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United States--Federal Enclaves--Residents as State Citizens

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CASE COMMENTS

ADMINISTRATIVE LAW—JUDICIAL REVIEW—CERTIFICATION OF QUESTIONS OF LAW.—The state compensation commissioner, after finding for claimants of silicosis benefits under the workmen's compensation law, held the award chargeable to the employer's account. The Workmen's Compensation Appeal Board, while affirming the award, reversed the determination that it was chargeable to the employer, and acting under W. VA. CODE c. 23, art. 5, § 4 (Michie, 1949), certified to the Supreme Court of Appeals the question of chargeability. *Held,* reversing the appeal board and answering the question, that the employer was chargeable. *Rogers v. State Compensation Comm'r,* 84 S.E.2d 218 (W. Va. 1954).

Judge Lovins, dissenting in part, regarded the statute allowing certification as a violation of the separation-of-powers article of W. VA. CONST. Art. V, § 1, and was apprehensive lest such procedure "pave the way for advisory opinions by this court." *Id.* at 223.

Certification had not previously been resorted to by the appeal board. Similar statutes elsewhere are rare; their employment still rarer. A sampling of approximately three-fourths of the states revealed five: N.Y. COMP. LAWS § 23 (1946), IND. STATS. ANN. § 49-1512 (Burns, 1952), and VA. CODE tit. 65, § 94 (Michie, 1950) (workmen's compensation laws); N.H. REV. LAWS c. 78, § 35 (1942) (tax commission), and N.H. REV. LAWS c. 287, § 20 (1942) (public service commission).

But the statutes, though few, are enough to give rise to conflicting judicial views. The New York court refused to answer a certified question of the validity of a proposed resolution by the industrial commission, as being a mere request for advice, saying, "The questions certified under § 23 must be incidental to a pending controversy with adverse parties litigant." In re *Workmen's Compensation Fund,* 224 N.Y. 13, 17, 119 N.E. 1027, 1028 (1918).

Indiana takes a diametrically opposite view. While no supreme court decision has been found, the appellate courts accept the statute as one whose purpose is merely to permit the courts to assist the board by giving information, answers being for the board's guidance and advisory only, much like an attorney general's opinion. *Evans v. Watt,* 90 Ind. App. 37, 168 N.E. 39 (1929); *State* ex rel. *Lynch Coal Operator's Reciprocal Ass'n v. McMahan,* 194 Ind. App. 151, 142 N.E. 213 (1924); *Bimel Spoke & Auto Wheel Co. v. Leper,* 65 Ind. App. 479, 117 N.E. 527 (1917). This position

but only by dictum, in *Milne Chair Co. v. Hake,* 190 Tenn. 395, 230 S.W.2d 393 (1950), and in *Block Coal & Coke Co. v. United Mine Workers of America,* 177 Tenn. 247, 148 S.W.2d 364 (1941). The *Thomas* case, *supra,* appears to be the only actual prior holding on this point.

Having thus determined that no dispute existed between claimants and their former employers and that claimants' unemployment was not due to any work stoppage caused by a labor dispute, the court ruled that mere mutual membership in the same trade union with the workers who were involved in a dispute could not disqualify the claimants. The court reasoned that to hold otherwise would be to automatically disqualify all union members—no matter what the reasons for their unemployment—so long as a strike by workers of the same union caused jobs to be available which claimants stated that they would not accept.

B. F. D.

UNITED STATES—FEDERAL ENCLAVES—RESIDENTS AS STATE CITIZENS.—Relators sought to strike *D*'s name from voters' records and ballot as mayoral candidate of South Charleston. *D* resided on the United States Naval Reservation in South Charleston, a tract purchased from the state but was not a federal employee. Relators asserted *D* was not a state citizen and could not become a candidate for office. *Held,* mandamus denied. West Virginia retains concurrent jurisdiction with the federal government and the state's sovereignty extends to those purposes which do not interfere with federal use of the property. The purposes for which the federal government acquired the land have no relation to the right of state citizens residing thereon to vote. *Adams v. Londeree,* 83 S.E.2d 127 (W. Va. 1954).

