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Paul R. Baier

Louisiana State University Law Center

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PUBLIC LAW

ADMINISTRATIVE REGULATION: LAW AND PROCEDURE

Paul R. Baier*

PUBLIC SERVICE COMMISSION

United Parcel Service has come a long way since James Casey founded the business in Seattle, Washington, in 1907. What used to be a group of young boys delivering packages on foot and by bicycle has grown into a big business, operating in thirty-five states, and after Transway, Inc. v. Louisiana Public Service Commission1 one can expect to see more U.P.S. vehicles running parcels intrastate2 in Louisiana under certification from the Public Service Commission. Transway, a competitor of United, challenged issuance by the Commission of a certificate of public convenience and necessity to United on the ground that certification created a class of common carrier not recognized by law—that is, a carrier of general commodities over irregular routes. R.S. 45:162(4) prescribes in part "[t]here shall be two main classes of common carriers, 'common carriers of commodities over regular routes'... and 'common carriers of special commodities over irregular routes'." (Emphasis added.) Although no special items were listed in the certificate issued to United, the Louisiana supreme court affirmed the Commission's issuance of the certificate because United was limited to delivering commodities under a certain size and weight and because United was required to furnish special service and handling. The court relied on the statutory definition of "special commodities" as those "which require special equipment, service or handling over irregular routes,"3 and the court held that United's operation fulfilled these requirements. The court was particularly impressed by the fact that the Public Service Commission thought it best in regulating the motor carrier industry to emphasize the peculiarity of the type of service, equipment, and handling required rather than the commodity itself. "This attitude of the

* Assistant Professor of Law, Louisiana State University.

1. 296 So. 2d 305 (La. 1974).

2. United was operating interstate in Louisiana under appropriate regulations at the time it applied for intrastate certification from Louisiana's Public Service Commission. See 296 So. 2d at 306. Under LA. R.S. 45:194 (Supp. 1960) (a part of the Motor Carriers' Regulatory Act) it is unlawful for any motor carrier operating interstate in Louisiana to operate over public highways in this state without first having filed a certified copy of its Interstate Commerce Commission authority with the Louisiana Public Service Commission. There is one other provision of the act which deals with registration and supervision of interstate carriers, LA. R.S. 45:163.1 (Supp. 1972).

Commission acquired through its experience and expertise, and no doubt influenced by the practices in motor transport, impresses us as being entirely consistent with the spirit of the law and its objective—to render reliable service in response to the shipping needs of the public.”

Moreover, it made no difference to the court that the Public Service Commission has apparently changed its view regarding the meaning of special commodities carriers; nothing in the law prevented the agency charged with administering Louisiana’s Motor Carriers’ Regulatory Act from changing its mind about the meaning of statutory terms where the ultimate effect is to implement the policies underpinning the Act.

Three Public Service Commission cases this term involve important procedural issues. The first case, United Gas Pipe Line Co. v. Louisiana Public Service Commission, concerns the question whether the Commission may charge against a utility the cost of hiring a Washington, D.C. attorney as special counsel to the Commis-

4. 296 So. 2d at 309.
6. 296 So. 2d at 308. In reviewing the Commission’s construction and application of the Motor Carriers’ Regulatory Act, the court was guided by the policy expressions contained in the act: “Regulation of traffic by motor carriers is authorized by the legislature, among other reasons, ‘so the public will be given the benefit of the most economic and efficient means of transportation.’ This policy is carried out by the certificate awarded to United, under which it will furnish a service no other carrier has offered to undertake—a service the need for which is amply demonstrated by the record.” Id. at 309.

The point that administrative agencies are not bound to follow their own prior administrative determinations was also made this term by the First Circuit Court of Appeal in Kidd v. Board of Trustees of Teachers’ Retirement System, 294 So. 2d 265 (La. App. 1st Cir. 1974), a case which involved the question whether members of the Teachers’ Retirement System are entitled to credit under the Teachers’ Retirement Act for part-time service rendered while enrolled as a student in educational institutions or performed for certain state agencies. See LA. R.S. 17:571(22), (23) (1950), as amended. The Board of Trustees of the Teachers’ Retirement System had on several occasions allowed credit for part-time student work, but it finally settled on an interpretation disallowing credit. The First Circuit held that the Board was entitled to change its mind on the matter because “[t]he doctrine of stare decisis... is not generally applicable to the decisions of administrative tribunals; nor does a prior administrative determination ordinarily preclude a subsequent one on the grounds of equitable estoppel. Accordingly, administrative bodies are not ordinarily bound by their prior determinations or the principles or policies on which they are based. However, prior determinations are entitled to great weight... and radical departures from administrative interpretation consistently followed cannot be made except for most cogent reasons.” 294 So. 2d at 271, quoting 73 C.J.S. Public Administrative Bodies and Procedure § 148 (1951).

7. 279 So. 2d 195 (La. 1973).
sion in an investigation of the utility. A majority of our supreme court answered no, notwithstanding the prevailing practice in this country of allowing regulatory agencies like the Public Service Commission to charge to the regulated utility company the expenses incurred in conducting an examination of the affairs of the utility for the purpose of fixing and regulating the rates charged or the services rendered by the utility under investigation. The right to recover these investigatory expenses is limited by statute in Louisiana, and the majority held that no provision of existing law permits a recovery of special counsel fees. The special services were those normally performed by a lawyer and they could have been performed by the Commission's regular counsel. Although the court found merit in the Commission's argument that, unless allowed a recovery, the Commission would be unable to hire adequate and experienced counsel and it would be at a disadvantage in dealing with regulated utilities, the majority remitted the Commission to the state legislature, where the authority exists to amend the law to provide for the Commission's charging the regulated utilities with the expense of employing special counsel. Justice Summers in his concurring opinion emphasized the general rule in Louisiana disallowing recovery of attorney's fees in the absence of a contract or statute specifically authorizing a recovery. The three dissenting justices would have allowed the Public Service

8. See La. R.S. 45:1180 (1950), as amended by La. Acts 1954, No. 376 § 1. This statute provides essentially that "all expenses incurred by the commission in conducting such examination, including the expenses and fees of engineers, consultants, accountants or clerical assistants specially employed to make the examination, shall . . . be paid by the person so examined." La. R.S. 45:1181 (1950) says that only such engineers, consultants, accountants or clerical assistants as are actually necessary to conduct the examination shall be employed and their compensation shall be fixed according to the time actually devoted to the work of conducting the examination and making their reports thereon whether as witness before the Commission in open hearing or by written report, under oath, as required by law.

