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Administrative Law -- Police Department Trials -- Question of Res Judicata

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CASES NOTED

ADMINISTRATIVE LAW—POLICE DEPARTMENT TRIALS—QUESTION OF RES JUDICATA

Defendant police officers, in a departmental hearing,[1] were acquitted of charges of accepting bribes when the principal witness refused to testify. At a second hearing, four months later, petitioners were found guilty as charged on the basis of that witness' testimony. As a result of the later decision, defendants were removed from the police force. On appeal defendants allege that the first decision was res judicata. *Held*, no strictly binding legal rule of estoppel should apply to administrative decisions, particularly where such application would preclude a decision on the merits. *Evans v. Monaghan*, 282 App. Div. 382, 123 N.Y.S.2d 662 (1st Dep't 1953).

It is a general rule that the decision of an administrative board or officer acting in a judicial or quasi-judicial capacity under the proper empowering statute has the same binding effect as the judgment of a properly-constituted court.[2] The courts agree that the ministerial or administrative decisions of a board or officer have no strict judicial finality.[3] The principal difficulty arises when the courts attempt to characterize the functions of a particular board or officer as administrative or judicial for the purposes of res judicata.[4] This tenuous classification often has most confusing results.[5]

The application of res judicata in administrative law is further

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1. Before a deputy appointed by the police commissioner, as authorized by N. Y. City Charter § 434; ADM. CODE § 434a-14.0.

2. 2 FREEMAN ON JUDGEMENTS § 633 (5th ed. 1925) and cases there cited.

3. St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 (1936); Wong Gum v. McGranery, 111 F. Supp. 114 (N.D. Cal. 1953); *In re* Whitford's Liquor License, 166 Pa. Super. 48, 70 A.2d 708 (1950); Cantlay & Tanzola, Inc. v. Public Service Comm., 101 Utah 245, 117 P.2d 298 (1951).

> While the rules that govern the finality and conclusiveness of adjudications at the common law do not apply, in the strict sense, to administrative . . . action in the Executive Departments of Government, yet in administrative action, as well as in judicial proceeding, it is both expedient and necessary that there should be an end of controversy. *In re* Barratt's Appeal, 14 App. D. C. 255, 257 (1899).

4. See Schopflocher, *The Doctrine of Res Judicata in Administrative Law*, 5 WIS. L. REV. 37-42 (1942) for a detailed discussion of this tendency.

5. Compare three of Mr. Justice Holmes' decisions: *In re* Janvrin, 174 Mass. 514, 55 N.E. 381 (1899) (rate-making is a judicial function); Prentis v. Atlantic Coast Line R.R., 211 U.S. 210 (1908) (railroad rate-making predominantly legislative); Springer v. Gov't of the Philippine Islands, 277 U.S. 189, 210 (1928) (His dissenting opinion says: ". . . The Interstate Commerce Commission does legislative, judicial, and executive acts, softened only by a *quasi* . . . we do not and cannot carry out the distinction . . . with mathematical precision . . . ." (Citations arranged chronologically to show the policy development.)

complicated by the doctrine's traditional judicial problems of jurisdiction,[6] privity,[7] and the necessity for a final[8] decision on the merits.[9] No detailed discussion of the complexities of the situation can be attempted here.[10] It must suffice to say that interpretation of the empowering statute[11] and protection of the public interest[12] are generally the best guides to the probable res judicata effect of an administrative decision.

More specifically, the removal of members of a police force is generally regarded as judicial or quasi-judicial if removal is for cause or is exercised after a hearing.[13] However, where the pertinent statute or charter permits summary discharge, the action may be considered administrative.[14] There are cases which suggest that hearings concerning the dismissal of public employees have res judicata effect[15] but ". . . the vein of authority runs very thin."[16] Indeed, what appears the most logical approach to this particular problem is found in *Handlon v. Town of Belleville*[17] which held that the civil service commission could re-examine its dismissal of a court clerk.[18]

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6. Anderson Lumber & Supply Co. v. Fletcher, 228 Ind. 383, 89 N.E.2d 449 (1950); Spurck v. Civil Service Board, 226 Minn. 240, 32 N.W.2d 574 (1948); Shires v. Reynolds, 208 Okla. 287, 255 P.2d 491 (1953).

7. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940) (decision by Bituminous Coal Commission binding on coal company in later case between company and Commissioner of Internal Revenue).

8. Hastings Mfg. Co. v. FTC, 153 F.2d 253 (6th Cir.), *cert. denied*, 328 U.S. 853 (1946) (dismissal "without prejudice" not final decision); C.G. Conn, Ltd. v. NLRB, 108 F.2d 390 (7th Cir. 1939) (dismissal with reservation of jurisdiction has no finality).

