An Analysis of Delegation of Legislative Power in South Carolina

Dalton B. Floyd Jr.

Follow this and additional works at: https://scholarcommons.sc.edu/sclr

Part of the Law Commons

Recommended Citation

This Note is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.
LAW NOTES

AN ANALYSIS OF DELEGATION OF LEGISLATIVE POWER IN SOUTH CAROLINA

"With the growing complexity of modern life, the multiplication of subject of governmental regulation, the increased difficulty of administering the laws, there is a constantly growing tendency towards the delegation of greater powers by the legislature."¹

The foregoing is a quotation found in several South Carolina decisions. On the surface it illustrates an awareness by the South Carolina Court of problems it is facing today. There has been a tremendous growth in recent years of the administrative process. Very few individuals have been left untouched by this sudden growth whereby the average person has become affected much more by the administrative process than by the judicial process.² Accompanying this growth has been a transfer of power from the legislature to the agencies. This transfer has produced many problems, and foremost among them are the rules invalidating delegations of legislative power. The legal practitioner will be increasingly faced with problems in this field of administrative law. A thorough understanding of the "delegation doctrine" is basic to a successful handling of such cases. This note will attempt to acquaint persons with the pitfalls encountered when concerned with delegations of legislative power and the entanglements of the "delegation doctrine". An examination of the South Carolina decisions on the subject will reveal whether the holdings of the Court are in accord with the introductory quotation.

BACKGROUND AND DEVELOPMENT OF THE "DELEGATION DOCTRINE"

In order to comprehend the workings of the "delegation doctrine" an examination of the reasons suggested for the doctrine is imperative.

One of the basic cornerstones of our governmental system is a separation of powers—legislative, executive, and judicial.

² 1 DAVIS, ADMINISTRATIVE LAW TREATISE § 1.02 (1958).
Frequently this separation is given as a reason for the "delegation doctrine." All agree that a needed function is served by this rule; however, the separation is not, and from the nature of things cannot be total.\(^3\) It has been suggested that the true effect of the rule is only that those powers definitely assigned to one branch are non-delegable, leaving the remaining functions free to be delegated.\(^4\)

Another reason suggested as a basis of the "delegation doctrine" is the maxim, "delegata potestas non potest delegari," which means that an agent cannot transfer his delegated authority to another, it being a trust or confidence reposed in him personally. Over the years the meaning of the word "agent" has been stretched to include the legislature, thus resulting in the maxim being used as a reason for invalidating delegations of legislative power. Of Roman origin, it has attained in American law the dignity of a constitutional law principle. However a critical analysis of the maxim has shown that "the whole doctrine, insofar as it is asserted to be a principle of constitutional law is built upon the thinnest of implication, or is the product of the unwritten super constitution."\(^5\) Even though the basis of the maxim has been severely questioned, a number of courts continue to cite it as the chief reason for their application of the delegation doctrine. Authorities today feel that the origins of the maxim can hardly help solve twentieth century problems of delegation.\(^6\)

A third reason for the doctrine is the idea that the function of legislating has been entrusted and referred to the legislators by the people as a trust or mandate to be personally exercised by them. This principle developed separately and at a later date than did the maxim, but for all practical purposes the same result is reached. In either case the idea of delegation is inconsistent with, and in direct opposition to these principles.

South Carolina courts have not lingered over, or delved very deeply into the origins or reasons behind the non-delegation of legislative functions doctrine. Instead, our Court has relied on noted constitutional law authorities and accepted as a long

---

6. 1 DAVIS, ADMINISTRATIVE LAW TREATISE, § 2.02 (1958).
standing rule of constitutional law the doctrine that legislative power cannot be delegated. In the leading case of State ex. rel. Richards v. Moorer\(^7\) the court stated it is a primary principle that in our system of government the legislative, executive, and judicial departments must be kept separate and independent. The Court then quoted with approval the following quotation from Cooley's Constitutional limitations:

One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made, until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high perogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved; nor can it substitute the judgment, wisdom, and patriotism of any other body for those for which alone the people have seen fit to confide this sovereign trust.\(^8\)

Therefore, South Carolina, along with other jurisdictions, took the doctrine as being a long standing rule, and applied it in subsequent cases without an inquiry into the reasons or origins of the doctrine.

It is believed that the question of delegation of legislative power was first raised in The Brig Aurora,\(^9\) an 1813 U. S. Supreme Court decision; however the case does not support the proposition that legislative power cannot be delegated. It decided only that a statute enacted by Congress should become effective upon the happening of a future contingency, in this case the issuance of a proclamation by the President of the United States. The most celebrated of the early decisions involving this point was Locke's Appeal,\(^10\) decided in 1872. The question involved was whether to allow the voters to vote on a question of granting licenses to sell intoxicating liquors. The court in Locke's Appeal stated: "that a power conferred

\(^7\) State ex rel. Richards v. Moorer, Supra note 1.
\(^8\) Id. at 469; See Vesta Mills v. City Council, 60 S.C. 1, 38 S.E. 226, 228 (1901) where Court relied on same quotation.
\(^9\) The Brig Aurora, 7 Cranch 382, 3 L. Ed. 378 (U.S. 1813). See also Wayman v. Southard, 19 Wheat. 1, 6 L. Ed. 253 (U.S. 1825).
upon an agent because of his fitness and the confidence reposed in him cannot be delegated by him to another, is a general and admitted rule. Legislatures stand in this relation to the people whom they represent. (Application of the maxim, 'delegata potestas non potest delegari'.) Hence it is a cardinal principle of representative government, that the legislature cannot delegate the power to make laws to any other body or authority."¹¹ Early S. C. decisions rely heavily on this and other quotations from Locke's Appeal as a basis for their decisions and as authority for the principle that legislative power cannot be delegated.¹²

