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Due Process -- Revocation of a Driver's License Without a Hearing Under the Florida Financial Responsibility Act

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ticality of enforcing rules with more comprehensive applicability. But this approach is constricting because it focuses on who an insider *is* rather than what he *did*. Under this former approach, "any person" meant "any insider," with a narrow definition of "insider" which limited the scope of rule 10b-5. In the present case, even though the Commission mentioned the broker's "special relationship with the company"[19] in its explanation of the "any person" phrase, there is more emphasis on the "inherent unfairness" of the transaction and the exploitation of the uninformed investor than in previous cases. In the words of the Commission, "intimacy demands restraint lest the uninformed be exploited."[20]

Difficulties of enforcement may create an impasse to the expansion of rule 10b-5 to *all* who knowingly use inside information, but the greatest obstacle in the way of more stringent application to brokers seems to be the business practices of the brokers themselves. One broker has said, "a broker who never had an iota of inside information would soon find himself out of business, for the good and sufficient reason that he would know little more than his customers."[21] He also said that brokers abstain, not because of the SEC rules, but because so much of this information is false. This rationalization is no more solace to the insider's victim than is the hollow echo of *caveat emptor*. The instant decision rejects these "morals of the market place" and is a clear indication that the SEC is no longer satisfied to let brokers regulate themselves in this area.

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DUE PROCESS — REVOCATION OF A DRIVER'S LICENSE WITHOUT A HEARING UNDER THE FLORIDA FINANCIAL RESPONSIBILITY ACT

The plaintiff, an uninsured motorist, was involved in an automobile accident. He failed to comply with the provisions[1] of the Financial Responsibility Act,[2] and the commissioner[3] threatened to revoke his driver's license and registration certificate. The plaintiff sought injunctive relief to restrain the commissioner and a final decree adjudicating the act as violative of

19. Cady, Roberts & Co., SEC Securities Exchange Act Release No. 6668, at 6 (Nov. 8, 1961).
20. *Ibid.*
21. Sibley, *Fair Play on Wall Street*, New Republic, March 12, 1962, p. 18. See also Bus. Week, Nov. 14, 1961, p. 29.

1. FLA. STAT. §§ 324.051(2)(e), (f) (1961).
2. FLA. STAT. ch. 324 (1961).
3. The state treasurer, as insurance commissioner, administers the Financial Responsibility Act. FLA. STAT. § 324.021(2) (1961).

the due process clauses of both the federal[4] and Florida[5] constitutions. He alleged that the act contained no provision for a hearing before revocation of his driver's license or for a judicial appeal after revocation. The lower court granted the relief sought. On appeal, *held*, reversed: procedural due process does not demand a hearing prior to the revocation of a driver's license under the Financial Responsibility Act, but does require that a method of review be available. This review is available in the Florida courts. *Larson v. Warren*, 132 So.2d 177 (Fla. 1961).[6]

The Florida Financial Responsibility Act was passed in 1947[7] to facilitate the payment of compensation to a party whose life or property had been injured by a financially irresponsible motorist.[8] Similar statutes,[9] existing in all fifty states,[10] have been subjected to a variety of constitutional attacks.[11] However, the financial responsibility laws have been held to represent a proper exercise of the state's police power imposing reasonable regulations upon the privilege of operating an automobile.[12] A procedural

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4. U.S. CONST. amend. XIV, § 1.

5. FLA. CONST. DECL. OF RIGHTS § 12.

6. Larson v. Williams, 132 So.2d 177 (Fla. 1961) was a companion case. The only factual difference in the *Williams* case was that the plaintiff had posted the security requested by the Commissioner and was seeking its return. The constitutional issue was raised in both cases and is the issue with which this note is concerned.

7. Fla. Laws 1947, ch. 23626.

8. The purpose of the Financial Responsibility Act is stated in FLA. STAT. § 324.011 (1961). "It is the intent of this chapter to recognize the existing rights of all to own motor vehicles and to operate them on the public streets and highways of this state when such rights are used with due consideration for others; to promote safety, and provide financial security by such owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle, so it is required herein that the owner and operator of a motor vehicle involved in an accident shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges."

