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Constitutional Law - Due Process - Revocation of License as Deprivation of Due Process

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Somewhat analogous to the instant case is a recent North Dakota decision, *Littlejohn v. County Judge, Pembina County*.[9] One co-owner had made a gift inter vivos of the bonds to the other co-owner. Upon the death of the donor a question arose as to the taxability of the bonds as part of his estate. The court decided that there was no interest remaining in the deceased, since his interest in the bonds had vested in the donee upon completion of the gift. However, if the donee had died first it seems improbable that the bonds would have gone to her estate rather than to the donor, since applicable regultations provide that the registration of the name of the owner is the sole evidence of the ownership and payment by the government is to be made only to the other registered owner.[10] Thus, the case patently departs from the majority view.

The purpose for which these bonds were first issued was to aid war financing. The United States Treasury Department set up regulations over the acquisition, use and disposition of these bonds in an attempt to keep litigation involving these bonds at a minimum. In doing so they made these bonds a special and unique type of property; they did not fall in any known property category and yet had features of many different types of property. In dealing with these bonds, it is well to keep in mind the aim with which they were issued.

GENE KRUGER

CONSTITUTIONAL LAW — DUE PROCESS — REVOCATION OF LICENSE AS DEPRIVATION OF DUE PROCESS. — Appellant, a physician and a member of the executive board of the Joint Anti-Fascist Refugee Committee, was convicted in a federal court of contempt of Congress for failing to produce before the House Committee on Un-American Activities certain subpoenaed papers relative to the activities of the Anti-Fascist Committee.[1] Subsequent to affirmance of this conviction,[2] and after having served five months in jail as a consequence, appellant's license to practice medicine was suspended for six months by the Board of Regents of the University of the State of New York pursuant to the provisions of the New York State Education Law.[3] Appellant sought a review of the determination of the Board, contending, *inter alia*, that the sections of the Education Law under which disciplinary action had been taken against him were violative of the due process clause of the Fourteenth Amendment. The Court *held*, that the conviction be affirmed. When a determination of an administrative agency is supported by substantial evidence, due process does not require review of the exercise of its discretionary power. *Barsky v. Board of Regents of the University of the State of New York*, 74 S. Ct. 650 (1954).

Regultaion of physicians by the state has existed at least since Hammurabi (B.C. 2285-2242), King of Babylon compiled his famous Code embodying

9. 58 N.W. 2d 278 (N.D., 1953).
10. 31 Code Fed. Regs. §315.45(c) (1949).

1. United States v. Barsky, 72 F.Supp. 165 (D.D.C. 1947).
2. Barsky v. United States, 167 F.2d 241 (D.C. Cir. 1948), *certiorari denied*, 334 U.S. 843 (1948), *rehearing denied*, 339 U.S. 971 (1950).
3. § 6514, subd. 2 (b): "2. The license of registration of a practitioner of medicine . . . may be revoked, suspended, or annulled . . . after due hearing in any of the following cases: (a) . . . (b) That a physician . . . has been convicted in a court of competent jurisdiction, either within or without this state, of a crime; . . . ."

provisions stipulating penalties for malpractice [4] and regulating fees chargeable for various operations.[5] That the reasonable regulation of the conduct of physicians,[6] dentists,[7] optometrists,[8] and similar professional classes [9] is a valid exercise of the state's police power is well settled,[10] as is the validity of statutes granting to a board the power to regulate or supervise such conduct.[11] Statutes vesting such boards with authority to determine finally issues of fact,[12] to make reasonable regulations relative to the professions,[13] and to exercise wide discretionary power to revoke, suspend, or annul licenses for reasonable cause have generally withstood the charge of unconstitutionality.[14] Revocations of licenses by such boards have been upheld unless clearly arbitrary,[15] or unless the grounds for revocation were so vague as not to give fair notice,[16] Violations of the regulations of a licensing board [17] or of a statute,[18] unprofessional,[19], immoral,[20] or unethical [21] conduct, practicing under an assumed name,[22] and advertising, deceptive [23] or otherwise,[24] have been held sufficient causes for suspension of licenses.