In an effort to reconcile the "delegation doctrine" with the decisions where delegations were upheld, the courts first began to draw a distinction between the power to make the laws and the subsidiary power to fill up the details. A difference was found in the legislative power and the exercise by an agency of authority and discretion to be exercised under and in pursuance of the law, and in the execution of it. However, if we subject these distinctions to a close examination we can readily see that administrative agencies determine what the law shall be every day. The Federal law has long recognized the fallacy in such reasoning.¹³ A few state courts have also recognized this truth. In a 1923 opinion the Wisconsin Court stated, "It only leads to confusion and error to say that the power to fill up the details and promulgate rules and regulations is not legislative power."¹⁴ South Carolina, as has the majority of states, continued to cling to this meaningless distinction and utilized it as a basis of sustaining delegations of legislative power. In Port Royal Mining Co. v. Hagood we find this often quoted statement from Locke's Appeal:

Then the true distinction, I conceive, is this: the legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things, upon which the law makes or intends to make, its own action depend. To deny this

¹¹ Id. at 494
¹⁴ State ex rel. Wisconsin Inspection Bureau v. Whitman, 196 Wis. 472, 220 N.W. 929, 941 (1928).
would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law making power, and must, therefore be a subject of inquiry and determination outside of the halls of legislation.\textsuperscript{15}

The same result is reached in phrasing the distinction this way:

The true distinction is between the delegation of power to make the laws, which involves discretion as to what the law should be, and conferring an authority or discretion as to it execution, to be exercised under and in pursuance of the law.\textsuperscript{16}

Although the idea of "filing up the details" still persists as a means of validating a delegation, in recent years the success or failure of a delegation of legislative power has hinged on the finding by the court of a sufficient "standard" to guide the administrative action. Increasingly, the courts have required that the legislative body state a "standard" to guide the agency in its work, and the attempted delegation will be held to be unconstitutional if this has not been done.

In a 1955 decision, Justice Oxner speaking for the court in a unanimous opinion said, "it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform."\textsuperscript{17} And in the recent case of Cole v. Manning\textsuperscript{18} which was filed May 3, 1962, both the majority opinion and dissent adopt the principle requiring standards.

Although this sounds simple enough, problems arise when we try to fit this to an actual situation and determine if the language used in the statute constitutes a sufficient standard. Our dilemma is increased when we turn to the cases and seek to fit our wording into what the court has held to be a valid standard.

\textsuperscript{15} Port Royal Mining Co. v. Hagood, \textit{supra}, note 12 at 524.
\textsuperscript{17} South Carolina Highway Dep't v. Harbin, 226 S.C. 585, 544, 86 S.E.2d 466 (1955).
\textsuperscript{18} Cole v. Manning, 125 S.E.2d 621 (S.C. 1962).
An analysis of the South Carolina decisions later on in the article will help clarify this situation. At this point it is only necessary that we recognize the existence of such a requirement.

It becomes helpful now to take a look at the federal law on the subject of delegation. As we shall discover, it has progressed far more rapidly than state law, and is perhaps twenty to thirty years ahead in its development on the subject of delegation. Early opinions of the U.S. Supreme Court were filled with statements such as this one found in a 1932 decision: "That the legislative power of Congress cannot be delegated is of course, clear." A number of these older decisions also contained much reference to, and emphasis on, the necessity of "standards." A statement of the court in the Rock Royal case illustrates this: "Each enactment must be considered to determine whether it states the purpose which Congress seeks to accomplish and the standards by which that purpose is to be worked out with sufficient exactness to enable those affected to understand these limits."20

Regardless of the repeated reference to "standards," only in three cases has the United States Supreme Court invalidated Federal Statutes for lack of standards or improper delegations of legislative authority. In more recent times the Supreme Court has abandoned all talk of standards and federal law and practice today is in accord with a 1940 statement of the Supreme Court: "Delegation by Congress has long been recognized as necessary in order that the exertion of

---


Attention should be given to the application of the delegation doctrine in the civil liberties field. Kent v. Dulles, 357 U.S. 116, 2 L. Ed. 2d 1204 (1958) hinted the delegation doctrine might be used in this area. In that decision the Court held the Secretary of State was not delegated by Congress, unbridled discretion to grant or withhold a passport from a citizen for any substantive reason he might choose. The Court in effect said that where such important personal rights and liberties are concerned the delegation by Congress should be specific and not vague. Also See Green v. McElroy, 360 U.S. 474, 3 L. Ed. 2d 1377 (1959) for an application of the Kent v. Dulles idea.
legislative power does not become a futility."22 Numerous cases have upheld very broad standards and several cases have upheld delegations without any standard or intelligible principle explicitly stated in the statute.23 In direct contrast to this, South Carolina, along with the majority of other states, has continued to hold fast to the "delegation doctrine" and the requirement of standards. Even as late as May, 1962, our court cited with approval a statement from an 1892 federal case, Field v. Clark,24 for the proposition that legislative power cannot be delegated.25 One cannot but question this adherence to the doctrine. As we have seen earlier, agencies do, in effect, make law and exercise legislative power. The reason given for requiring standards is that the administrative agency or official will have a guide to follow in the action taken, so that discretion will not run uncontrolled, end in arbitrariness or substantially deviate from the statutory purpose. Are not other methods available which will accomplish the same purpose equally as well, if not better? Other means of control include (1) requirement of procedural safeguards, (2) legislative supervision and (3) judicial review.26 It is certainly true that some means of control is more necessary on the state level than the federal level. This is due to the various fields state law has to regulate, direct effect on a person's earning of a livelihood, petty officials often times entrusted with administration, and the legitimate fear of unfair and discriminatory administration. The following discussion will attempt to give some meaning and understanding to the various facets of the problem as expressed in South Carolina, with emphasis on the interpretation our court has given the "delegation doctrine," and with suggestions of possible alternative methods of dealing with the problem.

