

10-1-1958

Administrative Law—Civil Service, Prior Service Credit—Per Curiam

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Administrative Law Commons](#)

Recommended Citation

Buffalo Law Review, *Administrative Law—Civil Service, Prior Service Credit—Per Curiam*, 8 Buff. L. Rev. 55 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/10>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

COURT OF APPEALS, 1957 TERM

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).

BUFFALO LAW REVIEW

retirement law.⁴⁹ Therefore the Comptroller was authorized to modify petitioner's prior service certificate, within one year of its issuance, by disallowing credit for such employment.⁵⁰

Discretion Not Abused in Denial of Liquor License—Per Curiam

In *Wager v. State Liquor Authority*,⁵¹ the Court found no abuse of discretion by the Authority in denying petitioner a renewal of his solicitor's permit because of his relationship with liquor retailers as a vending machine operator and automobile dealer. In the course of this relationship petitioner had made substantial advances to the retailers. The fact that this relationship was not shown to involve any misconduct or violation of law or Authority regulation formed the basis of Judge Fuld's dissent.

Denial of Permission for Relocation of Liquor Store Not Unreasonable—Per Curiam

In *Rockower v. State Liquor Authority*,⁵² plaintiff instituted an Article 78 proceeding for the review of the authority's denial of his request to change the location of his retail liquor store. The authority justified its decision on the ground that it was not reasonably possible to determine at that time whether additional stores should be located in the area to which plaintiff sought removal because that area is undergoing substantial change in that numerous public and private housing developments therein were in various stages of planning and completion.

The Court of Appeals reversed the Appellate Division⁵³ and concluded that the Authority's action was not an abuse of its discretion.⁵⁴ Although the immediate area of the requested site had been completed as to the slum clearance and there were no other retail liquor stores in close proximity to the requested site, the Authority determined that existing liquor stores in adjacent areas still being redeveloped might require relocation.

49. See N. Y. Town Law §30(10), which provides that deputy clerk is to serve without compensation unless otherwise provided by the town board.

50. The former §60(h)(3) of the N. Y. Civil Service Law which controlled such action by the Comptroller is now §41(h)(3) of the N. Y. Retirement and Social Security Law.

51. 4 N.Y.2d 465, 176 N.Y.S.2d 311 (1958).

52. 4 N.Y.2d 128, 173 N.Y.S.2d 5 (1958).

53. 4 A.D.2d 783, 165 N.Y.S.2d 226 (2d Dep't 1957).

54. See *Stracquadanio v. Department of Health of the City of New York*, 285 N.Y. 93, 32 N.E.2d 806 (1941).