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ANNUAL SURVEY OF TENNESSEE LAW

Administrative Law—1962 Tennessee Survey

*Val Sanford**

I. PROCEDURE—SCOPE OF JUDICIAL REVIEW

II. SUBSTANTIVE MATTERS—MOTOR CARRIER ACT

The writing of this article is an experience in frustration and despair, for in Tennessee there is little recognition of the existence of any such body of principle, of legal concepts and techniques, of procedures and practice, as "administrative law." There is one law, substantive and procedural, for beer boards, another for the Public Service Commission, another for the rate-making decisions of the insurance commissioner, another for employment insurance benefits, another for licensing well-diggers, and so on ad infinitum—a separate law, both substantive and procedural, not only for each agency, but often for each function within an agency.

All of these diverse agencies which now regulate practically every business and touch the life of every individual in this state are performing the same basic functions. They are granting and revoking licenses, establishing and enforcing standards of doing business, fixing rates and charges, and so on. There should be, and are, from the standpoint of sound policy at least, certain standards of fairness, of regularity in procedure, and of efficiency in enforcement which form a basis for performing the functions of all these agencies. Respect for the law and for the basic rights of citizens, and concern for the efficient administration of justice and the accomplishment of the substantive purposes of the legislature, demand the development and acceptance of a law of administrative procedure. One encouraging indication that this will come to pass is the creation of a Law Revision Commission, charged, among other things, with the duty of proposing specific reforms in the organization of administrative agencies and the rules of practice, and procedure before them.¹

Only five cases were reported during the period of this survey which directly involved what may some day be recognized as admin-

*Member, Gullett, Steele & Sanford, Nashville.

1. Tenn. Pub. Acts 1963, ch. 74.

istrative law. They follow no particular pattern and will be discussed separately.

I. PROCEDURE—SCOPE OF JUDICIAL REVIEW

Perhaps the most significant of the cases was *Fentress County Beer Board v. Cravens*,² which further confuses an already confused subject, the judicial review of actions of administrative agencies under the so-called common law and statutory writs of certiorari.³ In *Hoover Motor Co. v. Railroad & Public Utilities Commission*,⁴ the court held that a de novo review of non-judicial administrative action, such as the granting of a certificate of convenience and necessity to a motor carrier, would be contrary to the constitution as a delegation of administrative or legislative powers to the judiciary. Justice Tomlinson, dissenting in that case, argued that "weighing evidence and determining questions of fact by the preponderance thereof has always heretofore been regarded as a judicial function."⁵ The majority of the court, however, following *In re Cumberland Power Co.*,⁶ and a long line of other cases, looked to the nature of the subject matter rather than the form of the proceeding and held that the granting of a certificate of convenience and necessity was clearly an administrative function no different from rate-making, and that the courts could not constitutionally be empowered to decide such matters de novo. In the *Fentress County* case, however, the court, without discussing the *Hoover* case and without any review of the other decisions of which it is representative, held that a statute requiring a de novo review by statutory writ of certiorari of the actions of county beer boards in granting licenses was constitutional.

It could be argued that in so holding the court was adopting the argument of Justice Tomlinson which was rejected in the *Hoover* case—and there is some language in the opinion which would appear to support that position. The two cases can be distinguished, however, in that the statute in the *Hoover* case left a considerable measure of discretion in the Railroad and Public Utilities Commission, while the statute in the *Fentress County* case reduced the discretion of the county beer boards to a minimum. Since the court, however, did not either overrule, distinguish, or discuss the *Hoover* case, it is not possible to draw any persuasive conclusion as to the effect of the *Fentress County* case on the future course of judicial review in Tennessee.

2. 209 Tenn. 679, 356 S.W.2d 260 (1962).

3. The cases are reviewed and the basic questions discussed in Lacey, *Judicial Review of Administrative Action in Tennessee—Scope of Review*, 23 TENN. L. REV. 349 (1954).

4. 195 Tenn. 593, 261 S.W.2d 233 (1953).

5. *Id.* at 612, 261 S.W.2d at 241.

6. 147 Tenn. 504, 249 S.W. 818 (1922).

*Long v. National Bureau of Casualty Underwriters*⁷ poses an interesting contrast to the *Fentress County Beer Board* case. The *Long* case involved a review of an order of the Tennessee Commissioner of Insurance and Banking disapproving a rate increase for a number of automobile insurance companies. In contrast to the beer board statute, which provided for a de novo review under the so-called statutory writ of certiorari, the statute here⁸ merely provided for review "upon a writ of certiorari" without specifying the nature of the writ or the review. The court held that if the commissioner reached his decision from a consideration of the factors enumerated in the applicable statute and other relevant factors, his decision was final. Under such a limited scope of review, it would be practically impossible to reverse an order of the commissioner, since mere consideration and not even substantial evidence is all that is required to sustain it.⁹

*Special Products Co. v. Jennings*¹⁰ involved still another statutory provision for judicial review. The Tennessee Employment Security Act provides for the review of decisions of the board of review set up thereunder by "writ of certiorari," but goes on to specify that the findings of the board as to facts shall be conclusive "if there be any evidence to support the same."¹¹ The employer here was contesting claims on charges of misconduct. The court held that for it to find misconduct would require an adjudication on the merits of a labor dispute, and that it was without jurisdiction to pass on that question.

II. SUBSTANTIVE MATTERS—MOTOR CARRIER ACT

In *Hammer v. Franklin Interurban Co.*,¹² the court in construing the right of common carriers of passengers to render charter service off their certificated routes held that such carriers were not exempt from the jurisdiction of the public service commission in rendering such service even though the trip was rendered at the solicitation of the party served.¹³ The case further points up the need for review and clarification of the Tennessee Motor Carrier Act.

7. 209 Tenn. 435, 354 S.W.2d 255 (1961).

8. TENN. CODE ANN. § 56-616 (1956).

9. The court here also held that the appeal in this case was properly made directly to the supreme court rather than to the court of appeals. In so holding, it did not distinguish or discuss the leading case of *Woodruff v. Nashville*, 183 Tenn. 483, 192 S.W.2d 1013 (1946), which, while perhaps distinguishable in that different agencies and issues were involved, held that appeals in certiorari proceedings under what is now § 27-912 of the Code should go to the court of appeals.

10. 209 Tenn. 316, 353 S.W.2d 561 (1961).

11. TENN. CODE ANN. § 50-1325 I (1956).

12. 209 Tenn. 399, 354 S.W.2d 241 (Tenn. 1962).

13. The language of the Tennessee statute and the result reached in this case should be contrasted with the federal Motor Carrier Act, 49 Stat. 551, 552 (1935), 49 U.S.C. §§ 307(a), 308(c) (1958).

*Gasoline Transport, Inc. v. Crozier*¹⁴ involved the constitutionality of an amendment to the Motor Carrier Act exempting motor vehicles used in transportation of petroleum products where the owner or lessee of the vehicle is engaged in the business of distributing such products. The court held that the greater financial interest of the persons within the scope of the exemption in the products being transported made a reasonable basis for the classification. The court did not discuss the reasonableness of limiting this classification to the distributors of petroleum products.

14. 355 S.W.2d 98 (Tenn. 1962).