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ADMINISTRATIVE LAW-RIGHT OF PERSONS AGGRIEVED BY ORDERS TO REVIEW BY APPELLATE COURTS

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ADMINISTRATIVE LAW — RIGHT OF PERSONS AGGRIEVED BY ORDERS TO REVIEW BY APPELLATE COURTS — The Milk Control Board issued an order providing in part that where milk or cream was sold in single service paper containers a nonrefundable container charge of one cent be added to the applicable wholesale or retail price. Petitioner, engaged solely in the manufacture of paper containers for the packaging of milk, sought review of the proceedings of the board upon which the order was based. A demurrer based on the ground that petitioner was not a "person aggrieved" was sustained by the superior court and petitioner appealed. *Held*, a person "interested" or "aggrieved" need not be within the class of persons who are directly commanded by the order of the board either to act or to refrain from acting. Petitioner, who is deprived of a valuable market by the general order of the board, possesses the requisite interest and may appeal. *American Can Co. v. Milk Control Board*, (Mass. 1943) 46 N. E. (2d) 542.

The right of judicial review in any case, from a court¹ or administrative tribunal,² is restricted to persons aggrieved by the decision below. It is said that a person can be aggrieved by a judgment or order so as to attain standing in the appellate courts only when it operates directly and injuriously upon his personal, pecuniary, or property rights.³ Thus a creditor is not aggrieved by a decree setting apart land of his debtor as a homestead,⁴ nor by the appointment of an administrator of his debtor's estate who may act oppressively toward him.⁵ And mere lodgers occupying rooms or portions of a hotel under the control of others

App. (2d) 494, 118 P. (2d) 334 (1941). In the Sada case the court said, "the fact that a finding is supported solely by hearsay does not of itself invalidate the finding or stamp the proof as too unsubstantial to be credited. Inasmuch as hearsay is admissible, the weight to be given such evidence is a question for determination by the commission. . . ." 11 Cal. (2d) at 268.

¹ *In re Miller's Estate*, 274 Mich. 190, 264 N. W. 338 (1936); *Lee v. Bandimere*, 134 Ark. 605, 204 S. W. 307 (1918); *Luckenbach v. Laer*, 190 Cal 395, 212 P. 918 (1923); *Smith v. Whaley*, 27 R. I. 185, 61 A. 173 (1905); *McFarland v. Pierce*, 151 Ind. 546, 45 N. E. 706, 47 N. E. 1 (1897); *Macklin v. Essex Park Realty Co.*, 101 N. J. Eq. 776, 139 A. 32 (1927); *Wellman v. Carter*, 286 Mass. 237, 190 N. E. 493 (1934); *Finer v. Steuer*, 255 Mass. 611, 152 N. E. 220 (1926).

² *Turner v. Williamson*, 77 Ark. 586, 92 S. W. 867 (1906); *Conaway v. Atlantic City*, 107 N. J. L. 404, 154 A. 6 (1931); *Michigan-Lake Bldg. Corp. v. Hamilton*, 340 Ill. 284, 172 N. E. 710 (1930); *Godfrey v. Building Commissioner of Boston*, 263 Mass. 589, 161 N. E. 819 (1928); *Chandler v. Railroad Commissioners*, 141 Mass. 208, 5 N. E. 509 (1886).

³ *In re Deseret Mortuary Co.*, 78 Utah 393, 3 P. (2d) 267 (1931); *Appeal of Beard*, 64 Conn. 526, 30 A. 775 (1894); *In re Miller's Estate*, 274 Mich. 190, 264 N. W. 338 (1936); *Glos v. People*, 259 Ill. 332, 102 N. E. 763 (1913); *George Realty Co. v. Paragon Refining Co. of Michigan*, 282 Mich. 297, 276 N. W. 455 (1937); *Merchants' Loan & Trust Co. v. Patterson*, 308 Ill. 519, 139 N. E. 912 (1923); *Booras v. Logan*, 266 Mass. 172, 164 N. E. 921 (1929). The rule in some states is that only a party can be aggrieved by a judgment or decree and hence only a party can appeal. *Turner v. Williamson*, 77 Ark. 586, 92 S. W. 867 (1906); *Lowery v. Lowery*, 64 N. C. 110 (1870); *Elliott v. Superior Court*, 144 Cal. 501, 77 P. 1109 (1904); 2 CAL. JUR. 208 (1921).

⁴ *State ex rel. Sholseth v. Knight*, 52 S. D. 572, 219 N. W. 258 (1928).

