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Administrative Law - Waiver of Notice - Required by Statute

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struction, the courts have regarded unauthorized administrative interpretations as invalid.[13] The instant case is an illustration of this principle, but it is believed that since the purpose of the act is to protect the public the authority to require a bond might well have been read into the statute.

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ADMINISTRATIVE LAW—WAIVER OF NOTICE—REQUIRED BY STATUTE—Relators, school bus operators of East Baton Rouge Parish who had acquired tenure, were given notice to appear before the school board for a hearing to determine whether they should be dismissed upon the ground of wilful neglect of duty. On the day set for the hearing these operators appeared with counsel in the corridor of the courthouse, adjoining the room in which the meeting was being held; however, they refused, upon request, to participate in the proceeding because the statutory requirement that notice be given at least fifteen days in advance of the hearing had not been complied with by the board. Louisiana Act 185 of 1944 provides "that said School Bus Operator shall be furnished by such school board at least fifteen days in advance of said hearing, with a copy of the written grounds on which removal or discharge is sought."[1] The relators argued that the hearing was invalid because they had not received notice at least fifteen days before the hearing. *Held*, that the operators' appearance with counsel in the corridor of the courthouse estopped them from contending that notice was not given timely.[2] *State ex rel. Williams v. East Baton Rouge Parish School Board*, 36 So. (2d) 832 (La. App. 1948).

Ordinarily, a deviation from the statutory form and manner of giving notice may be a ground for invalidating the administrative decision.[3] The jurisdictions which require strict adherence

13. For other cases see Peoria & Pekin Union Ry. v. United States, 263 U.S. 528, 44 S.Ct. 194, 68 L.Ed. 427 (1924); Iselin v. United States, 270 U.S. 245, 46 S.Ct. 248, 70 L.Ed. 566 (1926).

1. La. Act 185 of 1944 [Dart's Stats. (Supp. 1947) §2248]: "It is further provided that said school bus operator shall be furnished by such school board at least fifteen days in advance of the date of said hearing, with a copy of the written grounds on which removal or discharge is sought. Said school bus operator shall have the right to appear in his own behalf, and with counsel of his own selection, all of whom shall be heard by the board at said hearing; provided, further that it is not the intent of this act to impair the right of appeal to a court of competent jurisdiction."

2. The court did not consider such technical contentions, as when the fifteen days began to run and the exclusion of certain days in computing the fifteen days.

3. See People v. Zoller, 337 Ill. 362, 169 N.E. 228 (1929), where the State of Illinois insisted that if there were any defects in the procedure of giving

to the statutory provisions apparently attempt to restrict the latitude of administrative bodies on notice procedure to that which is exercised by courts. Perhaps this is due to the degree of control exercised by courts over administrative bodies until the last few decades, since most of the cases adhering to this view were decided before 1930.[4]

The better approach seems to be that an appearance will cure a defective notice. Currently, the trend appears to be in that direction—that the number of fatal defects should be reduced to a minimum, without prejudice to the parties, as such technical points are detrimental to the efficiency and flexibility of the administrative process.[5] The purpose of requiring notice of time and place of hearing is to enable the parties to prepare for trial and to prevent the rendering of a decision by default, without the opportunity of being present. If a party appears at a hearing and is heard, the object of the notice is fulfilled.[6] Then why should one be allowed to take advantage of a defective notice if he has already received all that was intended to be provided for him by the notice?

The jurisdictions which narrow the scope of fatal defects of notice generally require that two conditions be met to constitute a waiver of notice: that the party appear and actually participate in the hearing, and that the party not be prejudiced by the non-compliance with the statutory provisions of notice.[7] This is in line with the principle that if one receives all that was intended to be provided for him by the notice, he cannot complain because it was defective. With this principle in mind, to what extent can courts go in finding a defect in the notice has been waived by

notice, the decision was still valid, because the parties were either present at the hearing or had been notified by mail of the hearing on that date. The court held that the failure to post the notice in the proper manner was not cured by any subsequent acts of the parties. Mathiessen v. Ott, 268 Ill. 569, 109 N.E. 260 (1915); People ex rel. Empie v. Smith, 216 N.Y. 95, 110 N.E. 174 (1915); Zeidl v. Zauner, 247 N.Y. 17, 159 N.E. 707 (1928).

4. See cases cited note 3, supra.

5. Most cases which have held that appearance cures a defective notice are cases where the owners of property subject to assessments had waived the right to notice by appearing at the hearing.

6. "The object of the notice . . . is to enable the property owner to protect his rights by proper proceedings. If he appear in the case, the object of his notice has been accomplished, nor will he be heard afterwards on that ground." Barker v. Omaha, 16 Neb. 269, 276, 20 N.W. 382 (1884).

7. See Horstmyer v. Trial Board of Sacrements, 21 Cal. App.(2d) 688, 69 P.(2d) 1021 (1937), where a police officer who was being tried before a city council argued that the decision dismissing him was void, on the ground that written notice was not properly served on him as the law required. The court rejected his argument, stating that he was not prejudiced by the defective notice, for by his appearance and participation in the proceedings, he waived the service of notice.

appearance of the party at the hearing? In the past courts have limited the cure of a defective notice to an actual appearance and participation in the hearing.

In this case the court has extended the doctrine of waiver of notice by an actual appearance and participation in the proceeding to an appearance with counsel in the corridor, adjoining the hearing room. Because of the peculiar facts in the case, it is believed that such an extension is justified. First, the parties did appear, in a sense of the word; and although they did not participate in the hearing, they were given full opportunity to do so. It was their own choice in refusing the request to participate in the hearing. Second, the alleged non-compliance with the act[8] did not prejudice the parties. This was evidenced by the parties having been present at the proper place, at the correct time, and with counsel. Their appearance at the hearing with counsel was precisely the object to be accomplished by the notice.

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ALIMONY—EVIDENCE OF FAULT—ACCRUED PAYMENTS UNDER SUSPENSIVE APPEAL—In June of 1940, plaintiff husband was awarded an absolute divorce on the ground of two years voluntary separation. The wife reconvened for alimony, and the court, concluding that the evidence did not warrant a finding that she had been at fault,[1] awarded alimony at the rate of five dollars a week. Plaintiff's evidence, which might have proved that the parties had never lived together, was ruled inadmissible on the ground that it was irrelevant in determining the fault issue. From the alimony judgment, he appealed suspensively. Since neither litigant sought to have the case removed to the preference docket until 1947, eight and one-half years passed before the supreme court heard the case. *Held,* on appeal, the evidence admitted below was inconclusive on the issue of fault and evidence that the parties had never lived together would have been relevant in determining this issue. The case was remanded for admission of the excluded evidence and determination of the fault issue, with instructions to reinstate the prior judgment if defendant was not found to have been at fault. *Reich v. Grieff*, 38 So. (2d) 381 (La. 1949).

8. La. Act 185 of 1944 [Dart's Stats. (Supp. 1947) § 2248].

1. The defendant wife against whom is pronounced a judgment of divorce on the grounds of two year separation may be awarded alimony if she was not at fault in causing the separation. Art. 160, La. Civil Code of 1870.