

6-1941

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Jack B. Tate
Federal Security Agency

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Recommended Citation

Tate, Jack B. (1941) "Litigation Problems Under the Social Security Act," *Indiana Law Journal*: Vol. 16 : Iss. 5 , Article 1.

Available at: <https://www.repository.law.indiana.edu/ilj/vol16/iss5/1>

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INDIANA UNIVERSITY
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Bloomington

INDIANA LAW JOURNAL

Volume XVI

June, 1941

Number 5

LITIGATION PROBLEMS UNDER THE SOCIAL SECURITY ACT

Introduction

JACK B. TATE*

The keen interest of the practicing lawyer at the present time in the machinery of administrative procedure requires no emphasis. Bar associations up and down the land are offering to their members lectures and round tables devoted to the functioning of the administrative process. Periodicals emanating from bar association and law school alike are filled with articles describing various phases of this process. The lawyer, who never before has practiced anywhere but in the county court, suddenly finds that his case has taken him into a State or Federal administrative tribunal.

This lawyer, trained exclusively in the common law trial technique, is often pleasantly surprised by the orderly character of the procedure utilized in the administrative forum. Instead of the dictatorial Star Chamber proceeding which some uninformed laymen imagine, he usually finds the administrative hearing to be characterized by dignity, intelligence, and fairness to all parties concerned. There is no more place in the administrative law system for the arbitrary and capricious administrative officer than there is in the judicial system for the arbitrary and capricious judge.

It is of course true that the rules of administrative procedure differ in operation from those employed in the con-

* General Counsel, Federal Security Agency.

duct of a jury trial. Rules governing the admission of evidence, for example, are not so strict when the evidence is to be weighed, not by twelve laymen, but by an administrative officer, skilled by experience in the very field where the decision lies. Because these rules are different, however, is no reason for supposing that they are less effective in dispensing justice. No one contends, for instance, that the chancellor should be bound by the same procedure in appointing a receiver as is the common law judge in deciding a negligence case. Obviously, a different procedure may be required to determine eligibility for an old age pension than to fix the liability of a tenant under a lease.

How then should the worth of the administrative process as an instrument of justice be measured? Is not the answer to this question found in determining how effectively it is performing the function with which it is charged by law? This function may or may not be the decision of controversies between private litigants or between a litigant and his government. Frequently the "controversy" angle is wholly lacking. Therefore, it is meaningless to attempt to evaluate the administrative process by the same standards as are used in measuring the efficacy of the judicial process. New standards, predicated on the purpose sought to be accomplished by the administrative process, are needed before any sound judgment of its worth is possible.

A fertile field for studying the administrative process is that encompassed by the procedure established for adjudicating claims under the Old-Age and Survivors Insurance provisions of the Social Security Act. This procedure is peculiarly applicable in that it illustrates an administrative adjudication wherein the controversial element is absent. It is illustrative also of an orderly procedure which begins by the filing of a claim with the Bureau of Old Age and Survivors Insurance of the Social Security Board and which may subsequently involve an administrative appeal, an administrative hearing, a review by an administrative tribunal and even a determination by the Federal Courts, in case the applicant is dissatisfied with the ruling which the administrative tribunal has made. The practicing lawyer will find this process described in detail in the article by Messrs. Harper and Niezer, entitled "Appeals Procedure Under Old Age and Survivors Insurance." Some of the

problems of court review are covered in the article by Mr. Margolies, entitled "Judicial Review of Public Assistance Determinations."

While any study of administrative law naturally emphasizes procedure, it should be remembered that a considerable body of substantive law has grown up since January, 1937, when the Federal old age insurance title of the Social Security Act first became operative. The origin and development of the fundamental substantive principles are discussed in the article by Mr. Peter Seitz, entitled "Some Aspects of Coverage of the Social Security Act: What is 'Employment'." The application of these principles by the Social Security Board, the Bureau of Internal Revenue, and the Railroad Retirement Board are treated in the series of notes and comments which close this issue of the Journal.