Buffalo Law Review

Volume 3 | Number 1 Article 9

12-1-1953

Administrative Law—Standards to Guide Administrative Action

Paul Gonson

THE COURT OF APPEALS, 1952-53 TERM

I. Administrative Law

Standards to Guide Administrative Action

For the second time within two years the State's motion picture censorship statute[1] was assailed as a prior restraint on the exercise of freedom of expression, and as failing to provide an adequate standard to satisfy the requirements of due process.[2] A motion picture had been denied a license by the Board of Regents' Motion Picture Division on the grounds that it was "immoral" and that its exhibition "would tend to corrupt morals." Construing "immoral" to refer to sexual immorality, the court sustained (4-2) the statute as a reasonable exercise of the police power.

Conceding that motion pictures now enjoy the same Constitutional protection accorded other media of expression,[3] the court pointed out that freedom, nevertheless, is not an "unrestricted license" to act.[4] The State may act to protect its citizens, even to the extreme of interfering with personal liberty.[5]

The *Miracle* case[6] was easily hurdled. In that case, though denying to the State the right to protect any religion from hostile views by a pre-censorship of those views under a statute condemning motion pictures if found to be "sacrilegious,"[7] the Supreme Court expressly left open the question whether motion pictures may properly be the subject of special measures of control under different criteria,[8] for instance, under a statute designed to prevent the showing of obscene films.[9]

Equating "immoral" with "obscene," the Court of Appeals seized upon this suggestion and decided the *Miracle* case was not controlling. The court proceeded to justify the pre-censorship feature of the statute as the only effective way to suppress those films deemed undesirable.

---

1. Education Law § 122, providing a license shall issue "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 morals or incite to crime."

2. *Commercial Pictures Corp. v. Board of Regents,* 305 N. Y. 336, 113 N. E. 2d 502 (1953).

3. *Burstyn v. Wilson,* 343 U. S. 495 (1952); discussed in 2 Buffalo L. Rev. 58. The *Burstyn* case overruled *Mutual Film Corp. v. Industrial Comm. of Ohio,* 236 U. S. 230 (1915), on this point.

4. *Crowley v. Christensen,* 137 U. S. 86, 89 (1890).

5. *Jacobson v. Massachusetts,* 197 U. S. 11 (1904); *Buck v. Bell,* 274 U. S. 200 (1926).

6. See note 3 *supra.*

7. See note 1 *supra.*

8. *Gelling v. Texas,* 343 U. S. 960 (1952), decided the week following on the authority of the *Burstyn* case, *supra* note 3, did not resolve that issue. It struck down a motion picture censorship statute on the score of indefiniteness.

9. *Burstyn v. Wilson, supra* note 3 at 505-506.

The terms "moral" and "immoral" were held to refer to the moral standards of the community, the "norm or standard of behavior which struggles to make itself articulate in law."[10] So limited by common usage, they are not too broad. Persons of ordinary intelligence know their meaning, kindred, as they are, to "obscene" and "indecent."[11]

The suggestion that the court make an independent judgment as to the picture in controversy was rejected. The Regents, an experienced administrative body, were deemed better qualified to judge the effect of a given motion picture. Judge Dye took issue with the familiar doctrine limiting the function of the reviewing court whenever there is a reasonable basis in law and support by the record.[12] He claimed it was inconsistent with Constitutional guarantees to leave a debatable issue of morals to an administrative agency. The court, however, maintained that if the Regents exercise their powers in a close case, and do so fairly and honestly, then due process has been observed,[13] and if they err in law, the court sits to correct them.

Delegation and the Court's Power to Review

Reliance on the good sense and judgment of the Board of Regents was once again given by the court in *Barsky v. Board of Regents*.[14] There the medical licenses of two physicians were suspended for certain periods, and a third physician was reprimanded and censured, all under the authority of the Election Law § 6514 (2) b, which authorizes disciplinary action against a physician who "has been convicted in a court of competent jurisdiction, either within or without this state, of a crime."

All three were members of the executive board of the Joint Anti-Fascist Refugee Committee.[15] They were convicted of the misdemeanor of contempt of Congress[16] in that each of them failed to obey a subpoena directing him to produce before a Congressional Committee certain records of the Joint Anti-Fascist Refugee Committee. The judgments of conviction were affirmed on appeal.[17]

10. CARDOZO, PARADOXES OF LEGAL SCIENCE 17, 41-42 (1928).
11. *People v. Muller*, 96 N. Y. 408 (1884).
12. *Mounting & Finishing Co. v. McGoldrick*, 294 N. Y. 104, 60 N. E. 2d 825 (1945).
13. *Nash v. United States*, 229 U. S. 373 (1912).
14. 305 N. Y. 89, 111 N. E. 2d 222 (1953).
15. See the statement of its history and aims in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 130 (1950).
16. 2 U. S. C. A. § 192.
17. *Barsky v. United States*, 167 F. 2d 241 (D. C. Cir. 1948), *cert. denied*, 334 U. S. 843 (1948).