⁵ *Swan v. Picquet*, 3 Pick. (20 Mass.) 443 (1826).

who owned and conducted it are not aggrieved by an order closing the hotel as a nuisance.⁶ An expectant heir of a living person is not aggrieved by a probate decree appointing a guardian for such person as an incompetent.⁷ Neither can one not a beneficiary of a private trust complain of error in making allowances out of the principal of the trust estate for expenses incurred in the management of the trust.⁸ Nor is one aggrieved because his feeling of propriety or his sense of justice is outraged,⁹ or because one is hurt in his feelings, wounded in his affections or subjected to discomfort or even expense by a decree.¹⁰ The broader scope given the term "persons aggrieved" in the principal case does not seem inconsistent with the general requirement that one who seeks to review a judgment must be adversely affected thereby respecting a direct and immediate pecuniary interest.¹¹ Rather it would seem to be a recognition of the broader effect of administrative orders.¹² Such orders may involve economic, political, and social considerations similar to those influencing legislative policy and, unlike the judgments of a court, their effect is not limited to the parties and privies to the record.¹³ Accordingly, it has been held that owners of nearby land whose value might be affected thereby may appeal from an order of a zoning board fixing new zones¹⁴ or granting building permits to applicants.¹⁵ And a competitor likely to be financially injured by an order of the Federal Communications Commission granting a license to a radio station may ask judicial review of the order.¹⁶ A nearby, though not adjoining, property owner may be ag-

⁶ *United States v. Ackerman*, 211 Cal. 408, 295 P. 811 (1931).

⁷ *Hadfield v. Cushing*, 35 R. I. 306, 86 A. 897 (1913); *Harmon v. Harmon*, 141 Tenn. 64, 206 S. W. 333 (1918).

⁸ *Merchants' Loan & Trust Co. v. Patterson*, 308 Ill. 519, 139 N. E. 912 (1923).

⁹ *Appeal of Spencer*, 122 Conn. 327, 188 A. 881 (1937).

¹⁰ *Sherer v. Sherer*, 93 Me. 210, 44 A. 899 (1899); *In re Fixico*, 71 Okla. 102, 175 P. 516 (1918); *McKenna v. McKenna*, 29 R. I. 224, 69 A. 844 (1908).

¹¹ *Cf. Chandler v. Railroad Commissioners*, 141 Mass. 208, 5 N. E. 509 (1886).

¹² The court in the principal case was careful to distinguish *Ex-Cell-O Corp. v. Chicago*, (C. C. A. 7th, 1940) 115 F. (2d) 627, where the American Can Co. sought to have declared unconstitutional the sale of milk in paper containers and where the court held that plaintiff possessed no such interest as would enable him to attack the validity of the ordinance; while at the same time it pointed out that the test of interest or grievance sufficient to entitle a party to enjoin enforcement of an ordinance was not necessarily the same as the test of a right to appeal from a decision based upon it.

¹³ The court in the principal case said, 46 N. E. (2d) at 545: "we have derived little assistance from decisions in ordinary litigation as to who is aggrieved, and close statutory analogies seem lacking. . . . In so far as these definitions [of 'persons aggrieved'] are capable of translation from the field of litigation to fit the case of a general order of a board, it would seem that the petitioner falls within them."

¹⁴ *Godfrey v. Building Commissioner of Boston*, 263 Mass. 589, 161 N. E. 819 (1928); *Madden v. Zoning Board of Review of City of Providence*, 48 R. I. 175, 136 A. 493 (1927).

¹⁵ *Michigan-Lake Bldg. Corp. v. Hamilton*, 340 Ill. 284, 172 N. E. 710 (1930); *Ayer v. Commissioners on Height of Buildings*, 242 Mass. 30, 136 N. E. 338 (1922); *Conaway v. Atlantic City*, 107 N.J.L. 404, 154 A. 6 (1931). But see *Adams v. Jersey City*, 107 N. J. L. 149, 151 A. 863 (1930).

¹⁶ *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U. S. 470, 60 S. Ct. 693 (1940). See comment, 52 YALE L. J. 671 (1943).

grieved by a street commissioner's action granting a license to store petroleum products.¹⁷ A competing carrier has been held to possess the requisite interest to enjoin an I.C.C. order authorizing construction of a ferry.¹⁸ And one may appeal from an order of an administrative board when the effect of the order is to affect adversely contractual rights and business relations though the order is not directly addressed to the person seeking review.¹⁹ The decision of the court in the principal case would seem to be in line with these cases and calculated to afford protection more suited to the interests affected by administrative orders.

Hobart Taylor, Jr.

¹⁷ *Standard Oil Co. of N. Y. v. Commissioner of Public Safety*, 274 Mass. 155, 174 N. E. 213 (1931).

¹⁸ *Claiborne-Annapolis Ferry Co. v. United States*, 285 U. S. 382, 52 S. Ct. 440 (1932). Cf. Goldman, "Standing to Challenge Orders of the I. C. C.," 9 GEO. WASH. L. REV. 648 (1941).

¹⁹ *Columbia Broadcasting System v. United States*, 316 U. S. 407, 62 S. Ct. 1194 (1942). Cf. Oberst, "Parties to Administrative Proceedings," 40 MICH. L. REV. 378 (1942).