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Administrative Law—Res Judicata Rejected in Disciplinary Proceedings

Frank Dombrowski Jr.

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RECENT DECISIONS

ADMINISTRATIVE LAW—RES JUDICATA REJECTED IN DISCIPLINARY PROCEEDINGS

Police officers were tried before the police commissioner's board on charges of protecting a bookmaker. When the bookmaker refused to testify, the officers were found not guilty and were restored to duty. Four months later the same charges were renewed; the bookmaker testified and officers were dismissed from the force. Petitioners proceeded under C.P.A. Art. 78, § 1296 contending that the prior determination was *res judicata*. *Held* (3-2): An administrator is not bound by a strict application of *res judicata* where "there seems solid and acceptable ground for re-examination." *Matter of Evans v. Monaghan*, 282 App. Div. 382, 123 N. Y. S. 2d 662 (1st Dep't 1953).

The propriety of boards to review their own decisions presents a proper question of *res judicata*. *Lilienthal v. City of Wyandotte*, 286 Mich. 604, 282 N. W. 837 (1938). Considerations of *res judicata* have no bearing whatever on the question of whether a judgment is subject to review on appeal. *Royal Indemnity Co. v. Heller*, 256 N. Y. 322, 176 N. E. 410 (1931).

An increasing number of federal enabling statutes indicate the degree of *res judicata* intended for the board. LONGSHOREMEN'S AND HARBOR WORKERS COMPENSATION ACT, 44 STAT. 1437 (1927), 33 U. S. C. § 992 (1946). Usually it is the court's function to settle the question of the control of the administrative agency over its own prior decision. If courts have considered *res judicata* applicable, they have termed board functions judicial or quasi-judicial. *Jones v. Young*, 257 App. Div. 563, 14 N. Y. S. 2d 84 (3d Dep't 1939) (Court of Claims); *Hyatt v. Bates*, 35 Barb. 308 (N. Y. 1861) (highway commissioners); *Los Angeles G. E. Co. v. County of Los Angeles*, 162 Cal. 164, 121 Pac. 384 (1912) (tax boards). Where the function is considered legislative, ministerial or administrative *res judicata* is inappropriate. *In re Whitford's Liquor License*, 166 Pa. Super. 48, 70 A. 2d 708 (1950) (licensing board); *Pearson v. Williams*, 202 U. S. 291 (1906) (immigration proceedings); *In re Pollock*, 257 Fed. 350 (S. D. N. Y. 1918) (naturalization proceedings).

Quite often the classification resorted to is fruitless. Rate fixing is termed legislative in the federal system, *Prentiss v. Atlantic Coast Line Co.*, 211 U. S. 210 (1909), judicial in New York, *People ex rel. Central Park, N. & E. River Ry. v. Willcox*, 194 N. Y. 383, 87 N. E. 517 (1900). Even where the function of a board is administrative, a degree of *res judicata* may remain.

Thus, when a licensing board passes on the moral fitness of an applicant for an assistant pharmacist's license, this was held *res judicata* as to the moral fitness of the applicant on his application for a full license. *Watkins v. Mississippi State Board of Pharmacy*, 170 Miss. 26, 154 So. 277 (1934). Although immigration proceedings are not judicial, *Pearson v. Williams, supra*, the courts have held an alien may not be harrassed to prove his right to remain in the United States, *Choy Yuen Chan v. United States*, 30 F. 2d 516 (9th Cir. 1929). Some jurisdictions have termed decisions of police boards judicial and have applied *res judicata*, *Queen v. Atlanta*, 59 Ga. 318 (1877); others have termed them administrative and ruled *res judicata* does not apply, *People ex rel. Miller v. City of Chicago*, 234 Ill. 416, 84 N. E. 1044 (1908).

Osterhoudt v. Rigney, 98 N. Y. 222 (1885), which barred the acceptance of audits by a town board after its predecessor has rejected them, is the leading New York case for the proposition that "decisions of special and subordinate tribunals may be as binding as decisions of courts exercising general judicial power." In *Stowell v. Santoro*, 256 App. Div. 934, 9 N. Y. S. 2d 866 (2d Dep't 1938), where a police officer was acquitted at the first proceeding, but was convicted when charges were renewed three years later on testimony of a witness present but not called at the first trial, it was held, citing only *Osterhoudt v. Rigney, supra*, that *res judicata* could be invoked.

While New York cases may be cited for the proposition that police board actions are judicial, *Reger v. Mulrooney*, 241 App. Div. 38, 271 N. Y. Supp. 20 (1st Dep't 1934), it has long recognized that such proceedings need not be conducted in strict conformity with the rules of evidence, *Matter of Greenbaum v. Bingham*, 201 N. Y. 343, 94 N. E. 853 (1911) or procedure, *Matter of Roge v. Valentine*, 280 N. Y. 268, 20 N. E. 2d 751 (1939) in courts of law.

What distinguished the instant case from *Stowell v. Santoro, supra*, was the unavailability of the evidence in the first trial. When the chief witness refused to testify, the evidence against the officers was in a very real sense non-existent. Courts of Equity first enjoined enforcement of judgments where newly discovered evidence tending to prove the truth of the charges was brought forth, when through no fault of the loser it has not been presented at the first proceeding. *Pickford v. Talbott*, 225 U. S. 651 (1912). The doctrine of *res judicata* does not operate upon the power of a court but upon the parties; therefore, the ability of a court to modify or vacate its judgments and order a new trial exists despite the doctrine. *Vanderbilt v. Schreyer*, 81 N. Y. 646 (1880); *Clark v. Scovill*, 198 N. Y. 296, 91 N. E. 800 (1910). See N. Y.

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C.P.A. § 522; Fed. R. Civ. P. 6(e) for statutory incorporations of the rule.

This writer believes the decision in the instant case is sound. The petitioners in fact were not subject to a trial on the merits when the chief witness refused to testify. A strict application of *res judicata* in a field where it is usually known only in a modified form, would be to destroy altogether the usefulness of the police commissioner's board. The continuing public interest in the integrity of public servants demands, at the very least, that newly available evidence be presented to official scrutiny and evaluation.

Frank Dombrowski, Jr.

ADMINISTRATIVE LAW—A WIDENING OF JUDICIAL REVIEW

Proceeding by an employment agency operator to annul a cease and desist order of the State Commission Against Discrimination (S. C. A. D.). The Commission moved to compel the operator to comply with its order. *Held*: Order affirmed upon a finding by the court that the evidence was sufficient to sustain the Commission's determination of unlawful employment practices. *Holland v. Edwards*, 282 App. Div. 353, 122 N. Y. S. 2d 721 (1st Dep't 1953).

After accepting the determination of the Commission, the court states that it may make any order which it deems should have been made. The court declares that its scope of review, in this case, is broader than that admissible under C. P. A. Art. 78.

As a general rule, the reviewing court's function is exhausted after finding a rational basis for the conclusions of the administrative body and sufficient evidence in the record to warrant such conclusions. *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474 (1951); *Board v. Hearst Publications*, 322 U. S. 111 (1943); *Matter of Mounting & Finishing Co. v. McGoldrick*, 294 N. Y. 104, 60 N. E. 2d 825 (1945). Thus, in an appeal by the Labor Relations Board to reinstate its determination, the court declared that where more than one reasonable inference could be drawn from the evidence presented, the decision of the Board will not be upset. *Matter of Stork Restaurant v. Boland*, 282 N. Y. 256, 26 N. E. 2d 247 (1940).

Petitioners in a recent case asserted that the Board of Regents had dealt too severely with them and had ignored weighty considerations in suspending their license to practice medicine. The