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ADMINISTRATIVE LAW

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Perhaps the most important New Mexico administrative law case in a number of years was handed down May 21, 1975, by the Supreme Court. The case, *De Vargas Savings & Loan Ass'n v. Campbell,*[1] established a new law of standing to challenge governmental actions other than expenditures,[2] and in so doing expressly overruled cases setting a stricter standard.[3]

Professor Walden has dealt with this case elsewhere in this survey of New Mexico legal developments.[4] However, briefly examining the exact language of the court in *De Vargas* is worthwhile. The court specifically stated "[w]e hold that to attain standing in a suit arguing the unlawfulness of governmental action, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise."[5]

This statement greatly liberalizes the law of standing in New Mexico. It should facilitate the attempts of environmentalists, consumers, and other citizens seeking to challenge the lawfullness of governmental actions.

However, the quoted language can be misleading in that it appears to overstate the precise intention of the court. The court certainly intended to liberalize the law of standing, but it is unlikely that the mere allegation by the complainant that he or she is injured in fact will be sufficient to grant standing except when the motion in opposition is on the pleadings alone.

The complainant will have to make a showing suitable to the procedural posture of the challenge of some injury in fact beyond the mere allegation of injury in fact or imminent threat of injury. That this is the court's intention is indicated at the end of its

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1. 87 N.M. 469, 535 P.2d 1320 (1975).

2. For a discussion of taxpayer standing, *see* Utton, *Through a Glass Darkly: The Law of Standing to Challenge Governmental Action in New Mexico,* 2 N.M. L. Rev. 172 (1972).

3. The court specifically said, "We therefore overrule Ruidoso State Bank v. Brumlow . . . and its progenny (sic), Southern Union Gas Co. v. New Mexico Pub. Serv. Com'n., 82 N.M. 405, 482 P.2d 913 (1971), and Hubbard Broadcasting, Inc., v. City of Albuquerque, 82 N.M. 164, 477 P.2d 604 (1970)." 87 N.M. 469, 473, 535 P.2d 1320, 1324 (1975).

4. *See* discussion at , *supra.*

5. 87 N.M. 469, 473, 535 P.2d 1320, 1324 (1975).

opinion, which says that this new standard "should grant standing to those having legitimate interests while allowing the ordinary summary judgment procedures to be used to penetrate the allegations of the pleadings to determine whether injury in fact actually exists."[6]

The court quoted with approval *Goodman v. Brock*[7] to the effect that "[t]he procedures provided by Rule 56, *supra*, serve a worthwhile purpose in disposing of groundless claims or claims which cannot be proved without putting the parties and the courts through the trouble and expense of full blown trials on these claims."[8] Thus, the standard for standing to challenge the lawfulness of government action in New Mexico, established by *De Vargas*, requires the complainant to make a showing "that he is injured in fact or is imminently threatened with injury, economically or otherwise" sufficient to withstand a challenge for summary judgment.

The right of parties before an administrative agency to discover and introduce evidence was clarified by the Court of Appeals in *In re Miller*.[9] This case involved appeals from four county evaluation protest board decisions, one from Lincoln County and three from Bernalillo County. The cases were consolidated because they presented similar questions. In each case the evaluation protest board excluded evidence offered by the taxpayer, and the Lincoln County evaluation protest board also denied the right to discovery by deposition. In the Lincoln County case the taxpayer was refused permission to take the depositions of the county appraiser and a member of the State Reappraisal Department to determine how the contested assessment was made. The Court of Appeals held that exclusion of the offered evidence and denial of the deposition request denied the taxpayer a fair hearing, and therefore, constituted a denial of due process.

Of interest is the use the court made of the Administrative Procedures Act of New Mexico.[10] The court correctly pointed out that the Administrative Procedures Act does not expressly apply to hearings before county evaluation protest boards because "such hearings have not been placed under the Act by law."[11] After noting that "[i]t has been suggested that the Legislature has a duty to make the Act applicable to all public agencies to protect the public," the court

6. *Id.* at 474, 535 P.2d at 1325 (1975).
7. 83 N.M. 789, 498 P.2d 676 (1972).
8. *Id.* at 793, 498 P.2d at 680 (1972).
9. 88 N.M. 492, 542 P.2d 1182 (Ct. App. 1975), *cert denied,* N.M. , , P.2d (1975).
10. N.M. Stat. Ann. § 4-32-1 *et seq.* (Repl. 1974).
11. *In re* Miller, 88 N.M. at , 542 P.2d at 1186; *see also* Mayer v. Public Employees Retirement Bd., 81 N.M. 64, 65, 463 P.2d 40, 41 (Ct. App. 1970).

said, "in any case, the Act demonstrates that depositions are permissible under administrative law, to assist the agency and other parties in obtaining a fair hearing."[12] Thus, the court, although recognizing that the Administrative Procedures Act may not apply to a particular agency,[13] nonetheless used the Act as a source of administrative law to demonstrate that depositions are useful in agency practice.

This development is somewhat reminiscent of the United States Supreme Court's reasoning in *Wong Yang Sung v. McGrath.*[14] In that case the Supreme Court looked to the federal Administrative Procedures Act[15] to define the nature of the hearing required by due process under the U.S. Constitution. The Court said that due process required a hearing. The purpose of the federal Administrative Procedures Act, to provide fair and uniform procedures for federal agencies, was noted by the Court in requiring that the agency in question provide a hearing like that defined in Section 5 of the A.P.A. This added to the constitution by accretion; it incorporated by reference Section 5 of the Administrative Procedures Act into the constitutional definition of due process. The Court thus appeared to be saying that, even if the Administrative Procedures Act were repealed, due process under the constitution would require that the basic procedural safeguards provided in the Act would have to be honored by an agency in similar cases.

In each of the four New Mexico cases the taxpayer offered evidence which appeared reasonably to relate to the question of the proper evaluation of the property. In the Lincoln County case the taxpayer owned a horserace track. He offered evidence of valuations for prior years, copies of tax schedules covering the land owned and used by horsetracks in the state and comparable land values. In the Bernalillo County cases the taxpayers, who owned shopping centers and vacant land, offered evidence of valuations of comparable properties. In each case the board excluded the proffered evidence. The Court of Appeals noted that the "technical rules of evidence . . . do not apply at protest hearings before the county protest board. . . ."[16] It correctly pointed out that the reason for not applying the technical rules is not to exclude evidence, but is quite the opposite—to make it easier to introduce evidence before an

12. 88 N.M. at , 542 P.2d at 1186.

13. *See* N.M. Stat. Ann. § 4-32-2(A) (Repl. 1966). The Human Rights Commission has been required by the legislature to place itself under the Act by its own rule. No other state agency has been placed under the Act.

14. 339 U.S. 33 (1950), *modified,* 339 U.S. 908 (1950).

15. 5 U.S.C. § § 551-59 (1967).

16. 88 N.M. at , 542 P.2d at 1187, quoting from N.M. Stat. Ann. § 72-2-39.1(A) (Spec. Supp. 1975).

administrative agency.[17] Thus, the court held, exclusion of evidence and denial of discovery through deposition constituted a denial of due process because it inhibited the appellant's right to be heard and to present an adequate defense.

Miller is significant, therefore, because it prohibits agencies from arbitrarily excluding evidence in an administrative hearing and affirms the right under the due process clause of parties to take depositions as provided in the New Mexico Administrative Procedures Act, even though the Act does not apply to the particular agency in question. Since the Administrative Procedures Act does not expressly apply to most state agencies, the due process clause may become a primary vehicle for getting evidence before an agency.

17. *See*, Utton, *How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act*, 10 Nat. Res. J. 840, 848 (1970).