



1944

## The Administrative Procedure Bills

O. H. Thormodsgard

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officials from selling timber off school land. It held the State Court was the proper tribunal to decide whether or not the state law or the OPA ceiling price should apply.

Concluding from the reading of the decisions cited, it would seem the danger of violations of OPA ceiling prices in sales by County Court officials handling estates, or sheriffs, etc., is minimum and applies only to the sale of second hand farm machinery, equipment, or machinery parts, but why should OPA prices have anything to do with the orderly liquidation of assets of estates under the State laws and jurisdiction of our courts, even farming machinery belonging to the estate coming on for settlement with heirs and creditors? Let's hear from more of you lawyers.

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### THE ADMINISTRATIVE PROCEDURE BILLS

My Dean O. H. Thormodsgard

(Continued from Page 174)

The Attorney General's Committee prepared a majority and a minority report and two drafts of bills. These reports and accompanying bills have merits. Colonel McGuire, Chairman of the Special Committee on Administrative Law of The American Bar Association expressed his views on these reports as follows: "I would be the last one to minimize the importance of these two reports and drafts of bills. According to my way of thinking a far better job has been done by the Attorney General's Committee in the assembly of the material, in the reports, and in the two drafts of bills than was done by the corresponding English Committee on ministerial powers. . . . Personally, I believe that there is much good in both drafts submitted by the Attorney General's Committee and in the Walter-Logan Bill, and that if all concerned would forget any personal bias they may have a combination of the better features of all three bills would result in a much better administrative procedure bill than any of the three would make if enacted into law. I am happy to say that a most serious attempt has been made to accomplish that purpose in HR 3364 and S 918, 77th Congress. See — 27 A.B.A.J. (1941) 151-152 and 66 A.B.A. Rep. (1941) 439-454.

The House of Delegates met in Chicago March 17 and 18, 1941. Quoting from 66 A.B.A. Rep. (1941) 401-403:

"The next matter on the agenda was the report of the Committee on Administrative Law (page 439, *infra*) which was presented by Colonel O. R. McGuire, Chairman of the Committee. The following recommendations had been transmitted by the Board of Governors, after slight amendment which had been concurred in by the committee, with the recommendation that they be approved."

'Resolved, That the House of Delegates of the American Bar Association notes with satisfaction the reports by the Attorney General's Committee on Administrative Procedure, which strongly confirm the need for early enactment of

remedial legislation along lines heretofore urged by this Association; further

'Resolved, That the House of Delegates hereby approves the following statement of principles which should be reflected in any bill enacted for the improvement of federal administrative procedure:

'(1) Completeness. A short but complete statement of the fundamentals of the whole administrative process, including clear declarations of policy;

'(2) Rules and Regulations. In connection with administrative regulations: (a) the specification of required types of administrative rules; (b) a statutory enumeration of methods of rule making to be adapted to different kinds of rules and situations and designed to secure the participation of all interested parties in the rule-making process, including formal notice and public hearing if requested and practicable preliminary to the issuance of interpretative or substantive law rules; (c) a recognition of a right of petition in connection with the making and modification of rules, and (d) clear provision for judicial review both upon recognized principles of declaratory judgment or in cases of actual controversy.

'(3) The Adjudicatory System. In connection with administrative adjudication: (a) The segregation of prosecuting and judicial functions in the administrative process; (b) a requirement that adjudications be expedited in order to secure the prompt relief of private parties; (c) a definition of the duties of officers who may preside at administrative hearings; (d) declared standards of fair and impartial procedure; (e) provision for the independent selection of administrative hearing officers, other than the heads of agencies, designed to secure their independence of judgment; (f) a statement of the applicability of the basic principles of evidence, together with a recognition of the right of cross examination; (g) provision that decisions shall be made by the administrative officers who heard the case in the first instance (subject to review by superior administrative officers), and that all deciding officers shall confine their consideration to the record, shall personally master the pertinent parts of the record, and shall not rely upon outside aid (other than clerical) in the performances of this function; and (h) adequate requirement of the making of findings and conclusions, and the statement of reasons for decisions.

"The foregoing standards should be placed within a legislative framework which requires (a) adequate and specific notice in all cases, the simplification of responsive pleadings, and the availability of declaratory rulings in all cases of threatened action or controversy; (b) a statement of unmistakable authority for the informal disposition of uncontested cases, coupled with a requirement of formal procedure in all cases where private parties demand them; (c) the limitation

of sanctions or penalties to those authorized by law; and (d) a clear statement of the procedure for judicial review and an adequate scope thereof, together with provisions which will simplify and decrease the cost of such review.

'(4) General Provisions. In connection with all administrative proceedings; (a) Provision for the proper delegation and decentralization of authority; a definitely stated right of appearance and representation of parties; and the simplification of the admission of attorneys or others to practice before administrative agencies and (b) appropriate limitations upon investigatory powers, the issuance of subpoenas, and administrative publicity.

'(5) Exceptions. The exception of purely executive functions which do not lend themselves to formal procedures, such as lending, spending, national defense and similar types of governmental activity.

'Resolved, That the House of Delegates expresses the opinion that Senate Bill 674 (which was drafted by the minority of the Attorney General's Committee) is the bill which up to this time best embodies the above statement of principles; and further

'Resolved, That the enactment into law of legislation embodying these principles is of great public importance and that the Association lend every effort in aid thereof.'

(Continued in next issue)

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### OUR SUPREME COURT HOLDS

In Robert T. Croak and Betty Croak, Pltfs. and Respts., vs. Ed Wittman, Deft., Tillie Egan, Louisa McIlwain, et al, Inters. and Applt.

That a transferee of real property subject to a trust takes it free of the trust if he is a purchaser without notice and for value. This rule is applicable whether the property involved is subject to an express trust or is impressed with a constructive trust.

That a duly executed instrument denominated a quit-claim deed purporting to "grant bargain, sell, release and quit-claim" to the grantees property described therein "to have and to hold the above quit-claimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said parties of the second part, their heirs and assigns, forever", when taken in good faith, for value and without notice is sufficient to support a claim of bona fides on the part of the grantees.

That the essential elements of a bona fide purchase are: (1) a valuable consideration, (2) the absence of notice, (3) the presence of good faith.

That where the consideration for the conveyance of real estate is the extinguishment of an antecedent debt and as a result of the transaction the transferee surrenders valuable rights or changes his position to his detriment the transferee may be considered a bona fide purchaser if he entered into and carried out the transaction in good faith and without notice.

Appeal from the District Court of Bottineau County, Grimson, J. **AFFIRMED.** Opinion of the court by Morris, J.