9. The court acknowledged that under La. R.S. 45:1177 (1950), as amended, the commission is authorized to hire its own regular, full-time attorney and that this attorney is to be paid out of fees collected from the regulated companies. But there is a difference, said the majority, between the Commission's power to appoint its own regular attorney and the power to appoint special counsel and then to charge this special counsel's fees against the regulated companies. The latter is not embraced in section 1177, nor is the power to appoint special counsel elsewhere given the Commission by statute.

10. The Commission is authorized to hire its own regular counsel. See note 9 supra.

11. 279 So. 2d at 199 (Summers, J., concurring). See also Fleming v. Louisiana Dept. of Education, 293 So. 2d 658 (La. App. 1st Cir. 1974).
Commission to assess against the regulated utility the expenses incurred in hiring special counsel.\textsuperscript{13}

\textit{Red Ball Motor Freight, Inc. v. Louisiana Public Service Commission}\textsuperscript{13} is the second procedural case. It concerns the scope of the constitutionally protected right in Louisiana to judicial review of Commission orders;\textsuperscript{14} and the effect of the \textit{Red Ball} case is to restrict judicial review to review of the record of evidence presented in the first instance before the Public Service Commission. Thus it is error for a trial judge on judicial review of an order of the Commission to consider evidence different from that offered at the hearing before the Commission. This result follows from R.S. 45:1194, which provides for the suspension of judicial proceedings upon presentation of new facts on review and requires that any new evidence be sent back to the Commission before rendition of any judgment by the trial court. This statute limits the scope of judicial review to evidence which the Commission has had an opportunity to consider; the language of the statute is mandatory and the trial judge has no discretion in the matter.\textsuperscript{15} But the court made it clear that an aggrieved party has the right in a proper case to introduce evidence which is different from or additional to that offered before the Commission so long as the Commission is first given the opportunity to consider the evidence. The court also stated that the presumption of correctness of administrative action does not prohibit the introduction of evidence in support of a contention that the order is arbitrary, capricious, unreasonable, or that it was issued without any legal evidence to support it.\textsuperscript{16}

The last case,\textsuperscript{17} a rate-making case before the Public Service Commission, holds that the principle of res judicata does not freeze a rate base for all subsequent rate proceedings of the same public utility before the Public Service Commission. Citing article 2286 of

\begin{footnotes}
\item 12. Justice Marcus, joined by Justice Tate, was of the view that, while attorney’s fees are not ordinarily recoverable in Louisiana except when allowed by contract or statute, R.S. 45:1180 is such an authorization. 279 So. 2d at 200 (Marcus, J., dissenting). Justice Dixon also dissented in the case, without opinion.
\item 13. 286 So. 2d 337 (La. 1973).
\item 14. The constitution prescribes that “any party in interest may appeal from orders and decrees of the Commission to the courts by filing suit . . . against the Commission at its domicile.” La. Const. art. VI, § 5 (1921). It should be noted that, although this provision of the constitution establishes the right to judicial review of Commission orders, it is silent regarding the scope of review.
\item 16. 286 So. 2d at 340.
\end{footnotes}
the Civil Code," the court held that the object of the earlier proceeding involving the same utility was a rate increase; the assumption of a rate base in the earlier case was only an aid in testing the adequacy of the rate, and the earlier rate base is not binding on the Commission in futuro. 19

Civil Service Commissions

By far the most significant civil service case decided during the 1973-1974 term is Barnett v. Develle, 20 in which the supreme court declared unconstitutional as violative of Louisiana's Civil Service Amendment 21 an attempt on the part of the state legislature to fix the salaries and annual vacation time of firemen in cities of 12,000 or more population, including New Orleans, a city which has a city civil service commission. 22 The patent purpose of Article XIV, §15 of the Louisiana constitution of 1921 (the Civil Service Amendment) is to insure uniform treatment of all similarly classified employees in the state and municipal civil service systems, to avoid discrimination and favoritism, to promote efficiency of governmental operation, and to encourage promotion based on merit. The court decided that "the electorate, by adoption of Section 15, has placed certain aspects of State and municipal classified employment beyond the pale of state and local governmental control," 23 including the rates of pay of classified employees such as firemen. Any other interpretation would emasculate the operation of the civil service system in Louisiana, 24 or as the court put it: "It would also completely negate the expressly conferred authority of the Commission to establish and adopt rules and plans fixing the pay and hours of employment of City Civil Ser-

18. "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. . . ."
19. The First Circuit Court of Appeal also held this term that administrative agencies are not bound by the judicial doctrine of res judicata in Kidd v. Board of Trustees of Teachers' Retirement System, 294 So. 2d 265 (La. App. 1st Cir. 1974). See also note 6 supra.
20. 289 So. 2d 129 (La. 1974).
23. 289 So. 2d at 143.
24. This was Professor Dakin's conclusion too, in an earlier symposium issue, when he commented on Louisiana Civil Serv. League v. Forbes, 258 La. 390, 246 So. 2d 800 (1971). See The Work of the Louisiana Appellate Courts for the 1970-1971 Term — Administrative Regulation: Law and Procedure, 32 La. L. Rev. 271, 280 (1972). The Forbes case held the legislature had no power to increase the pay scales of state police officers, because these employees are under the state civil service.
The opinion in *Barnett* is well-reasoned and thorough, and it seems to this writer that the court reached the only principled conclusion possible in the case.

But aside from the merits, the opinion in *Barnett v. Develle* is important because it straightens up the jurisprudence; what looked like a conflict in the cases has been resolved. One line suggested that the legislature could indeed favor city firemen by raising their pay through special acts, notwithstanding the fact that firemen are classified municipal civil service employees. At the same time, the supreme court in *Louisiana Civil Service League v. Forbes* denied the legislature the power to increase the pay scale of state police officers because these employees are under the state civil service. But what is good for the state civil service system would also seem to be good for the municipal systems, and so the court has now applied *Forbes*’ reasoning to city civil service commissions as well. To that end the court in *Barnett* expressly overruled earlier and inconsistent jurisprudence.

