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eliminates a device whereby legal education is appraised practically through the eyes of members of the bar; it returns to the situation existing prior to 1924 when the Legislature was constrained as a matter of policy to enact a statute making the bar examination a requirement; and, finally, it rejects the considered views of professional groups who have studied the problem of bar admissions that are involved in a "diploma privilege" and who, on the basis of experience, have concluded that a bar examination for law school graduates is desirable. It would be unthinkable to allow medical school graduates to practice medicine without passing the examination conducted by the Louisiana State Board of Medical Examiners.[18] The legal profession merits similar safeguards despite the fact that Louisiana is fortunate in the quality of work done by students in its law schools. The broadening of the diploma privilege is, in the opinion of the writer, a serious mistake. It should be rectified as quickly as possible by action of the Supreme Court or through the reenactment of legislation similar to Act 113 of 1924. Otherwise the "diploma privilege" will become so imbedded as to be difficult to remove. Under the jurisprudence such legislation would constitute a valid exercise of the police power.[19]

Public Law

ADMINISTRATIVE LAW

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During the past term the court had occasion to interpret in *Roussel v. Digby*[1] the provision of the conservation laws pursuant to which a person adversely affected by an order made by the commissioner may pursue judicial review thereof. As

18. As to the requirement of examination see La. R.S. 1950, 37:1269, 1270, 1271, 1272.

19. Ex parte Steckler, 179 La. 410, 154 So. 41 (1934); In re Mundy, 202 La. 41, 11 So. 2d 398 (1942) both hold that the Legislature may, in the exercise of its police power, and in the performance of its duty to protect the public against imposition or incompetence on the part of persons professing to be qualified to practice the so-called learned professions, fix minimum qualifications or standards for admission to the bar. The exercise of that power by the Legislature does not limit the inherent judicial power to prescribe maximum qualifications.

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1. Roussel v. Digby, Commissioner of Conservation, 222 La. 779, 64 So. 2d 1 (1953).

the Legislature phrased the statute, such review is available to "an interested person adversely affected by any law of this state with respect to conservation of oil or gas, or both, or by a provision of this chapter, or by a rule, regulation, or order made by the commissioner hereunder, or by an act done or threatened thereunder, *and who has exhausted his administrative remedy. . . .*"[2]

Applicant requested reformation of a drilling unit in a specific manner and, after hearing, the commissioner issued his order reforming the unit but not in accordance with applicant's request. Thereupon applicant sought injunctive relief against the order, pleading illegality and unconstitutionality.

No question was raised concerning the finality of the commissioner's order as issued. Commissioner's counsel argued, nonetheless, that the applicant had not exhausted his administrative remedies because he did not request reconsideration of the order after recompletion of a well, the data on which would allegedly have thrown additional light upon the correctness of the determination by the commissioner. The court cryptically dismissed the contention with the statement: "We are not impressed with this contention because it would be very difficult to determine when an administrative remedy has been exhausted."[3]

There is no specific requirement in the statute that a request for rehearing precede recourse to the courts. The logic of counsel's argument that, because reconsideration of a final order was not requested, the applicant has failed to exhaust his administrative remedies must, therefore, lie elsewhere. Presumably such considerations as the fact that motions for rehearing before the same tribunal that enters an order are often mere formalities which waste the time of litigants and tribunals and tend unnecessarily to prolong the administrative process lie back of the failure of the Legislature to include a formal request for hearing as a prerequisite to judicial review.[4]

Should it make a difference that applicant failed to request reconsideration under circumstances where additional evidence was available allegedly bearing on the correctness of the commissioner's decision? If there is primary jurisdiction

2. La. R.S. 1950, 30:12.
3. 222 La. 779, 783, 64 So. 2d 1, 2.
4. Davis, Administrative Law § 192 (1951).

in the commissioner to make the fact decisions as to unitization and it is to be respected, it seems clear that the effect of additional evidence should not be considered judicially until he has had an opportunity to consider it. As a corollary, if the unreasonableness of the commissioner's order is to be established to any extent by additional evidence, the "primary jurisdiction" doctrine would dictate dismissal of the suit as was done by the trial court.[5]

Is this result required by the statute, however, permitting as it does the trial court to which application is made for injunctive or other relief to admit "all pertinent evidence with respect to the validity and reasonableness of the order of the commissioner complained of"?[6] In other words, in the absence of a specific requirement that review of the order be on the basis of the record made before the commissioner, is there anything in the statute suggesting a different legislative intention as to disposition of the case than the one made by the court here, namely, remand to the lower court for trial on the merits, including presumably the consideration of new evidence?