The case presents a clash of principle with precedent as to the effect of the federal-state relationship on residents of federal enclaves. U.S. CONST. Art. 1, § 8, clause 17, gives Congress the power to "exercise exclusive legislation" over areas ceded to the United States by the states. Older authority was explicit that "exclusive legislation" meant wholly "exclusive jurisdiction" in the absence of an express reservation by the state. *Fort Leavenworth R.R. v. Lowe,* 114 U.S. 525 (1885); *Surplus Trading Co. v. Cook,* 281 U.S. 647 (1930) (state could not tax personal property thereon); *Lowe v. Lowe,* 150 Md. 592, 133 Atl. 729 (1926) (residents not entitled

to sue for divorce in state courts); *Commonwealth v. Clary,* 8 Mass. 72 (1811) (state liquor laws not applicable); *State v. Mack,* 23 Nev. 359, 47 Pac. 763 (1897) (residents not subject to state criminal laws for acts committed thereon); In re *Town of Highlands,* 48 N.Y. 795, 22 N.Y. Supp. 137 (1892), *Sinks v. Reese,* 19 Ohio St. 306 (1869), *McMahon v. Polk,* 10 S.D. 296 (1897) (residents not entitled to vote in state elections). These precedents amply support the dissent in the instant case.

However, indications of a less rigid view of "exclusive jurisdiction" are beginning to appear in both federal and state courts, responsive to the considerations noted in Chief Justice Hughes' statement in *James v. Dravo Contracting Co.,* 302 U.S. 134, 148 (1937) that ". . . the importance of reserving to the state jurisdiction for local purposes which involves no interference with the performance of governmental functions is becoming more clear as activities of the [federal] government expand and large areas within the state are acquired by [it]." In *Tagge v. Gulzow,* 132 Neb. 276, 271 N.W. 803 (1937), inhabitants of a federal farmstead project were held residents of the public school district in which the reservation was situated and their children entitled to free school privileges. A wrongful death statute was held applicable to such an enclave in *Hoffman v. Power Co.,* 91 Kan. 450, 138 Pac. 632 (1914). More recent Supreme Court opinions have minimized "exclusiveness" and have espoused concurrency when the state activity does not conflict with the purposes underlying federal acquisition. *Silas Mason Co. v. Tax Comm'n,* 302 U.S. 186 (1937); *Atkinson v. Tax Comm'r,* 303 U.S. 20 (1938); *James v. Dravo Contracting Co., supra.*

Congressional recognition of state revenue needs was expressed in a 1940 act (54 STAT. 1059) permitting application of designated state taxes in these enclaves. A recent decision held that residents of a military reservation were entitled to vote in state elections, *Arapajolu v. McMenamin,* 113 Cal.App.2d 824, 249 P.2d 318 (1952). Thus, the broad literalness of the older line of cases has been retreating before considerations incident to preservation of the state's importance in the face of ever-increasing expansion of the federal government. The instant decision rejects the concept of "compartmentalized" jurisdiction in favor of the view that the federal-state relation is not a conflict between rivals for power but an ensemble of mutually supplementing governments. In manifesting a judicial awareness of the importance of state-national

jurisdictional concurrence, it emphasizes the desirability of minimizing occasions for discord.

The decision assumes without examining that the question depends on state law. In view of the provision that all "persons born or naturalized in the United States . . . are citizens of the United States *and of the state in which they reside,*" (U.S. CONST. AMEND. XIV, § 1, italics supplied), the determination of state citizenship of persons resident in federal enclaves may well present a federal question. If so, its ultimate resolution when appropriately raised will be for the federal courts where, it is hoped, it will be approached with the same realistic awareness of the accommodations involved in co-operative federalism to which the instant decision has been properly sensitive.

C. N. S.