Either an appointing authority or an employee in classified civil service subject to the jurisdiction of municipal fire and police civil service boards may appeal an adverse decision to a district court, and the hearing on review “shall be confined to the determination of whether the decision made by the board was made in good faith for cause.” Based on this language, our supreme court in *Milam v. Municipal Fire & Police Civil Service Board* held it was necessary to allege in the notice of appeal to the district court that the action of the board was not made in good faith for cause; otherwise the notice of appeal was fatally defective, resulting in dismissal of the appeal. One court of appeal went so far in enforcing *Milam*’s strict pleading requirement as to order dismissal of an appeal where the

25. 289 So. 2d at 146.
26. See Firefighters Local 632 v. City of New Orleans, 204 So. 2d 690 (La. App. 4th Cir. 1967) (Firefighters I); Firefighters Local 632 v. City of New Orleans, 230 So. 2d 326 (La. App. 4th Cir.), writ denied, 232 So. 2d 78 (La. 1970) (Firefighters II); Firefighters Local 632 v. City of New Orleans, 269 So. 2d 194 (La. 1972) (Firefighters III).
27. 258 La. 390, 246 So. 2d 800 (1971).
28. *Barnett v. Develle*, 289 So. 2d 129, 144 (La. 1974), overruling Firefighters I, II, and III. The supreme court in the *Barnett* case applied its ruling of unconstitutionality prospectively only—that is, the firemen who had received benefits under the special acts of the legislature were allowed to keep them to the date of the court’s decision in *Barnett*.
29. La. Const. art. XIV, § 15.1 (1921). The right to judicial review in such cases is also found in La. R.S. 33:2501 (1950); La. R.S. 33:2561 (Supp. 1964).
30. 253 La. 218, 217 So. 2d 377 (1968).
appointing authority alleged in the notice of appeal that its own action was in good faith for cause but forgot to aver the contrary about the civil service board's action. To dismiss in such a case would seem to exalt form over substance and to violate the rule that appeals are favored in the law. Moreover, as Professor Dakin has pointed out in earlier symposium work on administrative regulation, our supreme court seems to have relaxed the requirements of agency appeals-pleading; and this term in Odum v. City of Minden the Louisiana supreme court continued to mitigate the notice-of-appeal requirements. The court, expressly overruling the Milam case, held that the words "not in good faith for cause" are unnecessary for a valid notice of appeal to the district court. This language, said the court, refers to the scope of judicial review and not to the content of the notice of appeal. To hold otherwise would impose more technicality in administrative proceedings than in ordinary actions, and the court found no adequate basis for such a stringent requirement. It suffices if the notice of appeal contains a reasonably clear and concise statement of the action from which the appeal is taken."

The integrity of agency process in civil service discharge cases was before the First Circuit Court of Appeal in Newbrough v. State Department of Highways, a case which reveals especially irresponsible agency practice. Newbrough was classified as an Engineering Aide III with the Department of Highways. He was required to submit to a physical examination given by the Department's physician on October 5, 1970, and he was subsequently advised of his termina-


32. In Smith v. Board of Commissioners of Port of New Orleans, 262 La. 96, 262 So. 2d 383 (1972), the supreme court held that the rule that appeals are favored in law also applies to civil service matters.


34. 281 So. 2d 117 (La. 1973).

35. Id. at 119.


37. The characterization is the court's. See 280 So. 2d at 649 (the Department's action is "doubly irresponsible").
tion for medical reasons on November 2, 1970. However, Newbrough was not given a copy of the physician's report nor was he told of its contents at the time of his termination; rather, he had to wait until the hearing of the civil service commission on his appeal—some twenty months later—before he discovered the medical reasons claimed by the Department to justify his discharge. This delay, the First Circuit held, was fatal and in violation of a civil service rule requiring a detailed statement of reasons for a dismissal. Without a copy of the medical report of the Department’s physician, the employee is in no position to refute the charges against him. Moreover, the court added that it is almost impossible to refute charges of ill health twenty months later.

There were other reasons for reversing the civil service commission's decision upholding Newbrough's termination for cause. An important substantive restraint on the freedom of an appointing authority to discharge for cause is that "there must be a real and substantial relation between the conduct of the employee and the efficient operation of the public service; otherwise legal cause is not present." Applying this restraint to the case of a classified employee discharged for medical reasons, the First Circuit in Newbrough held there must be some substantial relation between the medical or physical disability for which the employee is discharged and the requirements or qualifications of his job. Newbrough was terminated because of high blood pressure and excessive weight; the Department's physician had reported that Newbrough was not physically qualified for employment "in all classes." But this medical report was hardly credible, because the Department had never given any medical standards or guidelines to its physician to use in evaluating employees, nor had the Department's physician been given any description of the tasks performed in the various categories of Highway Department classified service. The court noted that, while Newbrough's job did require some physical exertion, the commission did not find that he was ever unable to perform the required tasks; nor was there any probative testimony to substantiate the connection between the as-

39. The court of appeal, referring to Civil Service Commission Rule 12.3, said: "We consider 'the detailed reasons' for dismissal sacramental to a termination, without which a reversal of the dismissal should be in order, for the very obvious reason that the employee who does not know the basis of his dismissal has no way to refute charges against him." 280 So. 2d at 649.
41. Id.
signed cause for Newbrough's termination and the duties required of him as an employee of the Department of Highways. Physical exertion would hardly seem a problem to a man who, according to the testimony in the case, was known to lift the rear-end of a Volkswagen for the fun of it. The court ordered Newbrough reinstated to his former position with reimbursement for all loss of wages and benefits.

**School Boards**

The Louisiana supreme court, disagreeing with the Fourth Circuit's interpretation of Louisiana's Public Meetings Law, has ordered more sunshine in on the meetings of the Orleans Parish School Board. Last term the Fourth Circuit Court of Appeal held that "conference sessions" of the school board were not "meetings" within the meaning of the Public Meetings Law, which requires that all meetings of public boards "shall be open to the public." These conference sessions were executive and private in nature; they were scheduled in advance, with notice to participants only (not to the public); there was an agenda; minutes were taken; and semi-binding determinations, which later required formal board action, were taken by vote on many matters. But on these criteria the Louisiana supreme court held there must be compliance with the statute: such meetings are a type which the statute requires to be open to the public, except when recessed into executive session in accordance with R.S. 42:6, and it made no difference to the court that the school board had a rule authorizing executive sessions to consider matters of administration. Whatever right the school board had to adopt a rule permitting executive sessions prior to the enactment of the Public Meetings Law in 1952, this law by its mandatory terms requires "all" meetings of


44. Louisiana's "Sunshine Law" (public meetings law) was first enacted by La. Acts 1952, No. 484. Justice Summers' special concurring opinion in the Reeves case in the supreme court thoroughly reviews the history and purpose of this legislation. Justice Summers noted: "In an attempt to require governmental bodies to conduct their affairs openly, public meeting statutes have been enacted. The passage of open meeting statutes is one of the achievements of a broader campaign, spearheaded primarily by the American press, to promote freedom of information. The freedom-of-information campaign is based on the argument that public knowledge of the considerations upon which governmental action is based, as well as knowledge of the final action taken, is an essential component of the American process." 281 So. 2d at 723
boards with policymaking or administrative functions to be held only with adequate notice given to the public as to time and place, and these meetings must be open to the public, except solely as permitted by statute to be recessed for a specified time into executive session. The court did say, however, that the school board was free to have administrative and informal conferences in private, at which purely administrative or highly sensitive matters are discussed for the exchange of views without a primary purpose of making a binding determination requiring board action. It is clear that the court's opinion in Reeves v. Orleans Parish School Board will have an impact beyond school boards, since the court's interpretation will apply generally to all the public boards and governing bodies specified in R.S. 42:5.

