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Administrative Law—Review of Administration Determination

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Since the appointment of eligible applicants to a position protected by Civil Service involves the discretion of the appointing agency, the Court could not order the Commissioner to appoint the captains to the position of battalion chief.[21] However, this action was brought only to restrain him from exceeding his authority; injunctive relief where the Civil Service Law is being violated is properly sought in Article 78 proceedings.[22]

Review of Administration Determination

The Administrative Code of the City of New York provides that upon the death of a member of that city's employees retirement system before his retirement, and upon evidence submitted to the Board of Estimate of the city proving that the death was the natural and proximate result of an accident sustained in the course of employment, and not as a result of willful negligence on the part of an employee, employee's dependents are are entitled to certain death benefits.[23]

The courts have decided that it is the duty of the Board of Estimate itself, in the first instance, to pass on the sufficiency and quality of the evidence presented in support of such a claim.[24] The criterion on review of the Board's action is only whether a rational basis for its conclusion can be found.[25] Since the basis for review by the courts is so narrow, all administrative agencies should conscientiously and painstakingly assess evidence presented to them.[26]

In *Kilgus v. Board of Estimate of City of New York*,[27] the court held, that the Board of Estimate had not discharged its duty by accepting a report of a trial committee, consisting solely of a non-elected employee of the Board, as the basis of its decision. This report, together with conflicting testimony surrounding the death for which claim was here made, was in the possession of the Board for some months prior to its decision. Some members of the Board had stated that in the absence of overwhelming evidence to the contrary they felt bound by the trial committee's report; other members stated that the courts would later give the claimant a full hearing if he chose to appeal. In the light of these statements, the court felt that the Board misconceived its duty in not considering and making its own independent findings and determinations of the facts before it.

The dissent strongly contended that since the report of the trial committee

21. *Jaffe v. Board of Education*, 265 N. Y. 160, 192, N. E. 185 (1934).
22. N. Y. Civ. Prac. Act §§1283-1306.
23. Administrative Code of the City of New York §B3-33. O.
24. *Daley v. Board of Estimate of the City of New York*, 267 App. Div. 592, 49 N. Y. S. 2d 139 (2d Dep't 1944).
25. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 146 (1939).
26. *Weekes v. O'Connell*, 304 N. Y. 259, 107 N. E. 2d 290 (1952).
27. 308 N. Y. 620, 127 N. E. 2d 705 (1955).

and the conflicting testimony had been before the Board, and its decision recited that it had been reached after careful consideration of the entire record, the courts could not and should not interfere.[28] The administrative action has a quality resembling that of a judicial proceeding and it is not the function of the court to probe the mental processes of the deciding officer in reaching his conclusion.[29] The minority, however, entirely ignored the misconception of the Board's duties which was entertained by some of its members, and its position thus seems less realistic than that of the majority.

Liquor Licenses

In an action under Article 78 of New York Civil Practice Act to review refusal to renew a restaurant liquor license by the State Liquor Authority on the ground of permitting licensed premises to become disorderly, the Court *held,*[30] the evidence did not sustain the determination; there was an absence of substantial evidence that the licensee or his manager knew or should have known of the presence of prostitutes, or heard a conversation in which a police officer was solicited.

The majority decided that sufferance or permission, within the purview of the statute, requires a fair measure of continuity and permanence, which the Liquor Authority here failed to prove. Since an administrative board's action must be *clearly* arbitrary in order to reverse a finding of fact,[31] the Court must have determined that the finding was arbitrary, although neither the majority nor the dissenting opinion discussed the reviewability of the Authority's action. The court retains is power to review where an arbitrary decision has been made, in spite of the fact that review in this case is not specifically provided for in the statute.[32] The Court here assumed review was possible, and then reversed what was not a clearly arbitrary and capricious finding of fact. They found that there was not substantial evidence of the owner's knowledge and sufferance—clearly a question of fact, on which reasonable men could differ, as did the majority and dissenters.

Plaintiff's request for liquor license, made on November 21, 1952, was held in abeyance while the state legislature made a survey of the number of liquor stores in each country and drew up a schedule of the maximum number to be

28. *Weekes v. O'Connell, supra,* note 26.
29. *Morgan v. United States,* 304 U. S. 1 (1938).
30. *Migliaccio v. O'Connell,* 307 N. Y. 566, 122 N. E. 2d 914 (1954).
31. *In re Leonard Battaglia v. John F. O'Connell,* 269 App. Div. 1002, 58 N. Y. S. 2d 412 (3rd Dep't 1945).
32. The statute provides for review of the Authority's actions only where there is a refusal to issue a license, or where there is a revocation or cancellation or suspension of a license. N. Y. ALCOHOLIC BEVERAGE CONTROL LAW §121.