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Constitutional Law—Delegation of Legislative Power to Administrative Bodies or Officers

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a "settlement" could have no weight in determining any question as to advancements in future cases involving analogous facts. The authorities appear to be clear that such arrangement could not be binding.⁸

Finally, the present case decides that whether or not a check be denominated by the deceased as a "loan", the commissioner's finding that it was in fact an advancement would not be disturbed.⁹ In other words, it seems that for the promotion of equality between the heirs, there was to be no differentiation as regards sums given the heirs, in the absence of clear evidence that the deceased conducted himself as a creditor, and that beyond question he regarded the heir as a debtor because of the transaction between them. By and large, that principle promotes a fair division of the property, even though it seems to be squarely in conflict with the usual thought that any evidence of the intent of the deceased opposed to an advancement is more or less conclusive.

The present decision is thus a most important one, to the extent that it settles as to advancements these points in the administration of estates. Both in its holding that the value of the deceased's property should be ascertained as of the date of his death and in its detailed exposition of the hotchpot method, the decision should become a leading authority in local litigation.

P. J. O'F.

CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER TO ADMINISTRATIVE BODIES OR OFFICERS. — *D* collided with *P*'s airplane when landing in violation of certain air regulations fixed by the West Virginia Bureau of Aeronautics under authority of a statute¹ giving such board authority over all phases of aerial activities, with power to make such rules and regulations as they should see fit to adopt for the public safety. The board was required, however, "to adopt and enforce the provisions of the federal

⁸ Without all the parties, a compromise arrangement of this sort obviously cannot stand. *Campbell v. Lynch*, 88 W. Va. 209, 106 S. E. 869 (1921); *McAdams v. Bowen*, 369 Ill. 325, 16 N. E. (2d) 732 (1938). And, in order for an investigation to conclude the parties, the disinterested party must properly take into account all of the evidence, and arrive at his finding in judicial fashion. *Neill v. Flynn Lumber Co.*, 82 W. Va. 24, 95 S. E. 523 (1918); *Rowe v. Rowe*, 144 Va. 816, 130 S. E. 771 (1925).

⁹ The court said (at p. 197): "The view of this case we take is that whatever these payments may have been called, they were in truth advancements, irrevocable in character; that no debt or obligation was created, and it necessarily follows that they are not subject to the statute of limitations."

¹ W. VA. CODE (Michie, 1937) c. 29, art. 2A, § 2.

air commerce act now in force or as hereafter amended, so as to make applicable as far as possible the provisions of that act to the State of West Virginia." *Held*, that the legislature, having established a sufficiently definite standard, may authorize an administrative body or officer to make rules and regulations, and that this standard was sufficiently provided for by the federal act. *Rinehart v. Woodford Flying Service*.²

This case presents the often discussed problem of how far a legislative body may delegate its power to an administrative body or officer. When the courts lay down the proposition that legislative power may not be delegated, the power to legislate in the broad sense, that is, to make laws, is involved and no more. The delegation is objectionable when it reaches "abdication" rather than "delegation."³ A principle running throughout the many decisions is that the grant must specify the subject matter of regulation and the end which it seeks to attain. The delegation is not bad, therefore, when it can be shown that the legislature itself has given the power to act only within defined limits.⁴

The instances in which the regulatory power is delegated to administrative bodies in West Virginia are numerous. The state board of education is given the power to determine the educational policies of the state, subject to and in conformity with the constitution and laws of this state, and to make rules and regulations concerning the different phases of education as they deem expedient and necessary.⁵ The commissioner of labor is given the power to see that all existing laws concerning labor are carried out.⁶ He may accept cooperation from the Federal Government, and the department of labor is designated to cooperate with the United States employment service in accordance with the provisions of the Wagner-Peyser Act.⁷ The public service commission is given the charge of all public utilities, and the power to investigate all rates and practices, changing the rates or tolls when unfair or unjust if they have not been regulated by an act of Congress.⁸ The director of the conservation commission is given the power to exercise general supervision of, and to make rules and regulations

² 9 S. E. (2d) 521 (W. Va. 1940).

³ Note (1925) 11 VA. L. REV. 183, 195.

