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Administrative Law - Ultra Vires Regulations

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Notes

ADMINISTRATIVE LAW—ULTRA VIRES REGULATIONS—Plaintiff, the purchaser of a home, was assigned his vendor's rights under a contract with defendant for the eradication of termites. The defendant, a duly licensed and bonded contractor under an act creating the Pest Control Commission,[1] had complied with a regulation of that commission requiring the giving of a bond for the faithful performance of his contract. The plaintiff brought suit for damages, alleging that defendant failed to comply with the terms of the contract. The trial court gave judgment for defendant and questioned the authority of the commission[2] to make rules which add conditions to a section of the act authorizing a general licensing bond.[3] The court of appeal affirmed the decree, holding that the act[4] did not authorize the Pest Control Commission to require a bond to be furnished to the commission guaranteeing the performance of the contract by the operator. *Melancon v. Mezell*, 37 So. (2d) 52 (La. 1948).

The case presents a problem with reference to the effect to be given administrative regulations which fail to fall within the authorized scope of the statute creating the administrative body and defining its functions and powers. The decision in the instant case is in harmony with a trend in United States Supreme Court decisions to regard such regulations as invalid, thus ultra vires and without binding effect on the party to whom they apply. In *Addison v. Holly Hill-Fruit Products, Incorporated*,[5] the court found no authority for an administrative interpretation of "area of production," which served to exclude from the provisions of the Fair Labor Standards Act[6] canneries which obtained all their farm products from within ten miles and employed not more than seven employees. The court concluded that the act restricted the administrator to the "drawing of geographic lines" and that the regulations exempting plants with seven employees were

1. La. Act 124 of 1942 [Dart's Stats. (Supp. 1947) §§ 146.15-146.24].

2. Under Section 1 of La. Act 124 of 1942 [Dart's Stats. (Supp. 1947) § 146.15], which provides for rules covering qualifications of applicants for a license.

3. Id. at § 6 [Dart's Stats. (Supp. 1947) § 146.20].

4. Holding that Section 7 [Dart's Stats. (Supp. 1947) § 146.21] requiring a contract entered into by the contractor and one engaging his services to be in writing and its terms guaranteed for two years.

5. Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 64 S.Ct. 1215, 88 L.Ed. 1488 (1944).

6. 52 Stat. 1060 (1938), 29 U.S.C.A. § 201 (1938).

thus ultra vires. An act of Congress defined *adulterated butter* as "any butter in the manufacture or manipulation of which any process or material is used with intent or effect of causing the absorption of abnormal quantities of water, milk or cream." The Supreme Court held that this definition did not empower the commissioner of internal revenue to declare butter adulterated merely because it had sixteen per cent or more of moisture.[7] In *Work v. Mosier*[8] a statute designed to prevent the misuse of a minor's interest in Indian lands was held insufficient authority for a regulation declaring that income is misused if not devoted solely to the care and use of the minor, and alloting only fifty dollars a month to the minor's parent, in the absence of a clear showing that the funds were being used for his benefit. A declaration of the secretary of the treasury excluding the import of tea containing any coloring matter was held invalid under a statute establishing standards of "purity, quality, and fitness for consumption of all kinds of tea imported."[9] The problem is thus one of statutory interpretation, for the Supreme Court reserves to itself through its inherent judicial power the right to overrule administrative declarations which deviate from the authority conferred by the statutory provisions.[10] The court has recognized and attached considerable importance to situations where the statute is ambiguous and there has been a long and continuous administration construction,[11] especially if there has also been a re-enactment of a statute without change, for the view is that this is a recognition and approval of the particular construction given the statutes.[12] But where there is no uncertainty or ambiguity in the statute and no long-continued administrative con-

7. Lynch v. Tilden Co., 265 U.S. 315, 44 S.Ct. 488, 68 L.Ed. 1034 (1924).

8. Work, Secretary of the Interior v. United States ex rel. Mosier, 261 U.S. 352, 43 S.Ct. 389, 67 L.Ed. 693 (1923).

9. Waite v. Macy, 246 U.S. 606, 38 S.Ct. 395, 62 L.Ed. 892 (1918).

10. For a discussion of the problem generally, see The Supreme Court on Administrative Construction as a Guide in the Interpretation of Statutes (1927) 40 Harv. L. Rev. 469.

11. ". . . when there has been a long acquiescence in a regulation, and by it rights of parties have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons." Robertson v. Downing, 127 U.S. 607, 613, 8 S.Ct. 1328, 1330, 32 L.Ed. 269, 271 (1888).

See also National Lead Co. v. United States, 252 U.S. 140, 40 S.Ct. 237, 64 L.Ed. 496 (1920).

12. "And we have decided that the re-enactment by Congress, without change, of a statute which had previously received long continued executive construction is an adoption by Congress of such construction." United States v. Cerecedo Hermanos y Compania, 209 U.S. 337, 339, 28 S.Ct. 532, 533, 52 L.Ed. 821, 822 (1908).

See also United States v. G. Falk & Brother, 204 U.S. 143, 27 S.Ct. 191, 51 L.Ed. 411 (1907).

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