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CONSTITUTIONAL LAW—APPEALS FROM ADMINISTRATIVE TRIBUNALS.—Plaintiff, an Indiana corporation organized to engage in the small loan business, sought to avoid the provisions of an Act of 1933 reducing interest rates and placing the small loan business under the control of the Department of Financial Institutions.[1] The complaint in part charged that the act was invalid because it made no provision for an appeal to a court for a judicial determination of the questions involved. *Held* the validity of an act subjecting businesses of a certain character to rules and regulations of a non-judicial body does not depend upon provisions granting or failing to grant an appeal to the courts. *Financial Aid Corporation v. Wallace* (Ind. 1939), 23 N. E. (2d) 472.

Generically speaking, due process is not necessarily judicial process, nor is the right of appeal essential to due process of law.[2] The right of appeal is not an inherent or inalienable right, except where expressly guaranteed by the State Constitution.[3]

The general rule is that appeals are recognized as allowable only from judicial decisions, and administrative tribunals or departments do not ordinarily render judicial decisions.[4] A fundamental principle underlying the right of appeal in all cases is, that in the absence of express statutory provision to the contrary, the decision appealed from must have been made by a tribunal or officer vested with judicial authority, and while acting in a judicial capacity.[5] It has repeatedly been held that an appeal will not be allowed to the courts from the purely ministerial or administrative action of a public officer, board, commission, or similar tribunal, without express statutory authority.[6] The court held in the principal case that the act conferred administrative, and not judicial, authority.[7]

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[18] Gesell v. Thomahawk Land Co. (1924), 184 Wis. 555, 200 N. W. 550.

[19] Stevens v. U. S. Steel Corp. (1905), 68 N. E. Eq. 373, 59 Atl. 905.

[1] Chapter 154 of the Acts of the General Assembly of 1933, p. 806, amending Chapter 125 of the Acts of 1917, p. 401, secs. 18-3001 to 18-3005, Burns' Indiana Statutes 1933; sec. 10465 to sec. 10469, Baldwin's 1934.

[2] Reetz v. Michigan (1903), 188 U. S. 505, 23 Sup. Ct. Rep. 390.

[3] In re Petition to Transfer Appeals (1931), 202 Ind. 365, 174 N. E. 812.

[4] Ferner v. State (1898), 151 Ind. 247, 51 N. E. 360.

[5] U. S. v. Ferreira (1851), 13 How. 40, 14 L. Ed. 42; Indianapolis v. Hawkins (1913), 180 Ind. 382, 103 N. E. 10; Board v. Davis (1894), 136 Ind. 503, 22 L. R. A. 515.

[6] Sims v. Monroe Co. (1872), 39 Ind. 40; Farley v. Hamilton Co. (1890), 126 Ind. 468, 26 N. E. 174; Cushman v. Hussey (1917), 187 Ind. 228, 118 N. E. 816; State Board v. Ort (1925), 84 Ind. App. 260, 151 N. E. 31.

[7] "An administrative officer charged with the administration of the laws enacted by the General Assembly necessarily exercises a discretion partaking of the characteristics of the judicial department of the government, but does not have the force and effect of a judgment." Financial Aid Corporation v. Wallace (Ind. 1939), 23 N. E. (2d) 472, 475.

The failure of an act setting up an administrative tribunal to provide expressly for an appeal to the courts does not invalidate the act.[8] Without such provision, there are other remedies available where the tribunal has misused its authority. An appropriate mode of obtaining relief is to proceed by a bill in equity to restrain the enforcement of the order.[9] Mandamus will lie to redress any wrong which is suffered through any arbitrary, tyrannical, or unreasonable action on the part of the officer or tribunal, or any action based on false information.[10] So long as the act does not expressly deny the right of access to the courts to determine any matter which would be the appropriate subject of judicial inquiry, the act is valid, though no provision is made for appeal.[11] The courts are presumably open to the complainant to test the constitutionality of any administrative order.[12] In the principal case the complainant came to court under the Uniform Declaratory Judgment Act, praying that Chapter 154 be declared unconstitutional and void.[13]

It is important to note, however, that if the complainant claims confiscation of his property will result from any order of an administrative board, the state must provide a fair opportunity for submitting that issue to a judicial tribunal;[14] and the judicial tribunal will review the question *de novo*.[15] In those cases which so held, the court declared statutes invalid although they expressly provided the right of appeal, on the grounds that to exercise the right the complainant was forced to suffer such great hardship that it was in fact a denial of due process.[16] An opportunity to be heard must be given to him who claims that unconstitutional deprivation of his property is resulting from an administrative order; if that opportunity is given by express provision in the statute, or without that, by the remedies suggested above, the statute of which he complains remains valid.

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[8] Louisville & Nashville R. Co. v. Garrett (1913), 231 U. S. 298, 34 Sup. Ct. 48; Cofman v. Ousterhous (1918), 40 N. D. 390, 168 N. W. 826; Reetz v. Michigan (1903), 188 U. S. 505, 23 Sup. Ct. Rep. 390; Ferner v. State (1898), 151 Ind. 247, 51 N. E. 360.

[9] Chicago R. Co. v. Minnesota (1889), 134 U. S. 418, 459, 460; St. Louis & S. F. R. Co. v. Gill (1894), 156 U. S. 649, 659, 666; Ex parte Young (1907), 209 U. S. 123, 166.

[10] Cofman v. Ousterhous (1918), 40 N. D. 390, 168 N. W. 826; People ex rel. Lodes v. Health Department (1907), 189 N. Y. 187, 13 L. R. A. (N. S.) 894, 82 N. E. 187. In Metcalse v. State Board (1900), 123 Mich. 661, 82 N. W. 512, application for mandamus to compel the state medical board to register the petitioner was entertained, and although the application was denied, yet the denial was based not upon a want of jurisdiction in the court but upon the merits.

[11] Louisville & Nashville R. Co. v. Garrett (1913), 231 U. S. 298, 34 S. Ct. 48.

[12] Home Telephone Co. v. Los Angeles (1908), 211 U. S. 265, 278. In the principal case the court said, "If an administrative officer undertakes to perform any unauthorized act, an action will lie in court enjoining, prohibiting, or mandating him in the performance of administrative acts." See also Oklahoma Operating Co. v. Love (1919), 252 U. S. 331, 40 S. Ct. 338.

[13] Burns' Ind. St. Ann. (1933), sec. 3-1116.

[14] Ohio Valley Co. v. Ben Avon Borough (1919), 253 U. S. 287, 40 Sup. Ct. Rep. 527; Missouri Pacific Ry. Co. v. Tucker (1913), 230 U. S. 340, 347; Wadley Southern Ry. Co. v. Georgia (1915), 235 U. S. 651, 660, 661; Ex parte Young (1907), 209 U. S. 123, 28 Sup. Ct. Rep. 441.

[15] Crowell v. Benson (1930), 45 F. (2d) 66.

[16] *Supra*, note 14. See particularly Oklahoma Operating Co. v. Love (1919), 252 U. S. 331, 40 Sup. Ct. Rep. 338.

The presence or absence of an appeal provision, therefore, is of no material consequence, so long as the complainant has in fact the opportunity to test the constitutionality of orders issued under the statute. In the principal case, the complainant did have that opportunity, for, as was pointed out by the court, the complainant was even then "present in court questioning acts of the department and the authority granted by the legislature." W. D. B.