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ADMINISTRATIVE LAW

THOMAS KEMMERLIN, JR.*

Two cases, *City of Columbia v. South Carolina Pub. Serv. Comm'n*¹ and *Lominick v. City of Aiken*² involving administrative law principles were decided by the South Carolina Supreme Court during the survey period.³ These cases required no "trail-blazing" by the court and are of interest only in that they point up the confusion which exists in South Carolina in getting "out" of various quasi-judicial boards and commissions and "into" a court.⁴ With administrative agencies regulating even at the state and municipal level almost every facet of the business community and many areas of individual activity, literally from "A to Z"⁵, it is not surprising that this confusion exists. The statutes creating the various administrative agencies frequently make no provision for judicial review of the agencies' decisions⁶; when provision is made, it varies from a simple appeal⁷ to the institution of a civil action by a summons and petition naming the administrative agency as defendant.⁸

In the *City of Columbia* case the South Carolina Public Service Commission after a series of hearings issued an order allowing the Southern Railway to discontinue operating certain trains. Petitioners, taking no chance on the correct procedure to get into a court, served Southern and the Commission with a notice of

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1. 242 S.C. 528, 131 S.E.2d 705 (1963).

2. 244 S.C. 32, 135 S.E.2d 305 (1964).

3. A number of Workmen's Compensation cases arose during the survey period. These are not reviewed in this article for the reasons that none of these cases announced any significant principle of administrative law, and, in addition, they are being reviewed in another article of this Survey Issue.

4. A study of these cases and other cases in the area reveals such a lack of uniformity between the trial and appellate procedures followed before the various administrative agencies in this state as to suggest that the South Carolina General Assembly consider adopting some uniform procedure to be followed where the trial and appellate procedure is not sufficiently spelled out by the statute creating an agency, perhaps along the line of the ADMINISTRATIVE PROCEDURE ACT 60 STAT. 237 (1946), 5 U.S.C. §§ 1001-1010 (1952), or the MODEL STATE ADMINISTRATIVE PROCEDURE ACT (1946).

5. Aeronautics Commission, Barber Examiners Board, Cosmetic Art Examiners Board, on through Zoning Board of Adjustment.

6. *E.g.*, The South Carolina Board of Examiners of Public Accountants. See S.C. CODE ANN. §§ 56-3 to -26 (1962).

7. *E.g.*, The State Board of Barber Examiners. See S.C. CODE ANN. §§ 56-251 to -278 (1962).

8. *E.g.*, The South Carolina Employment Security Commission. See S.C. CODE ANN. § 68-165 (1962).

appeal from the Commission's order, a summons, a petition for a writ of certiorari, and a rule to show cause why the writ should not be granted. Petitioners brought these review proceedings in the Richland County Court. Upon that court granting the writ directing the Commission to certify and forward to the court the record of its proceedings, the Commission and Southern appealed. After observing that there was no statutory appeal from rulings of the Commission regulating railroads, the South Carolina Supreme Court considered certiorari as a method of review. The court pointed out that inasmuch as the appellate jurisdiction of the Richland County Court was by statute limited to civil appeals from magistrate's courts, it was necessary to determine whether certiorari was "original or appellate in nature," since, if it was the latter, the jurisdiction of the Richland County Court must fail. After reviewing the law of other states (the South Carolina court having never been faced before with the problem) the court ruled that certiorari was an appellate proceeding, and, therefore, reversed the county court's order granting certiorari.⁹

The *Lominick* case appears (except for the theories spun in footnote ten, *infra*) to be of interest from an administrative law standpoint only in that it joins the line of cases announcing the now elementary proposition that one must exhaust his administrative remedies before seeking the aid of a court. The city of Aiken adopted a zoning ordinance which provided that the building inspector of the city was to grant building permits when proper under the ordinance and otherwise enforce the ordinance. The ordinance further provided (a) for an appeal within ten days of the action of the building inspector by any person aggrieved by his granting or withholding of any such building permit, such appeal being to a "zoning board of adjustment" and (b) a further appeal from this board to the court of common pleas on questions of law. The building inspector upon application issued to plaintiff on October 30, 1962, a building permit to erect a drug store in an area zoned under the ordinance for "prescription shops." Certain individuals, neighbors to be to the drug store, later defendants, learned of the issuance of this per-

9. It is interesting to speculate how the court's decision would have read had the petitioners attempted to obtain review by bringing a proceeding to enjoin the enforcement of the Public Service Commission's order. It would appear that such an action would have been an "original" action, so that the Richland County Court would have jurisdiction. Of course, the difference in the scope of review which the petitioner could have obtained by injunction as compared with certiorari, had certiorari been successful, may have been a deciding factor in not pursuing the injunction route. See in this connection 2 AM. JUR. 2d *Administrative Law* § 627 (1962).

mit on November 1, 1962, well within the time for appeal to the board, but instead of appealing they voiced their grievances to the city council on November 12, 1962, as a result of which the city council on November 26, 1962, voted to revoke plaintiff's permit. Thereafter, plaintiff appealed the action of the city council to the board, which on December 26, 1962, dismissed his appeal. Plaintiff then brought a declaratory judgment action against the city of Aiken and the individuals who had complained to the city council seeking a determination (among other things) that his building permit was valid, that the city council was without authority to revoke it, and that the defendants were barred from protesting the issuance of the building permit, since they had taken no appeal to the board as provided by the zoning ordinance. One of the individual defendants counterclaimed for an injunction against erection of the drug store. The South Carolina Supreme Court, to whom the plaintiff appealed after adverse rulings by a master and the circuit court, after holding that the city council's action attempting to revoke the building permit was void, held that the defendants, having knowledge of the issuance of the permit on November 1, 1962, failed to exhaust their administrative remedies, i.e., appeal to the zoning board, and, therefore, had no standing to challenge the validity of the building permit issued plaintiff on October 30, 1962.¹⁰

10. The point was not raised in the decision, but it would appear that the defendants could have argued that the plaintiff's sole remedy was an appeal from the board to the circuit court, inasmuch as the zoning ordinance provided for an appeal from the board to the court of common pleas and the plaintiff had appealed to the board which on December 26, 1962, dismissed his appeal. Inasmuch as the ordinance apparently did not spell out the appeal procedure from the board of adjustment to the court of common pleas in detail, it is arguable that the declaratory judgment action itself was the appeal. However, since the supreme court declared the action of the city council revoking the building permit void, making the appeal to the board of adjustment in effect also a nullity, leaving plaintiff with a valid building permit at a time when no appeal could have been taken by defendants due to the passage of time from the date of original issuance of the permit, it appears that the rationale of the court's decision was based simply upon the plaintiff's right to enforce his still valid original building permit.