Buffalo Law Review

Volume 7 | Number 1 Article 9

10-1-1957

Administrative Law—Hotels Not Special Class of Housing Accommodations Within Rent Control Law

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COURT OF APPEALS, 1956 TERM

ADMINISTRATIVE LAW

Board Member Absent From Administrative Hearing Entitled To Vote

Courts, in reviewing the decisions of administrative tribunals, are limited to ascertaining whether or not there is a rational, legal basis for such determinations.[1] This does not mean that the courts will "Probe the mental processes" of the body[2] but rather that they will determine only whether there has been an independent appraisal and conclusion based on sufficient knowledge.[3]

In *Taub v. Pirnie,*[4] an application for a variance from a local zoning ordinance, the Court of Appeals unanimously held that, though a member of the Board was absent from the public hearing and did not read the transcript of the record, he nevertheless possessed adequate knowledge to make an informed decision. The Court pointed out that because the absent member had for years been a resident of the village and a village trustee, and because he had discussed the arguments presented at the hearing before voting, he possessed sufficient information to reach an independent and competent conclusion.

Thus the Court has held that an administrative board member may vote on the disposition of a proceeding, though absent from the hearing thereon, provided that he has acquired independent knowledge of the issues involved. It is submitted that this proposition is susceptible of unwarranted extension and its application should be restricted to similar factual settings.

Hotels Not Special Class Of Housing Accomodations Within Rent Control Law

In *Hotel Association of New York City v. Weaver*[5] the Court held that the Temporary State Housing Commission did not act in an arbitrary and capricious manner when it ruled that hotels as such did not constitute a "particular class of housing accommodations" within the meaning of the Emergency Housing Rent Control Law.[6]

Petitioner, an association of one hundred and seventy-one hotels in New York City, petitioned the Rent Administrator to find that hotels as such are a particular class of housing accommodations within the meaning of the statute and entitled

1. Mounting & Finishing Co. vs McGoldrick, 294 N.Y. 104, 60 N.E.2d 825 (1945).
2. Kilgus v. Board of Estimate of the City of New York, 308 N.Y. 620,628, 127 N.E.2d 705, 710 (1955).
3. *Ibid.*
4. 3 N.Y.2d 188, 165 N.Y.S.2d 1 (1957).
5. 3 N.Y.2d 206, 165 N.Y.S.2d 17 (1957).
6. N.Y. EMERGENCY HOUSING RENT CONTROL LAW §12.

to decontrol of rent under it. The statute empowers the commission to abolish rent control within a "particular class of housing accommodations" when it finds a five per centum vacancy existing within such class. Since the statute does not define what is meant by a "particular class of housing accommodations," it follows that the commission must make such determination. The determination must not be arbitrary and capricious, and if it is not, the courts may not interfere.[7] The commission defined the phrase as referring to a particular rental level for accommodations rather than to a particular type of accommodation, and ruled that a showing by petitioner that a five per centum vacancy existed among hotels did not satisfy the statute since they did not show a five per centum vacancy existing within a particular rental level. The problem then is whether or not the commission's determination of the definition of the phrase was arbitrary and capricious.

The declared legislative purpose of the act is to prevent the "exactions of unjust, unreasonable and oppressive rents and rental agreements."[8] It is logical to assume that when a prospective tenant considers renting a particular accommodation price is a determining factor. Tenants within a particular price range, therefore, compete against each other. In a particular type of housing accommodation, such as hotels, there might be vacancies in the higher price ranges while there were shortages in the lower price ranges. To allow decontrol on the basis of an overall showing within a particular type of housing accommodation of a five per centum vacancy might cause such a great degree of competition among the tenants of the lower priced accommodations as to promote the very hazards this Act was intended to prevent. The commission's basis of what constitutes a particular class of housing accommodation, which is rental level, is not susceptible to the above danger and works to promote the purposes of the statute. Therefore it can not be said that the commission acted in an arbitrary and capricious manner when it made its ruling. Since the commission did not act in such a manner the Court here refused to interfere with the commission's ruling.

Regulation Of Unprofessional Conduct

In *Strauss v. University of State of New York,*[9] a last minute amendment to a questionable regulation enabled the Court of Appeals to avoid an interesting problem dealing with the validity of administrative rules regulating the conduct of the optometry profession. The Board of Regents had adopted a rule which proscribed as unprofessional conduct "Advertising by means of large display, glaring, illuminated or flickering signs."[10] An illuminated sign is defined as "a sign lighted or self-luminous by any means whatever, or giving the outward

7. Park East Land Corp. v. Finkelstein, 299 N.Y. 70, 85 N.E.2d 869 (1949).
8. N.Y. EMERGENCY HOUSING RENT CONTROL LAW §1.
9. 2 N.Y.2d 464, 161 N.Y.S.2d 97 (1957).
10. Regulations of the Commissioner of Education, §70(1)(g), as amended January 25, 1957.