23. Fahey v. Mallonee, 332 U.S. 245, 91 L. Ed. 2030 (1947); St. Louis, I. M. & S. R. Co. v. Taylor, 210 U.S. 281, 52 L. Ed. 1061 (1908); American Trucking Ass'n. v. United States, 344 U.S. 298, 97 L. Ed. 337 (1953) is perhaps the best example here. The Court upheld the ICC's issuance of rules which changed certain leasing practices by the motor carriers where standard rules was present. See 1 DAVIS, ADMINISTRATIVE LAW TREATISE §§ 2.01-2.04 (1958) for a complete discussion of present day Federal law.
26. 1 DAVIS op. cit. supra note 6, § 2.08.
South Carolina Cases Analyzed

Having seen the courts’ attitude toward delegations of legislative authority, we are now faced with the task of examining the holdings of cases where this obstacle has been raised. The court is armed with the propositions that (1) legislative power cannot be delegated, (2) that filling up the details or acting under and in pursuance of the law is not exercising legislative power, and (3) that any delegation must be accompanied with standards to guide administrative action. The court in almost every decision uses these legal clichés, accompanied by citation of authorities, in decisions where the delegation is found to be either valid or invalid. Complete confusion results when we adhere strictly to these statements in an attempt to examine and analyze these decisions. Therefore in order to facilitate the study of these cases, they have been classified into groups according to the interest involved. It will become apparent as we go along that different considerations come into play according to the type of interest involved, whether it be a general economic regulation or the licensing of a profession. These considerations, more often than not, are the deciding factors in the cases and the legal clichés are only pegs which the court uses to hang its decision upon.

Licensing of trades and professions

In this area we must be aware of the fact that a person’s livelihood is at stake. Many times the refusal of a license or the revocation of a license may result in extreme hardships and often times is fatal. Coupled with this the fact that the examining board is normally made up of members of the profession, thus giving an ideal opportunity for arbitrary discrimination, we can see why the judiciary tends to be skeptical and look more closely at these types of delegations. In State v. Ross,27 a 1937 decision, the defendant was tried and convicted of operating a business of cosmetic art without the required license. The defendant attacked the constitutionality of the act under which she was tried and convicted. As one ground of attack Mrs. Ross alleged that the act, which regulated the occupation of hairdressers and cosmetologists, delegated legislative powers to the Board of Cosmetic Art Exam-

27. State v. Ross, 185 S.C. 472, 194 S.E. 439 (1937); See Assáid v. City of Roanoke, 179 Va. 47, 18 S.E.2d 287 (1942); where a delegation was found invalid specifically because of failure to provide notice and hearing.
iners. The court made no mention of “standards,” but immediately stated that legislative power could not be delegated. In order to by-pass this obstacle the court quoted this statement from Locke’s Appeal:28 “The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.” The court felt the Board was performing “only acts of executive administration which are in no sense legislative.”

Yet as we have seen, in actuality, the promulgation of rules and regulations is “making law.” Could not the delegation have been just as easily found invalid by use of these legal clichés? The answer without hesitation is yes; but if we look behind these statements to other considerations we find strong support for the holding. The act provided for adequate procedural safeguards, notice and hearing, and a right of judicial review was granted. Therefore it is evident that very good protection was provided against arbitrary action. True, the court rendered the right decision, but this fails to excuse its use of the “legal clichés” as a basis for its decision. The emphasis should have been placed where it belonged—on the provision for judicial review and procedural safeguards.

The next case we shall consider could fit easily into several classifications, but due to the power of revocation involved it is better dealt with in this area. The case in question is South Carolina Highway Department v. Harbin,29 decided in 1955. The Court was reviewing an order of the circuit court setting aside and declaring null and void a suspension by the Highway Department of the driver’s license of the defendant. The Highway Department had suspended the license because the defendant has accumulated a total of 12 points, which according to the Department’s “point system” called for suspension if recommended after interview of the defendant by the Department. Although not expressly authorized by the statute to set up a “point system,” the Department did so in reliance on the broad authority to suspend or revoke licenses for a period of not more than a year for any cause it deemed satisfactory,30 together with the authority to promote rules and regulations for the administration and enforcement of the

The court concluded that the Department was without authority to adopt the "point system" because the provision of the statute authorizing the Department to suspend or revoke a driver's license for "cause satisfactory" to it was an unconstitutional delegation of legislative authority. In reaching this conclusion the court, speaking through Justice Oxner, accepted and applied with full force the "standards" test. According to several noted authorities, this was an excellent illustration of what's wrong with the "standards" test. The court again stated that legislative power could not be delegated, but they recognized that an administrative agency may "fill up the details." The court in setting out the requirement of standards or an intelligible principle, applied the requirement to the instant case as follows: "When the authority of the State Highway Department to suspend or revoke a license for any cause which it deems satisfactory is considered in the light of the foregoing principles, said provision must be declared invalid as an unlawful delegation of legislative power. It sets up no standard to guide the department and contains no limitations. As a general rule, "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." Certainly by reading the statute as a whole we can find a standard, as counsel for the Department contended. An obvious limitation is found in Section 56-174(3) in the language, "for cause satisfactory" to the Highway Department. The Court took pains to point out that a license to operate a motor vehicle is but a mere privilege as opposed to a right. Although the reasoning is doubtful, there is authority to the effect that the label "privilege" is enough to justify arbitrariness. Or as phrased by a Washington court, "Where the statute deals only with a privilege which the state is free to withdraw completely at any time, the courts are less strict in the application of the dele-

32. 1 Davis, Administrative Law Treatise § 2.11 at 123 (1959). Professor Davis uses the Harbin case as illustrating a misuse of the "mumbo-jumbo" required by the standards principle. He felt that the delegation should have been upheld. See also an article by Professor Earnest L. Folk III of the University of South Carolina Law School found in 13 S.C.L.Q. 414 at 425 n. 39. The article is entitled, Some Developments in Administrative Law: A Comment on Davis, Administrative Law Treat.
gation principle than where the statute affects an established personal or property right."\(^{34}\) One Court has even gone so far as to say that discretion relating to a privilege may be an "arbitrary discretion".\(^{35}\) Certainly the fact that the Court was dealing with a "privilege" did not make their case against a valid delegation any stronger.

