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Administrative Law

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ADMINISTRATIVE LAW

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The only significant case in Administrative law decided by the court this year was *Richards v. City of Columbia*[1] in which plaintiff property owners in the City of Columbia attacked the validity of an ordinance empowering a commission, set up for the purpose, to require the alteration or repair of houses found to be unfit for human habitation, or alternatively, to prohibit their occupancy.

Although attacked on many constitutional grounds, the court upheld the validity of the ordinance in all particulars but one. It found that certain portions of Section 9,[2] which section enumerates the standards by which the commission is to be guided in determining whether a dwelling is fit for human habitation, lack sufficient definiteness to comply with the constitutional requirement of a standard to guide the commission in administration of the delegated authority. As authority for this conclusion it cited the recent case of *S. C. State High-*

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1. 227 S.C. 538, 88 S.E. 2d 683 (1955).

2. The italicized portions of § 9 were invalidated by the decision.
"Section 9. Standards of Dwellings or Dwelling Units Fit for Human Habitation. *The Commission and/or the Rehabilitation Director may determine that a dwelling or dwelling unit is unfit for human habitation if conditions existing in such dwelling or dwelling unit are dangerous or injurious to the health, safety or morals of the occupants of such dwelling or dwelling unit, the occupants of neighboring dwellings or other residents of the City.*
"Without limiting the generality of the foregoing the following conditions are hereby declared essential to make a dwelling fit for human habitation:
"A. Inside running water connected to a kitchen sink, and to a lavatory or laundry sink, and to a bathtub or shower, and to a toilet, all connected to the public sewer, or other disposal approved by the City Board of Health;
"B. Adequate screens and glass panes for all doors and windows;
"C. Fireplaces, flues, or other provisions for heating to afford reasonable comfort;
"D. A window in each living room and bedroom which opens not less than 45% of its area and can be effectively opened and closed as a means of ventilation;
"E. Electrical wiring system connected and installed in accordance with the electrical ordinance of the City.
"F. Privacy for toilet and tub or shower, effectively ventilated.
"G. The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather constructed and maintained so as to be reasonably weather tight and water tight, and sound and safe, and capable of affording privacy.
"In addition to the foregoing, a dwelling unit may be found to be unfit for human habitation if there are defects therein increasing the hazards of fire, accident, or other calamities, conditions making the structure unsafe, unsanitary, or failing to provide for decent living or which are likely to cause sickness or disease."

way Department v. Harbin[3] in which it was held that a statute empowering the Department to suspend a driver's license for "cause satisfactory to the Department"[4] was not a sufficiently definite standard or yardstick to govern the Department in the exercise of its discretion.

A comparison of the language invalidated by the court in the instant case with that used in the statute involved in the *Harbin* case, leaves little doubt that the two cases are readily distinguishable. In the *Harbin* case the language of the statute makes no attempt to set forth a standard by which the Department is to find the "cause satisfactory to [it]." In the instant case the standard set forth in the ordinance (taken verbatim from the enabling statute)[5] to guide the commission in its determination that a dwelling is unfit for human habitation is *"if conditions existing in such dwelling or dwelling unit are dangerous or injurious to the health, safety or morals of the occupants . . . ."*[6]

That the language "conditions dangerous or injurious to health, safety or morals" is well recognized at common law as a sufficient standard or yardstick by which to measure facts, there can be little doubt. For example,

> A common or public nuisance is the doing of or failure to do something that *injuriously affects the safety, health or morals* of the public, or works some substantial annoyance, inconvenience or injury to the public . . .[7] [Emphasis added]
>
> A common nuisance is an offense against the public order and economy of the State, by unlawfully doing any act, or by omitting to perform any duty which the common good, *public de-*

3. 226 S.C. 587, 86 S.E. 2d 466 (1955).

4. "For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year." CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-172.

5. *"Standards for determining fitness of dwelling.*
"An ordinance adopted by a municipality under this chapter shall provide that a public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. The ordinance may provide additional standards to guide the public officer or his agents in determining the fitness of a dwelling for human habitation." CODE OF LAWS OF SOUTH CAROLINA, 1952 § 36-505.

6. See note 2, *supra*, 1st paragraph.

7. Commonwealth v. South Covington & C. St. R. Co., 181 Ky. 459, 463; 205 S.W. 581, 6 A.L.R. 118 (1918).

cency or morals, or the public right to life, health, and use of property requires, and which at the same time annoys, injures, endangers, renders insecure or interferes with the rights of property of the whole community, or any considerable number of persons.[8] [Emphasis added]

The same language used in other statutes has presented no difficulty for the courts in finding a sufficient definiteness to enforce such provisions:

> If it [food] contain any added poisonous or other added deleterious ingredient *which may render such article injurious to health* . . .[9] [Emphasis added]; and
> [Federal Statute][10] declares a drug to be misbranded *if it is dangerous to health* when used in the dosage or with the frequency prescribed in the labeling thereof. The words 'dangerous to health' *provide a question of fact for determination by the Court or jury and leave nothing for speculation.*[11] [Emphasis added]

Nor is it novel to delegate the administration of a standard expressed in such language to administrative agencies. For example,

> The Tax Commission is empowered to revoke any such permit where *it shall appear to the satisfaction of the Commission that immoral conditions or practices exist or conditions which tend to create or encourage immoral conditions or practices* are permitted in the place of business covered by such permit.[12] [Emphasis added]

That administrative agencies often are charged with administration of statutes in which the standard is necessarily stated in more or less general terms which can only represent an evaluation of specific physical facts, has long been recognized. For example,

> [Motor vehicle carrier certificates may be issued by the Public Service Commission] when the *public convenience and necessity* in such territory are not already being reasonably served . . . . .[13]

8. State v. Turner, 198 S.C. 499, 505; 18 S.E. 2d 376 (1942).
9. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 32-1514(5).
10. 21 U.S.C.A. 352(j).
11. U. S. v. 62 Packages More or Less of Marmola, etc., 48 F. Supp. 878, 884 (1943).
12. South Carolina Acts of 1940, as quoted in State v. Turner, 198 S.C. 499, 507; 18 S.E. 2d 376 (1942), now rewritten into CODE OF LAWS OF SOUTH CAROLINA, 1952 § 4-215.
13. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 58-1412.

