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ADMINISTRATIVE LAW-HEARING ON QUESTIONS OF LAW AS A REQUIREMENT FOR DUE PROCESS

RECENT DECISIONS

ADMINISTRATIVE LAW—HEARING ON QUESTIONS OF LAW AS A REQUIREMENT FOR DUE PROCESS—The Federal Communications Commission granted a permit for a radio station to the Coastal Plains Broadcasting Company. WJR, not a party to that proceeding, filed a petition for reconsideration and hearing, alleging, inter alia, that the new station would cause objectionable interference with WJR. Coastal Plains entered an opposition, asserting that the petition, on its face, was legally insufficient to make WJR a party. WJR did not respond. The commission, without oral argument, denied the application, holding that there was no objectionable interference. The court of appeals treated this as equivalent to a holding as a matter of law, essentially as though raised on demurrer, that the petition did not state facts sufficient to raise any legal issue. It held that due process required an oral argument on every question of law except those involving interlocutory orders and refused to consider the merits, remanding the case for oral argument. *Held,* reversed. Oral argument is unnecessary. *Federal Communications Commission v. WJR, the Goodwill Station, Inc. and Coastal Plains Broadcasting Co., Inc.*, 337 U.S. 265, 69 S.Ct. 1097 (1949).

Notice and an opportunity for a hearing constitute one of the most important elements of due process,[1] and it is well established that administrative agencies are bound to observe the requirements of due process in their procedures.[2] Although the formalities of judicial practice are not necessary,[3] it is generally held that there must be notice and hearing in administrative proceedings,[4] at least when they are of a quasi-judicial character.[5] The requirements for such a hearing are summarized in the two cases of *Morgan v. United States*,[6] where it is said that a "hearing is the hearing of evidence and argument,"[7] and, further, that there must be "reasonable opportunity to know the claims of the opposing party and

[1] MOTT, DUE PROCESS OF LAW §88 (1926); Davidson v. New Orleans, 96 U.S. 97 (1877); Simon v. Craft, 182 U.S. 427, 21 S.Ct. 836 (1901); MacGregor v. Hogan, 263 U.S. 234, 44 S.Ct. 50 (1923).

[2] ROTTSCHAEFER, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW §334 (1939); Ex parte Virginia, 100 U.S. 339 (1879); The Japanese Immigrant Case, 189 U.S. 86, 23 S.Ct. 611 (1903).

[3] MOTT, DUE PROCESS OF LAW §89 (1926); ROTTSCHAEFER, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW §334 (1939); Missouri ex rel. Hurwitz v. North, 271 U.S. 40, 46 S.Ct. 384 (1926).

[4] MOTT, DUE PROCESS OF LAW §89 (1926); Chin Yow v. United States, 208 U.S. 8, 28 S.Ct. 201 (1907); I.C.C. v. Louisville & Nashville Railroad Co., 227 U.S. 88, 33 S.Ct. 185 (1913); Regal Drug Corporation v. Wardell, 260 U.S. 386, 43 S.Ct. 152 (1922).

[5] MOTT, DUE PROCESS OF LAW §§90-92 (1926). See, also, Davis, "Requirement of Opportunity to be Heard in the Administrative Process," 51 YALE L. J. 1093 (1942); Hawkins, "Necessity for Administrative Notice and Hearing," 25 IOWA L. REV. 457 (1940); Hale, "Hearings: The Right to a Trial," 42 ILL. L. REV. 749 (1948); 34 COL. L. REV. 332 (1934); 80 UNIV. PA. L. REV. 96 (1931); Hagar v. Reclamation District No. 108, 111 U.S. 701, 4 S.Ct. 663 (1884); Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908).

[6] 298 U.S. 468, 56 S.Ct. 906 (1936) and 304 U.S. 1, 58 S.Ct. 773 (1938).

[7] Morgan v. United States, 298 U.S. 468 at 480, 56 S.Ct. 906 (1936).

to meet them,"[8] since, otherwise, the right to argument may be a barren right. Although it is not clearly stated, "argument" would seem to refer to the argument of questions of law.[9] The few cases which consider whether the argument must be oral, either in judicial or quasi-judicial proceedings, are in conflict.[10] The principal case is a clear ruling that there is no absolute right to oral argument, but that the right is a matter for case-to-case determination, depending on the circumstances and interests involved and the procedure prescribed by Congress.[11] However, the decision goes further than this. The report indicates only that WJR stated, in its petition, the facts on which it relied. There is no reference to a written argument. Thus there is no argument, written or oral, and so no hearing.[12] Although the Court may not have intended this result, the decision must be authority for the position that due process creates no absolute right to any argument or hearing on questions of law in quasi-judicial proceedings before administrative agencies.[13]

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[8] Morgan v. United States, 304 U.S. 1 at 18, 58 S.Ct. 773 (1938). See, also, WEAVER, CONSTITUTIONAL LAW AND ITS ADMINISTRATION §247 (1946); Railroad Commission of California v. Pacific Gas & Electric Co., 302 U.S. 388, 58 S.Ct. 334 (1938); State of Washington ex rel. Oregon Railroad & Navigation Co. v. Fairchild, 224 U.S. 510, 32 S.Ct. 535 (1912); Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, 301 U.S. 292, 57 S.Ct. 724 (1937); The Japanese Immigrant Case, 189 U.S. 86, 23 S.Ct. 611 (1903).

[9] ROTTSCHAEFER, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW §334 (1939). See also, Coe v. Armour Fertilizer Works, 237 U.S. 413, 35 S.Ct. 625 (1915).

[10] Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708 (1908), held that it was a denial of due process not to permit taxpayers to be heard, before a board, in support of petitions they had submitted in opposition to a proposed tax assessment. See also, Fallbrook Irrigation District v. Bradley, 164 U.S. 112, 17 S.Ct. 56 (1896) and Unity School of Christianity v. Federal Radio Commission, (App. D.C. 1933) 64 F. (2d) 550. Cases holding that oral argument is not required are Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773 (1938) and Sproul v. Federal Radio Commission, (App. D.C. 1931) 54 F. (2d) 444. Several cases have held that due process is not denied when the personnel of the board is changed during the suit so that those who hear the argument are not the same as those who render the judgment. See Louie Lung Gooey v. Nagle, (C.C.A. 9th, 1931) 49 F. (2d) 1016; United States ex rel. Minuto v. Reimer, (C.C.A. 2d, 1936) 83 F. (2d) 166; Eastland Co. v. F.C.C., (App. D.C. 1937) 92 F. (2d) 467. See, also, 6 GEO. WASH. L. REV. 192 (1938).

[11] Principal case at 277.

[12] Although the Court does not indicate whether a hearing is required, the court of appeals viewed the Commission's ruling as a denial of a hearing. Federal Communications Commission v. WJR, the Goodwill Station, Inc. and Coastal Plains Broadcasting Co., Inc., (App. D.C. 1948) 174 F. (2d) 226. In view of the definitions of a "hearing" set out above, it seems necessary to say that this denial of argument is a denial of a hearing.

[13] There was a dissent in the court of appeals which conceded that a hearing is necessary for deciding a question of law, but said that this applies only when facts are alleged that present a substantial question as to a matter of law. The Court in the principal case, at 276, specially states that oral argument may not be required even when there is a substantial question of law.