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Administrative Law

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ADMINISTRATIVE LAW

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In this survey, the subject of Administrative Law is confined to those cases and statutes concerning the powers and procedures of administrative agencies. It does not include any agency rules or regulations, nor any discussion of the substantive provisions of any statutes involved.

LEGISLATION

Two statutes of interest in this field were adopted by the Legislature during the year. The first[1] is of general interest and relates to venue for review of administrative actions by the Circuit Courts.

It provides:

> The circuit courts of this State are hereby vested with jurisdiction to hear and determine all questions, actions, and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, Code of Laws, 1952, affecting boards, commissions, and agencies of the State of South Carolina, and officials of the State of South Carolina in their official capacities, in the circuit where such question, action, or controversy shall arise.

It appears that the intent of this act is to provide for venue outside Richland County, but the choice of the word "jurisdiction" leaves it open to argument that the courts are hereby

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1. S. C. ACTS AND JOINT RESOLUTIONS 1954 No. 624, p. 1541.
"§1. Circuit Court to have jurisdiction of actions affecting state agencies. The circuit courts of this State are hereby vested with jurisdiction to hear and determine all questions, actions, and controversies, other than those involving rates of public service companies for which specific procedures for review are provided in Title 58, Code of Laws, 1952, affecting boards, commissions, and agencies of the State of South Carolina, and officials of the State of South Carolina in their official capacities, in the circuit where such question, action, or controversy shall arise.
"§2. Repeal.—All acts or parts of acts inconsistent herewith are hereby repealed.
"§3. Time effective.—This act shall take effect upon its approval by the Governor.
"Approved the 18th day of March, 1954."

given jurisdiction to review *de novo* all administrative actions except those specifically exempted.

The second statute[2] is of limited application because it redefines "benefit year" under the Unemployment Compensation Law but should be noted, for it changes the statute to avoid the interpretation of it by the court in the case of *Hartsville Cotton Mill v. S. C. Employment Security Commission.*[3]

DECISIONS

Evidence to Support Findings of Fact

During the period under consideration, the Supreme Court decided four cases[4] in which it had occasion to comment that the findings of fact by an administrative agency are binding on the courts in a review thereof if supported by substantial evidence. The language was not the same in each case as they arose under different statutes, but the concept was the same, whether the language was "competent evidence", "prima facie correct", or simply "any evidence". Indicative of this is the fact that in *Gurley v. Mills Mill,*[5] the Court used "any evidence" but in *Mason v. Woodside Mills,*[6] the expression was, "any competent evidence". Both cases involved the Workmen's Compensation Act; one was decided February 15 and the other March 9, 1954. Furthermore, in the case of *Mace v. Berry,*[7] the Court quoted from two of its earlier decisions[8] with reference to the same Agricultural Adjustment Act. In one,[9] it

2. S. C. ACTS AND JOINT RESOLUTIONS 1954 No. 660, p. 1704. This act amends §68-7 of the 1952 Code of Laws to read as follows:
"§68-7. 'Benefit Year' with respect to any individual means the one year period beginning with the first day of the first week with respect to which the individual first files a request for a determination of his status as an insured worker, and thereafter the one year period beginning with the first day of the first week with respect to which the individual next files a request for a determination of his status as an insured worker after the termination of his last preceding benefit year. Any request made in accordance with Section 68-151 shall establish a benefit year for the purpose of this section if the individual has been paid wages for insured work as required under Item 5 of Section 68-113." This provision was made effective upon approval by the Governor, which was March 23, 1954.

3. 224 S.C. 407, 79 S.E. 2d 381 (1953).

4. Gurley v. Mills Mill, 225 S.C. 46, 80 S.E. 2d 745 (1954). Mason v. Woodside Mills, 225 S.C. 15, 80 S.E. 2d 344 (1954). Mace v. Berry, 81 S.E. 2d 276 (S.C. 1954). A. C. L. Railroad v. Public Service Commission, 81 S.E. 2d 357 (S.C. 1954).

5. 225 S.C. 46, 51, 80 S.E. 2d 745, 747 (1954).

6. 225 S.C. 15, 80 S.E. 2d 344, 347 (1954).

7. 81 S.E. 2d 276, 280 (S.C. 1954).

