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Procedure—Judicial Review of Administrative Decisions

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for summary judgment in a non-enumerated action of the type at bar, the decision seems entirely justified.

Judicial Review of Administrative Decisions

Section 81 of the New York Insurance Law requires the approval of the Superintendent of Insurance for purchases of real property to be used for business purposes and not investment. Guardian Life Insurance Company decided to purchase a new building to be used either as an investment (to be rented as an office building) or to be used as the company's own principal office building. Consequently, Guardian sought the Superintendent's approval and was granted a hearing by the Superintendent, although none is required by law. Guardian had proceeded with the purchase before the hearing had been granted, and sought in the courts to have the Superintendent's refusal to grant his approval reviewed and reversed. The courts below denied the review, and the Court of Appeals affirmed.¹⁷

Although "in the absence of a clear expression by the Legislature to the contrary, the courts may review the exercise of a discretionary power vested in an administrative officer or body to determine whether the case discloses circumstances which 'leave no possible scope for the reasonable exercise of discretion in such manner,'"¹⁸ the legislature can proscribe judicial review of certain acts of administrative officers and boards.¹⁹ It is conceded by the majority that power of review is always retained by the courts where a Board has exceeded or ignored the statutory grant of authority.²⁰ The dissent here claims that the Superintendent of Insurance ignored the standard set by the statute;²¹ therefore review, in spite of any possible inferred mandate in the statute, is feasible and necessary. The majority in interpreting the statutory scheme disregarded the common law power of the courts to review, though this power has never been relinquished.

17. *Guardian Life Insurance Co. v. Bohlinger*, 308 N. Y. 174, 124 N. E. 2d 110 (1954).

18. *Schwab v. McElligott*, 282 N. Y. 182, 186, 26 N. E. 2d 10 (1940).

19. *Millman v. O'Connell*, 300 N. Y. 539, 89 N. E. 2d 255 (1949). In this case §121 of the Alcoholic Beverage Control Law was involved; it authorizes judicial review for some acts, but not for others. It was held that this was a legislative mandate against judicial review where not specifically authorized. However, §2 of this law provides that the authority's power is "subject only to the right of judicial review hereinafter provided for"; there is no such deliberate mandatory phrase in the Insurance Law.

20. *Barry v. O'Connell*, 303 N. Y. 46, 100 N. E. 2d 127 (1951).

21. According to the dissent, approval should be refused only when the company's action is clearly unauthorized, or the property is unrelated to the company's business, or there is fraud or no reasonable business reason for acquiring the property. Here the Superintendent relied on his own judgment as to what is a reasonable business use, rather than relying on the business experience of petitioner's officers.