As pointed out earlier, there is a legitimate sensitivity by the courts in this area due to the loss of livelihood possibility and the fear of arbitrary administration. However, in this instance, administration was being handled by a regularly constituted agency, procedural safeguards were present including notice and administrative interview, and all this was followed by a judicial hearing. This would seem to tip the scales in favor of upholding the delegation. It is doubtful whether any further protection would have been obtained by the inclusion of a standard. Professor Davis sums it up very well in this statement, "The fault lies not with the South Carolina Court for failing to inquire into the practical consequences of a decision either way; the fault lies in the general doctrine that some mumbo-jumbo must go with each delegation of legislative power, and that the courts will refuse to supply the mumbo-jumbo."\(^{36}\)

**Power affecting the use of real property**

Any delegation in this area will be closely and carefully scrutinized. The reason is obvious. It is simply that throughout the history of the common law the courts have been very zealous toward protecting the property rights of land owners. This sensitivity has colored decisions involving delegations which affect the use of real property. As one writer aptly put it, it is an occasion when "judicial nerves tingle."\(^{37}\) South Carolina has several decisions in this area. A city ordinance requiring the alteration, repair or destruction of houses deemed unfit for human habitation was the focal point of *Richards v. City of Columbia*, a 1955 decision.\(^{38}\) The ordinance

\(^{34}\) Senior Citizens League v. Department of Social Security, 38 Wn. 2d 142, 765, 228 P.2d 478, 491 (1951). For authority in S. C. see Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889). A discussion on this case will follow later in the article.

\(^{35}\) Blackman v. Board of Liquor Control, 95 Ohio App. 177, 182, 113 N.E.2d 893, 895 (1952).


\(^{37}\) Davis, *op cit. supra*, note 6, § 2.11 at 125.

was upheld except certain portions of section nine,\textsuperscript{39} which the Court struck out as not containing a sufficiently definite standard or yardstick to guide the commission in its determination that a dwelling is unfit for human habitation. The Court relied on the \textit{Harbin}\textsuperscript{40} case as authority for this holding. As pointed out earlier, there was a standard present in the \textit{Harbin} case, and in the instant case there also seems to be a sufficient standard, because the commission was to declare a dwelling unfit for human habitation only "if conditions existing in such dwelling or dwelling unit are dangerous or injurious to the health, safety, or morals of the occupants . . . ."\textsuperscript{41} The Court relied so strongly on \textit{Harbin} they failed to state any reasons for requiring a standard. Again we are faced with the Courts blind adherence to the standards test. Not only was a standard present to offer its limited protection, but procedural safeguards (notice and hearing) were also present to guard against any arbitrary action. Certainly the application of the standards requirement in this instance resulted in a destruction of the true objective, which is primarily

\textsuperscript{39} Section 9. Standards of Dwellings or Dwelling Units Fit for Human Habitation. The Commission and/or the Rehabilitation Director may determine that a 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.

\textsuperscript{40} 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.

\textsuperscript{41} 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.

[The italicized portions were the part struck out by the Court.]

\textsuperscript{40} See 9 S.C.L.Q. 2 (1956) for a critical discussion of this case by Professor George Savage King in his survey article on administrative law.
the prevention of arbitrariness. Rationalization of this decision can only be accomplished by contributing such a result to the sensitive feeling toward real property held by the Courts.42

In Henderson v. City of Greenwood43 and Goodale v. Sowell44 we see again this sensitivity come to the fore. In both cases the Court was concerned with the ease with which landowners were deprived or restricted in the use of their property. In neither case was the delegation of legislative power a crucial issue. In Henderson v. City of Greenwood a city ordinance forbidding erection of a building within 200 feet of railroad crossing without special permission of city council was held unconstitutional as being unreasonable. The plaintiff's use of his property was subject to the absolute, undefined, and uncontrolled discretion of the city council. The statute at issue in Goodale v. Sowell exempted certain portions of Chesterfield County from operation of the general stock law, requiring residents within the exempted sections to build and keep in good repair a fence along the lines described therein. The Court found that portion of the statute unconstitutional as a taking of private property without compensation and without consent. It was likewise unconstitutional in that "it conferred upon the commissioners . . . arbitrary powers of discrimination."45 Attorneys should be conscious of this sensitivity when concerned with delegations in this area.46

42. For a South Carolina decision in this area pertaining to zoning see Momeier v. John McAllister, Inc., 203 S.C. 353, 27 S.E.2d 504 (1941), where the Court upheld the discretion given the Board of Adjustment by the city ordinance as being only administrative in character, relating to the execution of the ordinance, to be exercised under the pursuance of the law, rules, and standard set forth.
45. Id. at 525.
46. Worthy of mention at this point is the recent case of Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 112 S.E.2d 743 decided September, 1961. The Supreme Court there upheld the circuit court's order that the land undertaken to be condemned in fee by the Electric Co., was reasonable and necessary for the construction and operation of a generating plant. The attack was predicated upon an unwarranted delegation of the power of eminent domain to a private utility. By Code of Laws of South Carolina § 24-12 the Legislature has expressly delegated to the defendant co. and all other similarly engaged the power of eminent domain. The opinion contains the following language: "... In the exercise of that power those to whom it has been delegated represent the sovereignty of the state, and are empowered to decide, subject only to supervision of the courts to avoid fraudulent or capricious abuse, what and how much land of the citizens they will condemn for their purposes." See also Bookhart v. Central Elec. Power Co. Co-op., 222 S.C. 289, 72 S.E.2d 576 (1951).
Power affecting the public health, safety, morals, and welfare

The general rule, as we have seen, is that statutes or ordinances which confer discretionary authority without having laid down rules for guidance may be successfully attacked on the ground that they confer undefined, uncontrolled, and arbitrary powers rendering them invalid. However, over the years an equally well settled exception to this general rule has developed, "where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety, and general welfare."47 Thus the ordinary rule requiring standards, which has been accepted in South Carolina, is relaxed somewhat when concerned with an exercise of the police power.

