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Marketing Quotas and the Farmer

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dismiss or remand the case to the Commission. If evidence offered to the court has not been submitted to the Commission, the correct practice requires that such evidence be first submitted to the Commission.[33] In most instances the Commission's action will be sustained as to awards for reparations. As was pointed out in *Interstate Commerce Commission v. Mechling*,[34] judicial review of the Commission's findings of fact and its exercise of expert judgment within its statutory authority is extremely limited.

John C. Hood.

MARKETING QUOTAS AND THE FARMER

IN *Lee v. Roseberry*[1] plaintiff tobacco producer sought judicial review of her marketing quota under the Agricultural Adjustment Act (AAA) of 1938.[2] Plaintiff's marketing quota of 1.8 acres in 1949 had been reduced to 1.5 acres for 1950, a reduction of 14.7 per cent. The quota had been fixed by a county committee acting under a proclamation of the Secretary of Agriculture requiring a general reduction of 10% in tobacco marketing quotas. Existing legislation prohibited lowering of quotas of farmers having allotments of .9 acre or less. When such farms were excluded from the general 10 per cent reduction, farmers having allotments of more than .9 acre had to assume a proportionally larger quota reduction. Plaintiff attacked this legislation as unconstitutional and sought a recomputation of her quota, a declaratory judgment of her rights under the Act, and an injunction against state officers of the Production and Marketing Administration (PMA). The court upheld the constitutionality of the Act and the quota fixed thereunder.

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[33] Lang Transp. Corp. v. United States, 75 F. Supp. 915 (S. D. Cal. 1948).
[34] 330 U. S. 567 (1947).
[1] 94 F. Supp. 324 (E. D. Ky. 1950).
[2] 7 U. S. C. 1946 ed. § 1281 *et seq.*

Almost every farmer and producer of agricultural commodities in the United States has been, in recent years, subject to some form of governmental control. At present, important regulation is centered around marketing quotas, integrated with acreage allotments and soil conservation payments. The Secretary of Agriculture has the task of administering marketing quotas, and his authority is derived from the Agriculture Adjustment Act of 1938.

Marketing quotas are a means of regulating the marketing of commodities when supplies become excessive. The quantity of a given commodity that will provide adequate supplies—the national marketing quota—is determined by the Secretary of Agriculture. This quantity is usually translated into terms of acreage. The acreage is allotted among states, counties, and finally among individual farms. The marketing quota for an individual farm is, in effect, the quantity produced on the acreage allotment. Marketing quotas are proclaimed by the Secretary of Agriculture whenever supplies of commodities reach certain levels. Before such quotas go into effect, it is necessary that at least two-thirds of the producers of the commodities vote in favor of the marketing quotas. After a favorable vote, the Production and Marketing Administration takes over the main task of administering the quotas. The PMA is directed by an Administrator, assisted by a Deputy Administrator and four Assistant Administrators, with main offices in Washington, D. C. There are several regional offices, and, in addition, a state PMA office in every state, and numerous county committees. The state PMA offices and county committees are a key part of the PMA field organization. They advise on program development and are responsible for local administration of national programs. The county committee is composed of three farmers elected annually by the other farmers of the county.[3] The main job of the county committee is to apportion the marketing quotas among farms.

[3] Soil Conservation and Domestic Allotment Act, as amended, 49 STAT. 1149 (1936); 16 U. S. C. 1946 ed. § 590 h(b).

Whenever quotas are established for individual farms, frequently some farmer feels that as to him the quota is discriminatory or works an unusual hardship. To adjust such complaints of individual farmers the Secretary of Agriculture, through the PMA, has issued marketing review regulations.[4] These review regulations, which conform to the Agriculture Adjustment Act of 1938, provide opportunity for an administrative hearing on the county level through a county review committee,[5] following determination of the quota by the county committee.

A farmer who desires review of his marketing quota must submit his application for review to the secretary of the county committee within fifteen days after receipt of notice of his quota. His application must be accompanied by the original notice of the quota mailed to him, together with other pertinent information, and a statement of what he thinks his quota should be and the reasons therefor. If any necessary information on the application for review is omitted, the secretary will so inform the applicant by registered mail, enabling him to amend his application in accordance with review regulations. The secretary of the county committee acts as clerk of the review committee and files applications for review with the review committee for action.

The review committee is composed of three farmers, appointed by the Secretary of Agriculture. Members of the committee must be residents of the county and may not be members of the county committee. One member serves as chairman and another as vice-chairman.[6] Members of the review committee are paid a small sum but may not be compensated for more than thirty days per year. Hearings are usually held in the office of the county committee. At least ten days' notice before each hearing is given to the appli-

[4] The last marketing quota review regulations were issued on July 29, 1949, and superseded all prior regulations issued under the AAA and amendments. These regulations are issued under authority of 52 STAT. 62, 64, 66 (1938), 55 STAT. 92 (1941), 60 STAT. 237 (1946); 7 U. S. C. 1946 ed. §§ 1361-68, 1375 (b).