8. Lee v. Berry, 219 S.C. 346, 65 S.E. 2d 257 (1951). Lee v. DeBerry, 219 S.C. 382, 65 S.E. 2d 775 (1951).

9. Lee v. Berry, *supra* note 8.

refers to "any competent evidence", in the other[10] "substantial evidence". Therefore it would appear "competent evidence" is used interchangeably with "substantial evidence" and not necessarily to be given the technical meaning it carries when used in a context of common law rules of evidence. However, it appears extremely unlikely that a reviewing court would find "substantial" any evidence which was not competent in the technical sense.

Appeal of Conviction As a Stay of Consequential Administrative Action

In *Parker v. State Highway Department*[11] it was held that an appeal from a conviction of driving while under the influence of alcohol does not operate to stay the suspension of the defendant's driver's license by the Department, which is required by statute upon his "conviction" for such offense.

The Court agreed with the Department's contention that the suspension of the license was not a part of the punishment for the offense, and that it was therefore not affected by "§ 7-6 of the Code of 1952, providing that notice of appeal in a criminal case 'shall operate as a stay of the execution of the sentence until the appeal is finally disposed of' . . . ."[12]

Recognizing the possibility of a harsh result in the occasional case when the defendant's conviction is subsequently reversed, it thought the legislature must have weighed this against the beneficial effect of having removed from the highways without any delay those properly convicted. Undoubtedly, the Court's decision was the proper one here; as it so aptly said, "Upon such conviction, there is no longer a presumption of innocence."[13]

Effect of Equal Division Among Members of Reviewing Administrative Agency

A unique situation arose in the case of *Gurley v. Mills Mill*[14] involving an award under the Workmen's Compensation Act. After a hearing before the Full Commission reviewing an award made to claimant by a Single Commissioner, the Single Commissioner's term expired before he voted on the case be-

10. Lee v. DeBerry, 219 S.C. 382, 387, 65 S.E. 2d 775, 777 (1951).
11. 224 S.C. 263, 78 S.E. 2d 382 (1953).
12. 224 S.C. 263, 272, 78 S.E. 2d 382, 386 (1953).
13. 224 S.C. 263, 272, 78 S.E. 2d 382, 386 (1953).
14. 225 S.C. 46, 80 S.E. 2d 745 (1954).

fore the Full Commission and the other four Commissioners divided two to two. Subsequently, the Commission wrote a letter informing claimant of this fact and ordering a second review before the Full Commission on which the new Commissioner had been seated. Claimant contended that the two to two division was an affirmance of the Single Commissioner's award and that the Commission had no power to order the case reheard. Nevertheless, it heard the case again and reversed the award by a vote of three to two. On appeal, the Supreme Court held that there was no error in the Commission's procedure.

The Court said that the rule that a two to two division of the Supreme Court results in an affirmance of the judgment below is not controlling, because it is the application of a specific provision of the State Constitution[15] requiring a vote of at least three justices for a reversal.

Legislative Delegation of Appointive Power

A case which deserves interest in the field of Administrative Law is *State v. Taylor*.[16] This was an appeal from a conviction in a Magistrate's court for violation of a statute[17] requiring a permit from the State Veterinarian to operate a livestock market. The defendant challenged the constitutionality of the statute on the ground, *inter alia*, that the Agency (a committee which was granted the discretion to direct the issuance of the permits by the Veterinarian) was illegally constituted, in that the Legislature had delegated to the Clemson College Trustees the power to appoint four members of the seven-man committee and provided that the president, vice-president and secretary of the Livestock Dealers Association be the remaining three members.

The Supreme Court in a *per curiam* opinion upheld the validity of the statute, answering the above objection with the

15. S. C. CONST. Art. 5, § 12.
16. 223 S.C. 526, 77 S.E. 2d 195 (1953).
17. CODE OF LAWS OF S. C., 1952, § 6-334:
"Upon the filing of the application on the forms prescribed and the giving of a bond as required in this article the technical livestock committee, composed of four men appointed by the board of trustees of the Clemson Agricultural College of South Carolina and the president, vice-president and secretary of the Livestock Dealers Association shall make an official inspection of the premises of the applicant and if, in their opinion, the owner of the proposed market can comply with the provisions of this article the State Veterinarian shall issue the permit. This permit may be revoked by such committee for violation of the provisions of this article or the rules and regulations relating thereto."

assertion that the Clemson Trustees were especially qualified for the assignment and that the officers of the Livestock Dealers Association have a rational relation to the law to be administered.[18] The decision appears to indicate that the Court would not have reached any different result if the committee had been composed entirely of officers of the Association.

