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Aministrative Law - Right to Notice and Hearing - North Dakota Administrative Agencies Uniform Practice Act

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RECENT CASES

ADMINISTRATIVE LAW—RIGHT TO NOTICE AND HEARING —NORTH DAKOTA ADMINISTRATIVE AGENCIES UNIFORM PRACTICE ACT. Plaintiff Insurance Commissioner ordered the defendant insurance company to cease issuing new policies of insurance until its funds became equal to its liabilities. Upon defendant's failure to comply, the Commissioner petitioned the district court for permission to take possession of defendant's business. Defendant objected to the jurisdiction of the court on the ground that the Commissioner had failed to give it notice and hearing before deciding it was insolvent. The lower court upheld the objection and dismissed the suit without prejudice. Upon appeal to the North Dakota Supreme Court it was *held*, that the decision be reversed. The provisions of N.D. Rev. Code §28-3208 (1943), which declare that, "Whenever an administrative agency . . . shall institute an investigation . . . no decision shall be made by the agency until all parties in interest have been furnished with a written specification of the issues . . . nor until an opportunity shall have been afforded . . . to be heard . . ." did not apply. The North Dakota Administrative Agencies Uniform Practice Act does not apply to nonreviewable orders issued by administrative agencies. *Krueger v. American Christian Mutual Life Insurance Co.*, 43 N.W.2d 676 (N.D. 1950).

The right to be heard before property is taken or rights are withdrawn is said to be of the essence of due process as required by the Fourteenth Amendment.[1] Although a statute providing for administrative determinations may not expressly require notice and hearing, yet in an effort to uphold the constitutionality of such statute, notice and hearing may be implied where they are necessary.[2] However, the more general rule is that a statute not requiring notice and hearing where such is a necessity will be held unconstitutional, even though notice and hearing may actually have been given.[3] As a general proposition there must be notice and hearing where a failure to give such a matter of right would result in a denial of due process,[4] or where a property right or a vital interest of an adverse party is affected.[5] But there are exceptions to this general rule. Notice and hearing have not been required where the administrative action may be classed as quasi-legislative as distinguished from quasi-judicial,[6] where a substantial number of persons will be affected by the administrative determination and it is impractical to notify them all,[7] where there is an urgent public necessity for prompt action,[8] or where

[1] Garfield v. Goldsby, 211 U.S. 249, 262 (1908); *cf.* Stuart v. Palmer, 74 N.Y. 183, 194 (1878).

[2] Bratton v. Chandler, 260 U.S. 110 (1922); *cf.* Gilchrist v. Bierring, 234 Iowa 899, 916, 14 N.W.2d 724, 732 (1944).

[3] Coe v. Armour Fertilizer Works, 237 U.S. 413, 424 (1915); Beveridge v. Baer, 59 S.D. 563, 241 N.W. 727 (1932).

[4] Hagar v. Reclamation District No. 108, 111 U.S. 701 (1884).

[5] Garfield v. Goldsby, 211 U.S. 249 (1908); *cf.* McDonough v. Godcell, 13 Cal. 2d 741, 91 P.2d 1035 (1939).

[6] Commonwealth v. Sisson, 189 Mass. 247, 75 N.E. 619 (1905).

[7] Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915); Baker v. Paxton, 29 Wyo. 500, 215 Pac. 257, 268 (1923).

[8] North American Cold Storage Co. v. Chicago, 211 U.S. 306 (1908); Durand v. Dyson, 271 Ill. 382, 111 N.E. 143 (1915).

there is an opportunity to be heard at one stage of the proceedings before the administrative action becomes final.[9] Under the latter exception, the requirement of a hearing is satisfied where a statutory right to contest the validity of an administrative order involves the right to a trial de novo.[10]

In the present case the statutes establishing the authority for the commissioner to issue his order required no notice or hearing.[11] The statutes providing for the enforcement of this order allow a full hearing on the application for the order to show cause made by the commissioner in the district court.[12] Thus it is apparent that an order of the present nature as issued by the commissioner, acting in an executive capacity pursuant to statutory authority, does not operate as a final or binding determination of facts or the defendant's rights, and no prior notice and hearing are required as a constitutional matter.[13]

The North Dakota Administrative Agencies Uniform Practice Act[14] was never intended to grant a right of review.[15] The desired result was to establish a code of procedure for those cases where review is granted by some other satute.[16] That the act was not intended to apply to every order of an administrative officer or body is apparent in the statutory definition of an administration agency.[17] The order of the insurance commissioner in the present case had neither of the statutory prerequisites; to have "the force and effect of law", or be "by statute . . . subject to review in the courts."[18]

Admittedly the instant case reaches a beneficial result. An opposite construction of the statutes would have imposed unnecessary burdens upon state administrative agencies. Yet construing the holding in connection with *In re Guon*,[19] it appears that the benefits of the benefits of the Administrative Agencies Uniform Practice Act are afforded parties only in cases where the methods of hearing and review, as provided by independent statutes, are not inconsistent with the pro-

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9 Opp Cotton Mills v. Administrator, 312 U.S. 126, 152 (1941); Jordan v. American Eagle Fire Ins. Co., 169 F.2d 281 (1948).

