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ADMINISTRATIVE LAW - LIABILITY OF PUBLIC OFFICERS EXERCISING QUASI-JUDICIAL FUNCTIONS

RECENT DECISIONS

ADMINISTRATIVE LAW — LIABILITY OF PUBLIC OFFICERS EXERCISING QUASI-JUDICIAL FUNCTIONS — Defendants as duly authorized municipal officers issued a building permit to the plaintiff. After plaintiff had acted in reliance thereon defendants for reasons of self-interest and political expediency revoked the permit. *Held*, defendants as quasi-judicial officers while acting within their jurisdiction are not liable personally in tort for damages resulting from a discretionary act notwithstanding their conduct may have been malicious or corrupt. *Wasserman v. City of Kenosha*, (Wis. 1935) 258 N. W. 857.

There seems to be general agreement among the authorities that where no property right has been invaded, a quasi-judicial officer [1] acting within his jurisdiction [2] and in good faith is not liable personally for acts involving discretion even though they be erroneous.[3] If there has been an invasion of property rights, however, then, there is some difference of opinion as to whether the officer is liable.[4] But when one passes to the category in which the principal case must be classified, i.e. where the officer being within his jurisdiction has acted in bad faith though without invading a property right,[5] a pronounced conflict in the authorities is noticed. The majority impose personal liability on the officer.[6] The minority argue that the interest of the general public in having officials perform their duties vigorously and fearlessly requires that they be protected by a more or less com-

[1] An act is quasi-judicial "when the law, in words or by implication, commits to any officer the duty of looking into facts, and acting upon them, not in a way which it specifically directs, but after a discretion in its nature judicial." State v. Hastings, 37 Neb. 96 at 117, 55 N. W. 774 (1893), quoting from BISHOP, NON-CONTRACT LAW, § 786 (1889).

[2] It is generally held that when the officer exceeds his jurisdiction he is personally liable. Miller v. Horton, 152 Mass. 540, 26 N. E. 100 (1891), and see authorities cited in notes 6 and 7, infra. In MECHEM, PUBLIC OFFICERS, § 641 (1890), a possible exception is suggested where the jurisdiction is colorable but in fact erroneously exercised.

[3] Garff v. Smith, 31 Utah 102, 86 P. 772 (1906).

[4] Under what is probably the majority rule, liability is attached. The principal case takes this position (but holds that a revocation of a building permit is not an invasion of property rights). And see Lowe v. Conroy, 120 Wis. 151, 97 N. W. 942 (1904); People ex rel. Copcutt v. Board of Health, 140 N. Y. 1, 35 N. E. 320 (1893); Pearson v. Zehr, 138 Ill. 48, 29 N. E. 854 (1891); Cubit v. O'Dett, 51 Mich. 347, 16 N. W. 679 (1883); Stone v. Augusta, 46 Me. 127 (1858). But compare Raymond v. Fish, 51 Conn. 80, 50 Am. Rep. 3 (1883).

[5] The language of the cases cited in notes 6 and 7, infra, leaves little doubt that if the officer acts in bad faith and also invades property rights, he will universally be held personally liable.

[6] 1 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 439 (1911); 2 MCQUILLLIN, MUNICIPAL CORPORATIONS, § 556 (1928); 46 C. J. 1043 (1928). For the purpose of accuracy, however, it ought to be noticed that many of the cases announcing the so-called majority rule contain specific findings that the officers whose acts were called into question did in fact act in good faith so that their authority on the problem in hand is either by way of dicta or by implication.

plete immunity even though this rule occasionally works hardship upon a particular individual.[7] The Wisconsin court seems to be in the vanguard of this minority group. In any evaluation of the majority and minority views it should be borne in mind that the person injured nearly always has available the remedies of injunction and mandamus, so that denial of a personal action against the officer does not leave him without any remedy.[8] Should he in addition be given an action for the trouble, expense, and probable loss due to delay in thus enforcing his right which the wrongful act of the officer causes him? Is this extra safeguard of official integrity proper in view of general social experience? On the other hand, how likely are purely vexatious suits, and what real force is there to the policy argument of the minority? These questions aid in defining what seems to be an almost evenly balanced issue. The majority rule, however, seems definitely to be the more desirable. If by mandamus or injunction the party discriminated against can achieve his principal objective, and if in so doing he has not been seriously damaged, he is not likely to chance the hazards of more litigation. Some protection is also afforded the officer by a possible action for malicious prosecution. On the other hand, if the injury has been substantial, fairness seems to demand that a recovery be allowed from the person responsible therefor. Moreover the public is not only interested in the "fearless and vigorous" administration of the law but also in the fair and equitable administration thereof. M. F. A. H.

[7] Sweeney v. Young, 82 N. H. 159, 131 A. 155 (1925); Jaffarian v. Murphy, 280 Mass. 402, 183 N. E. 110 (1932); Ray v. Dodd, 132 Mo. App. 444, 112 S. W. 2 (1908); De Bolt v. McBrien, 96 Neb. 237, 147 N. W. 462 (1914); Sanders State Bank v. Hawkins, (Tex. Civ. App. 1911) 142 S. W. 84; Spalding v. Vilas, 161 U. S. 483, 16 S. Ct. 562 (1895); Moran v. McClearns, 60 Barb. (N. Y.) 388 (1871).

[8] The principal case calls attention to the fact that the plaintiff could have enforced his right to proceed with the construction of the building by injunction.