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Administrative Law

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ADMINISTRATIVE LAW

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During the period under survey, no significant changes have been made in the administrative process either by the Florida Legislature or the Florida Supreme Court. However, a few statutes have been enacted which are worthy of note and a few decisions have been rendered by the supreme court which reflect interesting applications of settled principles of law to particular factual situations.

Assistant Secretary of State.—In 1951,[1] the Florida Legislature abolished the office of Assistant Secretary of State, which action, from all surrounding circumstances, has been long overdue. The office of the Assistant Secretary of State was authorized by virtue of statute enacted in 1927 and was contingent for its creation upon the voluntary act exercised by the Secretary of State. According to this provision, the Secretary of State had the right to appoint an assistant to carry out his office whenever he contemplated being absent from the state capitol. In the event of such apointment the Secretary of State was completely and solely responsible for the compensation to which his assistant was entitled. This statute as constituted gave rise to the possibility of many abuses and inequities. For example, first it permitted a person selected by an appointive official to act in the high office of Secretary of State. This result has the necessary effect of removing a high official an additional step from the people. Second, this statute permitted a division of loyalty since the responsibility for the Assistant's compensation was placed upon the Secretary himself. It cannot be contested that a person's natural reaction is to be completely loyal to the person who is responsible for both his employment and compensation. When applied to the office of Assistant Secretary of State it encouraged primary loyalty to the Secretary which under certain circumstances could have been detrimental to the public. It thus appears that the abolition of the office of Assistant Secretary of State, as it was constituted, was justified in the light of surrounding circumstances.

State Planning Board.—By virtue of statute enacted in 1935[2] a State Planning Board was established for the purpose of effectuating greater efficiency through the planning and coordination of the state's economic resources. The Board's primary function was to advise and assist administrative agencies as well as the State Legislature in adopting methods and laws designed to protect the state's resources from waste due to

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1. FLA. STAT. § 15.10 (1951).
2. FLA. STAT. §§ 419.01-419.11 (1935).

inefficiency or short-sightedness. Although the basis for the Board's establishment was commendable it apparently did not function as contemplated by its creators since it was abolished by the 1951 Legislature.[3] One reason justifying its abolition was apparently its complete lack of authority to either impose its findings or carry out its conclusions based upon research and study. An additional reason which apparently justifies its abolition was the vastness of its purpose and the lack of concentration. When one considers the large number of administrative agencies in the State of Florida and the attempt of a single board to coordinate the activities of the agencies with a view to creating greater efficiency and avoiding waste, it is very easy to envision results which would not have been contemplated. Under such circumstances, however, how could a board with no authority aside from the right to investigate and report findings function properly?

Disqualifications of administrative board members.—Since June 9, 1951,[4] any member of an administrative agency in the State of Florida authorized to exercise judicial functions is subject to disqualification because of bias, prejudice, interest, or other causes which affect the fairness of administrative hearings. In the event of the disqualification of an administrative board member the Governor is authorized to appoint a circuit court judge to serve temporarily in the proceedings for which the commissioner was disqualified. This statute as enacted applies with equal force to both elected and appointed commissioners. Expressly excluded from the operation of the statute are the State Insurance Commissioner and the Commissioner of Agriculture. The effect of the statute as is evidenced by its terms is to assure by additional safeguard proper and fair administrative hearings. Administrative hearings of a judicial nature are made more alikened to judicial hearings and properly so since both have similar characteristics and have essentially the same effect. Prior to this statutory provision it was generally held that the fact that a commissioner of an administrative tribunal may be prejudiced is not in and of itself sufficient cause to overthrow an administrative ruling in the absence of a clear showing that the hearing itself was unfair. This holding placed an undue disadvantage upon the aggrieved party since it was virtually impossible for him to show unfairness of a hearing through bias of a commissioner. Since bias is a sufficient basis for disqualification of a judicial officer there is no reason or justification in drawing a distinction between a judicial proceeding and an administrative proceeding of a judicial nature. It thus appears that although a distinction once existed in Florida it has now been properly dispelled.

