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Administrative Law -- 1957 Tennessee Survey

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ADMINISTRATIVE LAW—1957 TENNESSEE SURVEY

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Only a few cases by the Tennessee Supreme Court decided during the survey year considered questions of general administrative law. These concerned the timing and extent of judicial review of administrative action and the conduct of hearings by agencies.

Prerequisites to Judicial Review: Whether available administrative remedies must be exhausted by a litigant before seeking a review or other relief by court action is a question not always capable of exact prediction.[1] The "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted"[2] is subject to a number of exceptions.[3] In *State v. Yoakum*[4] a number of teachers brought a suit under the Declaratory Judgment Act for a decision with respect to their rights under the transfer provisions of the Teacher Tenure Act of 1951.[5] The teachers alleged that a majority of the county board of education had transferred them to different schools without the concurrence of the county superintendent and that the action of transferring them was "arbitrary, capricious and contumacious." The contention was raised that the teachers had failed to exhaust their administrative remedy of an appeal to the county board of education as analogous to the right of appeal from a suspension or dismissal by the superintendent. The court held that, under the allegations of the complaint that the action of the board was arbitrary, an appeal to the board which had already decided the issue would be useless and the appeal was not required prior to court action. In an earlier case, *State ex rel. Jones v. Nashville*,[6] the court had declined to reverse

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1. See Davis. *Administrative Remedies Often Need Not Be Exhausted,* 19 F.R.D. 437 (1957).
2. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938).
3. See *Study: Exhaustion of Administrative Remedies,* 2 Race Rel. L. Rep. 561-82 (1957) for a consideration of the application of the doctrine of exhaustion of administrative remedies to school segregation-integration problems under the "pupil placement acts" recently enacted by several Southern states.
4. 297 S.W.2d 635 (Tenn. 1956).
5. TENN. CODE ANN. §§ 49-1401 to -1420 (1956). The particular section involved in this action, § 49-1411, was amended by Tenn. Pub. Acts 1957, c. 202, TENN. CODE ANN. § 49-1411 (Supp. 1957) so as to remove any doubt as to the concurrent authority of county superintendents of education (who are elected by the board) and boards of education in transferring tenure teachers.
6. 198 Tenn. 280, 279 S.W.2d 267 (1955). See Earle, *Administrative Law—1956 Tennessee Survey,* 9 VAND. L. REV. 913, 914 (1956).

on appeal the dismissal of a writ of mandamus brought by a former city employee to require his reinstatement in the city's employ where it was shown that an administrative appeal previously available to the employee had not been exhausted even though the time for obtaining the appeal had expired. In that case, however, the administrative remedy had been rendered futile by the neglect of the petitioner, and not, as here, by the action of the administrative agency itself.

Exhaustion of state administrative remedies was referred to by the federal district court in *Thomas v. Chamberlain.*[7] In that case a suit for damages arising out of the condemnation of property in Chattanooga was brought under the Federal Civil Rights Acts. In granting a motion for summary judgment by the defendants the court found that "simple and adequate" administrative remedies available to the plaintiff had not been exhausted, as would be required before it could be found that the plaintiff had been deprived of a federal right.

The doctrine of primary jurisdiction was involved in the case of *Aladdin Industries v. Associated Transport*[8] decided by the Court of Appeals, Middle Section. This was a contempt action involving the violation by union drivers for common motor carriers of an injunction requiring the carriers to furnish service to a "struck" plant. It was contended by the contemnors that the case involved a labor dispute under the exclusive jurisdiction of the National Labor Relations Board or an administrative dispute under the exclusive jurisdiction of the Interstate Commerce Commission or of the Tennessee Public Service Commission. The basis of the action was held, however, to be the vindication of the common law or statutory right of a shipper to service by a common carrier; a matter for initial decision by the courts and not within the primary jurisdiction of any of the above agencies.

