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Administrative Law -- Due Process Standards for Quasi-Judicial Proceedings of Municipal and County Agencies

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Quasi-judicial proceedings conducted by administrative agencies have traditionally varied from regular judicial proceedings in the use by agencies of less formal and more flexible procedural regulations than those used in fully adversary proceedings. Procedural informality has been particularly characteristic of quasi-judicial proceedings conducted by municipal and county agencies. "Humble Oil & Refining Co. v. Board of Aldermen" raised the issue of whether a municipal body conducting a quasi-judicial proceeding may exercise discretion as to compliance with its own procedural rules. In a decision with important procedural implications for all local governmental agencies in the state, the North Carolina Supreme Court held that due process considerations required compliance with procedural rules in effect at the time the proceeding was conducted.

In "Humble," plaintiff acquired options to purchase or lease three adjoining lots in Chapel Hill. The lots were in a district zoned to permit construction and operation of service stations upon approval of a special use permit by the Board of Aldermen. "Humble"'s application for such a permit was jointly considered by the Aldermen and the Chapel Hill Planning Board at a duly advertised public hearing as required by the ordinance. Immediately after receiving testimony in favor of

1. A distinction is made between administrative agency proceedings that are quasi-judicial or adjudicatory in nature and proceedings that are quasi-legislative or rule-making in nature. For an explanation of the basis on which this distinction is made see Daye, North Carolina's New Administrative Procedure Act: An Interpretive Analysis, 53 N.C.L. Rev. 833, 838-39 (1975).
2. See generally Daye, supra note 1.
5. Id. at 467-68, 202 S.E.2d at 135. The litigation involved two additional issues. A standing challenge by the Board of Aldermen was decided in Humble's favor with recognition by the court that a "prospective vendee" under contract to purchase property may properly apply for or appeal the denial of a variance or special use permit related to such property. Id. at 464-65, 202 S.E.2d at 133-34. Humble's "inadequate standards" attack on the validity of the ordinance provisions governing special use permit decisions was rejected. Id. at 471, 202 S.E.2d at 138.
6. Id. at 461, 202 S.E.2d at 131.
7. Chapel Hill, N.C., Ordinance Providing For The Zoning of Chapel Hill and
and in opposition to the issuance of a special use permit, the Aldermen voted unanimously to deny Humble’s application. They did not, however, refer the application to the planning board as apparently required by the ordinance. Upon petition by Humble, the Superior Court of Orange County issued a writ of certiorari and subsequently sustained the Aldermen’s decision. Humble appealed, the North Carolina Court of Appeals affirmed, and certiorari was granted by the North Carolina Supreme Court.

Humble argued that the application denial was arbitrary and a deprivation of due process from both a procedural and an evidentiary standpoint. The procedural attack was based upon a contention that the ordinance required a referral to the planning board after the public hearing for an advisory recommendation before the Aldermen could

