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Public Utilities, Administrative Law, War Powers, Local Government and Taxation

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PUBLIC UTILITIES, ADMINISTRATIVE LAW, WAR POWERS, LOCAL GOVERNMENT AND TAXATION

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This review covers the fields of public utilities, administrative law, war powers, local government and taxation. With a single exception it may be stated that no new principles of law have been announced during 1953 to this time in these fields of law. This does not mean that the Supreme Court has not been busy in these fields, but rather that it has found occasion to apply well-established principles to new sets of circumstances rather than finding itself presented with new basic problems.

The single exception we find is *School District No. 3 v. Perry*,[1] decided Nov. 17, 1952, an *en banc* and unanimous decision, opinion by Mr. Justice Moore. The case had to do with the formation of a new school district under a statute which allowed a discretion to the County Superintendent of Schools. The statute made no specific provision for an opportunity for hearing before the exercise of discretion by the Superintendent.

In such a case the Court held that validity of the superintendent's exercise of judgment was nevertheless dependent upon his giving those interested an opportunity to be heard. Although there is no specific discussion of the point, of constitutional law, it does appear that in discretionary matters public officials, whether directed specifically to do so or not, should, under our ideas of due process, afford an opportunity for a hearing to those interested in order that the discretion may be a well-advised one.

This is in accord with a definite trend manifested by the court in all matters involving activity by administrative and municipal officials. It appears to be the view of our Supreme Court that public officers ought not to lose sight of the fact that they should exercise their powers for the advancement of the welfare of the people they serve. Wherever a public officer exercised a technical, ungenerous view of his duties, not connected with the real purpose for which he was supposed to operate his office, he found the Supreme Court puting him back in his place. This happened a number of times.

The State Board of Barber Examiners found the technical ground for refusing to permit an experienced barber to practice his occupation and promptly swept it aside *(Battaglia, et al v. Moore)*.[2] In *Prouty, et al v. Heron*,[3] the court found it unreasonable for the Engineering Examiners to limit the practice of a man to

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[1] .....Colo....., 250 P. 2d 1010, 1952-53 C.B.A. Adv. Sh. No. 6.
[2] .....Colo....., 261 P. 2d 1017, 1952-53 C.B.A. Adv. Sh. No. 5.
[3] .....Colo....., 255 P. 2d 755, 1952-53 C.B.A. Adv. Sh. No. 14.

a phase of that field called "Civil Engineering" in the absence of any reasonable standard for such limitation.

This attitude was not wholly confined to the executive branch of the government. When a district court endeavored to step outside the judicial field and enter the province of the Fish and Game Commission, the court was held to the performance of duties assigned to it by law. *(People ex rel Dunbar, Atty. Gen., et al v. District Court in and for Chaffee County).*[4] But on the other hand, when the Fish and Game Department, through some over-zealous employees, unlawfully seized some deer meat from a man because he was an alien, even after they had issued a license to him to go out and get the deer meat, the court put that department back in its place pointing out that the legislature had not forbidden aliens to have hunting licenses, and that it is for the legislature to say who may hunt and not for an administrative official.

Along the same general trend of relieving the innocent and intentionally law abiding citizen from arbitrary and unlawful action of public officials, is the case of *Peterson v. McNichols,*[5] in which the City, after exacting an unlawful excise from a number of its citizens, then passed an ordinance to pay back the money which the Supreme Court, in an earlier case, had pointed out was unlawfully exacted. Then the City turns around and decided its own ordinance in which it had declared that it was simply doing common justice and decency and equity, was unconstitutional and void. The Supreme Court found nothing wrong with the City being as honest as the ordinary business man would have to be and required the City to make the repayments of the funds unproperly and unlawfully collected.

Somewhat in the same vein is *Mullen Investment Co. v. Arvada,*[6] where the Supreme Court required the town to make good every dollar of Special Improvement Tax money which it had collected and diverted for other uses than payment of the interest and principal on special improvement bonds for which the money had been paid.

There is one very wise decision of the court, *People v. Toll Gate Sanitation District,*[7] which really falls under a subdivision of law which is not specifically named within the One Year Review, to wit, the field of judicial legislation. In an opinion which cites all of the perfectly apparent reasons why the sanitation district law should be different than it is, but with no more than a simple quotation of the actual statute involved, the court held that a person qualified to vote is really one registered to vote.

[4] .....Colo....., 255 P. 2d 743, 1952-53 C.B.A. Adv. Sh. No. 16.
[5] .....Colo....., 260 P. 2d 938, 1952-53 C.B.A. Adv. Sh. No. 28.
[6] .....Colo....., 261 P. 2d 714, 1952-53 C.B.A. Adv. Sh. No. 27.
[7] .....Colo....., 261 P. 2d 152, 1952-53 C.B.A. Adv. Sh. No. 23,

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