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Judicial Review of Administrative Action in Florida: Certiorari

COMMENTS

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN FLORIDA—CERTIORARI[1]

A reading of current cases in the Florida reports shows a great deal of emphasis on problems in administrative law, particularly cases wherein courts are asked to review the proceedings involving state and municipal officers in the discharge of their affairs.[2] The Federal government has recently codified its law on this subject,[3] and there will undoubtedly be some effort to do so in Florida.

In the absence of a statute, review of administrative law has been administered through the years in the form of the extraordinary common law writs such as certiorari, mandamus, quo warranto, habeas corpus, and prohibition. It might well be said that the growth of administrative law has been through the development of these extraordinary writs.

As a preliminary study to a reformulation of principles of administrative law, an examination should be made as to the use of these writs. With that in mind, there is presented herein a study of the use of certiorari in Florida.[4]

The application of the writ to administrative bodies is not of modern design. The writ issued to review alleged illegal acts of an administrative body as early as 1700 in the Cardiff. Bridge Case[5] in the King's Bench, and since that time its scope has been extended and enlarged until it has become an accepted method of review of decisions promulgated by administrative bodies, with the limitation that the body was acting judicially or quasi judicially.

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[1] "Certiorari is a common law prerogative writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case." 11 C.J. § 1, 87. See also Black's Law Directory 3d Ed. for distinction between certiorari and mandamus. For methods of certiorari in use in Florida see Art. V, Sec. 5, of the Florida Constitution; F.S.A. 33.12.

[2] See 2 Miami Law Quarterly 54.

[3] Administrative Procedure Act of June 11, 1946; 60 Stat. 237, 5 U.S.C. § 1001.

[4] This comment will not discuss interlocutory appeals by certiorari which Rule 34, Rules of Practice, Supreme Court of Florida permits.

[5] Rex v. Inhabitants in Glamorganshire, (K.B. 1700) 1 Ld. Raym. 580, 91 Eng. Rep. 1287. By virtue of an Act of Parliament, 23 El. c. 11, orders were promulgated for levying of money for repair of Cardiff Bridge. Court held that where, under pretense of the Act, the body acting encroached jurisdiction to themselves greater than the Act warranted, certiorari would issue to keep it within its jurisdiction.

In Florida, as in generally all jurisdictions,[6] the writ will not issue to review purely administrative or quasi administrative acts,[7] the body acting must exercise discretion clearly judicial or quasi judicial.[8] The determination or test of what constitutes a judicial act as distinguished from one of an administrative nature is none too evident from Florida decisions. The line drawn where the administrative function ends and where it assumes that scintilla of discretion which constitutes a judicial act is none too clear.[9] As was stated in Sirmans v. Owen et. al.,[10] "Not every act which involves judgment or discretion is a judicial act. The exercise of judgment is not the criterion by which a proceeding must be viewed to determine whether it is judicial." The nature of the act done, rather than the body acting, seems to be determinative however.[11]

From its inception certiorari was a method of appealing only questions of law.[12] At common law it was used generally to correct excess of jurisdiction of justices of the peace,[13] and this has been extended in some jurisdictions to the point where the writ, in nature, is similar to a writ of error.[14] In Florida the writ cannot be made to serve the purpose of

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6 In New Jersey, North Dakota, and South Dakota, certiorari is not confined to a review of judicial or quasi judicial proceedings. Camden v. Mulford, 26 N.J.L. 49, (1856); Shields v. Paterson, 55 N.J.L. 495, 27 A. 803 (1893); State ex. rel. Johnson v. Clark, 21 N.D. 517, 131 N.W. 715 (1911); State ex. rel. Dollord v. Commissioners, 1 S.D. 292, 46 N.W. 1127 (1890).

7 "Certiorari is limited to review of judicial and quasi judicial determinations, and will not lie to review quasi legislative or quasi executive commission orders, unless notice and judicial hearing is required as a condition to decision," West Flagler Amusement Co. v. State Racing Com. et al., 122 Fla. 222, 165 So. 64 (1935). Also see Sirmans v. Owen et. al., 87 Fla. 485, 100 So. 734 (1924).

