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Wayne A. Smith

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COMMENTS

Administrative Law—Inherent Power of Administrative Agencies to Reconsider Final Decisions.*

There is general disagreement whether an administrative agency, in the absence of statutory authority, has the inherent power to reconsider or set aside final determinations.¹ The disagreement stems from two opposing policies: the desirability of finality of proceedings² and the desirability for the agency to reach the right result.³

Many legislatures, having recognized this problem, have given a particular agency the express power to reconsider its decision⁴ while others have expressly denied this power.⁵

In the absence of such legislation, there is a conflict between the approaches taken by courts in determining the existence of such power. Some courts have held that administrative agencies, like courts, have an inherent power to reconsider or set aside a final determination.⁶ Other courts look to the controlling statute as a

* *Kennecott Copper Corp. v. Employment Security Comm'n*, 78 N.M. 398, 432 P2d 109 (1967).

1. *E. g.*, *Lyons v. Delaware Liquor Comm'n*, 44 Del. 304, 58 A. 2d 889 (1948) (commission's power to make a decision implies a power to vacate it); *Anchor Casualty Co. v. Bongards Co-op*, 253 Minn. 101, 91 N. W. 2d 122 (1958) (power to reverse adjudications lasts until jurisdiction is lost). *But see*, *Heap v. City of L. A.*, 6 Cal. 2d 405, 57 P. 2d 1323, (1936) (Civil Service Commission has no power to rehear in the absence of express authority); *Hunt v. Schilling*, 27 Ariz. 235, 232 P. 554 (1925) (tribunals acting judicially can not grant a rehearing).

2. *Miles v. McKinney*, 176 Md. 551, 199 A. 540 (1938).

3. *Village of Cobb v. Public Service Comm'n*, 12 Wis. 2d 441, 107 N.W. 2d 595 (1961) (purpose of a rehearing is to enable the administration agency to correct any errors in the proceeding before it); *Saginaw Broadcasting Co. v. Federal Communication Comm'n*, 96 F. 2d 554, 68 App. D.C. 282 (1938) denied, 305 U.S. 613 (1938) (purpose of a rehearing is to correct error or hear newly discovered evidence).

4. *E. g.*, 29 U.S. C. § 160 (d):

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. *Mustard v. City of Bluefield*, 130 W. Va. 763, 45 S.E. 2d 326, (1947).

6. *State ex rel. Turnbladh v. District Court, County of Ramsey*, 359 Minn. 294, 107 N.W.2d 307 (1960); *Handlan v. Bellville*, 4 N.J. 99, 71 A.2d 624 (1950) (administrative tribunals are analogous to courts in that both possess inherent power of reconsideration).

whole to determine if the statute confers the power to rehear by implication.⁷

In the recent case of *Kennecott Copper Corp v. Employment Security Comm'n.*,⁸ the Supreme Court of New Mexico indicated by way of dicta that administrative agencies do not have the right of reconsideration.

In *Kennecott*, appellants, employees of Kennecott, filed and presented claims for unemployment benefits before the Employment Security Commission of New Mexico. The claims arose during a strike against Kennecott in which appellants, though not members of the striking union, refused to cross the picket line.

The claims were assigned by the Commission to a deputy. He conducted a hearing and transmitted findings of fact to the Commission. On or about August 13, 1964, a decision was rendered holding appellants' claims to be valid and payable. Kennecott, on August 15, 1964, appealed to the Commission. On March 10, 1965, the Commission affirmed the validity of the claim. From this decision Kennecott appealed to the district court where the Commission was reversed and appellants' claims held invalid. On appeal to the New Mexico Supreme Court, *held*, Reversed.

Appellants' claims were upheld on procedural grounds. Kennecott contended that the deputy had rendered the first decision, so they were unable to appeal to the district court until the Commission had rendered a decision. Appellants contended that the first decision was the Commission's decision. The court upheld appellants' contention and said that since Kennecott did not appeal to the district court within the fifteen days required by statute,⁹ they lost their right to appeal. By way of dicta in declaring that the Commission did not have the inherent power to review its decision, the court said:

After the commission has rendered its decision it has exercised the express power conferred by the act upon it. No logical reason appears to

7. *Olive Provation Program Committee v. Agriculture Prorate Comm.*, 17 Cal. 2d 204, 109 P. 2d 918 (1941); *Warburton v. Warkentim*, 185 Kan. 468, 345 P. 2d 992 (1959).