It is well settled school law in Louisiana that a probationary teacher may not be discharged by a school board except upon the written recommendation of the superintendent of schools accompanied by valid reasons for the discharge. To effect a proper dismissal of a probationary teacher, both the superintendent and the school board must comply literally with the terms of the applicable statute, which is R.S. 17:442. In Serignet v. Livingston Parish School Board, a probationary teacher was notified of his termination by the superintendent of schools in a letter which stated: "The reason for this action being incompetency and wilful neglect of duty as supported by the attached copy of resolution of the Livingston Parish School Board." But the parish school board's resolution recited no facts showing the teacher was incompetent or that he had wilfully neglected his duty; all the school board's resolution did was to refer back to the superintendent's recommendation of termination. The First Circuit Court of Appeal held this termination procedure violated the mandatory requirement of R.S. 17:442 that a recommendation of termination must be "accompanied by valid reasons therefor." The superintendent's letter charging incompetence and neglect of duty was insufficient because the charges in the letter of termination were not detailed

(Summers, J., concurring), citing Comment, 58 IOWA L. REV. 210 (1972). Justice Summers also pointed out that, for him, public meetings legislation is mainly desirable for its educational effect, rather than for its effect as a legal weapon. "Compliance should properly depend not upon rulings of this Court, but upon the good faith of public officials and upon their respect for the electorate whom they serve." 281 So. 2d at 724.

46. 281 So. 2d at 722.
47. Id. at 721.
49. 282 So. 2d 761 (LA. App. 1st Cir. 1973).
enough; they were "mere conclusions," to use the court's characterization. The court said: "To support a dismissal the recommendation must contain a specific recitation of facts sufficient to afford the dismissed teacher opportunity for rebuttal."50

The First Circuit's strict interpretation in Serignet of the requirement that "valid reasons" must be stated to effect a proper discharge seems to confuse probationary discharge procedure with procedures for the discharge of a tenured teacher—the latter requiring notice, written charges, and a full hearing prior to the discharge.51 Certainly incompetence and neglect of duty are valid reasons which would support a recommendation to terminate. But to go on to the conclusion that a probationary teacher must be given detailed written charges sufficient to afford an opportunity for rebuttal seems to obliterate the hard line which the law has always drawn between probationary teachers and those with tenure.52 Nor do the cases cited in the opinion support the court's novel reading of R.S. 17:442.53

In Pitcher v. Iberia Parish School Board,54 a probationary teacher was discharged for failure to comply with a school board rule requiring all teachers to submit to an annual physical examination by a physician of their choice. The rule was adopted to assure that the parish's teachers were medically fit to hold their teaching jobs. The Third Circuit Court of Appeal sustained the rule against an argument that the required medical examination violates the constitutional right of privacy. Not so, said the court. Reasonable interference with privacy is not forbidden by the law, and ample reason exists for requiring an annual medical checkup among teachers. Moreover, the invasion of privacy involved in the case is minimal, said the court. The teacher is free to pick the examining physician, and the results

50. Id. at 763. The court also said "the School Board must act upon detailed written charges specified by the Superintendent to effect a proper dismissal." Id.
53. Both State v. Bienville Parish School Bd., 198 La. 688, 4 So. 2d 649 (1941) and State ex rel. Kennington v. Red River Parish School Bd., 193 So. 225 (La. App. 2d Cir. 1939), are distinguishable from the Serignet case because in those cases the superintendent had not given any written reasons for the discharge.
54. 280 So. 2d 603 (La. App. 3d Cir. 1973).
of the examination are disclosed to no one except the teacher. Only the physician's ultimate conclusion regarding the medical fitness of the teacher to continue employment is reported to the school board. In these narrow circumstances the court held there is no violation of the right of privacy. Failure to comply with the rule is a valid reason for discharge within the meaning of R.S. 17:442.

In affirming the discharge in the Pitcher case, the court of appeal noted that the scope of judicial review of the actions of a school board is limited: a presumption of validity attaches to the discretionary actions of the board, and it is not within the power of the court to substitute its views for those of a school board when there is a rational basis for the board's policy determinations.\textsuperscript{5}

That judicial review of school board decisions is limited also proved dispositive in two other teacher discharge cases decided during the term. In Celestine v. Lafayette Parish School Board,\textsuperscript{56} a teacher was terminated for incompetency in administering what the school board considered the wrong punishment for an incident involving student obscenity. The teacher was discharged because of his poor judgment in requiring an eleven-year-old girl to write a vulgar, four-letter word (beginning with the letter F) 1,000 times in the presence of the other members of the class. Judge Hood for the Third Circuit refused to speculate regarding the effect of such a punishment on the child involved or on the other pupils in the class. It was enough that the school board thought the teacher's action manifested extremely poor judgment.\textsuperscript{57} That the court in the Celestine case deferred to the views of the school board seems understandable, despite the fact that some individuals might argue that the punishment administered by the teacher in the case well fit the crime. Still, where there are two views, it is probably best to leave arguments about the appropriateness of different forms of student discipline to the school officials themselves and not to the judges. At least that would seem to be the result required by the rationale, stated by the Louisiana supreme court in State ex rel Rathe v. Jefferson Parish School Board,\textsuperscript{58} of

\textsuperscript{55} Id. at 608, citing Moffett v. Calcasieu Parish School Bd., 179 So. 2d 537 (La. App. 3d Cir. 1965) and Blanchet v. Vermilion Parish School Bd., 220 So. 2d 534 (La. App. 3d Cir. 1969).

\textsuperscript{56} 284 So. 2d 650 (La. App. 3d Cir. 1973).

\textsuperscript{57} The court quoted from State ex rel. Rathe v. Jefferson Parish School Bd., 206 La. 317, 360, 19 So. 2d 153, 167 (1943): "There is nothing more firmly established in law than the principle that, within the limits of their authority, the power and discretion of legally created governing boards is supreme. Their wisdom or good judgment cannot be questioned by the courts." 284 So. 2d at 653.