9. Oravec v. Unemployment Comp. Board of Review, 171 Pa. Super. 491, 90 A.2d 269 (1952).

10. DAVIS, ADMINISTRATIVE LAW 566 (1951).

> *Whenever the traditional rules of res judicata do not work well as applied to particular administrative action, those rules may be weakened in any desired degree without destroying the essential service of the doctrine . . . .*
> This escape from the all-or-none fallacy is fully supported in the practices of the agencies and in the holdings of the courts, although the proposition that res judicata may be a matter of degree is not articulated as such . . . .

11. Katz v. Sims, 25 N.J. Misc. 415, 54 A.2d 483 (C.P. 1947); City of Socorro v. Cook, 24 N.M. 202, 173 Pac. 682 (1918); Padian v. McAdoo, 114 App. Div. 100, 99 N.Y. Supp. 600 (1st Dep't 1906).

12. Churchill Tabernacle v. FCC, 160 F.2d 244 (D.C. Cir. 1947) (F.C.C. should re-examine each application for renewal of an old license and grant or refuse it in the public interest).

13. Swars v. Council of City of Vellejo, 33 Cal. App.2d 867, 206 P.2d 355 (1949); Borough of Jamesburg v. Hubbs, 6 N.J. 578, 80 A.2d 100 (1951); Reger v. Mulrooney, 241 App. Div. 38, 271 N.Y. Supp. 20 (1st Dep't 1934); White v. Bolmer, 223 S.W.2d 686 (Tex. 1949).

14. Barron v. Baillies, 157 Fla. 492, 26 So.2d 449 (1946); Sirmans v. Owen, 87 Fla. 485, 100 So. 734 (1924); City of Jackson v. McLeod, 199 Miss. 676, 24 So.2d 319 (1946).

15. Lillienthal v. City of Wyandotte, 286 Mich. 604, 282 N.W. 837 (1938); McAlpine v. City of Garfield, 25 N.J. Misc. 477, 55 A.2d 666 (1947); Stowell v. Santoro, 256 App. Div. 934, 9 N.Y.S.2d 866 (2nd Dep't 1939) (cited in instant case at pp. 667, 671).

16. Evans v. Monaghan, 123 N.Y.S.2d 662, 665 (1st Dep't 1953).

17. 4 N.J. 99, 71 A.2d 624 (1950).

18. In analogy to the authority of courts of general jurisdiction at common law, administrative tribunals possess the inherent power of reconsideration

The dissenting opinion in the instant case relies heavily on the decision in *Stowell v. Santoro*[19] which prevented village trustees from convicting the petitioner (police chief) of a bribery charge after a previous acquittal on the same specification. The dissenters are fearful that a grant of retrial power to the police department could result in endless vexation for members of the force. The majority of the court makes a weak attempt to distinguish the facts of the *Stowell* case but is primarily concerned with the necessity for a decision on the merits. Since *whatever evidence was offered* at the first hearing was directed to the guilt or innocence of the accused, it is difficult to support this emphasis.

However, since a court of law will relax the res judicata doctrine to further the ends of justice,[20] administrative agencies, with their greater flexibility,[21] should have the same power. Even in a criminal case, the refusal of a witness to testify may result in a mistrial so that the defendant can be retried.[22] Removal proceedings are not criminal actions,[23] although they are penal in nature,[24] and it appears illogical to extend to defendants in a departmental trial greater protection from jeopardy than a criminal proceeding might afford them. It is further suggested that ". . . in proceedings for the removal or discharge of a policeman the protection of the public is a matter of paramount importance, exceeding perhaps the individual interests of the policeman concerned."[25]

Fred Patrox

CONFLICT OF LAWS—IN PERSONAM JURISDICTION OVER NON-RESIDENT INDIVIDUALS—DOING BUSINESS TEST

Defendants, out of state owners of a Florida orange grove, listed the grove for sale with a real estate broker in Florida. In a suit for the broker's

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of their judicial acts, except as qualified by statute. This function arises by necessary implication to serve the statutory policy . . . . The denial to such tribunals of the authority to correct error and injustice and to revise its judgments for good and sufficient cause would run counter to the public interest . . . . *The power of correction and revision, the better to serve the statutory policy, is of the very nature of such governmental agencies. (Italics supplied.)*

19. 256 App. Div. 934, 9 N.Y.S.2d 866 (2nd Dep't 1939).
20. Universal Const. Co. v. Ft. Lauderdale, 68 So.2d 366 (Fla. 1953).
21. See note 10 *supra*.
22. United States v. Coolidge, 25 Fed. Cas. 622, No. 14,858 (C. C. D. Mass. 1815).
23. Sullivan v. Mun. Ct. of Roxbury Dist., 322 Mass. 566, 78 N.E.2d 618 (1948); McGillicuddy v. Monaghan, 201 Misc. 650, 112 N.Y.S.2d 786 (Sup. Ct.) *aff'd on other grounds*, 280 App. Div. 144, 112 N.Y.S.2d 792 (1st Dep't 1952).
24. Fort Wayne v. Bishop, 228 Ind. 304, 92 N.E.2d 544 (1950).
25. City of Gary v. Yaksich, 120 Ind. App. 121, 127, 90 N.E.2d 509, 511 (1950).