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COURT OF APPEALS, 1957 TERM

ADMINISTRATIVE LAW

Denial of Insurance License Because of Prior Conviction

A proceeding under Article 78 of the Civil Practice Act[1] is the present method of obtaining judicial review of determinations of administrative boards, replacing the writs of certiorari, mandamus, and prohibition, but retaining their substantive aspects.[2]

Section 119 of the Insurance Law[3] provides that the Superintendent of Insurance shall determine the professional qualifications and trustworthiness of applicants for licenses as insurance brokers and provides for judicial review of such determinations under an Article 78 proceeding.

In *Koster v. Holz*,[4] petitioner was denied an insurance broker's license on the basis of conviction of a felony, the offense being failure to complete induction procedure as prescribed by the Universal Military Training and Service Act.[5] He requested a personal consideration of the matter by the Superintendent, and, after an informal hearing, the prior determination was affirmed. Petitioner then sought relief in Special Term where the determination of the Superintendent was affirmed and in the Appellate Division which also affirmed.[6] The Court of Appeals reversed, holding that a formal hearing and a record of that hearing were required in order to meet the requirements of section 119 of the Insurance Law.[7]

The decision reached is consistent with existing authority in the area and is based on the fact that section 119 is a re-enactment of former section 143 of the Insurance Law which provided for judcial review by writ of certiorari. Since in a review by certiorari the tribunal is limited to the record, the Court felt it manifest that a record must be kept.[8]

After determining that the case must be remanded for a formal hearing, the Court set some guideposts for the determination of petitioner's trustworthiness. It was pointed out that two classes of conscientious objectors are recog-

1. N. Y. CIV. PRAC. ACT, §1283.
2. Newbrand v. City of Yonkers, 295 N.Y. 164, 33 N.E.2d 75 (1941); THIRD ANNUAL REPORT OF N. Y. JUDICIAL COUNCIL (1937).
3. N. Y. INSURANCE LAW §119.
4. 3 N.Y.2d 639, 171 N.Y.S.2d 65 (1958).
5. 62 STAT. 604 (1948), 50 U.S.C. Appendix §456(j) (1952), as amended 69 STAT. 223 (1955), 50 U.S.C.A. Appendix §456(j) (1958).
6. 3 A.D.2d 654, 159 N.Y.S.2d 678 (1st Dep't 1957).
7. *Supra note* 3.
8. Newbrand v. City of Yonkers, *supra* note 2; Collins v. Behan, 285 N.Y. 187, 33 N.E.2d 86 (1941); 1 BENJAMIN, ADMINISTRATIVE ADJUDICATION IN NEW YORK 91 (1942).

nized by the Universal Military Training and Service Act, but that only one of them is exempt from military service, the other being required to serve regardless of sincerity of belief.[9] This being the case, the Superintendent should determine whether petitioner's draft board felt him to be sincere in his belief. If, in spite of his sincerity, he was unable to obtain exemption from military service, the conviction for refusal to be inducted into the armed services would not be considered sufficient evidence of untrustworthiness, within the purview of section 119, to deny him an insurance broker's license.

It is apparent that the Court of Appeals had an eye on the recent United States Supreme Court decision in *Schware v. Board of Bar Examiners*.[10] In that case the appellant was prohibited from taking the bar exam of New Mexico on the ground that his use of several aliases, a number of arrests (but no convictions) during labor disputes, and admitted membership in the Communist Party during the 1930's, were conclusive evidence that he did not possess the "good moral character" required by the state of its attorneys. The Supreme Court held it to be a violation of the due process clause of the Fourteenth Amendment to bar him because of such past conduct alone, saying, "In determining whether a person's character is good, the nature of the offense which he has committed must be taken into account."[11] and "[m]ere unorthodoxy does not as a matter of fair and logical inference negative good moral character."[12]

The implication of *Koster v. Holz*,[13] however, is quite a bit more narrow than that of the *Schware* case.[14] The Court of Appeals, perhaps looking to other administrative determinations, limits the aim of its dicta to cases where the particular statute in question does not expressly provide that a conviction *per se* is sufficient ground to bar an applicant under such statute. Nor does the decision give any affirmative information as to what kind of crimes have a bearing on the trustworthiness of an individual.

It is submitted that those convicted of serious crimes involving moral turpitude will still fail to meet statutory requirements of trustworthiness of good moral character. However, the doors may open to those who have been convicted of less serious crimes which are not related to the purpose of the particular statute. The precise dividing line remains to be determined.

Procedural Safeguards in Administrative Review

Dissatisfied with the results of a local school district election which ap-

9. *Supra* note 5.
10. 353 U.S. 232 (1957).
11. *Ibid.* at 243.
12. *Ibid.* at 244.
13. *Supra* note 4.
14. *Supra* note 10.