⁴ *Thompson v. Smith*, 115 Va. 367, 154 S. E. 579 (1930); *Holgate Bros. v. Bashore*, 331 Pa. 255, 200 Atl. 672 (1938).

⁵ W. VA. CODE (Michie, 1937) c. 18, art. 2, § 5.

⁶ *Id.* at c. 21, art. 1, § 3.

⁷ *Id.* at c. 21, art. 2, § 2.

⁸ *Id.* at c. 24, art. 2, § 2.

concerning the governing of this commission or department; to regulate fires and smoking in or near woods at such times and in such localities as he shall deem necessary.⁹ The workmen's compensation commissioner is given power to adopt reasonable and proper methods of procedure, to establish methods of physical examinations, to prescribe the time in which adjudications and awards may be made, and to make all investigations calculated to ascertain the rights of the parties.¹⁰ The state historian and archivist is given power to adopt and establish rules and by-laws to insure proper administration of his department.¹¹ The state liquor commission is given the power to make rules and regulations concerning the management of its department and the effective discharge of the duties of said commission.¹² The commissioner of insurance has the duty to see that all insurance companies adhere to the existing laws and to require all insurance companies to file reports on forms prescribed by statute.¹³ The governor of the state was, at one time, given the power, when in his opinion the financial affairs of the state demanded, to limit or dispense with activities of any state agency and to dismiss such employees whose services were unnecessary or became unnecessary.¹⁴ Other illustrative examples are the powers delegated to the commissioner of forfeited lands,¹⁵ the commissioner of banking,¹⁶ the tax commissioner,¹⁷ and the commissioner of agriculture.¹⁸

No case has been found in which the delegation of such powers to these West Virginia administrative bodies or officers has been held unconstitutional. In a recent case the power given to a local housing authority, necessary to engage in low cost housing and slum clearance projects, including the power to acquire property and to remove unsanitary conditions, to be guided in these undertakings by the Federal Housing Act, was upheld.¹⁹ The power

⁹ *Id.* at c. 20, art. 1A, § 7.

¹⁰ *Id.* at c. 23, art. 1, §§ 13-15.

¹¹ *Id.* at c. 29, art. 1, § 2.

¹² *Id.* at c. 60, art. 2, § 13.

¹³ *Id.* at c. 33, art. 1, § 2.

¹⁴ W. Va. Acts 1933, c. 1. This act provided, however, that it should remain in effect only for a period of two years after the enactment thereof.

¹⁵ W. VA. CODE (Michie, 1937) c. 37, art. 3, § 4.

¹⁶ *Id.* at c. 31, art. 8, § 6.

¹⁷ *Id.* at c. 11, art. 1, § 2.

¹⁸ *Id.* at c. 19, art. 1, § 4.

¹⁹ *Chapman v. Huntington West Virginia Housing Authority*, 3 S. E. (2d) 502 (W. Va. 1939). The court here said: "The discretionary powers delegated to the local housing authority by the instant statute are indeed broad; but delegation of broad powers to an administrative body, accompanied by fitting standards for their exercise, does not of itself constitute an illegal transfer of

given the public service commission was similarly held valid.²⁰ The statute giving the tax commissioner power to set up a uniform system of keeping account of public funds and to see that every public officer adhered to it was held not to empower such chief with unlawful power to perform a legislative duty.²¹ The power given to the governor to perform the administrative act of dismissing state employees and limiting state agencies and activities, when he deemed the financial condition of the state warranted it, was also held not to be an invalid delegation of legislative power.²²

From an examination of these West Virginia statutes, either upheld or not yet questioned, it would seem that the different regulatory powers delegated would fall under the following classes: first, as in the present case, those referring specifically for a standard to the laws or acts of other governments;²³ second, those prescribing in themselves the most minute standards to be followed in promulgation of rules and regulations to be followed by the body or officer;²⁴ third, those giving power to establish rules and regulations concerning the intra-agency-workings of the different departments;²⁵ fourth, those giving power to establish rules and regulations governing third parties or bodies, with only general standards as guides;²⁶ fifth, those giving certain power, but making it operative only on the happening of a certain contingency.²⁷

legislative powers to the executive department of the government. Time and again, the legislature of this state has given broad powers to administrative bodies. . . . Of course, delegation of discretionary power to an administrative body must be accompanied by adequate standards, either prescribed by the statute itself or inherent in the subject-matter of the legislation, sufficient to guide its exercise." (At pp. 510-511.)