The most substantial indication of a legislative intent to vest primary jurisdiction in the commissioner lies in the manner in which the Legislature has phrased its definition of a person entitled to seek judicial review. Thus, not only must such a person have a final order from the commissioner, *he must also have exhausted his administrative remedies.*[7] Since such a person must be in possession of a final order, the *sine qua non* of judicial review, one plausible legislative meaning to be attributed to this additional requirement is that, if new evidence has come to light since the final order was promulgated, the commissioner should have an opportunity to consider it and if necessary modify his order. Thus, the Legislature might reason, the need for judicial review would in many instances be eliminated.[8]

5. Both the doctrine of "primary jurisdiction" and "exhaustion of administrative remedies" are applicable where "post-order" evidence is involved, since, while the existence of a final administrative order nominally satisfies the "exhaustion of remedies" principle, the consideration of "post-order" evidence by a reviewing court may violate the "primary jurisdiction" doctrine. Cf. Davis, op. cit. supra note 4, at § 197.

6. La. R.S. 1950, 30:12.

7. Ibid.

8. Compare the provision made for judicial review of orders of the Public Service Commission, La. R.S. 1950, 45:1194:

"If, upon the trial of any suit brought to contest any decision, act,

It is interesting to note that the Model State Administrative Procedure Act[9] seeks to avoid the violation of agency primary jurisdiction by the requirement that "review . . . shall be confined to the record" and by providing further that: "if, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision."

While the Federal Administrative Procedure Act eliminates the necessity for requesting a rehearing in connection with a final order before pursuing judicial review,[10] it imposes limits on the scope of review where new facts have come up, but rehearing is not requested, by providing that the reviewing court shall set aside agency action, findings, and conclusions found to be unwarranted by the facts *but only to the extent that the facts are subject to trial de novo by the reviewing court.* Thus in the case of any federal agency whose record findings of fact are made final by statute if supported by substantial evidence, the reviewing court is limited to the record as made before the agency and there is no opportunity to introduce new facts at the judicial level.

There is no language in the conservation statute setting such limits on the scope of judicial review. On the contrary,

rule, rate, charge, classification, or order, of the commission, the plaintiff introduces evidence which is found to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall send a transcript of such evidence to the commission, and stay proceedings in the suit for fifteen days from the date of such transmission. Upon the receipt of the transcript, the commission shall consider the evidence, and it may alter, modify, amend, or rescind its decision, act, rule, rate, charge, classification, or order, complained of in the suit and shall report its action to the court within fifteen days from the receipt of the transcript."

9. Handbook of the National Conference of Commissioners on Uniform State Laws 329, § 12 (5), (6) (1944).

10. 60 Stat. 243 (1946), 5 U.S.C.A. § 1009 (e).

the rules governing the review proper might well be interpreted as granting a trial de novo since provision is simply made that "the order complained of shall be taken as prima facie valid" and "all pertinent evidence with respect to the validity and reasonableness of the order of the commissioner complained of shall be admissible."[11] If the commissioner is to have primary jurisdiction over "post-order" evidence, it will evidently take more than the words of the present statutory provisions to assure it.

CONSTITUTIONAL LAW

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The past term produced but three cases in the field of constitutional law, two of which dealt with impairment of the obligation of contract and the third involving the equal protection clauses of the state and federal constitutions.

The contract clause cases, one alleging impairment by a federal statute, and the other by a state act, were actually disposed of upon the ground that no impairment in fact occurred. It is the dicta of the cases which are of interest, however, illustrating as they do that the clause serves as a limitation only upon the legislative powers of the states and not upon Congress. The state act, challenged in *Fireside Mutual Life Insurance Company v. Martin*,[1] was Act 195 of 1948 amending the Insurance Code,[2] which reads in part as follows:

> "All life, health and accident insurers on cooperative assessment plan organized and authorized to do business in this state as of 12:00 noon of October 1, 1948, may continue to operate provided, that from and after December 31, 1950, all policies issued by such insurers shall be subject to and in accordance with the laws and regulations of this state relative to industrial life insurance, and especially

11. La. R.S. 1950, 30:12. Even in the context of a trial de novo granted by statute, the United States Supreme Court has, however, indicated scope for the doctrine of primary jurisdiction. See, e.g., Justice Brandeis' comments in Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 291 (1922). And see generally Davis, Administrative Law § 197.

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1. 66 So. 2d 511 (La. 1953).

2. La. R.S. 1950, 22:391.