In City of Darlington v. Stanley48 decided July, 1961, the Court was squarely faced with this problem. The City of Darlington had an ordinance prohibiting the staging of a parade or a procession on the streets without a permit. Appellants were convicted in the Municipal Court of Darlington for violating this ordinance. On appeal the ordinance was attacked as being unconstitutional in that it fixed no standard or guide for the granting or denial of a permit, and left the matter to the uncontrolled will of the City Council. In a unanimous decision the Court held the ordinance constitutional. This decision was reached by applying the foregoing exception. But the Court in its application of the exception seems to go much further than necessary. No standard or guide in the statute was found, but instead, the Court had to rely on implicit standards. In the opinion of the Court we find the following language: "The standard to be applied is obvious from the purpose of the ordinance. It would be of little or no value to state that the standard by which the City Council should be guided is the safety, comfort and convenience of persons using the street. That is already implicit in the statute as we see it."49 Yet in Section 2 of the ordinance we find that the permit is to be issued "subject to the public convenience and public welfare". (Emphasis added).50 Standards such as these have long been held adequate.51 This certainly was a huge

47. Annot., 92 A.L.R. 400 at 410.
49. Id. at 147.
50. Id. at 143.
51. The United States Supreme Court has held adequate, standards including "public interest," New York Cent. Sec. Corp. v. United States,
step to take if we consider the attitude of the Court in the Harbin case and their refusal in that instance to look beyond the narrow section in question to find a standard. The only explanation given by the Court for this sudden liberalism is necessity: "It clearly appears that it would be practically impossible to formulate in an ordinance a uniform plan or system relative to every conceivable parade or procession." The motivating reason is more likely the fact that we are concerned here with an exercise of the police power for protection of the public health, safety, morals, and welfare. This clearly illustrates the reason for an analysis of the case according to the interest involved, and for not relying completely on the "legal clichés" used by the Court. The reasons for the holdings go much deeper.

In a decision filed August 20, 1962, the Supreme Court in an analogous situation found the ordinance in question unconstitutional. The case was City of Florence v. George. Thirty four appellants (all of whom were Negro high school students) conducted a parade upon the city streets of Florence and were convicted of violating a city ordinance which prohibited the staging of any parade upon the public streets of the City of Florence without first obtaining a permit from the Chief of Police. The case received wide publicity due to its civil rights overtones. The attorneys for the City of Florence contended that the exception which the Court had applied in the Stanley case applied here. Associate Justice Bussey, speaking for the Court, replied: "Here, the ordinance is completely devoid of any language which would warrant the Court in drawing any implication therefrom in favor of its constitutionality. Without any preamble, explanation or qualifying words whatsoever, it vests the absolute control of parades in the Chief of Police of the City. The ordinance in the Stanley case contained a full and comprehensive preamble as to the purpose of the ordinance; required an application which would contain various pertinent information which would be needed

287 U.S. 12, 77 L. Ed. 138 (1933); "public convenience, interest, or necessity" Federal Radio Comm' n v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 286, 286, 77 L. Ed. 1166 (1933). Among the many state decisions see State ex rel. Oregon Railroad & N. Co. v. Railroad Commission, 82 Wash., 17, 100 Pac. 179 (1909), where "just, fair, & reasonable" was considered a proper standard.

52. South Carolina Highway Dep't v. Harbin, supra note 29.
by the municipality in order to intelligently grant permits in keeping with the municipality's right to control parades in consideration of and relation to other proper uses of the streets; and provided that 'the mayor or city council shall, in its discretion, issue such permit subject to the public convenience and welfare.'\textsuperscript{55} Justice Bussey is quite correct in the differences he draws between the two cases. Obviously, his concern is over the uncontrolled discretion given the Chief of Police. He feels, and quite correctly so, that no protection is given against arbitrary action. Our disagreement is over the means of preventing such arbitrariness. It is submitted that the problem would have been the same had the ordinance included the vague words called "standards." True protection could be obtained much better through the use of procedural safeguards and in various outside checks and supervision upon discretionary power.\textsuperscript{56} The decision reached is a correct one, but the weakness is in the emphasis placed upon standards and in a failure to examine the other methods affording a better protection against arbitrariness.

Also falling within this area is the interesting case of \textit{Kirk v. Board of Health}.\textsuperscript{57} Here the Board of Health of the City of Aiken reached the conclusion that Mrs. Kirk, a resident of the City, was afflicted with leprosy, contagious in its nature, and passed resolutions requiring her to be removed to the city hospital for infectious diseases. The municipal Boards of Health derive such authority for Article 8, Section 10 of the State Constitution and from Section 1099 of the South Carolina Code of Laws. The Court, without hesitation, declared this was not a delegation of legislative power, "it is merely the providing of the agency for carrying out the legislative enactment."\textsuperscript{58} We can rationalize this case by an awareness that the rules are relaxed when the power concerned is an exercise of the police power for the protection of the public health, safety, morals, and welfare.

This area also encompasses statutes which pertain to alcoholic beverage manufacture and distribution. In 1946, in the case of \textit{Davis v. Query},\textsuperscript{59} the Supreme Court held that the Alcoholic Beverage Control Act under which the State Tax

\textsuperscript{55} Id. at 9.
\textsuperscript{56} See 1 DAVIS, \textit{Op. cit. supra} note 6, § 2.09.
\textsuperscript{58} Id. at 378.
Commission was given authority to pass reasonable regulations for the manufacture, possession, transportation and use of alcoholic liquors was not unconstitutional as a delegation of legislative authority to the Commission. "A legislative body may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations to promote the purpose and spirit of the legislation and to carry it into effect." The Court found that "equitable distribution" was an adequate standard. This holding coincides with the decisions of the majority of states on this subject. Although chief reliance was placed on the overworked standards test and its group of legal clichés, the recognition by the court of the increasing necessity for delegation in this modern age was quite enlightening: "The practical side of the problem is very apparent. The General Assembly meets once a year, the commission constantly. Equitable distribution may require one rule of conduct by the liquor dealers one month and another the next. Hence the situation requires a flexibility of control which is not possible under the rigidity of legislative acts."

Power to license the use of property

Here again we run into the feeling of sensitivity which the common law has toward the owner of real property. This feeling, when associated with delegations, has produced conflicting decisions. One of the earliest South Carolina cases in which the question of a delegation of legislative authority arose, falls in this area. Port Royal Mining Co. v. Hagood was decided in 1888. Involved was a state statute delegating to the Board of Agriculture the power to grant or to refuse licenses to mine phosphate rock in navigable streams of the state, as the Board in its discretion might deem best for the interest of the state.