9. There are basically three types of financial responsibility statutes: (1) those statutes which require proof of financial responsibility as a condition precedent to obtaining a driver's license; (2) those statutes that provide for revocation of the driver's license subsequent to a judicial determination of liability, based upon the driver's involvement in a motor vehicle accident, unless financial responsibility is shown; and (3) those statutes that provide for revocation of the driver's license and registration plates upon the involvement of the driver in a motor vehicle accident which resulted in personal injury or property damage, unless financial responsibility is established. See 5A AM. JUR. *Automobiles* §§ 147, 148, 150 (1956). Florida's statute is comparable to number three above. The constitutional issue discussed in this note will be applicable only to number three above.

10. Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 307 n.24 (1950). Subsequent to this article, the remaining nine states enacted financial responsibility laws. ALASKA COMP. LAWS ANN. §§ 50-8-1 to-65 (Supp. 1959); ARK. STAT. §§ 75.1401-.1493 (1957); HAWAII REV. LAWS §§ 160-80 to-126 (1955); LA. REV. STAT. §§ 1301-10 (Supp. 1960); MISS. CODE ANN. §§ 8285-01 to-41 (1956); NEV. REV. STAT. §§ 485.010-.420 (1960); S. C. CODE §§ 46-701 to-750 (Supp. 1960); TENN. CODE ANN. §§ 59-1201 to-1221 (1956); TEX. REV. CIV. STAT. ANN. art. 6701h (1960).

11. Annot., 35 A.L.R.2d 1011, 1013 (1954): "Against claims of violation of various provisions of both state and federal constitutions, such acts have been held not to violate the equal protection clause, the due process clause, the provision against self-incrimination, and the one prohibiting imprisonment for civil debt."

12. The great weight of authority is to the effect that the necessity of alleviating the financial hardship that results to some users of the highway by reason of the financial irresponsibility of others is a compelling public interest which justifies the statutes. Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Doyle v. Kahl,

due process objection has been raised most frequently to those statutes which provide for the revocation of the driver's license prior to any adjudication of liability unless financial responsibility is established.[13] In answering this objection, the courts have been concerned mainly with the *nature* of a driver's license.[14] An overwhelming majority of the courts have held that a driver's license is a privilege granted by the state and due process does not demand a hearing prior to the revocation of that privilege under the financial responsibility laws.[15] As long as the motorist, whose license has

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242 Iowa 153, 46 N.W.2d 52 (1951); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Sharp v. Dep't of Pub. Safety, 114 So.2d 121 (La. App. 1959); Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So.2d 446 (1958); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Rosenblum v. Griffen, 89 N.H. 314, 197 Atl. 701 (1938); Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 117 Atl. 882 (1935); Commonwealth v. Koczwara, 78 Pa. D. & C. 6 (Dist. Ct. 1951); Berberian v. Lussier, 87 R.I. 226, 139 A.2d 869 (1958); Gillaspie v. Dep't of Pub. Safety, 152 Tex. 459, 259 S.W.2d 177 (1953). *Contra*, People v. Nothaus, 363 P.2d 180 (Colo. 1961).

13. Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); People v. Nothaus, 363 P.2d 180 (Colo. 1961); Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Sharp v. Dep't of Pub. Safety, 114 So.2d 121 (La. App. 1959); Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So.2d 446 (1958); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Rosenblum v. Griffen, 89 N.H. 314, 197 Atl. 701 (1938); Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935); Commonwealth v. Koczwara, 78 Pa. D. & C. 6 (Dist. Ct. 1951); Berberian v. Lussier, 87 R.I. 226, 139 A.2d 869 (1958); Gillaspie v. Dep't of Pub. Safety, 152 Tex. 459, 259 S.W.2d 177 (1953).

14. In Wall v. King, 206 F.2d 878 (1st Cir. 1953) the court stated: "We have no doubt that the freedom to make use of one's own property, here a motor vehicle, . . . is a 'liberty' . . . and liberties are not absolute. . . . What is a reasonable regulation or prohibition imposed by the state in the exercise of its police power depends very much upon the nature of the particular liberty affected." *Id.* at 882.