[5] 7 U. S. C. 1946 ed. § 1363.

[6] Various rules have been issued to cover situations arising when there is a vacancy or absence; such rules are found in 7 C. F. R. §§ 711.13-711.15 (1949 ed.).

cants. The time of the hearing may be changed from day to day or adjourned to a new place by the chairman. The hearings are required to be conducted in a fair and impartial manner, with reasonable opportunity for all parties to be heard and produce evidence. Either side may be represented by counsel.[7]

The application for review is read by the chairman, and he requires the representative of the county committee to answer orally or in writing so as to inform the applicant fully of the issues of fact and law that are in dispute. This answer consists mainly in a statement of the factors considered by the county committee in fixing the quota. Applicant has the burden of proof on all issues of fact raised by him. Although the hearing is not conducted along strict judicial lines, cross-examination of witnesses is allowed.

The review committee requires notes to be taken of the hearing, and the applicant may, at his expense, receive a verbatim record.[8] All parties may file written arguments and proposed findings of fact and conclusions, based on the evidence adduced at the hearing, for consideration by the review committee. Every final determination by the review committee must be reduced to writing and show the committee's disposition of the findings and conclusions proposed by the parties. If the review committee decides against the county committee's determination of the quota, it must point out in what respect the county committee failed to apply the law. The final decision, together with supporting documents, certified as true, complete, and correct, is mailed to the applicant by the clerk of the review committee.

If a hearing goes to a final determination, the review committee, on its own motion or upon due application therefor, may, within fifteen days from the date of mailing a copy of its determination

[7] 7 C. F. R. § 711.25 (c) (1949 ed.) states that either applicant or the Secretary of Agriculture may be represented at the hearing, and that the county committee *shall* be present or represented at the hearing.

[8] Frequently, the state PMA committee asks for a transcript, and the applicant is entitled to one of its copies if he so desires.

to the applicant, reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document. The review committee may reopen the hearing on behalf of the Secretary of Agriculture within sixty days from the date of the mailing of a copy of its determination to the applicant. The review committee has power to dismiss, without a hearing, insufficient or imperfect applications.

While the above comprises the content and effect of the regulations issued by the Secretary of Agriculture, actual practice is frequently less formal. When a farmer receives his quota, he may inquire at the office of the county committee to ascertain how his quota was determined. Mathematical errors may be changed there without delay. Usually there is no further protest, and it is seldom that appeal is taken from the final determination of a review committee.

The AAA provides for judicial review of the final determinations of review committees. The applicant must begin his action within fifteen days after the review committee's determination is mailed to him by filing suit in a district court of the United States, or in any state court of general jurisdiction in the county or district where applicant's farm is located. In *Larkin v. Roseberry*[9] such a proceeding was brought in the state court, but the defendant review committee requested removal to the federal court. The plaintiff protested that it was not a suit of such a civil nature as was contemplated in the Federal Judicial Code,[10] and that removal was precluded by the section of the AAA governing judicial review.[11] The court allowed the removal, however, and it seems most likely that cases of this kind hereafter will be heard almost exclusively in the federal courts.

The applicant must furnish bond to protect the Government from court costs. Citation may be served on any member of the

[9] 54 F. Supp. 373 (E. D. Ky. 1944).
[10] 28 U. S. C. 1946 ed. §§ 41, 71.
[11] 7 U. S. C. 1946 ed. § 1367.

review committee. After citation the clerk of the review committee files a certified copy of the record on which the determination was made. All notices of suits are forwarded to the Hearing Clerk, Department of Agriculture, Washington, D. C. No member of the review committee is allowed to make an appearance in his behalf or on behalf of the committee, except in accordance with instructions from the Secretary of Agriculture.

The court review is limited to questions of law; if the findings of the review committee are supported by the evidence, they are conclusive as to findings of fact. The court may direct the review committee to hear additional evidence if good reason for not producing it at the hearing is shown, and the committee may revise its determination on the basis of the new evidence. The court hears the case upon the original record and supplements thereto. If the court decides that the action of the committee was not in accordance with law, the court may remand the case for reconsideration. The commencement of such proceedings does not operate automatically to stay the final determination of the review committee. The constitutionality of the Act and authority of the Secretary of Agriculture to issue regulations thereunder have been attacked in several cases, and each time the validity of the Act has been upheld.[12]

