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Administrative Law

ADMINISTRATIVE LAW

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

NOT so long ago it was thought that a complainant had a constitutional right to a trial *de novo* on appeal to a court from an administrative decision affecting his property.[1] Now it appears settled that judicial review falling short of a trial *de novo* will satisfy the requirements of due process.[2] What decree of finality a court should accord to an administrative finding of fact is a question of great import and difficulty. The Texas Supreme Court has worked out a "substantial evidence rule," a rule considerably different from the substantial evidence rule applied in the federal courts. Texas decisions of 1947, involving the Railroad Commission, the Department of Public Safety and the county court acting as an administrator are of some help in delineating the contours of the "substantial evidence rule."

DRILLING PERMIT—SUBSTANTIAL EVIDENCE RULE AMPLIFIED

After the *Trapp* case,[3] it was the consensus of legal opinion that the Supreme Court of Texas had greatly narrowed the scope of judicial review of administrative determinations, particularly those of the Railroad Commission. In 1947 this narrowed concept of judicial review was given further explanation in *Hawkins v. The Texas Co.*[4] In this case the Texas Co. petitioned the district court to cancel a special permit issued to J. C. Hawkins by the Railroad Commission as an exception under Rule 37. Some evidence was

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[1] Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287 (1920); Lone Star Gas Co. v. State, 137 Tex. 299, 153 S. W. (2d) 681 (1941).

[2] Railroad Commission v. Rowan Nichols Oil Co., 310 U. S. 573 (1940); Buford v. Sun Oil Co., 319 U. S. 315 (1943); Trapp v. Shell Oil Co., 145 Tex. 323, 198 S. W. (2d) 424 (1946).

[3] Trapp v. Shell Oil Co., 145 Tex. 323, 198 S. W. (2d) 424 (1946).

[4] ___ Tex. ___, 209 S. W. (2d) 338 (1947), *aff'g.* 203 S. W. (2d) 1003 (Tex. Civ. App. 1947).

presented in the trial in support of the Commission's order issuing the permit. Nevertheless, the trial court ordered a cancellation of the permit and enjoined Hawkins from drilling. The Texas Supreme Court affirmed, saying:

> ". . . the application for writ of error filed herein in behalf of the Commission suggests misunderstanding or uncertainty as to the meaning of the substantial evidence rule and as to the scope of judicial review in a suit to test the validity of an order of the Commission. . . . That application, quoting from the dissenting opinion in the *Trapp* case . . . states in substance that the rule should be and is in the trial of a case like this, as soon as a single witness testifies to acts which would sustain the permit, it will become useless for the court to proceed further, for regardless of the evidence to the contrary, the court will be powerless to do otherwise than to sustain the permit. The substantial evidence rule does not mean that."[5]

The opinion stresses that prior Supreme Court decisions have emphasized the word "reasonably" in expressing the rule to be that findings of the Commission will be sustained "if reasonably supported by substantial evidence." To a layman it would be difficult to comprehend a situation where fact findings are supported by substantial evidence and at the same time are not "reasonably" supported by substantial evidence." To a lawyer the emphasis on the word "reasonably" may serve as a clarifying process.

The case of *Hawkins v. Texas Co.* is susceptible of the following analysis as to the present status of the "substantial evidence rule" and the scope of judicial review. The court may totally ignore the opponent's evidence and look only to that of the proponent to determine whether or not it is substantial. This is a practical approach, for if this narrowed field of review reveals that the evidence is not substantial, that puts an end to the case; the Commission will be reversed and the court is spared of further and immaterial inquiry. But if the evidence is deemed substantial, further inquiry becomes necessary. This is so because to uphold the Commission's findings, support not only by substantial evidence is necessary, but also the support must be "reasonable."

[5] *Id.* at 340.

This emphatic requirement injects a test of relativity into the application of the substantial evidence rule. The word "reasonable" connotes a comparison. Nothing of itself is reasonable. A thing is reasonable or not only in relation to some other thing or standard. It is therefore inescapable that the opponent's evidence be looked into. The court can now appraise the relative weight of one side as opposed to the other, possibly giving consideration to the credibility of the witnesses,[6] and come to a rational conclusion on the whole record as to whether or not the proponent's substantial evidence "reasonably" supports the findings of the Commission.

The court does not purport to substitute its discretion and opinion for that of the Commission. Clearly, substantial evidence does not have to preponderate to furnish reasonable support. It is probable that considerably less than a preponderance of the evidence will mark the point of reasonable support. It is up to the court to decide just when the evidence has reached or fallen short of that point.

Beer License—Substantial Evidence Rule—No Trial De Novo on Appeal from County Court Order

In *State v. Peeler*[7] the court was confronted with a case in which petitioner had been denied a license to sell beer by order of a county judge sitting in an administrative capacity pursuant to statutory authority,[8] and this action had been reversed by the district court after an independent judicial determination of the fact issues. The court of civil appeals reversed the district court for not confining its review to an application of the substantial evidence rule and remanded the case with the following comment:

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[6] Whether or not the Supreme Court's opinion in the *Hawkins* case is broad enough to permit a court to consider the credibility of witnesses in applying the substantial evidence rule is questionable.

