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Administrative Law—Procedure

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Procedure

Since the advent of the widespread use of the administrative process, the procedure that such quasi-judicial tribunals should follow has not been uniformly settled. Such methods are not necessarily those that courts must use. The Supreme Court of the United States has pointed out that the differences in origin and function between the courts and administrative agencies precludes a transplantation of the rules of procedure from courts to agencies.[24] Beyond this statement of what is not the procedure for all administrative tribunals, we may only say that what shall guide each individual agency is the procedure set up the statute being administered or in regulations passed pursuant to such statute.

In *Wignall v. Fletcher*[25] the procedure prescribed by the different sections of the Vehicle and Traffic Law was under consideration. The petitioner (eighty years of age) had become involved in an automobile accident without any negligence on his part. He later received a notice from the Commissioner of Motor Vehicles to appear for a hearing pursuant to § 71 of the Vehicle and Traffic Law to determine whether he had any physical disability which which might require suspension or revocation of his license to drive. A hearing was held, and the report of the Commissioner stated that he found the petitioner in good physical condition; however, the Commissioner required that petitioner take a road test before entering any final determination in the case. Petitioner failed the test, and the decision of the Commissioner became: "Revoke License, Failed Test". Petitioner was then notified that he had failed a test pursuant to § 20(8) of the Vehicle and Traffic Law, and that his license was revoked. Petitioner appealed to the Appellate Division for review, and the revocation was annulled.[26] The court treated the revocation as being made pursuant to § 71, and remitted the case with instructions to the Commissioner to make findings in support of whatever determination he might reach.

Another hearing was held by the Commissioner under the same case number as the first proceeding, and again the driver's test was ordered. Petitioner took the test and failed for the second time. Findings were made and entered under the original case number, and the same notice of revocation was given under § 20(8). Petitioner again appealed to the Appellate Division,

24. *F. C. C. v. Pottsville Broadcasting Co.*, 309 U. S. 134 (1940).

25. 303 N. Y. 435, 103 N. E. 2d 728 (1952).

26. 277 App. Div. 828, 97 N. Y. S. 2d 314 (4th Dep't 1950).

which again annulled the determination of the Commissioner;[27] this time on the ground that petitioner had not been offered the proper opportunity to be heard provided for in § 71(3)(b) of the Vehicle and Traffic Law. The Commissioner then appealed to the Court of Appeals, contending that the proceeding under § 71 had concluded with the first road test and that subsequent proceedings were held pursuant to § 20(8), which requires no hearing.

The Court of Appeals affirmed the Appellate Division, taking the position that the proceeding was instituted under § 71, while the revocation was made under § 20(8). Because the two sections have separate and distinct methods of procedure, due process required that petitioner have been informed as to which part of the statute the Commissioner was proceeding under.[28] Action taken under one section of a statute may not be justified because such action could have been taken under a different section of the statute.[29] If the Commissioner required the road tests pursuant to § 20(8), he should have notified the petitioner that the § 71 proceeding had terminated with the physical examination and that further proceedings were being conducted under § 20(8).

Desmond, J., dissenting,[30] felt that the original § 71 proceeding was duly held and resulted in no revocation or suspension, since the Commissioner found no physical disability. Both road tests were then required of petitioner under § 20(8), which requires no hearing or formal notice. Thus, the Commissioner proceeded in a manner allowed, and nothing shows that anyone was confused or prejudiced by the action.

In *Weeks v. O'Connell*[31] a procedural problem was also presented. Again the objection was that the agency had not followed proper procedure. The Liquor Authority had revoked petitioner's license on the ground that he had permitted trafficking in narcotics on the premises. A hearing was held before a hearing commissioner, who decided that the charges were sustained by the evidence adduced at the hearing. The record and the hearing commissioner's report (including his summary of the evidence and preliminary findings) were given to a stenographer to prepare for submission to the Liquor Authority for a final decision, in

27. 278 App. Div. 28, 103 N. Y. S. 2d 7 (4th Dep't 1951).

28. *Sacharoff v. Corsi*, 294 N. Y. 305, 62 N. E. 2d 81 (1945); *Cole v. Arkansas*, 333 U. S. 196 (1948).

29. *Hickox v. Griffin*, 298 N. Y. 365, 83 N. E. 2d 836 (1949); *S. E. C. v. Chenery Corp.*, 318 U. S. 80 (1942).

30. Loughran, C. J. and Fuld, J., concurring.

31. 304 N. Y. 259, 107 N. E. 290 (1952).

accordance with statutory procedure. Because it was the last day of the license period, and the record wouldn't be ready for at least three more days, the Liquor Authority, in making the revocation, proceeded on some "notes" prepared by the hearing commissioner from memory. The revocation was affirmed by the Appellate Division.[32] The Court of Appeals reversed, pointing out that even though the actual report may have contained substantially the same facts as were given to the Liquor Authority in the "notes", and even though the decision may have been the same, the fact remains that the Liquor Authority cannot wholly disregard procedural methods set up in the statute and regulations.

From the decision of this case it is clear that administrative action will not be upheld, regardless of the propriety of the decision, when the procedure set out in the statute, or regulations adopted pursuant thereto, has not been closely adhered to. In *Wignall v. Fletcher,* discussed above, the Court of Appeals held that administrative tribunals, like judicial tribunals, are bound to proceed in a manner consistent with the requirements of due process. An agency may have express authority to conduct a proceeding against an individual and to invoke the prescribed sanctions; however, it may not do so without proper notice to the individual involved. Such notice includes the requirement that a person be duly informed whenever there is any change in the nature of the proceeding against him.

Exhaustion of Remedies

The doctrine referred to as "exhaustion of remedies" stands for the proposition that before litigants may take their cases to the courts, they must first exhaust the administrative remedies available.[33] Even though a case has been before an agency, and a determination has been secured therefrom, the doctrine requires that the whole administrative process be utilized.[34] If there is further process or appeal possible before an agency, the courts will not assume jurisdiction to review, even though the determination of which review is sought was made by an administrative tribunal.[35]

A "jurisdictional dispute" between the Brotherhood of Railroad Trainmen and the Switchmen's Union involved the inter-

32. 278 App. Div. 917, 195 N. Y. S. 2d 909 (1st Dep't 1951).

33. *Aircraft & Diesel Corp. v. Hirsch,* 331 U. S. 752 (1947).

34. *Myers v. Bethlehem Shipbuilding Corp.,* 303 U. S. 41 (1938).

35. *Ibid.*