Due process generally requires that notice and an opportunity for hearing be given a licensee prior to revocation of a license authorizing pursuit of a business or a profession, unless such activity can be completely prohibited

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4. Harper, Francis Robert, *The Code of Hammurabi.* Chicago: University of Chicago Press; Callaghan and Co. London: Luzac and Company, 1905, p. 79, §§ 218-220.
5. Harper *op. cit. supra* note 4, pp. 77, 79, §§ 215-217, 221-220.
6. Davis v. State, 183 Md. 385, 37 A.2d 880 (1944); State v. Miller, 59 N.D. 286, 229 N.W. 569 (1930); State Board v. Ferry, 171 Pa. 372, 94 A.2d 121 (1953); State v. Doran, 28 S.D. 486, 134 N.W. 53 (1912).
7. Bell v. Board of Regents, 295 N.Y. 161, 65 N.E. 2d 184 (1946).
8. Fisher v. Schumacher, 72 S.2d 804 (Fla. 1954); Norwood v. Parenteau, 63 N.W.2d 807 (S.D. 1954).
9. Aitchison v. State, 105 A.2d 495 (Md. 1954); Walker v. Corwin, 210 Minn. 337, 300 N.W. 800 (1941).
10. Duren v. State Board of Optometry, 211 Ark. 565, 201 S.W.2d 578 (1947); Dean v. State, 116 N.E.2d 503 (Ind. 1954); Capitol Optical Co. v. State Board of Optometry, 70 So.2d 15 (Miss. 1954); Sears Roebuck & Co. v. State Board, 213 Miss. 710, 57 So.2d 726 (1952); Davis v State, *supra* note 6; *cf.* Purity Extract Co. v. Lynch, 226 U.S. 192 (1912).
11. Reetz v. Michigan, 188 U.S. 505 (1903).
12. Melton v. Carter, 204 Ark. 595, 164 S.W.2d 453 (1942); Kendall v. Beiling, 295 Ky. 782, 173 S.W.2d 489 (1943).
13. Norwood v. Parenteau, *supra* note 8.
14. Brinkley v. Hassig, 83 F.2d 351 (10th Cir. 1936), *appeal dismissed,* 282 U.S. 800 (1936); State *ex rel.* Kassabian v. State Board, 235 P.2d 327 (Nev. 1951); Board of Medical Examiners v. Buck, 192 Ore. 66, 232 P.2d 791 (1951), *aff'd* 258 P.2d 124 (1953), *appeal dismissed,* 346 U.S. 919 (1954).
15. Lee Optical Co. v. Williamson, 120 F.Supp. 128 (W.D. Okla. 1954); *cf.* Davis v. Schnell, 81 F.Supp. 872 (S.D. Ala. 1949); Blumlo v. Township Board, 309 Mich. 452, 15 N.W.2d 705 (1944); Ritter v. City of Pontiac, 276 Mich. 416, 267 N.W. 641 (1936).
16. Green v. Blanchard, 138 Ark. 137, 211 S.W. 375 (1919); State *ex rel.* Inscho v. Dental Board, 339 Mo. 547, 98 S.W.2d 606 (1936).
17. *cf.* Norwood v. Parenteau, *supra* note 8.
18. *In re* Shortridge, 53 N.D. 614, 207 N.W. 442 (1926).
19. State *ex rel.* Lentine v. State Board, 334 Mo. 220, 65, S.W.2d 943 (1933); Tarr v. Hallihan, 375 Ill. 38, 30 N.E.2d 421 (1940).
20. State v. Knight, 201 Iowa 819, 216 N.W. 104 (1927); Meffert v. State Board, 66 Kan. 710, 72 Pac. 247 (1903), *aff'd,* 195 U.S. 625 (1904); State *ex rel.* Sorenson v. Lake, 121 Neb. 331, 236 N.W. 762 (1931).
21. State Board v. Ferry, *supra* note 6.
22. Berry v. Alderson, 59 Cal. 729, 211 Pac. 836 (1922).
23. Webster v. Board, 17 Cal. 534, 110 P.2d 992 (1941); Dr. Bloom Dentist v. Cruise, 259 N.Y. 358, 182 N.E. 16 (1932), *appeal dismissed,* 288 U.S. 588 (1932).
24. Semler v. Oregon State Dental Examiner, 294 U.S. 608 (1935); Fisher v. Schumacher, *supra* note 8; State v. Rones, 223 La. 839, 67 So.2d 99 (1953).

