Michigan Law Review

Volume 35 | Issue 8

1937

ATTORNEY AND CLIENT - CONSTITUTIONALITY OF STATUTE AUTHORIZING LAYMEN TO APPEAR BEFORE WORKMEN'S COMPENSATION COMMISSION

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RECENT DECISIONS

ATTORNEY AND CLIENT — CONSTITUTIONALITY OF STATUTE AUTHORIZING LAYMEN TO APPEAR BEFORE WORKMEN'S COMPENSATION COMMISSION [1] — Pursuant to legislative authorization the Illinois Industrial Commission promulgated a rule permitting representation by attorney or agent in proceedings before the Commission. Defendant, a layman, had made a business of handling and adjusting compensation claims, and an information was brought against him under a state statute forbidding unauthorized practice of law. Defendant sought sanctuary in the general license granted by the Commission, but the court *held*, that the Commission's rule was an infringement of judicial power in violation of the state constitution, and, consequently was no defense to the action. *Chicago Bar Association v. Goodman*, (Ill. 1937) U. S. Law Week, Mar. 16, 1937, p. 14.

The constitutional power of the judiciary to impose qualifications in addition to those prescribed by the legislature on the admission of applicants to practice before judicial tribunals is conceded in almost all jurisdictions which have faced the question.[2] It is considered that the judiciary has a distinct interest in the expeditious and proper handling of litigation which legislative regulations in the public interest may be inadequate to protect.[3] However, prior to the principal case the courts had apparently never intimated that their constitutional power included similar control over phases of practice of law [4] not bringing the judicial process into play.[5] Indeed, in a leading Wisconsin case, the court had expressed the opinion that the legislature could, without judicial sanction, license laymen to draft legal documents in a representative capacity or perform "any other type of legal services which does not give them power to influence *the course of justice as administered by the courts.*" [6] The

[1] For an exhaustive review of the legislation on the subject, see comment, 35 MICH. L. REV. 442 (1936).

[2] State v. Cannon, 206 Wis. 374, 240 N. W. 441 (1932); In re Lavine, 2 Cal. (2d) 324, 41 P. (2d) 161 (1935); In re Bozarth, (Okla. 1936) 63 P. (2d) 726. *Contra*: Matter of Cooper, 22 N. Y. 67 (1860).

[3] See State v. Cannon, 206 Wis. 374 at 397, 240 N. W. 441 (1932).

[4] It is not perfectly clear that all appearances before workmen's compensation commissions in a representative capacity constitute practice of law. See Goodman v. Beall, 130 Ohio 427, 200 N. E. 470 (1936). However, the conduct of the defendant in the principal case seems fairly includable within that category. See Michigan State Bar Assn. v. McGregor, a lower court case reported in 14 MICH. S. B. J. *145 (1934).

[5] It is arguable that, because of the finality and enforceability of their decisions, workmen's compensation commissions exercise judicial power; that, consequently, practice before them is subject to the same judicial control that is exerted over practice before courts. The acceptance of such an argument would, however, be fatal in many states to the constitutionality of compensation acts. See Borgnis v. Falk Co., 147 Wis. 327, 133 N. W. 209 (1911); Mackin v. Detroit Timken-Axle Co., 187 Mich. 8, 153 N. W. 49 (1915); Hawkins v. Bleakly, 243 U. S. 210, 37 S. Ct. 255 (1917).

[6] State v. Cannon, 206 Wis. 374 at 395, 240 N. W. 441 (1932), italics supplied. See, however, the extraordinary opinion of Frank, J., in Clark v. Austin, (Mo. 1937)

contrary doctrine announced in the instant case seems to have little support in either principle or authority. The only decision cited by the Illinois court as in accord with its position, *In re Day*,[7] involved merely the question of the court's power over admission to the general practice of law. Apparently the only analogy fortifying the conclusion reached is the oft-asserted constitutional power to punish unauthorized out-of-court practice of law as a contempt.[8] However, these assertions are simply dictum, since in none of these cases did it appear that the legislature had authorized the contemptuous conduct. As a matter of principle, moreover, it is difficult to see how lay representation before compensation commissions will impede the performance by the court of its constitutional function. Perhaps the presumed incompetence of lay representatives will multiply the errors in commission proceedings necessitating the corrective of judicial review; but a mere increase in judicial business can hardly be considered subversive of the judicial process, however socially undesirable it may be. It is arguable in support of the instant case that, since under the Illinois statute [9] (although either party is given the right to a judicial review of any final order of the commission), the court reviewing the commission proceedings cannot take new evidence but must consider fact and law solely on the basis of the commission's record, constitutionally adequate judicial review requires the exhaustive presentation of evidence before the commission, which presumably only an attorney can insure.[10] But even though it be conceded that the constitutional power assumed by the court may be founded on such a consideration, it is submitted that the court should have deferred to legislative policy as a matter of comity, inasmuch as there was no *actual* showing that evils of any sort had arisen from lay practice.[11] *Milton Rabinowitz.*

101 S. W. (2d) 977, asserting that a statute restricting to attorneys practice before the Missouri Public Service Commission was an unconstitutional invasion of judicial power on the ground that the judiciary has *exclusive* power to regulate all practice of law.

[7] 181 Ill. 73 (1899).

[8] In re Opinion of the Justices, 279 Mass. 607, 180 N. E. 725 (1932); State v. Barlow, (Neb. 1936) 268 N. W. 95. *Contra*: State v. Fletcher Trust Co., (Ind. 1937) 5 N. E. (2d) 538.

[9] Ill. Ann. Stat. (1930), c. 48, § 156 (f) (1).

[10] The court does not, however, rely on any such narrow ground but instead seems to take the broad position that all practice of law is subject to judicial control. See Chicago Bar Association v. Goodman, U. S. Law Week, Mar. 16, 1937, p. 14.

[11] It should be remembered that the court's interest alone is involved, and a "waiver" thereof seems not improper.