The differing methods of review provided for by the statutes for the "ordinary" revocation or suspension of a motor vehicle operator's license[9] (by petition for certiorari to the circuit court of the county of residence) and for the "mandatory" revocation of the vehicle registration certificate and operator's license under the Financial Responsibility Law[10] (by trial *de novo* in the chancery court of Davidson County) were involved in *Roney v. Luttrell.*[11] There one whose operator's license and vehicle registration had both been revoked by the Commissioner of Safety proceeded for review under the provisions pertaining to "ordinary" revocation of an operator's license and the petition was dismissed. On appeal the Supreme Court held that the

7. 143 F. Supp. 671 (E.D. Tenn. 1955).
8. 298 S.W.2d 770 (Tenn. App. M.S. 1956). See also, Sanders, *Labor Law and Workmen's Compensation—1957 Tennessee Survey,* 10 VAND. L. REV. 1110, 1112 (1957).
9. TENN. CODE ANN. § 59-713(f) (1956).
10. TENN. CODE ANN. § 59-1202 (1956).
11. 292 S.W.2d 411 (Tenn. 1956).

two statutes are not complementary so as to permit a review of both revocations by either method and that the latter method provided under the Financial Responsibility Law is the exclusive method in such a situation.

Hearings: What constitutes a "fair hearing" by a county beer board was considered in *Chanaberry v. Gordy.*[12] The hearing in question involved the revocation of a beer license. It appeared that there had been at least an informal stipulation between counsel that the revocation would not be considered at certain meetings of the board when it was, in fact, so considered. Under such a state of facts (with the added fact that the license holder was not present at the board meeting when the revocation was voted) the court held that the action by the board was arbitrary and properly subject to reversal by the circuit court on certiorari. It also is to be inferred, although the court's opinion does not elucidate the point, that at least one member of the board voted on the revocation without having been present at the hearing of the evidence. As to this, the court stated that each member of the board which acts must have heard the evidence. This poses somewhat of a corollary to the famous statement by Chief Justice Hughes in the case usually referred to as the "First *Morgan* Case"[13] that "the one who decides must hear."[14] In the *Morgan* case, however, "hear" seems to have been used in the sense of a final consideration of the evidence as distinguished from the actual audition of the testimony. In any event, it is futile to speculate on possible implications of the court's statement in the absence of a more concrete factual situation.
Judicial review: The question, discussed at some length in a previous survey issue,[15] of an attack on the legality of the constitution of a beer board in review of an action by the board, e.g., revocation of a license, was again raised in *Jones v. Sullivan County Beer Board.*[16] In the present case, however, the attack was made only as to the incompetence of one member of the beer board rather than the entire board as was discussed in the mentioned article. The court found the questioned member to be at least a de facto member and thus to be beyond the collateral attack of third parties, at least in the type of proceeding then before the court.

Legislation: Chapter 32 of the Public Acts of Tennessee, 1957,[17] repeals and substantially reenacts the Dental Practice Act of 1935.[18] A number of changes were inserted to meet constitutional objections to

12. 292 S.W.2d 18 (Tenn. 1956).
13. Morgan v. United States, 298 U.S. 468 (1936).
14. See DAVIS, ADMINISTRATIVE LAW 331-33 (1951).
15. Sanders, *Administrative Law—1955 Tennessee Survey,* 8 VAND. L. REV. 940, 943 (1955).
16. 292 S.W.2d 185 (Tenn. 1956).
17. TENN. CODE ANN. §§ 63-530 to -558 (Supp. 1957).
18. Previously TENN. CODE ANN. §§ 63-501 to -529 (1956).

the prior act raised by a chancery court.[19] Among the other changes, the new act specifies the powers and duties of State Board of Dental Examiners.

Chapters 374 and 375 of the Public Acts of Tennessee, 1957, the State Aeronautics Commission Act[20] and the Municipal Airport Act,[21] respectively, provide for rather general regulatory control over air navigation and airports within the state. There does not, however, appear to be any significant departure from other regulatory acts creating administrative agencies to control various activities.

19. The Tennessee Supreme Court has later held, however, that the supposed constitutional objections do not exist. State Board of Dental Examiners v. Rymer, 303 S.W.2d 959 (Tenn. 1957).
20. TENN. CODE ANN. §§ 42-201 to -224 (Supp. 1957).
21. TENN. CODE ANN. §§ 42-301 to -310 (Supp. 1957).