60. Id. at 49-50.
62. Davis v. Query, supra note 54, at 49. Also see One Hundred Second Calvary Officer's Club v. Heise, Sheriff, 201 S.C. 68, 21 S.E.2d 400 (1942) where the rules and regulations of the State Tax Commission were held to be promulgated in enforcement of the statute, thus the Court found the delegation to be valid. The particular rules in question permitted the Officer's Club to store liquor at the Fort free of the State stamp tax. A controversy ensued when the Commission seized as contraband some of this liquor which had been temporarily taken from the premises.
64. Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1888).
The Board denied the application for license and thereupon appellant filed this petition to command the Board to issue the license. The act was attacked as delegating legislative authority to the Board of Agriculture and failing to specify a standard, thus leaving the determination of the fitness of an applicant to the arbitrary and unregulated discretion of the Board of Agriculture. The Court upheld the statute holding, "it is undoubtedly true that legislative power cannot be delegated, but it is not always easy to say what is and what is not legislative power, in the sense of the principle. . . . While it is necessary that the law itself should be full and complete as it comes from the proper law-making body, it may be, indeed, must be, left to agents in one form or another to perform acts of executive administration, which are in no sense legislative." 65 As to the standards requirement, the Court decided that a license to mine in a navigable stream was in the nature of a special privilege, and subject to absolute control. In other words the Court is saying that when a special privilege is involved the legislature may give uncontrolled discretion to the State Board and require no standard. At one point the Court said, "It seems to us that it would be difficult to frame an act giving larger powers of discretion." 66 This is a highly questionable ground for disposing of the standards requirement. The mere fact that we are dealing with a privilege gives us no license to do with it as we please. One can partially understand why no standard is required when the licensed use may promote immorality as in the case of a pool room, 67 but in the instant case no immorality was present. Our quarrel with standards has been because of its questionable ability to combat and protect against arbitrariness, although it does, at times, give some protection. The view espoused in this case would even do away with that limited protection. We can find comfort in the fact that the trend today is to treat everyone fairly. No case in South Carolina has been found where this principle was later applied or even suggested.

65. Id. at 525.
66. Id. at 524.
67. See State v. Sherow, 87 Kan. 235, 123 Pac. 866 (1912) where it has been held that a statute authorizing township boards to license billiard, pool halls, and bowling alleys is not unconstitutional on the ground that it grants an arbitrary and uncontrolled discretion to such township boards.
The remaining South Carolina case which falls in this area is Schloss Poster Advertising Co. v. City of Rock Hill, 68 decided in 1939. The Court held invalid a municipal ordinance which made it unlawful to erect and maintain billboards facing on a public street or other public place without a permit. Mr. Justice Fishburne, speaking for the Court, felt that the ordinance committed "to the unrestrained will of the authorities, for any reason deemed satisfactory to them, the right and power to absolutely prohibit the use of property for the erection of billboards."69 Thus the tender feeling of the common law toward the owners of real property revealed itself.

"Ordinances which thus invest a city council with a discretion which is purely arbitrary and which may be exercised in the interest of a favored few are unreasonable and invalid."70 Such a decision has a number of factors which commend it—lack of guides or standards, no procedural safeguards, the grant of substantial power to petty political officials, and the fact that they were dealing with the real property of an individual.71 Not even the addition of some vague words called standards would have cured the defect. Cases such as this, although extreme, do point up the real danger involved and emphasize the need for protection which standards can not give. Once standards are exposed for what they really are, then perhaps delegations to regularly constituted agencies surrounded by procedural safeguards will not be invalidated because of a lack of statutory guides or standards.

General Business Regulation

Generally, it has been found that in the field of general economic regulation state decisions conform very closely to federal decisions.72 South Carolina has two interesting decisions in this area. The delegation of legislative authority was not a central issue in either of the cases. In the case of Railroad Commissioners v. Railroad Co., 73 the Court held that the statute giving the railroad commissioners supervision of the railroads was constitutional. The Court said it has long been

69. Id. at 96.
70. Id. at 97.
71. I Davis op. cit. supra note 6, § 2.10.
settled that a state legislature has the right to intrust such supervision to a Board of Commissioners. In a 1960 decision which provoked much discussion, the Supreme Court found the statute which purported to give the State Dairy Commission power to regulate retail prices was to that extent unconstitutional. Although not mentioned in the majority opinion, Justice Oxner in a lengthy dissent stated that if the legislature could control the price of milk, then, “there is no doubt that such authority may be delegated to an administrative agency provided the legislature fixes adequate standards by which such agency is to be governed or lays down a well defined and intelligent principle to which such agency must conform.”

Justice Oxner rendered no opinion on whether the standards were adequate since this was not a ground of demurrer.

Delegations which involve criminal proceedings

It is generally thought that the legislature may not delegate to an administrative agency the power to determine whether the violation of its rules is punishable or the power to create a penal sanction for the violation. But it seems established that a statute may delegate to an administrative agency the power to determine the elements of a criminal offense if a sufficient primary standard exists. The Courts, though, tend to construe and look more closely at the sufficiency of the standard in those cases where the regulations have penal sanctions. This is illustrated by the following language: “...the delegation of its power is even more extreme, for it makes it a misdemeanor for any citizen to violate any rule or regulation hereafter made by these authorities.” (Emphasis added.)

In Cole v. Manning, a very recent decision by the South Carolina Supreme Court, this very problem was presented.

Appellants had been tried and convicted with conspiracy to violate Section 55-14 of the 1952 Code by furnishing to prisoners in the State Penitentiary ten thousand tablets of amphetamine, "Pep Pills", a drug that had been declared contraband by the Director of Prisons. The appeal came up on a denial of their prayer for release after a writ of habeas corpus had been issued on their petition. Section 55-14 reads as follows:

It shall be unlawful for any person to furnish any prisoner under the jurisdiction of the Department of Corrections with any matter declared by the Director to be contraband. Matters considered contraband within the meaning of this section shall be those matters determined to be such by the Director and published by him in a conspicuous place available to visitors at each correctional institution. The violation of the provisions of this section shall constitute a felony and anyone convicted thereof shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars, or imprisonment for not less than one year nor more than ten years, or both.80

This section is part of the act establishing a Department of Corrections to carry out the policy of the state with respect to its prison system.81 The Court answered the contention that Section 55-14 was an unlawful delegation of legislative power by asserting that it was a proper delegation which did not vest the Director of Prisons with arbitrary powers. The standard found was only a general legislative policy to prohibit those things to be furnished prisoners detrimental to their welfare and the proper operation of the prison. Justice Bussey filed a strong dissent in which he concluded that the Director had unregulated discretion with no standard to guide him. He viewed the Harbin case82 as controlling.