The administrative procedure outlined above is the exclusive method by which parties may obtain judicial review of marketing quotas. In *Campbell v. West*[13] the court held that applicant who failed to protest the quota fixed by the county committee within the fifteen days allowed in the Act was without standing to appeal to the review committee and the court. In *Hawthorne v. Fisher*[14] the court stated that the administrative remedies provided in the Agri-

[12] Wickard v. Filburn, 317 U. S. 111 (1942); Mulford v. Smith, 307 U. S. 38 (1939); U. S. v. West Tex. Cottonoil Co., 155 F. 2d 463 (5th Cir. 1946); Usher v. U. S., 146 F. 2d 369 (4th Cir. 1944); Rodgers v. U. S., 138 F. 2d 992 (6th Cir. 1943); Troppy v. La Sara Farmers Gin Co., Inc., 113 F. 2d 350 (5th Cir. 1940); U. S. v. Biehunko, 55 F. Supp. 706 (S. D. Tex. 1944).

[13] 79 N. E. 2d 170 (Ohio C. P. 1948).

[14] 33 F. Supp. 891 (N. D. Tex. 1940).

culture Adjustment Act of 1938 must be exhausted before judicial review of marketing quotas and relief therefrom may be sought in the courts.

Farmers and producers who plant acreage contrary to the allotments assigned them by the county committee are subject to various penalties. For instance, any farmer who produces wheat in excess of the quota allotted to him is subject to a penalty of fifteen cents per bushel, or 50 per cent of the basic loan rate on the excess bushels marketed, or both.[15] The basic loan rate is the amount that the Government will loan a farmer on his commodity. This basic loan rate is usually described in terms of "parity," which is a formula by which the commodity is given the same purchasing power as it had during a given base period in terms of prices which farmers had to pay for goods they purchased, interest on mortgage indebtedness, taxes on farm real estate, and wage rates for hired labor. After the parity price is determined, the Government will loan money up to 90 per cent of the parity price to those producers of agricultural commodities who cooperate with marketing quotas. For example, if the parity price on a bushel of wheat is determined to be $2.00, the Commodity Credit Corporation will loan $1.80 per bushel of wheat. For those who refuse to cooperate with marketing quotas that are in effect, the penalty may be 90 cents per bushel on the excess bushels available for marketing. In addition, a producer's eligibility for price support loans and payments is made conditional on the producer's complying with acreage allotments, production goals, and marketing quotas (when authorized by law). Acreage allotments may be proclaimed by the Secretary of Agriculture although marketing quotas are not authorized by the referendum.[16] If acreage allotments alone are in effect, farmers who produce the commodity on acreage in excess of their acreage allotments are not subject to penalties on

[15] 7 U. S. C. 1946 ed. §§ 1339, 1340.

[16] Acreage allotments are a means of adjusting supplies of field crops. This is accomplished by apportioning the national acreage among individual farms. These acreage allotments are one of the bases for arriving at the marketing quota for each individual farm.

marketing the "excess" production of the commodity, but their eligibility for price support is affected.

Enforcement of these penalties is by the several district attorneys, on direction of the Attorney General or on request by the Secretary of Agriculture. In *Smith Land Co. v. Christensen*[17] the applicant protested his acreage allotment and the imposition of a penalty based upon production of seven hundred excess bushels. The court re-affirmed the principles of judicial review, stating that no new issues of fact, other than constitutional ones, could be introduced before the court, and holding that as the review committee had nothing to do with the imposition of the penalty, this question could not be reviewed. In *Usher v. U. S.*[18] the Government was successful in collecting penalties, the court pointing out that judgment in the civil action would be based upon the preponderance of evidence. In *U. S. v. Locke*[19] the producer planted in excess of the acreage allotment assigned him by the county committee, and the United States sought to collect the penalties on the excess that was planted and harvested, even though none of the commodity had been marketed. The court upheld the right of the Government to collect the penalties, stating that producers who refused to participate in the agricultural conservation program and produced and harvested wheat far in excess of acreage allotments were subject to the marketing penalty as provided for in the Act, even if the excess was consumed by the producer. In *U. S. v. Biehunko*[20] the Government asked not only for penalties for prior years but also for an injunction against the defendant, who had previously refused to pay penalties and had maintained a hostile attitude toward the program. The court refused injunctive relief since, no matter how hostile defendant may have been, the Government had failed to show threat of any unlawful or inequitable act.[21] *Dale A. Williams.*

[17] 148 F. 2d 184 (10th Cir. 1945).
[18] 146 F. 2d 369 (4th Cir. 1944).
[19] 56 F. Supp. 999 (M. D. Tenn. 1944).
[20] 55 F. Supp. 706 (S. D. Tex. 1944).
[21] The Agricultural Adjustment Act of 1938 has no provision for injunctive relief.