Regulatory administrative boards.—Although Florida does not as yet have a general administrative procedure act, it appears that a step in

3. FLA. STAT. § 419 (1951).
4. FLA. STAT. § 120.09 (1951).

that direction has been taken by the 1953 Legislature wich enacted a statute[5] creating greater uniformity among minor administrative tribunals.[6] The statute undertakes to establish a uniform system of compensation and per diem for board members included within its provisions and to require the deposit of all funds received by the board into the State Agencies' Fund. All members of the board are accorded compensation at the rate of $10.00 per day while attending official board meetings and are limited to a total compensation of $120.00 per year excluding per diem and mileage. The secretary of the board is accorded an annual salary of $1200.00 per year excluding the necessary travel expenses in the conduct of official business. The inevitable effect of this statute is to classify administrative agencies based upon the amount of services which they are expected to extend and to create uniformity insofar as it is permitted among those similarly situated.

Administrative board to handle dead bodies.—Apparently motivated by the creation of a medical school at the University of Miami and in contemplation of the formation of other medical schools in the State of Florida, the Legislature did in 1953 enact a statute[7] establishing an Anatomical Board whose members shall consist of the heads of departments of Anatomy, Pathology and Surgery of the Florida Medical Association and the Secretary of the State Board of Health. The Anatomical Board thus created is placed in charge of all unclaimed dead human bodies or those which must be buried at public expense. The board is directed to distribute the bodies proportionately among the medical and dental schools of the State of Florida for the purpose of anatomical studies only. The statute expressly precludes the board from purchasing any bodies, however, it does permit the board to accept bodies which are left to it by the provisions contained in a will.

Exhaustion of administrative remedies.—Several interesting cases concerning the administrative process have confronted the Florida Supreme Court within the last few years and although these cases have resulted in the pronouncement of well established principles of law, the application of these principles to the facts presented is of considerable interest. For example, in the case of *De Carlo v. West Miami*,[8] the Florida Supreme Court was confronted with the problem of exhausting administrative

5. Fla. Laws 1953, c. 28215.

6. Board of Accountancy, Board of Architecture, Barbers Sanitary Commission, Board of Basic Sciences Examiners, Beauty Culture Board, Board of Chiropody Examiners, Board of Chiropractic Examiners, Board of Dental Examiners, Board of Engineer Examiners, Board of Funeral Directors and Embalmers, Board of Law Examiners, Board of Massage, Board of Medical Examiners, Board of Medical Technology, Milk Commission, Board of Naturopathic Examiners, Board of Nurses Registration and Nurses Education, Board of Dispensing Opticians, Board of Optometry, Board of Osteopathic Examiners, Board of Pharmacy, Real Estate Commission, Land Surveyors, Board of Veterinary Examiners.

7. Fla. Laws 1953, c. 28163.

8. 49 So.2d 596 (Fla. 1950).

remedies before seeking judicial relief. In that case the lower court sustained a motion to dismiss filed against the bill of complaint which alleged that a zoning ordinance was invalid since it denied the plaintiff of her right to enjoy property as guaranteed by the federal and state constitutions. In sustaining the motion to dismiss, the lower court accepted the view that the complaint was without equity and that it was fatally defective in failing to allege that the plaintiff had exhausted the administrative remedies available to her. This holdng was based upon the fact that under the ordinance in issue, the plaintiff had the right to appeal to the Town Council for a variance or exemption to the zoning restrictions as imposed by the ordinance, however, she failed to do so. The Florida Supreme Court, with two justices dissenting,[9] sustained the holding of the lower court on the ground that judicial relief is available from a decision rendered by an administrative tribunal only after the administrative remedies have been fully exhausted. In his dissenting opinion[10] Justice Chapman held steadfast to the position that where the constitutionality of a zoning ordinance is in issue there is no requirement for the exhaustion of administrative remedies before seeking judicial relief since the issue is not determinable by an administrative agency but is exclusively within the jurisdicton of the courts. In the words of Justice Chapman,[11]

> We know of no authority which may be construed as granting power to a municipality to adjudicate the constitutionality of its own ordinance.

