

Res Judicata in License Determinations Before Administrative Tribunals - *Knox v. Mayor and City Council of Baltimore City*

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Civil Procedure Commons](#)

Recommended Citation

Res Judicata in License Determinations Before Administrative Tribunals - Knox v. Mayor and City Council of Baltimore City, 6 Md. L. Rev. 256 (1942)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol6/iss3/6>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

RES JUDICATA IN LICENSE DETERMINATIONS BEFORE ADMINISTRATIVE TRIBUNALS

*Knox v. Mayor and City Council of Baltimore City*¹

In February, 1939, appellant filed an application with the Board of Zoning Appeals to construct a tool house on a lot in Baltimore City, and for permission to use the lot for the storage of building materials and trucks. The petition was based on the grounds of an alleged non-conforming use of the premises, which had been zoned residential. The Board found that a non-conforming use had been established and approved the application. Appellant failed to exercise his license within six months from the date it was issued, and it therefore became null and void.² Subsequently, in November, 1939, and again in September, 1940, appellant applied for a similar license,³ based on the non-conforming use which had been found to exist in the first application. In both of the subsequent hearings, how-

¹ 23 A. (2d) 15 (Md., 1941). See, in general, Note, *The Doctrine of Res Adjudicata* (1940) 4 Md. L. Rev. 189.

² Baltimore City Code (1927) Art. 49, Sec. 35.

³ This statement is not exactly correct, although for the purposes of its opinion, the Court of Appeals regarded it as a similar application. The grounds for petitioner's suit were the same in both applications, i. e., a non-conforming use. The specific applications made by petitioner were as follows: In February, 1939, "to construct an addition for tool storage and to continue to use lot for storage of building materials and trucks at 4403 Alhambra Avenue." The addition was to be 10 ft. x 24 ft. In November, 1939, petitioner asked "to construct a tool house and garage at 4403 Alhambra Avenue the size to be 72 ft. x 36 ft., 6 inches." In September, 1940, the application was "to construct an addition and to continue the use of the lot and the garage thereon for the storage of building materials and trucks." The addition was to be 24 ft. x 12 ft.

ever, the Board of Zoning Appeals, after reviewing additional evidence, found that no non-conforming use had been established, and denied the license. This action was affirmed by the Baltimore City Court. Appellant contended that the finding of a non-conforming use by the Board of Zoning Appeals in his application of February, 1939 was *res judicata* as to whether appellant had a non-conforming use in the lot in question in his subsequent applications. The Court of Appeals, in affirming the lower court, held that the Board of Zoning Appeals was not a court or judicial tribunal, and that as a result the doctrine of *res judicata* could not apply in this particular case.⁴

This case suggests the problem of when, if ever, the judicial doctrine of *res judicata* will apply to an administrative board. Because of the numerous ramifications of the problem,⁵ discussion in this note will be limited primarily to the instances when a plea of *res judicata*, based on former action in an administrative tribunal vested with power to grant licenses, will be accepted by the Board in a subsequent application by the same party for the same license.

*Interest reipublicae ut sit finis litium*⁶ and *nemo debet bis vexari pro eadem causa*⁷ are the ancient maxims upon which the doctrine of *res judicata* is based. It is primarily a rule of convenience, giving security to past decisions, and freezing the future from the threat of similar litigation.⁸ The doctrine has many times been defined by the Court of Appeals in the following language:

“An existing, final judgment or decree rendered upon its merits, and without fraud or collusion, by a court of competent jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions

⁴ The Court then affirmed the decree of the lower court in refusing to grant the license. The grounds on which the decision was based were first, that the lower court was correct in finding that no non-conforming use existed under the facts as presented on the record, and secondly, even if such use did exist, petitioner's request would amount to an expansion of such use which is prohibited under appropriate ordinances.

⁵ Among other instances in which the doctrine of *res judicata* might or might not apply to administrative tribunals are, first the Board holding that the same facts had been previously litigated and determined in a law court; secondly, a law court holding that the issues to be decided have been previously determined by an Administrative Board; and, thirdly, where the Board itself possesses in the nature of a “continuing jurisdiction” over the subject matter, and parties present to the tribunal the same facts for a second determination.

⁶ It is a public concern that there be an end to litigation.

⁷ No one ought to be twice vexed for the same cause.

⁸ 2 FREEMAN, JUDGMENTS (5th Ed. 1925) Sec. 626.

or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the point and matters in issue in the first suit."⁹

The strict judicial doctrine of *res judicata* has not had uniform application before administrative boards in general.¹⁰ There are several reasons, based on sound social policy, why this should be so. In the first place, administrative boards are created to secure maximum social benefits without resorting to strict legal procedure. To limit their power of redetermination¹¹ by strict legal doctrines would be to defeat one of the purposes of their creation.¹² Secondly, administrative boards are created to deal with those aspects of social conditions which are continually subject to change. Because of these changes, decisions made in the past might not secure the greatest good to the greatest number in the future. Past decisions should therefore be subject to change, and it is felt that the judicial doctrine of *res judicata* should not impede necessary revision.¹³ A third reason lies in the fact that administrative

⁹ *Emmert v. Middlekauff*, 118 Md. 399, 404, 84 A. 540 (1912); *Christopher v. Sisk*, 133 Md. 48, 51, 104 A. 355, 356 (1918); *Baltimore v. Linthicum*, 170 Md. 245, 248, 183 A. 531 (1936); *Knox v. Mayor and City Council of Baltimore*, 23 A. (2d) 15, 17 (1941).

