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Administrative Law—Delegation

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THE COURT OF APPEALS, 1951-52 TERM

I. Administrative Law

In its 1951-52 term, the Court of Appeals dealt with several phases of the administrative process, including the role played by the courts. At the outset, it was faced with a basic problem of this branch of law, the proscription against statutory delegation of legislative power to an administrative body.[1] The next step, *i. e.*, the actual administration of the statute by the tribunal or officer, is guided by the requirements of due process.[2] Decisions of the Court in the past term accentuate the fact that procedure must be proper and in precise compliance with the statutory scheme.[3] On appeal, although the litigant has properly proceeded before the agency, he may nevertheless experience great difficulty in invoking th jurisdiction of a court to review the administrative action.[4] If jurisdiction is granted, the courts of this state find statutory as well as decisional rules governing the scope of review.[5]

Delegation

Delegation of power to an administrative agency must not be delegation of legislative power.[6] The function of the agency must be restricted to ascertaining facts and conditions to which the statute will apply.[7] The policy of the law must be set by the legislature,[8] and the statute must supply the methods to be used in carrying out such policy and the objectives which are to be attained; such standards are to guide the agency in administering the statute.[9] In the now famous *Miracle case*,[10] Education Law § 122 was involved. It provides that a license should be issued for the exhibition of any submitted film "unless such film or a part thereof is obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt

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1. *Burstyn v. Wilson*, 303 N. Y. 242, 101 N. E. 2d 665 (1951).

2. *Wignall v. Fletcher*, 303 N. Y. 435, 103 N. E. 2d 728 (1952).

3. *Weeks v. O'Connell*, 304 N. Y. 259, 107 N. E. 2d 290 (1952).

4. *Brennan v. Delaware, L. & W. R. Co.*, 303 N. Y. 907, 105 N. E. 2d 492 (1952).

5. *Lynch Builders Restaurant v. O'Connell*, 303 N. Y. 408, 103 N. E. 2d 531 (1952); *Kopec v. Buffalo Brake Beam-Acme Steel & Malleable Iron Works*, 304 N. Y. 65, 106 N. E. 2d 12 (1952).

6. *Field v. Clark*, 143 U. S. 649 (1892).

7. *Bowles v. Willingham*, 321 U. S. 503 (1944).

8. *Ibid.*

9. *Yakus v. United States*, 321 U. S. 414 (1944).

10. *Supra* n. 1.

morals or incite to crime." The license should issue from the Motion Picture Division of the Department of Education of the State of New York; consequently, the denial of a license would be based upon a determination by the Motion Picture Division that the film violated one of the proscriptions of the statute. In November, 1950, petitioner secured a license to show the film, "The Miracle". The first showing was in New York City during December of the same year. The film immediately provoked expressions of public opinion, and the Board of Regents, which is head of the Department of Education, promptly proceeded to review the action of the Motion Picture Division, which granted the license. A sub-committee, appointed by the Board, found that possibly the film should not have been licensed and recommended that the Board view the film and review the record. Following the recommendation, the Board of Regents unanimously rescinded and cancelled the license, upon its determination that "The Miracle" is "sacrilegious" and not entitled to a license under law. Whereupon, the licensee instituted a proceeding for review.

Petitioner contended that the statute delegates legislative power without adequate standards and attacked specifically the word "sacrilegious" for its indefiniteness. The Court of Appeals held (5-2) that there was no problem with the word "sacrilegious" and stated that were it necessary, the dictionary furnishes a clear definition.[11] Reliance was placed upon *Mutual Film Corp. of Missouri v. Hodges*,[12] in which the Supreme Court of the United States upheld a statute providing that a censor should approve such films as were found to be "moral and proper" and disapprove such as are "sacrilegious, obscene, indecent or immoral, or such as tend to corrupt the morals." The court in the instant case went on to show that the word "profane", which is considered a synonym for "sacrilegious", had also been upheld.[13]

Though the Court had little difficulty with this objection and felt that a "short answer" would suffice,[14] its position is far from unassailable. The *Mutual Film* case, upon which the court relied, dealt with similar statute but did not concern itself particularly with the word "sacrilegious". The specific objection in that case was to a different part of the statutory language.[15] Also, the

11. "The act of violating or profaning anything sacred," FUNK & WAGNALL'S NEW STANDARD DICTIONARY (1937 ed.).

12. 236 U. S. 248 (1915).

13. *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942).

14. 303 N. Y. 242, 255, 101 N. E. 2d 665, 670.

15. The first part of the statute disclosed which type films could be licensed. The specific words under attack were "educational," "moral," "amusing," and "harmless."

lengthy concurring opinion of Justices Frankfurter, Jackson and Burton, in the U. S. Supreme Court decision of the *Miracle* case,[16] is devoted entirely to showing the inherent vagueness of the word "sacrilegious". Besides tracing historically the various meanings ascribed to the word and the resulting confusion, the appendix to the opinion contains quotations from over thirty dictionaries, which show that dictionary definitions of the word differ and that no clear meaning may be derived therefrom.

Other Aspects of the Miracle *Case*

Because of the importance of, and intense interest in, the case now under consideration, further issues in the case will be discussed at this point. Petitioner advanced the contention that EDUCATION LAW §122 is unconstitutional as a violation of the First and Fourteenth Amendments of the Federal Constitution, in that the licensing scheme interferes with religious liberty. In refutation, the Court of Appeals relied on the proposition that freedom of religion is not an absolute right. It pointed out that a statute which has a legitimate objective within the police power of the state is not unconstitutional though it constitutes some restraint on the free exercise of religion.[17] The statute promotes the public welfare, morals, peace and order. "These are the traditionally recognized objects of the exercise of police power," said the court.[18] Further, a state may protect religious beliefs from private or commercial attacks and prevent offenses to decency and morals even though there be incidental benefit to religion, or a religion, if this be the case here.[19]

The other major issue in the case arose through the objection that the statute is unconstitutional *in toto* as a prior restraint on the freedoms of speech and press; that films should be included within the protection of the First and Fourteenth Amendments as a means of expression of ideas. The Court of Appeals relied squarely upon the *Mutual Film* case, and refused to accept the contention that technical developments have changed the essential nature of movies since the time of the *Mutual Film* decision. The rationale of this position is that movies are primarily a form of commercial entertainment, rather than a means of expression, and as such can be regulated.

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16. 343 U. S. 495 (1952).

17. *Cantwell v. Connecticut*, 310 U. S. 296 (1940).

18. 303 N. Y. 242, 259, 101 N. E. 2d 665, 672.

19. *Everson v. Board of Education of Ewing Township*, 330 U. S. 1 (1947).