\textsuperscript{58} 206 La. 317, 19 So. 2d 153 (1943).
limited judicial review of the policy determinations of school boards. Moreover, the Third Circuit in the *Celestine* case rejected the argument that the teacher's right to academic freedom entitled him to administer the punishment at issue in the case.59

The other case applying the basic premise of school law that courts will not interfere with a school board's bona fide exercise of discretion is *Simon v. Jefferson Davis Parish School Board*,60 where the court upheld the discharge for cause of a tenured high school teacher. There was substantial evidence supporting the school board's findings of several acts of wilful neglect of duty; and, although the court set aside some of the board's findings of fact, five substantiated charges remained which warranted the court's affirmance of the discharge for cause. The court rejected the teacher's contention that he was entitled to specific notice that his conduct was wrongful. "[A] classroom teacher merely by the nature of that position, should be aware of the impropriety of some practices," including the acts of neglect of duty proved in the present case, acts "which need no regulation to define their indecorum."61 The court also rejected the teacher's claim that freedom of speech protected him against discharge for making remarks in his world history class about sex activities between black and white races. While the court acknowledged that first amendment rights in the schools are of great importance,62 the right of free speech is not absolute, and "there must be some serious educational purpose underlying the use of a phrase or word for it to be protected under the auspices of academic freedom."63 The court concluded that what the teacher said in class served no serious educational purpose and was not therefore entitled to protection.64

59. 284 So. 2d at 655.
60. 289 So. 2d 511 (La. App. 3d Cir. 1974), writ denied, 293 So. 2d 178 (La. 1974).
61. 289 So. 2d at 517, citing Keefe v. Geanakos, 418 F.2d 359 (1st Cir. 1969).
63. 289 So. 2d at 517. The court here cited its own *Celestine* opinion, which was rendered earlier in the term. See *Celestine v. Lafayette Parish School Bd.*, 284 So. 2d 650 (La. App. 3d Cir. 1973).
64. For what it's worth, this writer thinks the court was wrong on its analysis of the first amendment issue in the case, at least with respect to two of the remarks made by the teacher in the case. This was a world history class, and the comments made in the class seem to have some relationship to the historical development of blacks vis-à-vis whites. There was no showing that what the teacher said ("Integration in churches and classrooms came recently, but in bed for a long time because if a white man wanted a little loving he would go across the tracks." "The black man has had the idea that only white women could love adequately because of picture shows. Until
It appears from the cases\(^6\) that the court orders to integrate schools in Louisiana requiring teacher transfers are liable to result in faculty grievances being filed under Louisiana's Teacher Tenure Law,\(^6\) which protects a tenured teacher not only against discharge without cause, but also from transfer to a position of lesser status, rank, or salary. Two terms ago in *Pardue v. Livingston Parish School Board*,\(^7\) the First Circuit Court of Appeal held that tenure restrictions were violated when a school board assigned a guidance counselor to the position of English teacher. This term in *Dantone v. Tangipahoa Parish School Board*,\(^8\) an elementary school was ordered closed down at the direction of a federal district court, and its faculty were transferred to another school. On transfer, Dantone was not paid according to her former status, i.e., principal-teacher, but rather she was paid only as a classroom teacher. The First Circuit Court of Appeal applied the rationale of the *Pardue* case and held that Dantone was entitled to reinstatement of her former salary status of principal-teacher. The court also ordered the school board to appoint Dantone to the nearest available position of equal status and rank as that held by her previously.

One final school case decided this term involves the use of the judicial process in aid of maintaining peace and quiet on the college campus. In *State Board of Education v. Anthony*,\(^8\) the First Circuit Court of Appeal affirmed issuance of a preliminary injunction against a number of Southern University students forbidding them from entering on the campus, harassing other students or members of the faculty, or in any manner disrupting or interfering with the operation of the University. The record showed (1) that the educational and administrative functions at Southern University had been brought to a standstill by the activities of a large number of students; (2) that those students against whom the preliminary injunction issued were the leaders of the disruptive students and had participated in the disruption; and (3) that the students enjoined evinced an intention recently there were no black women in movies." caused disruption in class. Moreover, what was said seems to have some redeeming educational purpose. Clearly, however, the court was right to sustain Simon's discharge on the other charges made in the case.


to continue those activities if they were permitted to return to the campus. There was evidence of occupations of administrative buildings and offices, wholesale boycott of classes, sizable demonstrations, interruptions of classes, burning and disruption of university property, and similar activities. The court concluded that the situation clearly called for issuance of a preliminary injunction to preserve the status quo of the educational process at Southern University; otherwise irreparable injury in the legal sense would have been suffered by the University and by those students who wanted to continue their education.

**STATE RACING COMMISSION**

*Jefferson Downs, Inc. v. Louisiana State Racing Commission*\(^7\) is the only case this term which expressly considers the impact of Louisiana’s Administrative Procedure Act\(^7\) on the adequacy of agency process in this state. And from the viewpoint of good administrative regulation, it’s nice to see counsel and the court citing and applying our Administrative Procedure Act. The case is important for what it says about how administrative agencies covered by the act must conduct agency adjudications,\(^7\) such as those involved in granting or denying racing permits. But there is also a threshold substantive point in the case: the State Racing Commission, the court held, has the authority by statute to grant a racing permit for a fewer number of days than the number requested by an applicant if the dates in the permit are within the time period requested. The Fourth Circuit refused to read the statutory authority to grant or to refuse a permit\(^3\) as denying to the Commission the authority to grant the permit, but for a fewer number of days.

Regarding the integrity of the administrative process, the *Jefferson Downs* case makes two points. First, Louisiana’s administrative law now reflects what is known as the Ashbacker doctrine, after *Ashbacker Radio Corp. v. Federal Communications Commission*.\(^4\) In that case the United States Supreme Court held that, where two bona fide applications to an administrative agency are mutually exclusive, the grant of one without a hearing to both deprives the loser of a meaningful opportunity to be heard. The legal

\(^{70}\) 288 So. 2d 653 (La. App. 4th Cir. 1974).
\(^{72}\) Under the act "‘adjudication’ means agency process for the formulation of a decision or order." LA. R.S. 49:951(1) (Supp. 1967).
\(^{73}\) LA. R.S. 4:158 (Supp. 1968).
\(^{74}\) 326 U.S. 327 (1946).
posture in the Jefferson Downs case was the same—that is, multiple applicants sought the grant of mutually exclusive, or at least overlapping, privileges. Both Jefferson Downs and Evangeline Downs wanted almost identical racing dates, but, according to the State Racing Commission, these two tracks were in competition with each other, and to grant both permits in full would have undermined the quality of thoroughbred racing in the area of Louisiana involved. Yet the Racing Commission granted Evangeline Downs' application for the full schedule of racing dates requested by it, without at the same time considering Jefferson Downs' application. Jefferson Downs objected to the Commission's practice of alphabetically taking up, considering, and disposing of each application before passing on the next one. The Fourth Circuit Court of Appeal agreed that this agency procedure was arbitrary and "abrasive to any concept of objectivity" because, under this procedure, the applicants who are alphabetically heard first are at an advantage in requesting and obtaining dates over those who are heard later. A reasonable approach, said the court, requires the Commission, when aware in advance that conflicting dates are requested, to afford both applicants an equal opportunity to present the merits of their requests and to have a determination made on the requests after they are considered together. Since this was not done, the court had jurisdiction to reverse the decision of the Racing Commission and to remand the case to the Commission for an expeditious hearing on Jefferson Downs' request for racing dates in accordance with the state Administrative Procedure Act.