8. *Kennecott Copper Corp. v. Employment Security Comm'n.*, 78 N.M. 398, 432 P.2d 109 (1967).

9. N.M. Stat. Ann. § 59-9-6 (h) (1953):

Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final fifteen (15) days after notification or mailing thereof. . . .

us for holding that a right of reconsideration is necessary in carrying out the express power.¹⁰

The purpose of this Comment is to show that an administrative body in New Mexico should have the power, either expressly by statute or inherently in the absence of such statute, to review and reconsider its final decision.

It is a general rule that courts are endowed with the power of rehearing,¹¹ modifying,¹² or vacating¹³ their final decisions.

It has been said that "the power to reconsider is inherent in the power to decide."¹⁴ Many authorities have said that administrative agencies, like courts, have the inherent power to rehear final decisions.¹⁵ These authorities proceed on the theory that administrative agencies conduct hearings which are "quasi-judicial" in nature.¹⁶ Administrative agencies consider evidence and apply the law to the facts as found. They exercise a discretion of judgment judicial in nature as to evidentiary facts; therefore, their function is quasi-judicial.

Administrative agencies need this power to rehear for many of the same reasons which courts have discovered they needed it. Indeed, many of these reasons were so well recognized that they were included in the Federal Rules of Civil Procedure.¹⁷

If for some reason such as mistake, surprise, or fraud, the unsuccessful party has been prevented from fully exhibiting his case, then

10. 78 N.M. at 82, 432 P.2d at 113.

11. *Finucane v. Bindezyck*, 87 App. D.C. 137, 184 F.2d 225 (1950), reversed on other grounds, 342 U.S. 76 (1951); *Miles v. Layton*, 38 Del. 411, 193 A. 567 (1937).

12. *Emerson v. Boyles*, 170 Ark. 621, 280 S.W. 1005 (1926); *Ayers v. Lund*, 49 Or. 303, 89 P. 806 (1907).

13. *Mosser v. Flake*, 258 Ill., 233, 101 N. E. 540 (1913); *Kemp v. Cook*, 18 Md. 130, 79 Am. Dec. 681 (1861); *Ladd v. Stevenson*, 112 N. Y. 325, 19 N. E. 842 (1889).

14. *Albertson v. Federal Communications Comm'n*, 87 U. S. App. D. C. 39 at 41, 182 F. 2d 397 at 399 (1950).

15. *Leonard Bros. Transfer v. Douglass*, 159 Fla. 510, 32 So. 2d 156 (1947); *Lubliner v. Board of Alcoholic Beverages*, 59 N. J. S. 419, 158 A. 2d (1960) (inherent power, comparable to that possessed by courts, to rehear and reconsider); *Central Home Trust Co. v. Gough*, 5 N. J. S. 295, 68 A. 2d 848 (1949).

16. 1 K. Davis, *Administrative Law* § 7.01 (1958); *Adolph v. Elastic Stop Nut Corp.*, 18 N.J.S. 543, 87 A. 2d 736 (1952).

17. Fed. R. Civ. P. 60 (b):

Or motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . for the following reason: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . (3) fraud misrepresentation, or other misconduct of an adverse party. . . .

there has not been a fair hearing. Our trial system is based on the system of adversary proceedings and if both sides are not given an equal chance to present the truth, then the entire system would soon collapse. Courts have long recognized this and have sustained motions to set aside a former decree or judgement and reopen the case for a new and a fair hearing. The need for an opportunity to set aside a decision is no less important for an administrative agency than it is for in a court.

In *Anchor Casualty Co. v. Bongards Co-op Creamery Assn.*,¹⁸ the Supreme Court of Minnesota stated:

It is generally recognized that one of the powers proper to an efficient and just administration of the right to adjudicate is the power to reverse adjudications which appear to be erroneous.

