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Administrative Law--Use of Writ of Prohibition

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CASE COMMENTS

Administrative Law—Use of Writ of Prohibition

The West Virginia Code provides for the creation of a municipal police civil service commission to conduct public hearings in cases involving the removal or reduction in pay of municipal police. A writ of prohibition was sought on grounds that the commission lacked jurisdiction in a case involving a five day suspension of a police officer. *Held*, writ awarded. The power of the police civil service commission to hold a public hearing is judicial in nature, not administrative; therefore, prohibition is a proper remedy. The civil service commission, which was created by statute, has only those powers expressly given to it by statute. The statute grants the power to hold public hearings in cases involving a removal or reduction of pay, but a case involving a five day suspension is not within its jurisdiction. *State ex rel. City of Huntington v. Lombardo*, 143 S.E.2d 535 (W. Va. 1965).

In the principal case, the city manager and the chief of police of Huntington sought the writ to prohibit the commission from conducting a public hearing requested by a police officer who was suspended for a period of five days. The writ was sought in the West Virginia Supreme Court of Appeals as that court has original jurisdiction in cases of habeas corpus, mandamus and prohibition. W. VA. CONST. art. VIII, § 3. The court was called upon to determine if the commission had such judicial or quasi judicial powers to grant the writ and whether the hearing requested was within the commission's jurisdiction.

The function performed by the writ in our legal system is of great importance. The writ is employable to prevent a judicial or quasi judicial body from usurpation and abuse of its legitimate power. W. VA. CODE ch. 53, art. 1, § 1 (Michie 1961). The writ may be issued by either the Supreme Court of Appeals or by a circuit court. W. VA. CONST. art. VIII, §§ 3, 12; W. VA. CODE ch. 51, art. 1, § 3 (Michie 1961); W. VA. CODE ch. 51, art. 2, § 2 (Michie 1961). The procedure of obtaining the writ as set forth in the statute, W. VA. CODE ch. 53, art. 1, §§ 1-11 (Michie 1961), is unchanged by the West Virginia Rules of Civil Procedure. LUGAR & SILVERSTEIN, WEST VIRGINIA RULES 533 (1960). The purpose of the writ of prohibition has changed little since early common law when it was the crown's interest that the numerous courts "keep within

the limits and bounds of their several jurisdictions prescribed to them by the laws and statutes of the realm." Annot. 44 A.L.R. 1 (1938). Since the early days of a clear distinction between the Crown's power and the courts' jurisdiction the writ's scope has expanded. The writ of prohibition is to control the exercise of judicial functions, but the operation of the writ is not restricted to courts *eo nomine*, as it applies to judicial acts of all officers or bodies having incidental judicial powers, even though the officers or bodies are primarily ministerial in nature. Annot. 77 A.L.R. 235 (1932).

The first case in which the West Virginia court was concerned directly with the application of a writ of prohibition to a body other than a court was *Brazie v. Fayette County Comm'r*, 25 W.Va. 213 (1884). After citing authority from several other states the court granted the writ, stating:

The writ of prohibition lies from a superior court not only to inferior judicial tribunals properly and technically denominated such, but also to inferior ministerial tribunals possessing incidentally judicial powers or tribunals such as are known in the law as quasi judicial tribunals and even in extreme cases to purely ministerial bodies when they usurp judicial functions.

The court noted that this conclusion as to the scope of prohibition is necessary to prevent "abuse of judicial power without an adequate remedy." Since the *Brazie* case, *supra*, there have been numerous cases in which the court has had to decide whether an agency had such incidental judicial powers as to warrant the granting of a writ of prohibition. In *Campbell v. Doolittle*, 58 W. Va. 317, 52 S.E. 260 (1905), the court, in granting a writ of prohibition against a circuit judge to prohibit his issuing a writ of prohibition against a city council to prevent the removal of five police officers, acknowledged that the exercise of discretion does not make an act judicial. In the *Campbell* case, *supra*, the administrative discretion of the council to remove the officers at its will is distinguished from the principal case in that the principal case involves a statutory commission with authority to conduct hearings and decide facts in designated areas. The effect of the statute has been to make this function quasi judicial in nature.