There was one other failure of administrative process in the Jefferson Downs case:

It is apparent that the defendant employed a lax and unexacting procedure devoid of staff reports and studies or sworn testimony, and no opportunity was afforded to interested parties for confrontation and cross examination. This practice is not at all consistent with the letter or the spirit of the administrative procedure act.

What the court condemned was the Commission's reliance on its own alleged expertise to reach the conclusion that there was not enough racing support for both Evangeline Downs and Jefferson Downs to operate as fully as each track had requested. No record evidence

75. 288 So. 2d at 656.
76. Pursuant to La. R.S. 49:964(G)(5) (Supp. 1966), which authorizes the reviewing court to reverse agency action when it is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."
77. 288 So. 2d at 656.
existed on this crucial determination, and without an evidentiary foundation in the record to this effect, the court was compelled to hold the agency's determination unlawful and subject to reversal. It made no difference that under R.S. 49:956(3) an agency may take notice "of generally recognized technical or scientific facts within the agency's specialized knowledge." The record must reflect what specialized facts the agency considered, and the affected party must be given notice of and an opportunity to contest whatever specialized facts an agency uses in making its adjudicative determination. All the record revealed in *Jefferson Downs* was the "predisposed observations" of Commission members, and this, too, was not in compliance with the state Administrative Procedure Act.

By its decision in *Jefferson Downs*, the Fourth Circuit has secured to the judiciary the capacity to effectively review administrative action in this state, and the case is a sound development in our administrative regulation; judicial review of administrative action would only be a nice slogan if an administrative agency were allowed to justify a decision on the basis of unknown and unknowable expertise—expertise which is usually always hidden from the fresh air of record review. The Fourth Circuit's opinion reminds one of Louis Jaffe's point that

> [t]he 'law' does not operate in a vacuum. The application of law requires a factual predicate; an action without such a predicate is lawless. A finding of fact which is based on no more than the will or desire of the administrator is lawless in substance if not in form.\(^78\)

And, like the holding in *Jefferson Downs*, Professor Jaffe would insist that "expertness is not a magic wand which can be indiscriminately waved over the corpus of an agency's findings to preserve them from review."\(^79\) It should be easier now, after the *Jefferson Downs* case, for students of administrative regulation to understand why our Administrative Procedure Act requires agencies relying on facts within their own specialized knowledge to spread those facts on the record and to make them available to the parties:\(^80\) this requirement enables affected parties to challenge agency factual determinations and it facilitates judicial review of administrative action in this state. The idea of R.S. 49:956(3) is that an agency's experience, technical competence, and specialized knowledge "may be utilized in the evaluation

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78. L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 595 (1965).
79. Id. at 613.
of the evidence," but not in substitution of the necessary factual predicate for lawful administrative action.

DEPARTMENT OF PUBLIC SAFETY

Louisiana's Alcoholic Beverage Control Law requires as a condition for obtaining an alcoholic beverage permit that the applicant "has not been convicted of a felony under the laws of the United States, the State of Louisiana, or any other state or country." In *Sportservice Corp. v. Department of Public Safety*, the question was whether the Commissioner on Alcoholic Beverage Control was right to revoke a permit where the holder had been convicted of a felony in a United States district court, but where the conviction had not yet become final, because an appeal was pending at the time of the revocation and at the time of judicial review of the Commissioner's order. The Fourth Circuit, citing language from *State v. Gani*, decided that the expression "convicted of a felony" used in R.S. 26:279 A(5) requires a conviction that is final through all appellate stages as well as final with respect to the trial stage.

To the writer, the court's decision in the *Sportservice* case seems wrong for several reasons. First, the court itself recognizes that another provision of the Alcoholic Beverage Control Law allows the Commissioner to revoke a permit for simple "violation" (not "conviction") of a schedule of prohibited acts, with or without criminal proceedings; moreover, R.S. 26:286(3) authorizes revocation for certain acts where the permittee "has been found guilty" by a trial court. Certainly these two provisions together suggest that conviction at trial is enough to disqualify an applicant from obtaining a permit, and if this conclusion is sound then it would seem to follow from R.S. 26:279(C) that the Commissioner was well within his authority when he revoked the permits of the Sportservice Corporation. Finally, R.S. 26:93, which is in pari materia, also indicates that a conviction is unnecessary to withhold, suspend, or revoke alcoholic beverage per-

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82. 293 So. 2d 530 (La. App. 4th Cir. 1974).
83. 157 La. 231, 102 So. 318 (1924). The language cited from the *Gani* case is not really apposite to the issue of finality through the appellate stage. *Gani* discusses finality at the trial stage, and not beyond.
85. "If the applicant, or any other person required to have the same qualifications, does not possess the required qualifications, the permit may be denied, suspended, or revoked." This section would seem to contemplate disqualification after issuance of an initial permit. In other words, a permittee must maintain his qualifications throughout the period of licensure.
mits. With all deference, the Fourth Circuit's contrary conclusion in what is essentially a revocation case is too restrictive a view; to require finality through all appellate stages leaves convicted felons free, for at least a while, to deal in alcoholic beverages in Louisiana, a result hardly consistent with the letter and spirit of the Alcoholic Beverage Control Law. At least the Commissioner should have the authority to suspend a permit pending an appeal, but the logic of the court's opinion would seem to preclude this sensible approach also.