Where through fraud, mistake, or misconception of facts the commission enters an order which he promptly recognized may be in error, there is no good reason why on discovering the error, he should not . . . correct it.¹⁹

Administrative agencies have also been granted the power to reconsider their determinations on such grounds as illegality,²⁰ irregularity in vital matters,²¹ erroneous conclusions of law,²² surprise,²³ or inadvertence.²⁴

It has also been held that administrative agencies do not have the power to reconsider their decisions in the absence of specific statutory authority. The Connecticut Court in *Middlesex Theatre v. Commission*²⁵ took a position shared by others²⁶ when it said:

otherwise, there would be no finality to the proceeding and the result would be subject to change at the whim of the officer or board or due

18. 253 Minn. 101, 91 N. W. 2d 122 (1958).

19. *Id.*, at 105, 91 N. W. 2d at 126.

20. *Geiger v. Mississippi State Board of Cosmetology*, 246 Miss. 542, 151 So. 2d 189 (1963); *Drew v. State Liquor Authority*, 2 N. Y. 2d 624, 142 N. E. 2d 201 (1957).

21. *Finnegan v. McBride*, 226 N.Y. 252, 123 N.E. 374 (1919).

22. *Warburton v. Warkentin*, 185 Kan. 468, 345 P. 2d 992 (1959); *Geiger v. Mississippi State Board of Cosmetology*, 246 Miss. 542, 151 So. 2d 189 (1963).

23. *Schultze v. Montgomery County*, 230 Md. 76, 185 A. 2d 502 (1962); *Miles v. McKinney*, 176 Md. 551, 199 A. 540 (1938).

24. *American Trucking Ass'n v. Frisco Transp. Co.*, 358 U. S. 133 (1958).

25. 128 Conn. 20, 20 A. 2d 412 (1941).

26. *Bernkrant v. Temporary Stat Housing Rent Comm'n*, 233 N.Y.S.2d 70, 36 Misc. 2d 507 (1962); *Eck Miller Transfer Co. v. United States*, 143 F. Supp. 409 (1956); *Miles v. McKinney*, 176 Md. 551, 199 A. 540 (1938).

to the effect or influence exerted upon them, or other undeniable elements tending to uncertainty and impermanence.²⁷

The adherents of this reasoning fail to realize that the same arguments could as easily apply to courts as to administrative bodies. What finality is there in court proceedings if the case can be reopened on the whim of the judge? The only protection the parties actually have is the honesty and integrity of the judge. But over the years the privilege to reopen cases in certain instances has not been abused by the courts and it has now become an accepted part of our judicial system.

Since administrative bodies are analogous to courts in many ways, why should they not have many of the powers of the courts? Since many more people are directly affected by administrative decisions than by court decisions, agencies should be afforded every possible means to insure that justice is reached in the hearing before them.

Court dockets are congested in most areas of the United States.²⁸ Many of these cases are appeals from administrative agencies. Some appeals could be avoided if the agency were given the power to rehear. This would seem to be the reason for state legislatures expressly giving the agencies the power to rehear and why many courts have given them the inherent power to rehear in the absence of such express authority.

Many courts have taken the other position that since administrative agencies were created by statute, they should only have powers authorized by the statute.²⁹ There has been a modification of this view by some courts. They have considered the controlling statute as a whole, with a view to ascertaining by way of construction, whether such a power was conferred upon the agency by implication.³⁰

Where a statute creating an administrative agency has provided for an appeal to the courts for review of its determination, it has been held that such a statute was not intended to confer the power

27. *Supra* note 25, at 21, 20 A. 2d at 413.

28. Rosenberg & Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 Colum. L. Rev. 1115 (1959).

29. *Pearce Hospital Foundation v. Illinois Pub. Aid Comm'n*, 154 N. E. 2d 691 (Ill. 1958) (commission is a creature of statute and has no greater powers than those conferred upon it by the legislature); *Olive Proration Program Comm'n v. Agriculture Prorate Comm'n*, 17 Cal. 2d 204, 109 P. 2d 918 (1941) (if commission is created by statute, then its power to reconsider questions must be by statute).