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8. 284 N.C. at 465, 202 S.E.2d at 134.
9. The Chapel Hill zoning ordinance authorizes the issuance of special use permits by the Aldermen for specified uses and under specified conditions “after joint hearing with the Town Planning Board and after Planning Board review and recommendation.” Section 4-B-1-a. The Aldermen are directed to “consider the application and said recommendation and either grant or deny the Special Use Permit requested.” Section 4-B-1-g.
11. 284 N.C. at 468, 202 S.E.2d at 136. The court agreed with Humble’s contention that this finding, upon which the application denial was based, was unsupported by competent evidence. The validity of flexible requirements as to the type of evidence which may be received in a quasi-judicial proceeding was affirmed by the court’s holding that N.C. GEN. STAT. §§ 143-317, -318 (1974) (repealed by Ch. 1331, § 2, [1973] N.C. Sess. Laws 703, effective July 1, 1975), which required that state agencies to which it applied must comply with rules of evidence as applied in the superior and district courts, did not apply to county and municipal agencies. Notwithstanding this latitude as to the receipt of evidence, the court relied heavily upon the stringent standards established in Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963), in requiring that crucial findings of fact be supported by competent, material, and substantial evidence. 284 N.C. at 468-71, 202 S.E.2d at 136-37. The Jarrell evidence standards were derived from N.C. GEN. STAT. §§ 143-306 to -316 (1974) (repealed by Ch. 1331, § 2, [1973] N.C. Sess. Laws 703, effective July 1, 1975), imposed in the context of a quasi-judicial determination of a “legal” or “property” right. It appears that the court in Humble extended the Jarrell standards to apply whenever the nature of the proceedings is quasi-judicial, regardless of the nature of the right involved. 284 N.C. at 470, 202 S.E.2d at 137. The evidentiary portion of the court’s decision may, however, be influenced by the repeal of the statutes on which the decision rests and the enactment of the North Carolina Administrative Procedure Act, N.C. GEN. STAT. §§ 150A-1 to -64 (Supp. 1974), effective February 1, 1976. It is noteworthy that the new Act expressly excludes municipal agencies from its coverage. Id. § 150A-2(1) (Supp. 1974). See Daye, supra note 1, for a thorough description and interpretation of this Act.
either grant or deny the application.\textsuperscript{12}

The Aldermen argued, and the court of appeals agreed, that the ordinance provisions meant that a referral to the planning board must be made before \textit{issuance} but not before \textit{denial} of a permit application. The Supreme Court rejected this construction\textsuperscript{13} and held that compliance with the referral provision was required by both due process and equal protection considerations.\textsuperscript{14} Referral to the planning board was viewed as a procedural safeguard designed to insure that every applicant for a special use permit received the same careful, impartial consideration.\textsuperscript{15} The court ordered the permit denial set aside and a \textit{de novo} consideration of Humble's application by the Board of Aldermen.\textsuperscript{16}

The strict procedural standards applied by the court in reviewing this administrative action stand in marked contrast to the highly deferential review of local government actions demonstrated in past decades.\textsuperscript{17} There has, however, been very little prior North Carolina litigation concerning the competence of a local government administrative agency to depart from its own procedural rules and regulations.\textsuperscript{18}

\begin{itemize}
\item \textsuperscript{12} 284 N.C. at 465, 202 S.E.2d at 134.
\item \textsuperscript{13} The court did not discuss its recent affirmation of the proposition that \textquotedblleft[w]here an issue of statutory construction arises, the construction adopted by those who execute and administer the law . . . is entitled to 'great consideration,' . . . . It is said to be 'strongly persuasive' or even '\textit{prima facie} correct.'\textquotedblright MacPherson v. City of Asheville, 283 N.C. 299, 307, 196 S.E.2d 200, 206 (1973) (citations omitted).
\item \textsuperscript{14} 284 N.C. at 467-68, 202 S.E.2d at 135.
\item \textsuperscript{15} \textit{Id.} at 467, 202 S.E.2d at 135.
\item \textsuperscript{16} \textit{Id.} at 471, 202 S.E.2d at 138. This remedy should allow the agency to better serve the public interest by providing a "second chance" when the decision is substantively correct but improperly reached. It may be argued that the \textit{de novo} approach is too burdensome for applicants. Particularly in the land use context, delays caused by the improper denial of an application may be fatal to either complex financial arrangements or to the commercial timing of business decisions. It would be anticipated, however, that agencies will make a good faith effort to comply with this decision. In addition, future applicants who are improperly denied a permit will have a better chance for favorable resolution of the conflict in the lower courts. It is also probable that the court would readily utilize the harsher remedy of ordering that a permit be issued in response to an unreasonable denial. \textit{See In re Application of Ellis, 277 N.C. 419, 426, 178 S.E.2d 77, 81 (1970).}
\item \textsuperscript{17} \textit{Id.}
\item \textsuperscript{18} \textit{Id.}
\end{itemize}
One limitation observed by courts in other jurisdictions on agency deviation from its own rules is the well-settled administrative law principle that administrative procedure must embody basic due process guarantees. Due process requirements have, however, generally been interpreted less stringently in the administrative as compared to the judicial arena. Even when such basic due process guarantees as notice or an opportunity to be heard are not involved, however, the prevailing view in administrative law is that, as a general rule, agencies engaged in quasi-judicial functions do not have discretion to waive, suspend, or disregard validly adopted procedural rules. There are recognized exceptions to this general rule where the deviation is not arbitrary, is made in the interest of justice, or results in harmless error.