DIVISION OF EMPLOYMENT SECURITY

Evans v. State Department of Employment Security\textsuperscript{66} reiterates two important principles of Louisiana unemployment compensation law: (1) under R.S. 23:1601(2) and the established jurisprudence an employer has the burden of proving that a claimant's discharge was for misconduct connected with his or her employment, otherwise the claimant is entitled to compensation; and (2) sufficient legal and competent evidence must support the findings of the board of review as to the facts. In the Evans case no representative of the employer testified before the appeals referee; only Evans' termination notice, which stated he was terminated for reporting to work while intoxicated, tended to show that Evans was discharged for misconduct connected with his employment. But this notice, the court held, was hearsay and not legally competent as evidence. Thus nothing remained in the record except Evans' own testimony to the effect that he was not drunk on the job. Moreover, the Second Circuit Court of Appeal cited its own earlier decision in Heard v. Doya\textsuperscript{7} for the proposition that mere disbelief of a claimant's testimony does not supply the proof of employee misconduct required of the employer. The court held that, on the record presented, the Division of Employment Security had erred in denying claimant Evans unemployment compensation.

Just what constitutes disqualifying misconduct within the meaning of R.S. 23:1601(2) has been repeatedly defined in the jurisprudence.\textsuperscript{8} But little thought has been given in the cases to the narrower

\textsuperscript{66} 292 So. 2d 265 (La. App. 2d Cir. 1974).
\textsuperscript{68} Horns v. Brown 243 La. 936, 942, 148 So. 2d 607, 609 (1963); "Misconduct within the meaning of an unemployment compensation act excluding from its benefits an employee discharged for misconduct must be an act of wanton or wilful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his employee, or
problem of whether the issue of disqualifying misconduct is a question of fact for primary determination by the administrator of Louisiana's Unemployment Compensation Act, in which case the administrative determination if supported by sufficient evidence would be conclusive, or a question of law for the courts, in which case the judges themselves would independently determine whether an employee was discharged for misconduct connected with employment.

Or indeed there is a third possibility: it is possible to view an issue of disqualifying misconduct as a mixed question of law and fact, with primary responsibility for decision on the question resting sometimes with the administrator of the act and sometimes with the court, depending on the extent to which agency expertise is helpful in resolving the issue in a particular case. Three cases decided this term in the courts of appeal suggest that our courts are treating the issue of disqualifying misconduct actually as a mixed question of law and fact.

For instance, sometimes the court defers to the administrative determination that no disqualifying misconduct is involved in a particular case, and the court seems to treat the issue of disqualifying misconduct as one of fact for primary determination by the appeals referee and the board of review. Piggly Wiggly Operators' Warehouse Inc. v. Doyal is such a case. In this case the claimant and his employer exchanged loud and abusive language during a discussion of work schedules. The appeals referee found as facts that claimant was only asserting his rights during the discussion; that both parties were guilty of using abusive language; and that the employer unjustly reprimanded the claimant. On these facts the agency decided that no disqualifying misconduct had been shown in the case by the employer. The Second Circuit Court of Appeal affirmed, saying that it

89. See LA. R.S. 23:1634 (1950): "[T]he findings of the board of review as to the facts, if supported by sufficient evidence and in the absence of fraud, shall be conclusive."

90. See LA. R.S. 23:1634 (1950): "[T]he jurisdiction of the court shall be confined to questions of law."

Professor Davis in his treatise points out that there is a lack of judicial consistency regarding treatment of a particular issue as one of fact or one of law, and he says that "even the most discerning and most conscientious judges are commonly limited in their articulation of what they do by a combined inability and unwillingness to spell out the detailed facts about the intensity of their review and about the influences upon their behavior with respect to review." K. Davis, Administrative Law Treatise § 30.08, at 233 (1958).

91. 297 So. 2d 494 (La. App. 2d Cir. 1974).
was required to accept the administrative findings of fact in this case since they were supported by sufficient evidence; however, the opinion of the court in *Piggly Wiggly* goes on to read as though the court is treating the ultimate determination of no misconduct as a question of fact too, or at least the reader senses a healthy judicial respect for the agency's ultimate administrative determination in the case.

The judicial deference in cases like *Piggly Wiggly*, where the agency decides that the claimant is not disqualified for unemployment compensation benefits, is supported by the remedial nature of the Employment Security Act—that is, the benefits of the act should be extended as far as possible and the term "misconduct" should be construed in a manner least favorable to working a forfeiture of benefits in any particular case. Moreover, in the writer's view, when the issue is misconduct *vel non*, a court would be wise to defer to the judgment of the administrative agency charged with the front-line responsibility of administering Louisiana's unemployment compensation system. One would not expect the Division of Employment Security to disqualify a claimant for job-related misconduct except in clear cases, and what the writer would suggest as an appropriate scope of review in these cases is that the court should affirm the agency's ultimate conclusion of misconduct *vel non* so long as the agency's determination passes a threshold test of reasonableness. In each case the court should ask itself not what it thinks or feels about the claimant's alleged misconduct, but whether the agency's conclusion is a reasonable one. And the agency's conclusion need not be the only reasonable conclusion either; it is enough that the administrative determination is a reasonable view of the claimant's conduct in any particular case. A reviewing court should also recognize that in some cases the agency, because of its specialized knowledge of industrial practices, is in a better position to determine whether disqualifying misconduct is involved in a specific case.

What all this means, of course, is that the writer would not be averse to allowing the Division of Employment Security, working through its appeals referee and its board of review, to fashion the law on employee misconduct in Louisiana unemployment compensation cases, subject only to limited judicial review for reasonableness. This would not contravene the provision of the Unemployment Compensation Act that establishes jurisdiction in our courts to review questions of law which are involved in compensation cases, for it would be a mistake to think that, because a court has jurisdiction to review

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questions of law in administrative cases, a court must decide every question of law for itself. Rather, the court should allow some discretion to the administrative agency in the first instance to fashion the law as it sees fit because, as Professor Jaffe has pointed out, “the administrative and the judiciary share the role of law pronouncing and law making. They are in partnership.” True, Professor Jaffe agrees that the court is the senior partner; it may supersede the administrative agency and determine a question of law for itself. Nevertheless, he still insists that the responsibility for deciding questions of law should be shared between court and administrative agency. Otherwise the root idea of the administrative process, the idea that effectuation of some social purposes is better left to administrative agencies than to courts, would be undermined.