10 Jordan v. American Eagle Fire Ins. Co., *supra* note 9.

11 N.D. Rev. Code §§ 26-1106, 26-1111 (1943).

12 N.D. Rev. Code §§ 26-2102, 26-2105 (1943).

13 Gauss v. American Life Ins. Co., 290 Mich. 33, 287 N.W. 368 (1939); Clark v. Lincoln Liberty Life Ins. Co., 139 Neb. 65, 296 N.W. 449 (1941).

14 N.D. Rev. Code c. 28-32 (1943), *am'd.* N.D. Rev. Code §§28-3205, 28-3208 (Supp. 1949).

15 Hoyt, *North Dakota Leads In Administrative Law Field*, 25 J.Am.Jud. Soc. 114 (1941).

16 *Supra* at 115.

17 N.D. Rev. Code § 28-3201 (1) (1943), "Administrative agency . . . shall include any officer . . . having state-wide jurisdiction and authority to make any order . . . which has the force and effect of law and which by statute is subject to review in the courts of this state."

18 *Supra* notes 11, 12, 13. The court pointed out in its decision that, although it had never before considered the precise question presented in the instant case, yet in each of the prior cases where the act has been held applicable requirements of hearing and review have been established by separate statute. For examples see Langer v. Gray, 73 N.D. 437, 15 N.W. 2d 732 (1944); Northern Pacific Ry. Co. v. McDonald, 74 N.D. 416, 23 N.W.2d 49 (1946); National Farmers Union Life Ass'n v. Krueger, 38 N.W.2d 563 (N.D. 1949).

19 In re Guon, 38 N.W.2d 280 (N.D. 1949); 26 N.D. Bar Briefs 312 (1950).

visions of the Uniform Act. To retain the desired uniformity, future legislators must watch with care their drafting of acts involving administrative agencies to be certain that such inconsistencies do not occur.[20]

Myron Atkinson, Jr.

BANKRUPTCY—EXCEPTING JUDGMENT CLAIM FROM DISCHARGE—EFFECT OF LACHES. The debtor filed a voluntary petition in bankruptcy in the Eastern District of New York, and the creditor filed the only claim scheduled. The proceedings were subsequently dismissed. Although dismissal is equivalent to denial,[1] three years later the debtor again filed a voluntary petition in the Southern District of New York, listing the same claim. The court, unaware it was acting upon a non-dischargeable debt, granted a general discharge. Twelve years thereafter the claim was assigned to petitioner, who now seeks to have the court exempt the claim from the operation of the discharge granted in the second proceeding. *Held*: petition granted. The denial of the first discharge, for whatever reason, is res judicata, not to be questioned in a later proceeding. Laches does not bar the claim, and the court may correct its order at any time since it has been imposed upon. *Harris v. Warshawsky*, 184 F.2d 660 (2d Cir. 1950).

The instant case represents the view of the bankruptcy-experienced Second Circuit. However, the court's liberality in recognizing a claim where the claimant obviously had been guilty of laches, is opposed by respectable authority. One eminent bankruptcy scholar argues that "there must come a time when the discharge is irrevocable. An interested party should not be entitled to stand by indefinitely until it seems advantageous to present the defense of res judicata".[2] Under the doctrine of res judicata the bankruptcy courts have broadened the scope of debts which are non-dischargeable beyond those set forth in section 17 of the Bankruptcy Act. The pendency of a voluntary petition in bankruptcy,[3] the denial of a discharge in a prior proceeding,[4] the dismissal of the prior proceeding without the granting of a discharge,[5] or the failure to apply for a discharge[6] precludes con-

[20] For a further consideration of administrative law in North Dakota see Comment, 24 N.D. Bar Briefs 211 (1948).

[1] Perlman v. 322 West Seventy-Second Street Co., 127 F.2d 716 (2d Cir. 1942).

[2] Oglebay, *Some Developments in Bankruptcy Law*, 23 J.N.A. Ref. Bankr. 70, 72 (1949); also see Donnelly, *The Non-Dischargeability of Dischargeable Debts in Bankruptcy*, 36 Va. L. Rev. 207 *et seq.* (1950); *In re* Early, 34 F. Supp. 774 (E.D. Pa. 1940).

[3] Freshman v. Atkins, 269 U.S. 121 (1925); Bluthenthal v. Jones, 208 U.S. 64 (1908).

[4] *In re* Buchanan, 62 F. Supp. 964 (W.D. W.Va. 1945).

[5] Perlman v. 322 West Seventy-Second Street Co., 127 F.2d 716 (2d Cir. 1942).

[6] *In re* Cederbaum 27 F. Supp. 1014 (S.D.N.Y. 1939).