It might be inferred from the opinion that the only test to be applied is, does the unofficial body to which the Legislature delegated the appointive power have a "substantial and rational relation to the law to be administered"? The statement of the Court which could give rise to this inference is,

> But we have sustained the right of the Legislature to vest in unofficial bodies the power of appointment to public offices or boards where such bodies do have such relation (substantial and rational) to the law to be administered.[19]

However, to assume that the Supreme Court intended in this statement to indicate that that is the only test to be applied, is to overlook the fact that the case of *Floyd v. Thornton*[20] was cited[21] as authority for it. The statute[22] which was upheld in that case provided for the *appointment* of the members of the Board of Bank Control *by the Governor*, and the unofficial bodies (State Bankers' Association, Building and Loan Associations, etc.) were given power only to *recommend* such appointees, and last, but not least, the appointees recommended had to be selected from that limited group of persons engaged in the respective branch of the banking business.

Therefore, it would seem to be reasonable to say that *Floyd v. Thornton*[23] held that where a statute vests the actual power of appointment in a public officer, and the exercise of that

18. 223 S.C. 526, 531, 77 S.E. 2d 195, 197 (1953).
19. *Ibid.*
20. 220 S.C. 414, 68 S.E. 2d 234 (1951).
21. See footnote 18 *supra.*
22. S. C. CODE OF LAWS, § 7829 (1942).
"A state board of bank control is hereby created and established, which shall be composed of five members, one of whom shall be the state treasurer as an ex-officio member, who shall be chairman. The remaining four members shall be appointed by the Governor, two of whom shall be engaged in commercial banking and recommended by the state bankers' association, one shall be engaged in building and loan association business and recommended by the said associations and one shall be in the cash depositories business and recommended by the representatives of the cash depositories affiliated with the state bankers' association." . . .
23. 220 S.C. 414, 68 S.E. 2d 334 (1951).

power is limited by the statute to those persons recommended by an unofficial body and the Legislature has set some reasonable qualification to be met by the appointees recommended, it will be upheld as a valid delegation of the power of appointment, provided the Court finds that the unofficial body has a substantial and rational relation to the law to be administered. To say that that case approves a more abbreviated test, insofar as delegation of the appointive power is concerned, is to ignore the express limitations on that power which were contained in the statute. While it is true that the *Floyd* opinion discussed only the "substantial and rational relation" test, there was no need to discuss the others when they were expressly imposed by the statute itself.

To return to the principal case,[24] it would appear that the delegation to the Clemson Trustees does no violence to the rule in the *Floyd* case. The Trustees are public officers who, in addition to their duties in relation to the College, are intrusted with the administration of numerous statutes[25] related to the agricultural life of the state. The power of appointment granted them by this act was not restricted by any private or unofficial body; therefore, the *Floyd* case would have no application.

As to the officers of the Livestock Association, the Court noted that the appointment was made directly by the Legislature rather than by delegating the power of appointment to the group to select someone else.[26] However, this appears to be a distinction without a difference, when it is recognized that the Association, by changing its officers, changes its members on the Committee. So that, as a practical matter, the appointive or elective power was delegated to the Association. Therefore, it is apparent that this part of the statute presented to the Court a question quite different from that in the *Floyd* case, in that this unofficial body was empowered not simply to recommend to a public officer, in whom power to

24. State v. Taylor, 223 S.C. 526, 77 S.E. 2d 195 (1953).

25. CODE OF LAWS OF S. C., 1952, § 3-21. *E.g.*, § 3-21(5): "It [Board of Trustees] may promulgate and enforce rules and regulations for the guidance of the State Veterinarian, or any assistant of his, in the treatment of horses, mules, cattle, hogs or other livestock or poultry or domestic fowl of any kind affected with any dangerous or contagious disease; . . ." . . .

"(9) It, or a committee appointed by it, shall supervise and enforce the execution of any duties devolved upon it; . . ."

26. "The legislature merely made certain designated officers of this Association members by virtue of their office." 223 S.C. 526, 532, 77 S.E. 2d 195, 198 (1953).

appoint was vested, but to elect its own officers without legislative restriction on the manner of doing so, and thus appointing them to the Committee, without limitation on the group from which they should be drawn[27] and without prescription of any of the personal qualifications which the appointees must fulfill.