Applying all these ideas, one would expect reviewing courts in the main to affirm decisions of the Division of Employment Security, and the Second Circuit’s opinion this term in Piggly Wiggly is typical in this regard. However, another opinion of the Second Circuit Court of Appeal this term in Phills v. Doyal seems inconsistent with the review thesis presented here. In this case the court summarily reversed the decision of the appeals referee and the board of review that claimant was disqualified for benefits because of misconduct connected with her employment, yet the agency’s conclusion hardly seems unreasonable on the facts. The employer’s superintendent testified that Phills was discharged because she used abusive language while they were discussing a malfunctioning time clock. Unlike the situation in Piggly Wiggly, nothing in the facts suggested that both parties were guilty of using bad language. The appeals referee found that the claimant told the plant superintendent “what he could do with the buzzer in an unlady like manner and then she was discharged.” Clearly, this conduct would seem to fit the definition of disqualifying misconduct quoted by the court of appeal on review as “a disregard of standards of behavior which the employer has a right to expect of his employee . . . .” Why reverse then? Because the employer has the burden of proving misconduct? This seems an untenable reason for setting aside the agency’s disqualification in Phills v. Doyal, because the superintendent’s testimony satisfies the employer’s legal burden of proof. Yet no other legal principle is cited or discussed by the Second Circuit in the Phills case for the court’s abrupt conclusion that the agency erred in denying compensation. If

94. L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 546 (1965).
95. 291 So. 2d 444 (La. App. 2d Cir. 1974).
96. Id. at 446.
the court has in mind a law rule that a single, hotheaded incident cannot disqualify a claimant under the Unemployment Compensation Act, especially where the claimant has worked for a substantial period of time without other incident, then it would be best for the court to say so directly. But as it now reads, the court's opinion in Phillips v. Doyal is deficient: the court fails to tell the agency what it did wrong in the case, and there is little for the agency to go on in the future to correct its ways; the opinion looks too ad hoc for this writer because, although the court acknowledges the rule of limited judicial review, in the very next breath the court seems to disregard the limitation and to substitute its own conclusion for that of the agency without adequate explanation. Surely this makes for war between court and administrative agency, when what is needed most between them is not war, but the idea of partnership—to use Professor Jaffe's illuminating expression. And what is needed toward that end, and this is essential, is a principled scheme of limited judicial review, not review ad hoc.

Southern Pacific Transport Co. v. Doyal is another case this term in which the judiciary asserts itself as senior partner (vis-à-vis the Division of Employment Security) with respect to questions of unemployment compensation law in Louisiana. But this time the scope of judicial review in the case is principled: the Fourth Circuit Court of Appeal has a rule of law in mind that the agency did not follow; the court explains itself to the agency, telling the agency why it went wrong and what it should do in similar cases in the future; moreover, and most important, the reversal seems plainly justified because the agency, in resolving the issue of misconduct in the case, disregarded the standards of impermissible employee conduct set forth in the collective bargaining agreement between the claimant and his employer. This is principled judicial review, not review ad hoc, because the court has not set itself free to reverse at will; it is only saying to the agency that it should respect the contract between the parties in determining whether a particular employee was discharged for misconduct connected with his or her employment. This is a law rule which the agency should have seen for itself and one which the agency can probably live with in future cases.

On its facts the Southern Pacific Transport Co. case involves a truck driver who was discharged for violating the company's policy regarding employee personal appearance, particularly employee hair

98. See text accompanying note 94 supra.
99. 289 So. 2d 882 (La. App. 4th Cir. 1974).
length. The company had the right, under the collective bargaining agreement between it and truck drivers, to fix and to maintain reasonable standards for wearing apparel and personal grooming. The appeals referee concluded that no legal misconduct was involved in the case and that the case involved only a controversy as to whose set of values regarding hair styles would prevail. The Fourth Circuit Court of Appeal reversed:

The question here is not simply a matter of whose set of values regarding hair styles would prevail. By a contract between the employer and the bargaining agent of the employees, the employer was granted the right to determine which hair style would prevail. . . . As we view the issue here it is a case of an employee who chooses to attempt to impose his standards upon his employer, despite his agreement to the contrary through his Union.100

Quoting from a federal case,101 the court went on to point out that the company’s interest in the neat grooming of its truck drivers made good business sense, taking judicial notice of the fact that, in public service industries, employers are indeed concerned about the image their employees create in the public’s mind; and the court’s conclusion followed that claimant’s wilful disregard of the employer’s reasonable grooming regulations constituted disqualifying employee misconduct under the Employment Security Act.

ZONING BOARDS

Regarding judicial control of administrative action, Professor Jaffe has said (and this applies to all agencies, and not just zoning boards): “The availability of judicial review is the necessary condition, psychologically if not logically, of a system of administrative power which purports to be legitimate, or legally valid.”102 Our supreme court said the same thing three years ago in Bowen v. Doyal,103 in which the court held that, although administrative bodies have the authority to determine as original propositions the matters delegated to them by statute, a person whose legal rights are adversely affected by the administrative determination may test its legal correctness in

100. Id. at 884.
102. L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 320 (1965).
the courts. The court spoke of a broad presumption that all administrative determinations are subject to judicial review, although on its facts Bowen involved only one agency, the Division of Employment Security. Surely Bowen v. Doyal will prove itself a landmark in Louisiana administrative regulation, and, as a matter of fact, it bore fruit this term in several zoning board cases. In one particularly notable case, Magnum Corp. v. Dauphin, \(^{104}\) the Third Circuit Court of Appeal, applying the idea that all administrative action is subject to judicial review, \(^{105}\) held that district courts in Louisiana have original jurisdiction to review the determinations of boards of zoning adjustment and that an absolute right of review exists, despite the fact that R.S. 33:4727 authorizes only a discretionary review in the district court by means of certiorari.

Bowen v. Doyal and its progeny (and there will be more after Magnum) preserve the proud tradition of judges watching over the shoulders of our administrative agencies; they guarantee that, in Louisiana, the administrative arena will be governed by the Rule of Law. And to take a final, overall look at the cases—they show that our courts have well kept their administrative trust during the 1973-1974 term.\(^ {106}\)

\(^{104}\) 293 So. 2d 582 (La. App. 3d Cir. 1974), writ denied, 295 So. 2d 813 (La. 1974).

\(^{105}\) The Fourth Circuit reached the same conclusion during the term with regard to zoning boards, saying: "Certainly the Zoning Board is an Administrative Agency." River Oaks-Hyman Place Home-owners Civic Ass'n v. City of New Orleans, 281 So. 2d 293, 294 (La. App. 4th Cir. 1973).

\(^{106}\) The usual concomitant of judicial review of administrative action, an insistence by the court on adequate standards cabining agency discretion, also appeared in the cases this term. See Summerell v. Phillips, 282 So. 2d 450 (La. 1973) (zoning ordinance containing no standards for uniform exercise of power to issue or to deny permits is unconstitutional); Jefferson Downs, Inc. v. Louisiana State Racing Comm'n, 288 So. 2d 653, 657-59 (La. App. 4th Cir. 1974) (Morial, J., concurring).