[Emphasis added]; and

> The Public Service Commission is hereby . . . vested . . . with the power, after hearing, to ascertain and fix *just and reasonable standards, classifications, regulations* . . .[14] [Emphasis added]

Looking again at the language used in the stricken portion of the ordinance in the instant case, it appears that at least one court would find no difficulty in finding the language "unfit for human habitation" a sufficient standard without even having to include "if conditions . . . are dangerous or injurious to the health, safety, or morals . . ." This is particularly true when it is remembered that the case from which this quotation is taken was a criminal prosecution.

> It is fundamental that a penal law cannot be sustained unless its mandates are so clearly expressed that any ordinary person can determine in advance what he may or what he may not do under it. [Citations omitted]
>
> However, the words "good repair" have a well known and definite meaning. [Citations omitted] They sufficiently inform the ordinary owner that his property *must be fit for the habitation* of those who would ordinarily use his dwelling. *It would be difficult, if not impossible, to lay down a rule of conduct in more exact terms which would at the same time cover the varying conditions presented in each individual case.*[15] [Emphasis added]

It might be asked, what purpose did the court accomplish in striking the general provisions as it did? Is "fireplaces, flues, or other provisions for heating *to afford reasonable comfort*"[16] a more exact standard than ". . . defects therein increasing the hazards of fire, accident, or other calamities?"[17] It left the former and struck out the latter. Perhaps the offending portions of the statute would have been less susceptible to revision by the court if they had incorporated that well known legal lubricant: the word "reasonable."

The use of such language might also have satisfied the dissent,[17a] which expressed the fear that, under the ordinance even as amended by the majority, enforcement could be entirely unreasonable in its demands on the property owners.

14. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 58-111.
15. People v. Sarnoff, 302 Mich. 266; 4 N.W. 2d 544; 140 A.L.R. 1206, 1208 (1942).
16. See note 2, *supra*, § 9 C.
17. See note 2, *supra*, last paragraph.
17a. See discussion of this case in CONSTITUTIONAL LAW, *infra*.

It would seem that the striking of the general provisions which were designed to plug any loophole in the specific provisions only leaves the ordinance open to more difficulty in administration by the extent to which it invites evasion of the spirit or purpose of the legislation as compared to compliance with its specific details. A dwelling complying with the provision requiring "[i]nside running water connected to a kitchen sink, and to a lavatory or laundry sink, and to a bathtub or shower, and to a toilet, all connected to the public sewer, or other disposal approved by the City Board of Health,"[18] could have such leaks from this plumbing and be in such a state of disrepair as to constitute "conditions making the structure . . . unsanitary . . . [and] likely to cause sickness or disease,"[19] and yet escape the effect of the ordinance because the latter provision has been stricken out and therefore leaves no remedy against the conditions, provided the plumbing is "connected." But escaping the effect of the ordinance would not foreclose the city from acting to abate the nuisance[20] created by the unsanitary condition "likely to cause sickness or disease." And if the city should so choose, the abatement of the nuisance could be without first giving an opportunity to be heard[21] as is required by this ordinance where the commission's authority is exercised.

In conclusion, it would seem that the following general principle if applied to the instant case would have led the court to a more satisfactory result:

> In this connection, however, we feel that we should respond to the suggestions made in responsible quarters that the delegation of power to subordinate administrative agencies is fraught with danger, for the reason that it introduces into our system a governmental agency which may exercise some of the powers of each of the co-ordinate departments of government in combination.

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18. See note 2, *supra*, § 9 A.
19. See note 17, *supra*.
20. "A house, which from the purposes for which it is used, or the situation in which it is placed, may not be a nuisance, may become so from the negligent and filthy state in which it is kept, and when that is the ground for prosecution must be laid in the indictment." State v. Purse, 4 McCord 472, 474 (S.C. 1828).
21. This, of course, assumes that the nuisance is such as would fit within the exception noted in Morison v. Rawlinson, 193 S.C. 25, 34; 7 S.E. 2d 635, (1940) as follows: "We are not asserting that where the particular thing or the act sought to be abated is made a nuisance by statute or is characterized as such by the common law any inquiry or notice is necessary, because the question as to whether it is in fact a nuisance is already determined."

As was pointed out by Mr. Dicey,[22] there will remain two checks upon the abuse of power by administrative agencies. In the first place, every such agency must conform precisely to the statute which grants the power; secondly, such delegated powers must be exercised in a spirit of judicial fairness and equity and not oppressively and unreasonably.

The doors of the courts of this country will always stand open to any citizen complaining that he has been deprived of his constitutional rights, no matter under what form of law the deprivation has been worked. The emergence of administrative agencies will not impair or destroy the checks and balances of the Constitution. To these two may be added a third check, one which seems to us is frequently overlooked, and that is, that all of these administrative agencies are the creatures of the Legislature and are responsible to it. Consequently the Legislature may withdraw powers which have been granted, prescribe the procedure through which granted powers are to be exercised, and, if necessary, wipe out the agency entirely.[23]

22. [Footnote by the Court] Development of Administrative Law in England, 81 LAW QUARTERLY REVIEW, p. 151.

23. State ex rel. Wisc. Inspection Bureau v. Whitman, 196 Wis. 472; 220 N.W. 929, 942 (1928).