In view of the general attitude of courts in this area coupled with views our court has expressed over the years, this decision is a surprising one. Normally, as pointed out earlier, where penal sanctions are imposed the courts require very adequate standards. In the instant case, our court found no express standard at all but relied entirely on the legislative intent, as expressed by a reading of the entire act. Possibly

80. CODE OF LAWS OF SOUTH CAROLINA § 55-14 (1952).
82. South Carolina Highway Dept v. Harbin, supra note 29.
the word "contraband" could have been considered as a standard, but as Justice Bussey points out in the dissent this is impossible because the Director declares what is to be contraband; consequently, it does not even carry its usual legal connotation. There seemed to be some confusion with those cases involving an exercise of the police power where the general rule requiring standards is relaxed. Judge Bussey's decision that the end result is control being placed in the unregulated and uncontrolled discretion of the Director of Prisons is correct. But the situation would not be greatly improved if some "mumbo-jumbo" called standards was added. Procedural safeguards and other outside administrative checks would better remedy the situation.

It is true, however, that a higher degree of performance by the legislature resulting in a better drafted statute would aid greatly in this instance in the protection needed against arbitrariness.

Interesting to note is the reference made in the dissent by Justice Bussey that "the actual crime is created by the decisions of the director in his untrammeled discretion." It is assumed that Justice Bussey is referring to that line of authority which holds that the creation of a crime is an "exclusive" function of the legislature. Since a crime is made up of the elements as well as the penalty, this view holds that when the rules and regulations of the agency provide the elements, then the violation is not made a crime solely by the action of the legislature. The fallacy in such reasoning is that the majority of jurisdictions, including the federal law, have decided that the creation of a criminal offense is not the "exclusive" function of the legislature. However a sufficient primary standard has always been required. This is where the instant case goes even further than the general rule.

83. Cole v. Manning, supra note 18 at 624.
86. This area is not to be confused with the situations where the Administrative agency is given the authority to prescribe civil sanctions. This is permissible. In such case the determination of what is a civil penalty as opposed to a criminal penalty is vital. See Stoval v. Sawyer, 181 S.C. 379, 187 S.E. 821 (1936) for a delegation of this type. The Court held there was not an unconstitutional delegation of legislative
Delegation to private parties

In the preceding discussion we have dealt with cases where the delegation was to administrative agencies. A group of similar problems are presented where the delegation is to private groups. Frequently, the Courts have said that power may not be delegated to private persons to govern other persons. In the Carter case where the United States Supreme Court held a delegation to producers and miners of coal of the power to fix maximum hours and minimum wages to be invalid, we find the following language: "The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority." But there has been no consistency in the application of this principle. Many delegations of this type have been upheld. The result is that some authorities in the field have said that the direct delegation of governmental power to private parties has become an established fact, whereas others feel the case law has not yet crystallized into any consistent principles. South Carolina has several cases on this subject worthy of examination. In the case of Willis v. Town of Woodruff an ordinance of that town purporting to grant applicant's request for a permit to build a filling station, if agreeable with other property owners, was held void as being unreasonable and discriminatory in that it attempted an improper delegation of governmental power to private citizens. In 1928 the United States Supreme Court reached a similar result in an analagous situation. The Courts seem impressed by the arbitrary power left in the hands of unofficial persons.

power when the Highway Dept. by a regulation defined the term "non-resident" in the statute.

87. This note does not attempt to cover in detail delegations to private parties, but only to lay out the general principles in this area.


90. Currin v. Wallace, 308 U.S. 1, 16, 83 L. Ed. 411 (1939); Thomas Cusack Co. v. Chicago, 242 U.S. 526, 61 L. Ed. 472 (1917); Cleveland v. City of Watertown, 222 N.Y. 159, 118 N.E. 500 (1917); Also see Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949), where the Court held that statutes providing for the electors of Charleston County to choose one of two plans for municipal government was not an unconstitutional delegation of legislative power. Laws such as this have generally been sustained. See Note, Constitutionality of the Referendum, 41 Yale L.J. 132, 134 (1931) for additional cases on this subject.


94. See State of Washington ex rel Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 73 L. Ed. 210 (1928) where the Court held unconstitutional
State v. Taylor\(^9\) is illustrative of another line of cases. The Supreme Court upheld a statute providing for a technical livestock committee empowered to promulgate and enforce rules and regulations pertaining to supervision of livestock markets, stockyards, and dealers, to prevent spread of livestock diseases. At issue was the power granted trustees and certain officers to appoint the four men comprising the committee. The court applied the rule set out in Ashmore v. Greater Greenville Sewer District\(^8\) that delegation to persons, groups, or organizations, unrelated to government of power to nominate, appoint, or elect public officers is unconstitutional as being an invalid delegation of legislative power, unless a substantial and rational relation exists between those persons and the law to be administered by the appointees or electees or to the public institution to be governed.\(^7\) The Court found a rational relation to the law to be administered. In as much as delegation to private parties in a number of situations constitutes a justifiable development, rules should be applied by the courts to prevent injustice and arbitrariness. The means for protection against arbitrariness that we have explored in examining delegations to administrative bodies would no doubt be easily applied in the field.\(^8\) It is essential that some protection be provided.\(^9\)

**Miscellaneous**

Several South Carolina cases fall outside of the areas previously discussed, yet a discussion of them is needed. Among

an ordinance prohibiting an old people's home in a zoning district without consent of a designated portion of neighbors.\(^9\)