Several West Virginia cases have awarded writs of prohibition against agencies exercising quasi judicial powers. In *Huntington*

Chamber of Commerce v. Public Service Comm'n, 84 W. Va. 81, 99 S.E.2d 285 (1919), the court admitted that although the commission was not a court in the strict sense of the term, it was a quasi judicial body. The court also stated that the power to summon parties, to hear evidence and to determine facts is quasi judicial. In *West Virginia State Medical Ass'n v. Public Health Council*, 125 W. Va. 152, 23 S.E.2d 609 (1942), the court observed that in addition to exercising administrative functions the council also had powers and jurisdiction with reference to suspension and revocation of physicians' and surgeons' licenses. Here the court termed the council's powers as quasi judicial stating that "[I]n its own sphere it may hear and evaluate the evidence on a contested matter and make a finding thereon, which finding is subject to review by the circuit court and on appeal by this court." It thus appears that the West Virginia court has termed the right to hold a hearing in which facts are determined and a decision reached based upon the facts to be quasi judicial even if done by bodies having primarily administrative functions.

The application of the writ to quasi judicial bodies does not go unchallenged. The dissent in the instant case states that prohibition was not the proper remedy and even if it were the proper remedy it was within the jurisdiction of the commission to hear such a case in as much as a suspension amounts to a reduction in pay. The dissent further rejects the use of the word quasi stating that "[A]s a matter of law and fact, there is no such thing as a quasi judicial tribunal." The argument is based upon the constitutional separation into three separate and distinct departments of government. In discussing the term "quasi" in *United States Steel Corp. v. Stokes*, 138 W. Va. 506, 76 S.E.2d 474 (1953), the court commented that it would be difficult to reject the term quasi judicial because it is so firmly imbedded in jurisprudence, even though the discussion in *Wise v. Calvert*, 134 W. Va. 303, 59 S.E.2d 445 (1950) would seem to point to its rejection in the interest of clarity. See also 1 AM. JUR.2d *Administrative Law* § 161 (1962).

There appears to be ample precedent to support the awarding of a writ of prohibition against an administrative agency which has incidental judicial powers. The West Virginia court has chosen to term the power of administrative agencies to conduct hearings, decide facts and reach decisions as quasi judicial. Once the court

has determined that a function is of a judicial or quasi judicial nature the court will award a writ of prohibition to prevent that body, regardless of its primary functions, from exceeding its jurisdictional powers. It appears that the West Virginia court will not grant the writ of prohibition if the functions of the agency are purely administrative in character.

The increase in the number of administrative agencies and the expansion of the scope of their power has necessitated a process of judicial review in an area not existing at the time the extraordinary remedies of prohibition and mandamus emerged. The process of judicial review of administrative action has developed in a piecemeal pattern similar to the commonlaw itself, in response to the pressure of particular situations and the influence of legislation. It is the complex of the old and the new. 2 AM. JUR.2d. *Administrative Law* § 555 (1962). The necessity to provide a control of quasi judicial functions has caused the writ of prohibition to be expanded to include this area. With ample precedent supporting the granting of the writ, necessity will dictate that the writ be awarded where commissions exceed their jurisdictional powers.

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Constitutional Law—Freedom of Religion and the Police Power

W suffered from an ulcer but refused a blood transfusion. She informed her doctor that religious convictions precluded her from receiving blood transfusions. *W* and *H*, her husband, signed a document releasing the doctor and hospital from all civil liability that might result from failure to administer the transfusion. However, *W*'s doctor requested the circuit court to appoint a conservator of the person of *W* and to authorize the conservator to consent to the transfusion. The court appointed a conservator who gave his consent. *W* and *H* appealed. *Held*, reversed. The first amendment to the Constitution of the United States protects the right of the individual to freedom in his religious belief. This freedom is subject only to the qualification that its exercise may be limited by governmental action where such exercise clearly and presently endangers the public health, welfare or morals. *In re Estate of Brooks*, 32 Ill.2d 361, 205 N.E.2d 435 (1965).