This is the first case in South Carolina in which the Court has gone so far as to approve such a delegation to a private group,[28] where in fact, it is restricted only by the appointive power having met the test of a "substantial and rational relation to the law to be administered." And even that test was met only by the assumption[29] of the Court that the officers of the Livestock Dealers Association "have peculiar knowledge of the workings of the livestock market and are thoroughly familiar with the methods which should be employed to control diseases in livestock." An assumption which would be doubted by many who, as some evidence of the reason therefor, could readily cite the very statute in question which makes it a crime to operate without the permit or without complying with prescribed sanitary and other conditions. It has not always been assumed that those with the greatest pecuniary interest in a particular commercial activity are those best fitted for selecting the personnel of any agency set up to regulate that commercial activity.[30]

There is no reason to believe that the Court would so casually enunciate a new principle of law with such far reaching consequences and which would *lower* the standards that the Legislature must fix before delegating to a private group

27. Except, of course, that an officer of the Association would be a member thereof.

28. The very few earlier cases involved public officials. *E.g.*, State *ex rel.* Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936).

29. "It is reasonable to assume that these persons have peculiar knowledge . . ." 223 S.C. 526, 532, 77 S.E. 2d 195, 198 (1953).

30. *E.g.* The late lamented eminent Judge Lide's statement in Floyd v. Thornton at p. 421: "We are unable to conceive of a case where there is a more rational and substantial relation to the law to be administered by the appointees than that involved in the statute before us. In other words, the State Bankers' Association is obviously an organization especially qualified for the selection of men to be appointed on the Board of Bank Control", would seem to do no more than emphasize the emphemeral nature of public esteem when compared with the action of our neighboring state of Georgia, which as recently as 1919 adopted a statute which declared, ". . . every insolvency of a bank shall be deemed fraudulent, and the president and directors shall be severally punished by imprisonment and labor in the penitentiary . . .; provided, that the defendant . . . may repel the presumption . . .", which statute, happily, was declared invalid by the U. S. Supreme Court in Manley v. Georgia, 279 U.S. 1 (1929).

the power to appoint persons to positions, in some instances, of enormous power. In a time when administrative agencies are ever increasing in number and in their reach, our Court would require a compelling necessity for such a change. This would seem to be particularly true when the only case cited in addition to the *Floyd* case, was *Ashmore v. Greater Greenville Sewer District*,[31] in which, so recently as 1947, the Court recognized the seriousness of this problem in the following language:[32]

> Such delegation by the lawmaking body to persons, groups or organizations unrelated to government of power to appoint or elect public officers constitutes a difficult and important problem of constitutional law which has vexed the courts and the text writers.

and narrowly limited its decision in that case as follows:[33]

> The rule which we approve goes no further than to invalidate attempted delegation by the legislature of the appointive or elective power to unofficial persons or bodies where the latter are without rational and substantial relation to the law to be administered by the appointees or electees or, we add, to the public institution to be governed.

It should be noted that in the *Ashmore* case the Court pointed to the *absence* of "a substantial and rational relation" and found it a fatal defect in the statute involved. It would be an obvious fallacy to contend that this justifies the proposition that the *presence* of such a relation is proof of the statute's validity.[34]

Since neither the *Floyd* nor *Ashmore* cases appear to be authority for this decision, and nothing indicates any intent on the part of the Court to enunciate a new principle, the justification of the result must lie in the particular facts of the case. Foremost among these may well have been a fact which did not appear in the report of the case but which is found in the Respondent's brief:[35] the defendant had never applied for a permit. Furthermore, four of the seven-man committee—a majority—were to be appointed by the Clemson

31. 211 S.C. 77, 44 S.E. 2d 88 (1947).
32. 211 S.C. 77, 93, 44 S.E. 2d 88 (1947).
33. 211 S.C. 77, 95, 44 S.E. 2d 88 (1947).
34. Because a three-legged stool without one leg will not stand, does not prove that any chair with three legs will stand.
35. P. 6, second paragraph.

Trustees. Although the Court did not say that this majority control by Clemson was even a factor in its consideration, the hearty endorsement of the Trustees' qualifications which it did express, may be indicative of its influence.