In Lawton v. Steele, 152 U.S. 133 (1894) a different factual situation presented the same procedural due process issue raised in the *Larson* case. The Supreme Court pointed out why the nature of the property affected was important when it stated: "If the property were of great value, . . . it would be putting a dangerous power in the hands of a custom officer to permit him to sell or destroy it as a public nuisance, and the owner would have good reason to complain of such act, as depriving him of his property without due process of law. But where the property is of trifling value, and its destruction is necessary to effect the object of a certain statute, we think it is within the power of the legislature to order its summary abatement." *Id.* at 141.

15. Escobedo v. State Dep't of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951); Ballow v. Reeves, 238 S.W.2d 141 (Ky. 1951); Sharp v. Dep't of Pub. Safety, 114 So.2d 121 (La. App. 1959); Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So.2d 446 (1958); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952); Rosenblum v. Griffen, 89 N.H. 314, 197 Atl. 701 (1938); Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935); Commonwealth v. Koczwara, 78 Pa. D. & C. 6 (Dist. Ct. 1951); Berberian v. Lussier, 87 R.I. 226, 139 A.2d 869 (1958); Gillaspie v. Dep't of Pub. Safety, 152 Tex. 459, 259 S.W.2d 177 (1953). *Contra*, People v. Nothaus, 363 P.2d 180 (Colo. 1961). The Colorado Supreme Court, in the last case, concluded that a motor vehicle is property, and that a person cannot be deprived of property without due process of law. It felt that the term property includes the right to make full use of that property which one has the inalienable right to acquire. As to whether the financial responsibility law was a valid exercise of the police power, the court stated: "the requirement . . . that the director of revenue, ' . . . shall suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident . . . ' unless such persons deposit a sum 'sufficient in the judgment of the director' . . . has nothing whatever to do with the protection of the public safety, health, morals or welfare. It is a device designated and intended to bring about the posting of security for the payment of a private obligation without the slightest indication that any legal obligation exists on the part of any person." *Id.* at 182.

been revoked because he has failed to comply with the terms of the statute, has recourse to the courts, procedural due process is satisfied.[16]

The courts have recognized the necessity for an effective method of review[17] and have indicated that the financial responsibility statutes generally provide for a right of appeal to a specified court.[18] The appeal is taken from the final order of the administrative agency, based upon evidence presented at a hearing which the statutes afford an aggrieved party upon request.[19] If, however, a statute fails to provide a specific method for review, a method must be available within the judicial structure of the state.[20] In situations in which there is no specific provision for review, the extraordinary writ of certiorari has been employed.[21] The Florida Supreme Court discussed appellate review in situations in which applicable statutes failed to provide for review in *De Groot v. Sheffield*.[22] The court indicated that in these situations, certiorari would be available to obtain review only of those administrative orders which were quasi-judicial in character.[23]

For an administrative order to be quasi-judicial, it must result from a hearing at which the aggrieved party has had the opportunity to present evidence. At the hearing, the administrative official has to have the op-

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16. Note that "judicial review" in this context does not refer to a review of the substantive matter of the statute. It refers, rather, to the review of the administrative proceedings conducted by the Commissioner. Because the statute promotes a compelling public interest, the courts concluded that it was necessary to review only those particulars wherein the Commissioner exercises some discretion. In State v. Stehlek, 262 Wis. 642, 56 N.W.2d 514 (1953), the court sanctioned the purpose of the act and then stated: "[The Commissioner's] function in carrying out the will and mandate of the legislature is purely ministerial. The legislature has factually determined and expressed that determination in the statute itself, as to when and under what circumstances a licensee shall be suspended. *There is then no need for reviewing the Commissioner's acts, unless he has deviated from the terms of the statute.* However, in those particulars where the Commissioner exercises some measure of discretion, there is provision for reviewing his acts. For example, the amount of security demanded by the Commissioner is subject to review by the court . . . ." *Id.* at 648, 56 N.W.2d at 517. (Emphasis added.)