One important aspect of *Humble Oil & Refining Co.* is its departure from prior North Carolina case law concerning the criteria for determining the applicable procedural standards for agency determinations. Earlier cases involving the general issue of administrative agency procedural standards applied more stringent standards when a vested property right was involved. The court in *Humble* gives quite limited consideration to the nature of the right involved. It is the quasi-judicial nature of the proceeding that is stressed at several points in the opinion as precipitating the imposition of specified standards. To the extent that the nature of the proceeding replaces the technical nature of the right being adjudicated as a determinant of the procedural require-

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specified by the ordinance and required by the enabling act. *In re Application of Ellis* also involved an amendment adopted without compliance with ordinance provisions, but this issue was not decided. The court ordered issuance of a permit that had been denied despite a stipulation that all ordinance requirements for the permit had been met. It was in the context of the exercise of "unguided discretion" by the Commissioners in deciding whether to grant or deny an application, not in the context of deviation from an existing procedural rule, that the court in *Ellis* required the Commissioners to "proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits." 277 N.C. at 425, 178 S.E.2d at 81.

20. E.g., id.
25. See note 11 supra.
ments to be imposed, this decision has ramifications not only for special use permit proceedings, but for all quasi-judicial proceedings. The probable applicability of this decision to all quasi-judicial proceedings is further supported by the constitutional base on which the court required the Aldermen to comply with the ordinance provision for a referral to the planning board. If due process requirements are satisfied only by adherence to procedures outlined in the ordinance in the special use permit context, there is no apparent reason to preclude similar requirements in other quasi-judicial proceedings.

The primary analytical difficulty with the *Humble* opinion is the resulting uncertainty about the reach of the procedural compliance requirement. Must an agency comply only with those procedural rules designed to provide procedural safeguards for fundamental rights? Alternatively, is compliance with all procedural rules required? A rigid due process requirement of compliance with all procedural rules would be a broader and more rigid requirement than has been generally imposed. Such a broad requirement could lead to slavish adherence to procedural rules for the sake of uniformity per se and may well prove detrimental to the purposes that administrative bodies are uniquely designed to serve: efficiency, speed, volume, flexibility, and informality. On the other hand, a due process requirement of compliance with procedural rules designed to safeguard fundamental rights is fully justified and in accord with the weight of administrative law authority from other jurisdictions.

Even if the opinion is interpreted to require compliance only

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26. This analytical innovation should simplify the case law in zoning cases by diminishing the importance of technical distinctions between various types of zoning decisions which have a dubious relationship to the importance of the interest involved. The scope of proceedings viewed as falling within the quasi-judicial category will also influence the scope of the *Humble* decision. A well-reasoned opinion in *Fasano v. Board of County Comm'rs*, 264 Ore. 576, 507 P.2d 23 (1973), characterizes a zoning change as a judicial function rather than accepting the "legislative" label traditionally applied to this type of action. Acceptance of the rationale of the *Fasano* opinion would greatly expand the proportion of local government decisions that would be viewed as quasi-judicial and thus be subjected to the more stringent procedural requirements of *Humble*.

27. See text accompanying note 5 supra.

28. An affirmative response to this inquiry could be reached by reference to language used by the court, "[T]he Alderman must 'proceed under standards, rules, and regulations uniformly applicable to all who apply . . . .' [A] board of aldermen may not violate at will the regulations it has established for its own procedure; it must comply with the provisions of the applicable ordinance." 284 N.C. at 467, 202 S.E.2d at 135.

