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Administrative Law

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ADMINISTRATIVE LAW*A. Cases*

The most important case to arise in the field of administrative law in South Carolina during the period under consideration was *Atlantic Coast Line R.R. v. South Carolina Pub. Serv. Comm'n.*¹ The facts of the case were as follows. The public service commission had granted to the Dangerous Materials Disposal Co. a "class E" certificate of public convenience and necessity to transport radioactive materials in intrastate commerce. The appellant, the Atlantic Coast Line Railroad, and several other motor lines objected to the granting of the certificate on the grounds that the motor certificate law contained in the South Carolina Code (sections 58-1401 to -1661) is an unconstitutional delegation of legislative power since there are no specific elements of proof or standards set forth for the commission to follow. The commission was empowered to issue certificates "when the public convenience and necessity . . . are not already being reasonably served. . . ."²

The appellant argued that this provision violated the holding in *South Carolina State Highway Dept v. Harbin*³ where legislation authorizing the highway department to suspend or revoke a driver's license "for cause satisfactory" was held to be an unconstitutional delegation of legislative power. The court in *Harbin* observed that the legislature may not delegate its authority to make laws when it establishes standards for the administrative agency to follow in carrying out the legislative intent. On the basis of this reasoning the court found that the power to suspend or revoke licenses for a "cause satisfactory" did not establish sufficient legislative control over the decisions of the board. However, the court also recognized that while the legislative function may not be delegated, administrative boards may be granted a certain amount of discretion, particularly in the administration of police regulations, although just how much discretion is allowed would be difficult to determine. The court apparently felt that this would have to be decided on a case by case basis. The more recent case of *Cole v. Manning*⁴ reaffirmed the view that the amount of discretion delegated to an adminis-

1. 245 S.C. 229, 139 S.E.2d 911 (1965).

2. *Id.* at 235, 139 S.E.2d at 914.

3. 226 S.C. 585, 86 S.E.2d 466 (1955).

4. 240 S.C. 260, 125 S.E.2d 621 (1962).

trative agency must depend in part on the circumstances of the particular case. Therefore, administrative agencies are recognized as having a certain amount of discretion either expressly conferred, as in the case of police regulations, or implied, as necessary to carry out the legislative intent, but such discretion must be controlled by fixed legislative standards in order to preclude any agency from wielding arbitrary power.

In applying the foregoing principles to the present case, the South Carolina Supreme Court held that allowing a determination of public convenience and necessity by the commission is not a delegation of unregulated discretion. In support of this position the court cited the ruling of the United States Supreme Court in *Federal Radio Comm'n v. Nelson Bros. Bond & Mortgage Co.*⁵ The Supreme Court there held that "in granting licenses the commission is required to act as 'public convenience, interest or necessity requires.' This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power."⁶

A secondary issue in *Atlantic Coast Line R.R.* was the claim that since no specific findings of fact were made by the commission prior to issuing the certificate the decision to do so should be set aside as unsupported by evidence. The basis for this contention was derived from the decision in *Drake v. Raybestos-Manhattan, Inc.*⁷ This case, however, dealt with workmen's compensation and a different statute was involved. South Carolina Code section 72-354 which governs the industrial commission requires such findings of fact but there is no such requirement for the public service commission although such findings might be desirable (as noted in the case of *E.L. Long Motor Lines, Inc. v. South Carolina Pub. Serv. Comm'n.*)⁸ Also, there is no constitutional requirement for such findings. The court disposed of the second question by holding that orders of the commission are presumed to be valid unless shown to be "arbitrary in the sense that no two reasonable men could differ thereabout."⁹ Furthermore, an order made pursuant to legislative authority will not be disturbed unless it is shown to be arbitrary or capri-

5. 289 U.S. 266 (1933).

6. *Id.* at 285.

7. 241 S.C. 116, 127 S.E.2d 288 (1962).

8. 233 S.C. 67, 103 S.E.2d 762 (1958).

9. *Atlantic Coast Line R.R. v. South Carolina Pub. Serv. Comm'n.*, 245 S.C. 229, 237, 139 S.E.2d 911, 914 (1965).

scious as a matter of law. A court may not substitute its own opinion for that of the commission simply because there may be a difference of opinion as to the advisability of the commission's decision. In the instant case the commission could not have made the usual findings of fact because the certificate was to establish a unique new service to fill a prospective or future need which was based on the construction of nuclear installations in various parts of the state and the prospect of nuclear vessels visiting Charleston. No other motor carrier was certified to transport radioactive materials so no finding could be made, however advisable, to determine whether "the public convenience and necessity in such territory are not already being reasonably served by some other certificate holder."¹⁰ For these reasons the court could not find as a matter of law that the commission's ruling was arbitrary or capricious.