17. The Supreme Court of the United States stated that "so long as it [the method of review] affords to those affected a reasonable opportunity to be heard and present evidence, [it] does not offend against due process." Yakus v. United States, 321 U.S. 414, 433 (1944). See cases cited note 13 *supra*.

18. See cases cited note 12 *supra*.

19. Note that generally an aggrieved party must exhaust his administrative remedies prior to seeking review in the courts. Atlantic Coast Line Ry. v. Carter, 66 So.2d 480 (Fla. 1953); De Carlo v. West Miami, 49 So.2d 596 (Fla. 1950); Morehead v. Mississippi Safety-Responsibility Bureau, 232 Miss. 412, 99 So.2d 446 (1958). *But see*, Garford Trucking, Inc. v. Hoffman, 114 N.J.L. 522, 177 Atl. 882 (1935).

20. 16A C.J.S. *Constitutional Law* § 629 (1956). Prior to 1957 a method of review by appeal was afforded an aggrieved party specifically within the Florida statute. See Fla. Laws 1955, ch. 29963, § 1, at 977. However, this section was repealed and replaced by FLA. STAT. § 324.042 (1961) which did not afford a review by appeal.

21. 14 C.J.S. *Certiorari* § 17 (1939).

22. 95 So.2d 912 (Fla. 1957).

23. "The reviewability of an administrative order depends on whether the function of the agency involved is judicial or quasi-judicial in which event its orders are reviewable or on the contrary whether the function of the agency is executive in which event its decisions are not reviewable by the courts except on the sole ground of lack of jurisdiction. In the latter event the order is, of course, subject to direct or collateral attack." *Id.* at 914.

portunity to exercise some discretion.[24] On the other hand, an order is ministerial or executive in nature when it is one that has been positively imposed by law, under certain specified conditions, and is not dependent upon judgment or discretion.[25] Under the Florida statute a party can request a hearing[26] to contest questions of fact which will determine whether or not the commissioner must revoke his license.[27] It appears, therefore, that these factual determinations, based upon evidence presented at a hearing, would be quasi-judicial and subject to review by certiorari.[28]

In the *Larson* case, the court first discussed the substantive aspects of the statute. It stated that the act, by providing financial security to those who had been injured or whose property had been damaged upon the highways, promoted public safety and was a proper exercise of the police power. On the procedural issue it concluded that when a driver's license is revoked under the Florida Financial Responsibility Act, due process is satisfied in light of the *methods* of review available.[29] In discussing these *methods* for review, the court noted that under the statute an aggrieved party can request a hearing before a deputy commissioner.[30] Directing attention to Florida Appellate Rule 4.1,[31] it concluded that certiorari is available to review the orders of the commissioner.[32] Review by certiorari is

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24. 14 C.J.S. *Certiorari* § 17 (1939). See also Neivert v. Evans, 82 So.2d 599 (Fla. 1955); Wilson v. McCoy Mfg. Co., 69 So.2d 659 (Fla. 1954); Schott v. Brooks, 56 So.2d 456 (Fla. 1952); City of Pensacola v. Maxwell, 49 So.2d 527 (Fla. 1950); West Flagler Amusement Co. v. State Racing Comm'n, 122 Fla. 222, 165 So. 64 (1935); Florida Motor Lines v. Railroad Comm'rs, 100 Fla. 538, 129 So. 876 (1930); Sirmans v. Owen, 87 Fla. 485, 100 So. 734 (1924); State v. Railroad Comm'rs, 79 Fla. 526, 84 So. 444 (1920).

25. West Flagler Amusement Co. v. State Racing Comm'n, 122 Fla. 222, 165 So. 64 (1935); First Nat'l Bank v. Filer, 107 Fla. 526, 145 So. 204 (1933); Sirmans v. Owen, 87 Fla. 485, 100 So. 734 (1924).

26. FLA. STAT. § 324.042 (1961) provides that "the commissioner . . . shall provide for hearings before a deputy commissioner or referee upon request of persons aggrieved by orders or acts of the commissioner."