[7] 200 S. W. (2d) 874 (Tex. Civ. App. 1947).

[8] Tex. Penal Code (Vernon's, 1925) art. 667.

"The district judge does not have to select the testimony of one side with absolute blindness to that introduced by the other.

"The district court may consider the whole record to determine the 'substantial evidence' . . ."[9]

The court also cited with approval the opinion of the late Chief Justice Alexander in the case of *Railroad Commission v. Shell Oil Co.*[10] with the following statement:

"The Chief Justice . . . re-dedicated to the people the three branches of government as having separate functions. Said opinion breaks the stranglehold the bureaus were winding around the Judicial branch of our Government, the opinion places said bureaus in their proper category of serving the people and not dictating to them."[11]

Though the element of "reasonable support" so greatly emphasized by the later *Hawkins* case was not mentioned, the ultimate effect of the opinion is the same and gives fully as broad a scope to judicial review in the application of the substantial evidence rule. It is to be stated that the substantial evidence rule was applied even though the statute expressly provided that appeal from the county court to the district court should be a "trial *de novo*."[12]

FREIGHT RATES—SUBSTANTIAL EVIDENCE RULE—NO TRIAL DE NOVO UNDER ARTICLE 6453

In *Consolidated Chemical Industries, Inc. v. Railroad Commission*[13] the petitioner complained that the district court had applied the substantial evidence rule in deciding an appeal brought under Article 6453[14] challenging a Commission order granting the Texas

[9] 200 S. W. (2d) 874, 879 (Tex. Civ. App. 1947).

[10] 139 Tex. 66, 161 S. W. (2d) 1022 (1942).

[11] 200 S. W. (2d) 874, 879 (Tex. Civ. App. 1947).

[12] TEX. PENAL CODE (Vernon's, 1925) art. 666, § 14.

[13] 201 S. W. (2d) 124 (Tex. Civ. App. 1947).

[14] TEX. REV. CIV. STAT. ANN. (Vernon's, 1925) art. 6453 provides: "If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision . . . in a court of competent jurisdiction in Travis County, Texas, against said commission as defendant. Said action shall have precedence over all other

and New Orleans Railroad Co. authority to apply a special sub-normal freight rate on sulphuric acid. The district court had sustained the Railroad Commission, and the court of civil appeals affirmed despite earlier Texas Supreme Court decisions[15] requiring an independent judicial determination of the fact issues in cases brought under Article 6453.

The court fully considered a lengthy transcript of evidence and testimony presented in the commission hearing and concluded that there was substantial evidence to support the Commission finding that an independent threat of waterway competition made necessary a sub-normal rate. The court stated that the findings of the Commission had a reasonable basis in the facts. Thus, in effect, the court required that the evidence not only be substantial but that it also reasonably support the Commission findings. Such an interpretation of the case places it on the same plane as the holding in the *Hawkins* case.

DRIVER'S LICENSE—SUBSTANTIAL EVIDENCE RULE—NO TRIAL DE NOVO UNDER ARTICLE 6687b

A question as to the application of the substantial evidence rule was before the court in the case of *Department of Public Safety v. Robertson.*[16] An appeal was taken by the Department from a judgment of the county court ordering it to issue a driver's license. The Department contended that the county judge should not have made an independent judicial finding as to the facts but should have limited the scope of review to an application of the substantial evidence rule. The statute involved was Article 6687b, Section 31,[17] relating to appeals to the county court from decisions of the Department of Public Safety. The statute provides that the court shall set the matter for a hearing, examine into the facts of the

causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court."

[15] Railroad Commission v. Houston and T. C. Ry., 90 Tex. 340, 38 S. W. 750 (1897); Railroad Commission v. Weld and Neville, 96 Tex. 394, 73 S. W. 529 (1903).

[16] 203 S. W. (2d) 950 (Tex. Civ. App. 1947).

[17] TEX. REV. CIV. STAT. ANN. (Vernon's, 1925) art. 6687b, § 31.

case and determine if petitioner is entitled to a license, *that the trial shall be de novo,* and that the licensee shall have the right of a jury. Notwithstanding these provisions, the appellate court reversed and rendered, holding that the judicial review by the county court should not be a trial *de novo.* The decision of the Department was held to be final and conclusive unless a showing were made that the Department acted unreasonably or unlawfully or unless its decision was not based on substantial evidence and was arbitrary or capricious. In reviewing all the evidence the court concluded that the Department did not act capriciously or arbitrarily. The Department's finding that the applicant's operation of a motor vehicle would be inimical to the public safety and welfare was held supported by substantial evidence and therefore conclusive.

As to the contention of the applicant that no appeal from the county court could be taken because none was provided for in Article 6687b, the answer was made that appeal would lie under the general laws of the state.[18]

C. S.

[18] TEX. CONST. Art. V, § 816.