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Administrative Law—Summary Seizure under Sanitary Code

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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.

trative order after complaint, albeit *ex parte*,⁸⁶ there appears no reason to allow administering officials to effect seizure without complying with that procedure.

The instant decision should not be regarded as prohibiting summary or provisional seizure in the cases of nuisances,⁸⁷ but rather as requiring that administering officials observe the minimum procedural safeguards statutorily prescribed.

AUTHORITY OF CIVIL SERVICE COMMISSION TO CHANGE GRADING METHOD

In *Hymes v. Schechter*⁸⁸ the Civil Service Commission for the City of New York, pursuant to one of its rules, applied a conversion formula in determining the grades in a promotion examination for the position of assistant housing manager. The effect of this was to lower the passing grade from that which was announced on the day of the exam. Candidates for the examination who had passed without the benefit of the conversion formula, brought this Article 78 proceeding⁸⁹ to annul the determination of the Commission.

The Supreme Court denied the relief, and the Appellate Division affirmed.⁹⁰ The Court of Appeals reversed, holding that where the rule of the city Civil Service Commission authorizing the use of a conversion formula on the examination grades was not officially in effect until more than two weeks after the examination was held, application of the rule to such examination was improper.⁹¹

Rule V section 5(1) of the Civil Service Commission relied on by the Commission so far as is pertinent provides:

The rating shall be comparative and in accordance with such standards as the needs of the service may require. Where there is an insufficient number of candidates in open competitive or promotive examination to provide an adequate eligible list to meet the needs of the service, the Director of Examinations may provide a mathematical formula of penalties for incorrect answers on the basis of test difficulty.⁹²

This rule previously applied to open competitive examinations but was amended to include promotion exams as well. This amendment was approved by the Civil Service Commission on March 20, 1956 and the examination was given on April 7, 1956. The rule was not approved by the Mayor and the State Civil Service Commission until more than two weeks after the exam, and the candidates were notified of their grades almost a year later.

There is no question that the commission is authorized to amend its rules at any time upon approval of the Mayor and the State Civil Service Commission.⁹³ Nor can it be seriously contested that the provision could have

86. NEW YORK EDUC. LAW 6815(1)(b)(3), *supra*.

87. See *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908); *Adams v. Milwaukee*, 288 U.S. 572 (1913).

88. 6 N.Y.2d 352, 189 N.Y.S.2d 870 (1959).

89. N.Y. CIV. PRAC. ACT § 1283 *et seq.*

90. *Hymes v. Schechter*, 7 A.D.2d 294, 182 N.Y.S.2d 726 (1st Dep't 1959).

91. *Supra* note 88.

92. N.Y. City Civil Service Commission RULES, Rule V § 5(3).

93. N.Y. CIVIL SERVICE LAW § 11(2).