30. *Suryan v. Alaska Indus. Board*, 12 Alaska 571 (D. C. 1950).

to rehear or reconsider its decisions.³¹ However, other courts have sustained the power to reopen and reconsider even though the enabling statute provides for judicial review.³²

To obtain finality of proceedings, agencies should not have the unlimited power to rehear. While many courts are afraid this will happen if they grant the agency the power to rehear, it has been handled with ease by other courts. The Minnesota Court in *Anchor Casualty Co. v. Bongards Co-op Creamery Ass'n.*³³ determined that:

This power [power to rehear adjudications] lasts until jurisdiction is lost by appeal or certiorari or until a reasonable time has run, which would be at least coextensive with the time required by statute for review.³⁴

Where the statute provides a period of appeal, courts have held that a motion to rehear may be filed within the period for taking such an appeal.³⁵ They do this on the theory that within such period, jurisdiction over the contested order remains within the commission. If the time for appeal has lapsed, then the order becomes final and the commission loses its jurisdiction to rehear. A reasonable time³⁶ to file for a rehearing has been upheld where the statute does not provide a period for appeal.

To deny administrative agencies the authority to correct errors and revise its judgments where good cause is shown would run counter to public interest. The functions of petitions and motions for rehearing is not to supplant, but to supplement, that of appellate

31. *Hunt v. Schilling*, 27 Ariz. 235, 232 P. 554 (1925); *Magma Copper Co. v. Arizona State Tax Comm'n*, 67 Ariz. 77, 191 P. 2d 169 (1948).

32. *Lyons v. Delaware Liquor Comm'n*, 44 Del. 304, 58 A. 2d 889 (1948); *National Tube Co. v. Ayres*, 152 Ohio St. 255, 89 N. E. 2d 129 (1949); *Southwestern Bell Tel. Co. v. State*, 181 Okla. 246, 71 P. 2d 747 (1937), appeal dismissed 303 U. S. 206 (1937).

33. 253 Minn. 101, 91 N. W. 2d 122 (1958).

34. *Id.* at 103, 91 N. W. 2d at 125.

35. *Lyons v. Delaware Liquor Comm'n*, 44 Del. 304, 58 A. 2d 889 (1948) (power does not exist after the expiration of a ten-day period for taking an appeal); *In re Robelen*, 136 A. 279 (Del. 1926) (no party can extend the statutory time for appeal, after the expiration of the 30-day period for appeal, by a motion for a rehearing); *Albertson v. F. C. C.*, 87 App. D. C. 39, 182 F.2d 397 (1950) (an order made within the 20 days allowed for an appeal can, by implication, be modified or vacated by a rehearing).

36. *Daley v. United States*, 169 Ct. Cl. 305 (1965) (administrative tribunals can reconsider their decisions if done within a reasonable period of time and before an appeal has been taken or rights vested); *Stone v. Dugan Brothers*, 1 N. J. S. 13, 61 A. 2d 740 (1948).

review.³⁷ The power should be invoked by administrative agencies to serve the ends of justice and the policy of the law.³⁸

The apparent unwillingness of the Supreme Court of New Mexico to allow administrative bodies to rehear in the absence of express statutory authority, is only dicta which can easily be reversed at a later date. In the meantime, however, the legislature could clarify the situation by enacting a provision similar to the one enacted in Utah³⁹ giving the administrative agency the express power to rehear.

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37. *Southland Indus. v. F. C. C.*, 69 App. D. C. 82, 99 F. 2d 117 (1938); *Saginaw Broadcasting Co. v. F. C. C.*, 68 App. D. C. 782, 96 F. 554 (1938), *cert. denied*, *Gross v. Saginaw Broadcasting Co.*, 305 U. S. 613 (1938).

38. *Handlon v. Belleville*, 4 N. J. 99, 71 A. 2d 624 (1950).

39. Utah Code Ann. § 35-1-82.53 (1953).

Review of order of hearing examiner or commission—Effect of supplemental order of hearing examiner.—(1) Any party in interest who is dissatisfied with the order entered by a hearing examiner or the commission may file a motion for review of such order. Upon the filing of such motion to review his order the hearing examiner may (a) reopen the case and enter a supplemental order after holding such further hearing and receiving such further evidence as he may deem necessary; or (b) amend or modify his prior order by a supplemental order; or (c) refer the entire case to the commission.