Buffalo Law Review

Volume 8 | Number 1 Article 9

10-1-1958

Administrative Law—Notice to Political Subdivision for Administrative Hearing

Buffalo Law Review

In *Mandle v. Brown*,[41] there was no promotion involved which violated the New York Constitution or the Civil Service Law. "A transfer from one position within a grade to another in the same grade with more important duties and with larger salary is regarded in a sense as a promotion. Such is not, however, the statutory meaning of the term."[42]

Notice to Political Subdivision for Administrative Hearing

Section 46(8) of the Correction Law empowers the Correction Commission to close any county jail which is unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners required by law.[43] In acting to close a county jail, the Commission must send a citation to the sheriff and clerk of the board of supervisors to appear before the Commission and show cause why the jail should not be closed. After a hearing, the Commission is empowered to order the jail closed, the county having ninety days within which to institute an Article 78 proceeding for review of the order.

In 1955, the Commission ordered an inspection of the Cayuga County jail resulting in two reports. One of these reports related only to a general uncleanliness while the other was a great deal more detailed, concerning structural defects, obsolete equipment and lax administration. Only the former report was supplied with the citation ordering the county to show cause why the jail should not be closed, but, when the hearing came up, the county representatives were faced with the more detailed report which they claimed they were unprepared to rebut or explain. As a consequence of the hearing, the jail was ordered closed and the county sought to have the order annulled by the Appellate Division under Article 78 of the Civil Practice Act.

The Appellate Division remanded the case to the Commission for another hearing on the ground that a proper hearing in accord with the statute had not been held, the county having had no opportunity to dispute or refute the matters in the second report and having been misled into answering only the charges contained in the first report.[44] The Court of Appeals reversed, holding that the key to the sufficiency of the hearing was the question whether the Correction Commission was acting in a quasi-judicial or an administrative capacity.[45] The Court adopted the latter answer.

The theory of the opinion is that counties are mere political subdivisions

41. *Supra*, note 37.
42. Sanger v. Greene, 269 N.Y. 33, 41, 198 N.E. 622, 625 (1935).
43. N. Y. CORRECTION LAW §46(8).
44. Cayuga County v. McHugh, 3 A.D.2d 300, 160 N.Y.S.2d 473 (4th Dep't 1957).
45. Cayuga County v. McHugh, 4 N.Y.2d 609, 176 N.Y.S.2d 643 (1958).

of the state, possessing only those powers granted or permitted by the legislature.[46] Since county jails exist only by statutory enactment,[47] the legislature could abolish them completely, without permission of the counties. If it could abolish them, the Court reasons, it could also regulate them as it saw fit. By Article 17, section 5 of the New York Constitution, the Correction Commission is given the duty of inspection. In addition, the legislature has delegated to it the power of closing the jails by the procedure outlined in section 46(8) of the Correction Law. Although a hearing is provided for, the Court concludes that it is administrative in nature, requiring only that the Commission determine whether to close the jail or not, and that in this determination, the Commission is acting as an arm of the legislature.

Strictly construed, there is nothing in the statute which requires that the county be notified of any more than the time and place of the hearing. The county is merely ordered to show cause why the jail should not be closed and there is no requirement that evidence be presented. The Appellate Division approached the problem with the assumption that the action was quasi-judicial in nature and from this determined that a fair hearing was required to prevent its becoming a mere sham. This would seem to be a valid conclusion even if the action were characterized as strictly administrative. It does not seem reasonable that the legislature, in enacting section 46(8) intended that the hearing therein provided should merely rubber stamp a determination of an inspection team. On the other hand, under the circumstances of this case, despite the superficial inequity, it cannot be said that there was arbitrary or capricious action on the part of the Commission. The jail was in fact inadequate, obsolete, unsafe and in need of replacement. The county was well aware of this situation and had been resisting the Correction Commission in this regard for a number of years. Nor were its representatives at the hearing surprised at the contents of the second report. The Commission had received too many promises; now it wanted action. To remand the case would result in the same conclusion, i.e., that the jail must be closed until it was properly repaired or a new one built.

Civil Service, Prior Service Credit—Per Curiam

In *Turner v. Levitt*[48] the Court held in a per curiam opinion that employment as a town clerk in which petitioner was in effect paid solely by the town clerk under a private arrangement (by which part of the pay was in the form of retention by the petitioner of license fees which belonged legally to the town clerk), did not constitute paid government service within the meaning of the

46. N. Y. COUNTY LAW §3; Markey v. Queens County, 154 N.Y. 675, 49 N.E. 71 (1898).
47. N. Y. COUNTY LAW §217.
48. 4 N.Y.2d 169, 173 N.Y.S.2d 286 (1958).