8 West Flagler Amusement Co. v. Com., supra; Sirmans v. Owen et. al., note 7, supra.

9 For demarkation between what are judicial functions and what are administrative or ministerial functions, see 11 C.J. note 57a § 68, 121. "A judicial act determines the law applicable and the rights and obligations of parties in relation to past transactions." was held too narrow a definition of a judicial act in Sirmans v. Owen et. al., supra. "Whether or not the statutory tribunal has exercised a statutory power given it to make a decision having a judicial character or attribute and consequent upon some notice or hearing provided to be had before it as a condition for the rendition of the particular decision made," is test given in West Flagler Amusement Co. c. Com., supra.

10 Sirmans v. Owen, note 7, supra.

11 Fla. Motor Lines v. Railroad Com'rs, 100 Fla. 538, 129 So. 876 (1930); 11 C.J. § 68, 121.

12 Goodnow 6 Pol. Sci. Q. 493.

13 11 C.J. § 1, 88.

14 Tolbert v. Kellis, 34 Ga. App. 49, 128 S.E. 204 (1925), (to review errors of fact); Essex County v. Civil Service Com., 98 N.J.L. 671, 121

an appellate proceeding in the nature of a writ of error,[15] it involves only a limited review of the proceedings and issues on discretion and not as a writ of right.[16] In Florida the writ will lie to review negative[17] orders as well as affirmative orders, on the same basis, that the body acting is doing so quasi judicially and the decision is final and no other method of review is available. If there are other and adequate remedies of appeal afforded, either by appellate procedure or otherwise, the writ will not be allowed;[18] although a recent decision[19] seems to have gone a step further, where there is a doubt as to other remedies, and allowed the writ to issue.

A. 695 (1923), as a direct method of appeal from quasi judicial bodies, The New York Civil Practice Act, before amendment in 1937, permitted a review of the weight or preponderance of the evidence in all certiorari proceedings. The writ of certiorari is supposedly abolished by the 1937 amendment in New York, but see comment of the Judicial Council of the State of New York on Art. 78 of the Civil Practice Act in Legislative Document (1937) No. 48 (D), where in commenting on § 1283 of Art. 78, it was stated, "This section is new. It makes no change in the present substantive law as to the right to relief in what are now known as certiorari, mandamus and prohibition proceedings, but establishes a uniform procedure for obtaining such relief." The Illinois Workmen's Compensation Act, Ill. Smith-Hurd Anno. Stat. (1935) Title 48 Sec. 156 F. (1) provides for inquiry into all questions of law and fact presented by the record in such proceedings. See Otis Elevator Co., v. Industrial Com., 302 Ill. 90, 134 N.E. 19 (1922).

[15] Basnet v. City of Jacksonville, 18 Fla. 523 (1882); Brimson v. Tharin, 99 Fla. 696, 127 So. 313 (1930); Knott, State Treasurer v. State ex. rel. Hanks, 140 Fla. 713, 192 So. 472 (1939).

[16] United Mut. Life Ins. Co. v. Sholtz, 121 Fla. 260, 163 So. 690 (1935); Farnham v. Caldwell, 141 Fla. 416, 193 So. 286 (1940); Jax Amer. Pub. Co. v. Jax Paper Co., 143 Fla. 835, 197 So. 672 (1940).

[17] Tamiami Trail Tours, Inc. v. Railroad Com'rs, 128 Fla. 25, 174 So. 451 (1937).

[18] Lorenz v. Lorenz, 152 Fla. 69, 778, 13 So. 2d 805 (1942), where common law writ authorized by constitution was denied to petitioner because of other and adequate remedy. Pennekamp v. Cir. Ct. of 11th Jud. Cir., 155 Fla. 589, 21 So. 2d 41 (1945), (denying writ). Fla. Motor Lines v. Railroad Com., supra, (granting writ).

[19] McGee v. McGee, 22 So. 2d 788 (Fla. 1945), where a motion to set aside judgment, which was void on face of record for lack of jurisdiction over person of defendant, was erroneously denied, the correctness of the order of denial may be tested in the Supreme Court by certiorari, even though other remedies may likewise be available.