Michigan Law Review

Volume 48 | Issue 8

1950

ADMINISTRATIVE LAW-FEDERAL ADMINISTRATIVE PROCEDURE ACT-THE SUPREME COURT GIVES THE ACT ITS FIRST INTERPRETATION

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COMMENTS

ADMINISTRATIVE LAW—FEDERAL ADMINISTRATIVE PROCEDURE ACT—THE SUPREME COURT GIVES THE ACT ITS FIRST INTERPRETATION—The Federal Administrative Procedure Act[1] received its first thorough consideration by the Supreme Court in the recent case of

[1] 60 Stat. L. 237 (1946), 5 U.S.C. (1946) §1001 et seq.

Wong Yang Sung v. McGrath.[2] The Court held that deportation proceedings must conform to section 5,[3] which provides for notice, opportunity for a hearing, separation of prosecution and quasi-judicial functions, and the issuance of declaratory orders by the agency, and to section 11,[4] which prescribes an independent status for presiding officers. The scope of section 5 is limited to administrative adjudications "required by statute to be determined on the record after opportunity for an agency hearing." There is no specific requirement in the Immigration Act, the applicable legislation in this field, for a hearing before an alien can be deported. A hearing, however, has long been deemed necessary to satisfy the requirements of due process,[5] and such hearings have been held before immigration inspectors who do not satisfy the requirements of section 11. Thus, in reaching its decision, the Court (in a 7 to 1 decision) interpreted the words "required by statute," as found in section 5, to include hearings required by statute either in express terms or by judicial interpretation. This compels an important change in immigration hearing procedures.

This decision, which resolved a long-standing argument as to the meaning of the phrase,[6] is of importance to the agency practitioner because it sheds light on the Supreme Court's general attitude towards the FAPA. Perhaps the most concise statement of this attitude is found in the portion of the opinion that Justice Jackson, writing for the majority, devoted to tracing the history of the act, wherein he said: "The Act thus represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities and, no doubt, some ambiguities. Experience may reveal defects. But it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the Act warrant, to give effect to its remedial purposes where the evils it was aimed at appear."[7] An investigation of the method by which Justice Jackson applied this general

[2] 339 U.S. 33, 70 S.Ct. 445 (1950).

[3] 60 Stat. L. 239, §5 (1946), 5 U.S.C. (1946) §1004.

[4] 60 Stat. L. 244, §11 (1946), 5 U.S.C. (1946) §1010.

[5] The Japanese Immigrant Case, 189 U.S. 86, 23 S.Ct. 611 (1903); Kwock Jan Fat v. White, 253 U.S. 454, 40 S.Ct. 566 (1920).

[6] The contentions of both contestants have been upheld in recent decisions. See Fajardo v. United States, Civil No. 46-214, S.D. N.Y., June 24, 1948; Eisler v. Clark (D.C. D.C. 1948) 77 F. Supp. 610.

[7] Wong Yang Sung v. McGrath, 339 U.S. 33 at 40-41, 70 S.Ct. 445 (1950).

policy to the facts of the case reveals the impact the Administrative Procedure Act will have upon administrative law in the coming months.

The government's argument that section 5 is intended to apply only when explicit statutory words granting a right to an adjudication can be found was based largely upon the fact that in the original bill section 5 was to apply to hearings required "by law."[8] Upon the suggestion of the Attorney General[9] the wording was changed to its present form. The necessary inference to be drawn from this change, the government contended, was that Congress must have intended a narrow application of the section. It would be difficult to find better evidence of Congressional intent than this pre-enactment history of the act. This argument, however, was dismissed with the one-sentence comment that "the legislative history [of the act] is more conflicting than the text is ambiguous." In lieu of the government's analysis the Court based its decision upon the proposition that because there would be no constitutional authority for deportation without a hearing and because the applicable provisions of the Constitution, here due process, permeate every enactment of Congress, the reasonable and therefore proper construction of "by statute" is one that includes provisions read into statutes by the judiciary as well as those specifically provided for by the legislature.

The significance of this decision insofar as it sheds light on the Supreme Court's view of the act is apparent. In determining the meaning of a particular phrase in the act, the Court will not be persuaded by the minute details of the act's pre-enactment history. Instead, the Court will emphasize the overall purpose Congress had for enacting the bill. That purpose, the Court decided, was to prevent arbitrary and biased manipulation by the federal administrative agencies of their ever-increasing power. As applied to the facts of this case this policy curtails the practice of embodying in one person or agency the duties of prosecutor and judge.

Also, the decision indicates that the Supreme Court will not allow the effectiveness of the act to be reduced by the fact that many of its provisions are vague and ambiguous. Instead, it will make every effort to give it a meaning, consistent with the above-stated purpose of Con-

[8] Sec. 301 of the bills proposed in the majority and minority recommendations of the FINAL REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE 195, 232-235 (1941).

[9] Hearings before a Subcommittee of the Committee on the Judiciary on S. 674, S. 675 and S. 918, 77th Cong., 1st sess. 1456 (1941).

gress for enacting it, even where it is necessary to resort to judicial legislation. Those who feared the act would be of little practical value in curbing the acquisitive tendencies of the federal agencies may take heart from this decision.

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