29. See text accompanying notes 19-23 supra.

30. See *Daye*, supra note 1, at 845.

31. See text accompanying notes 19-23 supra.
with procedural safeguards designed to protect fundamental rights, there is some ambiguity as to what specifically the court viewed in this case as a fundamental right. It seems obvious that the Aldermen could legitimately amend the ordinance in the future to delete the provision for a referral to the planning board so that referral per se would not constitute a fundamental right. Because the court viewed the purpose of the referral provision to be the assurance of careful and impartial consideration of all applications, it may be postulated that the fundamental right to be protected was the right to uniform treatment with respect to those procedural rules that protect the basic fairness of the ultimate decision. This interpretation is more plausible than the alternative that due process demands compliance with all procedural rules.32

Ambiguity about the proper scope of procedural compliance could have been avoided by a mandatory-directory analysis of the referral provision of the ordinance in lieu of the due process analysis used by the court. An accepted distinction in statutory construction is that failure to comply with a mandatory provision renders the proceeding to which the provision related illegal and void, whereas compliance with a directory provision is not necessary to the validity of the proceeding.33 In the absence of a statutory stipulation that a given provision is mandatory, the basic criterion by which a distinction is made between mandatory and directory provisions is the achievement of the underlying legislative purpose. The function of this distinction is to avoid the exaltation of form over substance.34 The mandatory-directory approach thus facilitates a desirable35 case-by-case examination of the important competing interests36 involved, with attention focused upon the specific interest of the applicant that may be ad-

32. See text accompanying notes 29-30 supra for an analysis of why this result would be undesirable.
35. But see Note, 16 SYRACUSE L. REV., supra note 3.
36. See Daye, supra note 1. Professor Daye enumerates the purposes that administrative bodies are uniquely designed to serve as efficiency, speed, volume, flexibility, and informality. Id. at 845. Competing interests are identified as "fairness considerations—equitable treatment of persons in like circumstances, notice, opportunity to participate, regularized process, articulated reasons for agency action and overall 'rationality' in agency process." Id. A perceptive discussion of the need for and method of arriving at a judicious balancing of these competing interests is also provided. Id. at 845-49.
versely affected and upon alternative means of protecting that interest. Thus, mandatory-directory analysis may result in broader compliance with procedural rules than would be demanded by due process.

Given the facts of *Humble Oil & Refining Co.*, a mandatory-directory analysis would have probably yielded the same results reached by the court through due process analysis. The advantage of the mandatory-directory analysis would have been a more precise articulation of the specific circumstances under which compliance with procedural rules is required. The disadvantage of the approach used by the court is that a cautious, overly-broad interpretation of the scope of the procedural compliance standard may well lead to the exaltation of form over substance.37

On balance, this decision makes a significant contribution to the development of administrative law for municipal and county agencies in North Carolina. The dramatic increase in the number of cases adjudicated by administrative agencies38 accentuates the importance of assuring procedural fairness for parties who appear before quasi-judicial tribunals. The sensitivity demonstrated by the court toward the protection of procedural fairness, if tempered with recognition of the uniquely flexible and informal nature of administrative actions by local governmental agencies, should lead to constructive resolution of issues not definitively decided by this case.

**Wendell Harrell Ott**

Constitutional Law—Double Jeopardy in the Juvenile Courts

The right to be free from double jeopardy, as guaranteed by the fifth amendment to the United States Constitution,1 is an integral part of the Anglo-American system of justice. "Fear and abhorrence of govern-

37. Similarly, if an agency finds the burden of a rigid and overly-broad procedural compliance standard excessively onerous, a not unlikely reaction would be to delete by amendment the provision in question whenever the provision was not a minimum requirement of due process. The imposition of rigid standards designed to enhance procedural protection of applicants could thus ironically lead to minimum rather than maximum procedural protection.


1. U.S. CONST. amend. V provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . ."