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Administrative Law—Procedural Safeguards in Administrative Review

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COURT OF APPEALS, 1957 TERM

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 *Schwartz 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 *Schwartz* 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.

proved construction and authorized a bond issue to be paid out of future taxes, the petitioner appealed to the Commissioner of Education to set aside the election, alleging procedural irregularities. Acting under rules of the Department, the Commissioner held a hearing at which affidavits, pleadings, and exhibits were available, briefs exchanged, and oral arguments of counsel heard. Relying on the presumption of regularity and the failure of the petitioner to prove any irregularity, the Commissioner found that the suggestion that the election was not accurate could be upheld only by engagement in pure speculation, and he accordingly affirmed the results. Petitioner thereupon brought this Article 78 proceeding for annulment of the Commissioner's determination and was rebuffed in the lower courts where the Commissioner's decision was viewed as not arbitrary in any sense. On appeal as of right, the Court of Appeals rejected jurisdiction, holding that no constitutional issue was involved within the purview of §2037 of the Civil Practice Act.¹⁵

Where administrative functions involve the determination of personal and property rights, a quasi-judicial type of determination, it is clear that procedures used must accord with the due process clause of the Constitution, including the right to notice, hearing, and opportunity to present testimony.¹⁶ Contrasted to this are matters purely administrative in nature which are analogous to "management of private business"¹⁷ and not subject to due process limitations. The petitioner here argued that he was deprived of his rights under due process concepts by virtue of not having the opportunity to produce witnesses at the hearing and cross-examine, relying heavily on *Hecht v. Monaghan*,¹⁸ which held that a cabby's hack license — a "property" right — could not be taken away by administrative action without adherence to the due process normal to a quasi-judicial hearing. The majority brushed this argument aside, however:

The principle underlying that decision is not applicable to an administrative determination of the sort here involved. The *Hecht* case, . . . dealt with the revocation of the petitioner's license to carry on his business or occupation and necessarily affected his very right to make a living.¹⁹

Thus, the implication seems clear that a local taxpayer does not have a property interest as such when contesting school district action before the Com-

15. *O'Brien v. Commissioner of Education*, 4 N.Y.2d 140, 173 N.Y.S.2d 265 (1958). Disputes concerning the validity of district meetings or elections are reviewable by the Commissioner under §2037 of the Education Law. Also, see §310 of the act which provides for appeals to the Commissioner generally and seems to include the scope of §2037.

16. *Hecht v. Monaghan*, 307 N.Y. 461, 121 N.E.2d 421 (1954).

17. *O'Brien v. Commissioner of Education*, *supra* note 15, Van Voorhis, J., concurring, at 146, 173 N.Y.S.2d at 268 (1958).

18. 307 N.Y. 461, 121 N.E.2d 421 (1954).

19. *O'Brien v. Commissioner of Education*, *supra* note 15, at 145, 173 N.Y.S.2d at 267 (1958).

COURT OF APPEALS, 1957 TERM

missioner; personal rights or property rights are not involved which would constitute the review a quasi-judicial act.

Judge Van Voorhis, concurring, disagreed with this conclusion, although he favored dismissal since it did not appear on the record that the petitioner had demanded before the Commissioner the rights contended for an appeal. In his view, the petitioner had a property interest, the hearing was quasi-judicial in nature, and there was a triable issue of fact which would require testimony and the right to cross-examine. The cases he cites to support his premises that due process applies, however, involved the seizure of property or the imposition of a burden or public judgment upon a person or group by government²⁰ and not a contest of governmental power to act by individual taxpayers. Even though taxpayers have been recognized as having an interest (sometimes referred to as proprietary) which permits them to sue municipal corporations and local government units,²¹ it should not follow that they must necessarily be accorded all the procedural forms associated with due process where specific property or personal rights are being moved against by governmental agencies other than through the medium of taxation which imposes a burden upon the community at large equally.

State Pension Not Subject to Diminution of Payments by Change of Mortality Tables

The Teachers Retirement System in New York consists in part of an annuity which is paid to employees upon retirement from contributions made by the members.²² The Education Law provides that the annuity "shall be the actuarial equivalent of his [the member's] accumulated contributions at the time of his retirement."²³

In 1935, the stability of this system was placed in considerable doubt by the dictum in *Roddy v. Valentine*,²⁴ to the effect that

[w]here the statutory scheme creates a fund wholly or largely out of public moneys, the interest of the member down to the point where there has been compliance with all precedent conditions and the award has been or as of right should have been made, can hardly be deemed contractual [W]hatever its legal nature may be, there seems to

20. *Hecht v. Monaghan*, *supra* note 16; *New York Edison Co. v. Maltbie*, 271 N.Y. 103, 2 N.E.2d 277 (1936); *New York State Guernsey Breeders Co-op v. Noyes*, 284 N.Y. 197, 30 N.E.2d 471 (1940); *Rochester Transit Corp. v. Public Service Comm.*, 271 App. Div. 406, 66 N.Y.S.2d 593 (3d Dep't 1946).

21. See Bradford, *Municipal Taxpayers and Standing to Sue*, 2 BUF. L. REV. 140. Also see N. Y. GEN. MUN. LAW §51.

22. N. Y. EDUCATION LAW §501(12) and (14).

23. N. Y. EDUCATION LAW §510(2) (a).

24. 268 N.Y. 228, 231, 197 N.E. 260, 262 (1935).