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## Administrative Law

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## ADMINISTRATIVE LAW

GEO. SAVAGE KING\*

Only four cases which might be classified under the heading of Administrative Law were decided by the court during the period of this survey. None involved any novel questions of administrative law. All were concerned with the application of well established rules to particular fact situations. In so far as consequences are concerned, the most important was *South Carolina State Highway Department v. Harbin*<sup>1</sup> in which the court invalidated the suspension of a driver's license on the basis of the Department's "point system".<sup>2</sup>

In the *Harbin* case<sup>3</sup> the court held that the statute<sup>4</sup> under which the Department had issued its regulations establishing the point system was unconstitutional in that it failed to provide a sufficient guide by which the power delegated to the Department was to be exercised. Having found that the statute in question provided for "no standard except the personal judgment of the administrative officers of the Department",<sup>5</sup> the application of the "general rule, [that] a statute which in effect reposes an absolute, unregulated and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers",<sup>6</sup> was conclusive of the result. As a guide to future challenges of legislative delegation the case offers nothing more than the court's recognition of the difficulty of formulating any precise test:

The degree to which a legislative body must specify its policies and standards in order that the administrative authority granted may not be an unconstitutional delegation of its own legislative power is not capable of precise definition.<sup>7</sup> Nevertheless, uncertainty in this area of the law would seem to be a necessary concomitance of the flexibility essential to a successful constitutional system.

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1. 86 S.E. 2d 466 (S.C. 1955).

2. The point system provided that any licensee accumulating a total of ten points was subject to having his driver's license revoked without further cause. The points were accumulated for specified traffic violations in accordance with a fixed schedule of points for each violation or warning by a patrolman.

3. 86 S.E. 2d 466 (S.C. 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. 86 S.E. 2d 466, 471 (S.C. 1955).

6. *Id.*

7. *Id.* at 470.

In affirming an order of the Public Service Commission requiring the defendant railroad to enlarge its loading platform at Lynchburg, the court, in *Atlantic Coast Line Railroad Co. v. Public Service Commission*<sup>8</sup> reiterated the rules that the orders of the commission will be set aside only when shown to be arbitrary and that its findings of fact are *prima facie* correct and will not be set aside unless clearly against the weight of the evidence.

In *Dunbar v. City of Spartanburg*<sup>9</sup> the petitioner's demand for rezoning of a certain area in the city was denied by that city's council after a public hearing. It was held that the action of a city council in refusing to amend an ordinance is the exercise of a legislative function and therefore is not subject to judicial review; no more so than would be the like refusal by the legislature to act on a similar request. The court also pointed out that the petitioner failed to pursue the remedy available to him by petition to the Board of Adjustment for an exemption from the zoning ordinance before resorting to the courts and thus was not entitled to a writ of certiorari—an application of what the court might have identified as the familiar doctrine of "exhaustion of administrative remedies".

Holding that a circuit judge had no authority to review a suspension of a driver's license which was made mandatory by a statute, in *Herndon v. South Carolina State Highway Department*,<sup>10</sup> the court revoked an order of the circuit judge permitting the licensee to drive while engaged in the performance of his duties as a laundry truck driver despite the suspension by the Department. In doing so the court held that Section 46-178<sup>11</sup> does not apply to the mandatory suspensions required by Section 46-348<sup>12</sup> and disapproved the dicta in the earlier case of *Folsom v. South Carolina State Highway Department*<sup>13</sup> which indicated otherwise.

8. 226 S.C. 136, 84 S.E. 2d 132 (1954).

9. 85 S.E. 2d 281 (S.C. 1954).

10. 85 S.E. 2d 287 (S.C. 1955).

11. "Any person denied a license or whose license has been suspended, canceled or revoked may file an application within thirty days thereafter for a hearing in the matter before a circuit judge . . . and such court or judge is hereby vested with jurisdiction . . . to determine whether the applicant is entitled to a license . . ." CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-178.

12. "The Department shall suspend the driver's license of any person who is convicted, receives sentence upon a plea of guilty or forfeits bail posted for the violation of Section 46-343 or . . . any other law . . . that prohibits any person from operating a motor vehicle while under the influence of intoxicating liquor . . ." CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-348.

13. 196 S.C. 167, 13 S.E. 2d 130, 133 (1941).