The effect of Justice Chapman's opinion in the *De Carlo* case became evident one year later in the case of *Miami Beach v. Perrell*.[12] In that case, the appellee desired to use premises, which he leased, for the purpose of conducting auction sales of jewelry, paintings, tapestries and like articles. In order to assert his right to do so the appellee brought an action for declaratory decree and injunction on the ground that the restrictions imposed by an ordinance preventing him from doing so were unreasonable and arbitrary and resulted in the segregation of a legitimate business to an undesirable section of Miami Beach. The lower court sustained the appellee's contention in denouncing the ordinance insofar as it regulated auction sales and issued an injunction against Miami Beach from enforcing the ordinance against the plaintiff. On appeal the appellant city raised the objection for the first time that the plaintiff below did not exhaust his administrative remedies before filing his complaint for declaratory decree. In support of its contention the appellant city cited

9. Justices Chapman and Terrell.
10. 49 So.2d 596, 597 (Fla. 1950).
11. *Ibid.*
12. 52 So.2d 906 (Fla. 1951).

the *De Carlo* case. Brushing aside the objection that the issue of exhaustion of administrative remedies was first raised on appeal, the Supreme Court embarked upon the course of distinguishing the *De Carlo* case from that presented on the ground that in the *De Carlo* case the allegations of invalidity related to the plaintiff alone and not to the ordinance in toto. In affirming the lower court's holding denouncing the ordinance, the Supreme Court declared:

> . . . in the *De Carlo* case, the plaintiff contended that a zoning ordinance insofar as it affected and operated against her own particular property was unreasonable and arbitrary, and we hold that, in order to afford the administrative authorities an opportunity to adjust at the local level, any inequalities resulting from the enforcement of a zoning ordinance, the plaintiff should have exhausted her administrative remedies before seeking relief in the courts. In the instant case, however, the plaintiff did not limit the attack on the ordinace to its effect on his own particular property, he made a general attack on the validity of the ordinance, ...[13]

It thus appears that where the validity of an ordinance is attacked in toto, it is not essential to first exhaust administrative remedies before resorting to the courts, however, where the complainant attacks only the validity of an ordinance as it applies to him, administrative remedies must first be exhausted before resorting to judicial relief.

Certiorari.—The scope of certiorari from an order of an administrative tribunal confronted the Florida Supreme Court in the case of *Pensacola v. Maxwell.*[14] In that case the plaintiff was dismissed by a Civil Service Board upon the finding that he attempted to extort money. On certiorari from the order of a Civil Service Board, the circuit court reweighed the evidence and determined that the preponderance lay in favor of the plaintiff thereby reversing the Board's ruling. The lower court felt it mandatory to reweigh the evidence by virtue of language used by the Supreme Court in the case of *Lorenzo v. Murphy.*[15] In that case the Supreme Court apparently subscribed to the view quoted from *Crandall's Common Law Practice,* as follows:

> Certiorari is not limited to an inquiry as to jurisdiction but extends to the manner in which that jurisdiction is exercised. It does not review questions of fact, yet the court may, on certiorari, examine the evidence and determine whether there is sufficient evidence to justify the finding of the inferior court and such, it is submitted, has been the practice of the Supreme Court of this State, not withstanding its averments to the contrary.[16]

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13. *Id.* at 907.
14. 49 So.2d 527 (Fla. 1950).
15. 159 Fla. 639, 32 So.2d 421 (1947).
16. CRANDALL, COMMON LAW PRACTICE 654 (1928).

In overruling the action of the circuit court, the Supreme Court took the position that certiorari from an order of the Civil Service Board should be limited to inspection of the record for the purpose of ascertaining whether or not the Board proceeded within the authority conferred upon it by law. It took exception to the lower court's interpretation of its own decision in the *Lorenzo* case and in an unanimous decision declared:

> We cannot agree that the cases relied on by the trial judge for the entry of its order authorized or required the court in certiorari proceedings to reweigh the evidence adduced before the tribunal whose ruling is sought to be reviewed for the purpose of determining where the preponderance lies. If such has been the construction placed upon the cited cases we do not hesitate to say that no such holding was intended.[17]

17. 49 So.2d 527, 528-529 (Fla. 1950).