The only other case worthy of mention in the area of administrative law was that of *Ex parte Wilson*.¹¹ This case involved the determination of the reasonableness of a South Carolina prison regulation requiring that all legal documents prepared by the prisoners be prepared in the prison "writ room" and providing for the confiscation of those legal documents prepared elsewhere. The reasonableness of the requirement that prisoners use the "writ room" was upheld in an earlier case of *Ex parte Wilson*¹² so that the unlawful collection of fees by "jailhouse lawyers" for the preparation of such documents might be prevented. In the present case the petitioner was protesting the confiscation of certain papers which he prepared in his cell contrary to the regulations. The issue, therefore, was whether confiscation of the papers was reasonably necessary for the enforcement of the writ room regulation. In holding that it was the only practical way to enforce the rule, the court observed that there was a similar regulation providing for the confiscation of legal materials prepared by the prisoners and found in their housing units at the medical center for federal prisoners at Springfield, Missouri. The court concluded that the rules in force at the South Carolina prison are reasonably incident to the proper operation of the facility and as implemented do not deprive the inmates of their rights.

10. *Id.* at 238, 139 S.E.2d at 915.

11. 242 F. Supp. 537 (E.D.S.C. 1965).

12. 235 F. Supp. 988 (E.D.S.C. 1964).

B. Legislation

No particularly significant changes were made in the area of administrative law during the 1964-65 session of the general assembly. However, there were some modifications of existing agencies and the creation of one new agency that are noteworthy.

The new agency is the Western Carolina Higher Education Commission.¹³ The commission will be composed of eight members, two each from Allendale, Bamberg, Barnwell and Hampton counties, serving four year terms. Its duties are to encourage the development of higher education including the establishment of facilities to offer freshman and sophomore college courses in the above mentioned counties. In the performance of its duties the commission is given the power to make contracts, make binding agreements, negotiate with educators and educational institutions and "generally, take such actions in its name as are necessary to secure for the respective counties and adjacent areas the educational facilities described in . . . this act."¹⁴ However, these activities of the commission will not bind the counties in any way unless there is written approval from a majority of the counties' legislative delegation. In addition, the commission may borrow funds with the approval of the legislative delegation from each county, and accept gifts, grants, or donations and hold title to real and personal property. On June 30 of each year the commission will be required to submit a report to the legislative delegation from each county accounting for all funds spent during the preceding year.

Because of the recognized need for improved traffic safety, sweeping amendments were undertaken affecting both the state highway department and the state educational finance commission.¹⁵ The state highway department is now authorized to inspect motor vehicles when there is reasonable cause to believe that the vehicle or its equipment is not in proper repair. This authority to inspect is limited to the brakes, lights, horn, tires, and windshield wipers. When any vehicle is found to be in an unsafe condition, written notice will be given to the driver and to the highway department specifying the particular repairs to be made. The repairs must be completed within ten days, after which completion a certificate of inspection and approval must

13. S.C. Acts & J. Res. 1965, p. 269.

14. S.C. Acts & J. Res. 1965, p. 269.

15. S.C. Acts & J. Res. 1965, p. 649.

be obtained from an officer of the highway department. Violations of this act will constitute a misdemeanor which may be punished by a fine of not less than twenty-five dollars or more than one-hundred dollars.

Section two of the act specifies that eye examinations will be required by the highway department of all persons seeking to have their driver's licenses renewed. The examinations may be performed by any person authorized by law to perform such examinations, and he must certify that the minimum standards of vision required by the highway department are met. However, the highway department is not authorized to require a greater degree of vision than 20/40 corrected in one eye. Where correction is necessary it will be noted on the driver's license and it will be unlawful for such person to operate a motor vehicle without the aid of such correction. A violation of this section will constitute a misdemeanor punishable by a fine of not more than one-hundred dollars or not more than thirty days in jail.

Section six of the act amends South Carolina Code section 21-839 regulating the certification of school bus drivers. The importance of this amendment¹⁵ is that examination and certification of school bus drivers will be conducted by the state educational finance commission instead of the state highway department.

Sections seven through fourteen provide for the establishment of driver education programs under the auspices of the state board of education. The board of education is authorized to promulgate rules and regulations for the establishment of driver education programs by the local school districts. Section eight defines which schools are qualified to conduct such programs, and section nine specifies the standards necessary in order for credit to be given for the course. Provision is also made for state aid in support of the program and for a method of determining its cost.

Of somewhat less significance is an act to amend South Carolina Code section 1-367 regulating the granting of phosphate mining licenses by the state budget and control board.¹⁶ The board may grant leases or licenses for such terms as are necessary, and fix the amount of royalty to be paid to the state. However, prior to the granting of a lease or license the board

16. S.C. Acts & J. Res. 1965, p. 279.

must publish notice of such application in a newspaper of general circulation within the county where the mining is to take place.

Also of comparatively minor significance is an act to amend South Carolina Code sections 56-1560 and 56-1565 relating to the license fees for the practice of veterinary medicine.¹⁷ Section one of the act gives the state board of veterinary examiners authority to set a fee not to exceed fifty dollars to accompany an application for a license to practice veterinary medicine in this state. Section two of the act provides for the collection by the board of examiners of an annual fee not to exceed ten dollars.

Of greater importance is an act to amend chapter one of title 56¹⁸ regulating the licensing of accountants.¹⁹ The basic statute remains unchanged, with the amendments serving primarily to supplement the original act by specifying in greater detail the duties and powers of the board of certified public account examiners and the standards to be applied for the certification or revocation of certification of accountants.

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17. S.C. ACTS & J. RES. 1965, p. 316.

18. S.C. CODE ANN. §§ 56-1 to -26 (1962).

19. S.C. ACTS & J. RES. 1965, p. 478.