97. Id. at 95; See Floyd v. Thornton, Sec. of State, 220 S.C. 414, 68 S.E.2d 384 (1951) where court held that statute providing that two members of board of bank control shall be appointed by Governor upon recommendation of Bankers' Association and one upon recommendation of representatives of cash depositories was not an illegal delegation of legislative power.
99. The Fair Trade laws have also been attacked on this ground. In the Old Dearborn case [Old Dearborn Distrib. Co. v. Seagram-Distillers Corp., 299 U.S. 183, 81 L. Ed. 109 (1936)] the United States upheld the validity of a non-signer provision. South Carolina in the case of Rogers Kent, Inc. v. General Elec. Co., 231 S.C. 636, 90 S.E.2d 665 (1957) held its Fair Trade Act unconstitutional as a deprivation of property without due process of law. The Court did not refer to the argument concerning unlawful delegation of legislative power.
these is the case of State ex. rel. Richards v. Moorer,\textsuperscript{100} considered by many to be the leading South Carolina decision on the "delegation doctrine." The statute being attacked was an act providing for the construction and maintenance of the state highway system. The statute provided an alternate plan for financing the highway system and gave the Highway Commission the option to choose between a state unit plan or a district unit plan of financing. It was contended that this was an illegal delegation of legislative power. The Court found the contention was without merit. The reasoning of the Court was as follows: "There is no question here of alternative laws. There is but one law, with alternative plans of financing provided for the purpose of carrying out the law. The act, as it came from the hands of the legislature, is complete in itself in form and substance. . . . The Highway Commission is given no power to add to, or to take away from the law as enacted. . . . The authority conferred upon the commission . . . is an authority or discretion as to the execution of the law, being merely a choice of method of procedure for carrying out the purpose of the Act, and is nothing more than provision for efficient execution and administration of a finished statute."\textsuperscript{101} There is nothing novel in this reasoning, but it is the first case in which our Court really took the time to examine the "delegation doctrine". References are made to a number of cases from other jurisdictions, and the South Carolina decisions up until this time were reviewed. The legal clichés we have been examining in this article received their real beginning in this case. Very few times subsequent to this did the Court ever look behind these statements to the heart of the problem. A quotation of the clichés and authorities to back them up provided a ready answer to any future contention that there was an unconstitutional delegation of legislative power.

The South Carolina Supreme Court has held in another case falling within this category that the legislature could not have delegated to a municipality the power to pass an ordinance affecting the jurisdiction of the courts of the state.\textsuperscript{102} In Ruff v. Boulware, Co. Supervisor\textsuperscript{103} an act providing for

\textsuperscript{101} State ex rel. Richards v. Moorer, supra note 79, at 484.
\textsuperscript{102} Vesta Mills v. City Council, 60 S.C. 1, 38 S.E. 226 (1901).
\textsuperscript{103} Ruff v. Boulware, Co. Supervisors, 133 S.C. 420, 131 S.E. 29 (1925).
establishment of a chain gang in Fairfield County on the unanimous written consent of the legislative delegation was held not void as an unconstitutional delegation of legislative power. In two other decisions a statute declaring that it shall be lawful for the city council of any city whose population is between two thousand and twenty thousand to establish a municipal court was upheld, as was the delegation to the court, giving them the power to declare a drainage district duly incorporated.

CONCLUSION

The tendency today is toward more and greater delegations of power to administrative bodies. In response to this trend, the South Carolina Supreme Court in particular, and the state courts in general, have failed to meet this challenge. They still adhere to the theoretical view that legislative power cannot be delegated, but realizing the practical necessity of delegations, they allow them only if accompanied by sufficient guides or standards. Most delegations are upheld. This is accomplished by finding that the power conferred is administrative and pertains only to the execution of the laws or by finding the existence of the required standard. It is submitted that an outright recognition by the Courts that agencies do in effect make law and exercise legislative power is a necessity. Certainly we will all agree that the legislature does not have a monopoly on wisdom. Yet this is in effect what we are saying by re-

fusing to admit that legislative power can be delegated. Continued adherence to this conception can only warp the view taken of delegations in the future.

By its repeated reference to the requirement of standards, our Court has failed to examine the reasons for such a requirement. The objective is primarily the prevention of arbitrariness. Standards do afford a limited protection, but protection is also obtained by procedural safeguards, administrative checks, and judicial review. More specifically, this includes a hearing with a determination on the record, adequate notice, specific findings based on sufficient evidence, requirement that findings and reasons be stated, and periodic re-examination or continued supervision by the city and state. Provisions could also be made for judicial review as a matter of right, thus assuring that the action taken would remain within statutory bounds, limiting the agency to the power to recommend or require approval after submission, or requiring the adoption of rules which would give notice to affected parties, and reduce the scope of the agencies' discretion. The doctrine functions properly when extreme situations of arbitrariness are present, but collapses when faced with delegations to regularly constituted agencies surrounded by these many safeguards. An excellent example of this latter situation is found in the *Harbin* case. In applying the doctrine to a situation as was present in *Harbin*, the reason for requiring standards is defeated. In such a case the standards requirement should be relaxed.

In defense of the doctrine it should be noted that in numerous cases invalidated for improper delegations, the legislature could have better performed the job it delegated. Also the use of the doctrine has certainly impressed the legislature with the importance of well drafted statutes. As previously mentioned, the doctrine was invoked many times where provisions for judicial review were inadequate and there was a lack of procedural safeguards. We have also failed to notice the need state courts might have for standards to guide them in their judicial review due to a lack of experience in these matters, and the degree to which state administration has become riddled with arbitrariness and misuse. Easily forgotten is the fact that the legislature has been entrusted with the job of exercising for the peoples' benefit the law making power; and they

are more responsive to the peoples' wishes because they are subject to the ballot box. At best the people have only an indirect control over the agencies. These reasons however fail to justify the action taken in many instances. If the doctrine is to be retained as a tool to be used by the courts, certain changes must be made. The court should at all times look for the true intention of the legislature and be conscious of what they are attempting to accomplish. Above all, the court should refrain from adhering to its past practice of rigid conceptualism and examine with an open mind the objectives sought.

Since these out-dated conceptions are still utilized by the courts, attorneys should be conscious of this fact and, in analyzing the cases, particular attention should be given to the type of interest involved. Often times, this will give an indication of the court's attitude in the area under study and serve to expose considerations the judiciary feels is important. With the future having in store an increasing amount of delegation problems, it is hoped the courts will re-examine this area of the law.

DALTON B. FLOYD, JR.