27. Examples of such factual questions would be: (1) Was there any property damage and if so, did it exceed $50.00? (2) Did the accident occur on private property? (3) Is the amount of financial security requested by the commissioner reasonable under the circumstances?

28. "Any fact-finding individual, group or board created as such by lawful authority is at least acting in a quasi-judicial capacity . . . ." United States Cas. Co. v. Maryland Cas. Co., 55 So.2d 741, 745 (Fla. 1951). See cases cited note 25 *supra*. See also note 16 *supra*.

29. Larson v. Warren, 132 So.2d 177, 181 (Fla. 1961): "[I]n matters wherein exercise of the police power was involved, the due process clauses of the state and federal constitutions do not require notice and hearing prior to exercising powers conferred on the commissioner . . . so long as a method of review is provided by rules of practice and procedure in the courts of Florida . . . ."

30. See note 26 *supra*.

31. FLA. APP. R. 4.1 provides: "All appellate review of the rulings of any commission or board shall be by certiorari as provided by the Florida Appellate Rules."

32. "Review by certiorari . . . is ample to reach and accomplish any due process objection." Larson v. Warren, 132 So.2d 177, 181 (Fla. 1961). The dissenting opinion, in referring to certiorari, apparently was contemplating a method to review the commissioner's ministerial function. In this sense certiorari certainly would not be available. See cases cited note 24 *supra*. However, the majority was of the opinion that the statute represented a valid exercise of the police power and thereby eliminated the necessity of reviewing the ministerial function. See note 16 *supra*.

ample to defeat any due process objection.[33] Yet, the court proceeded to discuss what was considered a valid method of review by appeal as provided in the Florida statutes.[34] Thus, it appears that review of the commissioner's orders could be obtained *either* by certiorari, in light of rule 4.1, *or* by direct appeal via the Florida statutes.

It is submitted that the court was correct in stating the financial protection of an injured party is a proper exercise of the police power and that the statute satisfies the requirements of procedural due process. However, the purpose of the act could be better accomplished if proof of financial responsibility were made a condition precedent to the issuance of the driver's license rather than a requirement imposed upon the happening of the first accident.[35] This would eliminate situations in which motorists have suffered financially as a result of being injured by a first offender who chose to have his license revoked rather than comply with the provisions of the act.

The court's dicta regarding the *methods* available to review the commissioner's order are somewhat confusing. It has been the law in Florida that certiorari will lie only when no other method of review is available.[36] Therefore, if appeal may be had as a matter of right under the Florida statutes,[37] the court's conclusion that certiorari is available appears erroneous. However, in light of the fact that a specific provision for review by appeal in the Florida Financial Responsibility Act was repealed in 1957,[38] it is doubtful that the legislature intended review as a matter of right. It appears that it was intended that review should be by certiorari.

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33. Larson v. Warren, 132 So.2d 177, 181 (Fla. 1961).

34. FLA. STAT. § 624.0128 (1961) states: "All findings of fact, final rulings, orders, or decisions of the commissioner, shall be subject to review by appeal to the district court of appeal, first district." The commissioner referred to is the insurance commissioner, who also administers the Financial Responsibility Act. See note 3 *supra*.

35. Such statutes are presently in effect in Massachusetts and New York. See MASS. GEN. LAWS ANN. ch. 90, §§ 34A-J (1958); N.Y. VEHICLE & TRAFFIC LAW §§ 310-21.

36. Lewis v. Lewis, 78 So.2d 711 (Fla. 1955); *In re* Pennekamp, 155 Fla. 589, 21 So.2d 41 (1945); Harry E. Prettyman, Inc. v. Florida Real Estate Comm'n, 92 Fla. 515, 109 So. 442 (1926); Jacksonville T. & K.W. Ry. v. Boy, 34 Fla. 389, 16 So. 290 (1894); Mapoles v. Wilson, 122 So.2d 249 (Fla. App. 1960); Fort v. Fort, 104 So.2d 69 (Fla. App. 1958).

37. See note 34 *supra*.

38. See note 20 *supra*.