provides, *inter alia*, that the Chairman of the Board is authorized to delegate any of his administrative powers to the "... head of any bureau or section of the Board."

82. This provision is in substance, the same as the New York Education Law as it provides for seizure of misbranded articles.

83. *Metallic Flowers, Inc. v. City of New York*, 5 N.Y.2d 246, 183 N.Y.S.2d 801 (1958).

84. Section 6815 provides:

1. Any drug, device, or cosmetic that is adulterated or misbranded or which may not, under the provisions of this article, be sold, may be seized on petition, or complaint. . . . Seizure shall be made:

A. By process pursuant to petition or complaint, or
 B. if the secretary or officer duly designated by him, has probable cause to believe that the article

(1)

(2)

(3) is so misbranded within the provisions of this article as to be dangerous to health, the by order of such officer issued under his oath of office, particularly describing the article to be seized, the place where located, and the officer or employee making the seizure.

85. Italics supplied.