²⁰ *State v. Baltimore & O. R. R.*, 76 W. Va. 399, 85 S. E. 714 (1915). The court here said: "We fail to find in this section any delegation of legislative power, specifically imposed by the Constitution on the Legislature. Powers conferred by this act upon our Public Service Commission are similar in character to those conferred by Congress from time to time upon the Interstate Commerce Commission, and by many of the states upon commissions of like character, for the control and regulation of public service corporations." (At p. 405.)

²¹ *Blue v. Smith*, 69 W. Va. 761, 72 S. E. 1038 (1911).

²² *LePage v. Bailey*, 114 W. Va. 25, 170 S. E. 457 (1933), the court holding it was indeed a special type of delegation but not an unconstitutional one said: "It is well settled that an enactment may provide, 'that it shall become operative only upon some certain act or event, or, in like manner, that its operation shall be suspended; and the fact of such act or event, in either case may be made to depend upon the ascertainment of it by some other department, body or officer, which is essentially an administrative act.'" (At p. 28).

²³ W. VA. CODE (Michie, 1937) c. 29, art. 2A, § 2; *id.* at c. 21, art. 2, § 2.

²⁴ *Id.* at c. 29, art. 5A, § 5; *id.* at c. 24, art. 2, § 2; *id.* at c. 17, art. 2A, § 9; *id.* at c. 20, art. 1A, § 7.

²⁵ *Id.* at c. 29, art. 1, § 2.

²⁶ *Id.* at c. 23, art. 1, §§ 13-15; *id.* at c. 60, art. 2, § 13.

²⁷ *Id.* at c. 22, art. 1, § 7.

The conclusion to be drawn from these observations is that, when comprehensive standards are laid down by the legislature by which the board is to be bound and mere details are left to the administrative body or officer, the power delegated is purely administrative. Where the standards are unrestricted or omitted the power becomes legislative. Between these two extremes we have a "twilight zone" within which each case must be determined on its own facts.

It would seem that the delegation in the present case is a mere reiteration of what the legislature has done many times before and clearly within constitutional bounds.

E. E. T., JR.

CONSTITUTIONAL LAW — DUE PROCESS — LIABILITY WITHOUT FAULT. — *P* was injured while working for *D*, who had not subscribed to the workmen's compensation fund. *P* sued *D* for the damages incurred under an amended section of the act¹ which imposed an enforceable liability upon a non-casual, nonsubscribing employer for injuries suffered in the course of and resulting from employment, though not caused by the wrongful act, neglect or default of the employer. *Held*, one judge dissenting, that the statute is unconstitutional as violative of the due process clauses of the state and federal constitutions. *Prager v. W. R. Chapman & Sons Co.*²

Though the constitutionality of workmen's compensation acts is now generally conceded,³ at their inception the declaration that an employer, even under the act, should be responsible for injuries to his workmen whether or not the employer was at fault met with instant and vigorous opposition. While it was held that the com-

¹ W. VA. CODE (Michie, 1937) c. 23, art. 2, § 8. "... employers . . . shall be liable to their employees . . . for all damages suffered by reason of accidental personal injuries or accidental death sustained in the course of and resulting from their employment, and in any action by any such employee or personal representative thereof, such defendant shall not avail himself of the following common law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further, shall not avail himself of any defense that the negligence in question was that of someone whose duties are prescribed by statute, provided no action shall lie, and no recovery shall be had, against casual employers . . . without allegation and proof that such accidental personal injuries . . . were caused by the wrongful act, neglect or default of the employer. . . ."

² 9 S. E. (2d) 880 (W. Va. 1940).

³ *De Francesco v. Piney Mining Co.*, 76 W. Va. 756, 86 S. E. 777 (1915); 1 *SOHNEIDER, WORKMEN'S COMPENSATION LAW* (2d ed. 1932) § 4.