by the state.[25] But upon compliance with the foregoing, neither the accordance of finality to the board's interpretation of the evidence [26] nor to determinations of certain questions of law [27] is violative of due process.

Here, the fact that appellant in refusing to produce the subpoenaed papers was acting on advice of competent legal counsel, and that the crime of which applicant was convicted involved no moral turpitude [28] is of no material consequence. Apellant's contention that the Board of Regents relied on immaterial and prejudicial evidence of the alleged subversive activities of the Refugee Committee in determining the extent of disciplinary action taken is likewise unavailing in that the mere fact of appellant's conviction of a crime was sufficient to sustain the Board's determination.[29] Therefore, if the board has not exceeded its jurisdictional limits and if substantial evidence supports its findings, a final determination of the constitutional validity of the empowering statute precludes judicial review of the considerations upon which the board based its decision.[30]

The instant case, in supporting the extension of discretionary powers of administrative boards, is in accord with the vast majority of holdings. It is submitted that the policy thus set forth is desirable as tending not only to facilitate the accurate and expeditious fulfilment of administrative functions, but also to prevent an even greater crowding of court dockets, the inescapable consequence of a contrary view.

H. M. PIPPIN

CONSTITUTIONAL LAW — EQUAL PROTECTION — SEGREGATION IN RECREATIONAL FACILITIES FURNISHED BY THE STATE. — Suit was brought against the City of Baltimore and the State of Maryland by plaintiffs, adult and minor Negroes, to enjoin segregation of the races at public swimming pools, beaches and bathhouses. Plaintiffs claim that such segregation interferes with rights guaranteed them by the equal protection clause of the Fourteenth Amendment. It was stipulated at a pre-trial conference that the separate facilities afforded the Negroes were "physically equal." The court *held,* that segregation of the races with respect to recreational facilities controlled by the State did not deprive the plaintiffs of their constitutional rights as long as the facilities provided were of a substantially equal nature. *Lonesome* v. *Maxwell,* 123 F. Supp. 193 (D.Md. 1954).

Under the "separate but equal" doctrine, public facilities for Negroes and Whites may be separate if substantially equal.[1] It is not required that the facilities provided the different races be identical but is is sufficient if they

25. Smith v. State Board, 140 Iowa 66, 117 N.W. 1116 (1908); *See* Golsmith v. United States Board of Tax Appeals, 270 U.S. 117, 123 (1925).

26. *cf.* Jones v. Buffalo Creek Coal Co., 245 U.S. 328 (1917); Central Land Co. v. Laidley, 159 U.S. 103 (1895); U.S. v. Gallagher, 183 F.2d 342 (3d Cir. 1949).

27. Reetz v. Michigan, *supra* note 11.

28. Sinclair v. United States, 279 U.S. 263 (1929).

29. Sinclair v. United States, *supra note 28;* Armour Packing Co. v. United States, 209 U.S. 56 (1908).

30. Gibson v. Medical Examining Board, 141 Conn. 218, 104 A.2d 890 (1954); State *ex rel.* Kassabian v. State Board, *supra* note 14; Schnure v. Board of Regents, 130 N.Y.S. 2d 783 (N.Y. 1954); Davis v. Board of Regents, 283 App. Div. 591, 128 N.Y.S.2d 51 (1954); *cf.* Switchmen's Union v. National Mediation Board, 320 U.S. 297 (1943); Ray v. Powell, 314 U.S. 402 (1941); Bates and Guild Co. v. Payne, 194 U.S. 106 (1904).

1. Plessy v. Ferguson, 163 U.S. 537 (1896).