¹⁰ For an article analyzing many of the cases in this field see Schopflocher, *The Doctrine of Res Judicata in Administrative Law* (1942) *Wis. L. Rev.* 5, 198.

¹¹ Attention is directed to the wording of this clause, since it should be borne in mind that the instant note deals only with the plea of *res judicata* on a redetermination of issues previously settled before the board.

¹² Administrative boards are created to extend legislative policy, as well as to exercise judicial power. In a comparison of such boards with judicial courts as such, in respect to the procedure used by each, Mr. Justice Frankfurter said:

"Perhaps the most striking characteristic of this movement has been the investiture of administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims—modes whereby interested litigants define the scope of the inquiry and determine the data on which the judicial judgment is ultimately based. Administrative agencies have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication, and other essential public services. These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of the courts." *F. C. C. v. Pottsville Broadcasting Co.*, 309 U. S. 134, 142, 143 (1940).

¹³ Attention is called to the various instances where rates are made by administrative boards. Patently, as conditions change, rates should change with them, and the Administrative tribunal should be free to adjust its ruling in accord with such change. See however *Arizona Grocery Co. v. Atchison, Topeka and Santa Fe Railway Co.*, 284 U. S. 370 (1932).

boards being peculiarly acquainted with the subject matter with which they deal, are better qualified to make their own rules of procedure in a given case than courts of law, and therefore should not be forced to adopt an already existing, strict legal doctrine.¹⁴

It by no means follows, however, that the doctrine of *res judicata* has, or should have, no application to administrative boards. When the board is a licensing board, as was the situation in the principle case, there are situations where the doctrine is, and should be, applied. The classical approach to the problem is to state that if the licensing board sits in the capacity of a quasi-judicial body, the doctrine of *res judicata* should apply, but if it sits as a quasi-legislative or quasi-executive body, the doctrine should not apply.¹⁵ The decisions in many cases have turned on this point,¹⁶ although the difficulty of establishing any clear definition of either term has made this approach of little real value and has been the cause of great confusion.¹⁷

The relatively few Maryland cases which have dealt with this problem do not seem altogether to have followed the classical approach, but instead seem to have been decided more on the basis of their own individual fact situations. In *Mayor and City Council v. Linthicum*,¹⁸ the Court held that the doctrine of *res judicata* should be applied to a previous determination by a licensing board. There, the petitioners twice had sought and been denied a license from the Board of Zoning Appeals, which denial had been sustained on appeal to the Baltimore City Court. Subsequently to the enactment of procedure vesting the Court of Appeals with appellate jurisdiction in such cases, peti-

¹⁴ For a similar conclusion see Comment, *Res Judicata in Administrative Law* (1940) 49 Yale L. J. 1250, 1278.

¹⁵ HART, AN INTRODUCTION TO ADMINISTRATIVE LAW (1940) 355-356; Comment, *Res Judicata in Administrative Law* (1940) 49 Yale L. J. 1250, 1253.

¹⁶ The doctrine applied since the board acted in its quasi-judicial capacity in *Lilienthal v. Wyandotte*, 286 Mich. 604, 282 N. W. 837 (1938); *Shugg v. Anacanda Copper Mining Co.*, 100 Mont. 159, 46 P. (2d) 435 (1935); *Colusa County v. De Jarnett*, 55 Cal. 373 (1880); *Longinetta v. Shelton*, 103 Tenn. 324, 52 S. W. 1078 (1898). But where the board acts in its quasi-legislative or quasi-judicial capacity, the doctrine will not preclude a redetermination. See *People v. McCelallan*, 118 App. Div. 177, 103 N. Y. Supp. 146 (1907); *Prentiss v. Atlantic Coast Line*, 211 U. S. 210 (1908); *Board of County Commissioners v. Cypert*, 65 Okla. 168, 166 P. 195 (1917); *Board of County Commissioners v. Trautman*, 204 Ind. 362, 184 N. E. 178 (1933).

¹⁷ See for example: *Woodworth v. Kales*, 26 F. (2d) 178 (C. C. A. 6th, 1928). See also Comment, *Res Judicata in Tax Litigation* (1932) 46 Harv. L. Rev. 692. Comment, *Administrative Tribunals—Operation of Administrative Orders as Res Judicata* (1929) 27 Mich. L. Rev. 677.

¹⁸ 170 Md. 245, 183 A. 531 (1936).

tioner again applied for a similar license on the same grounds. The application was denied by the Board, but this was reversed by the Baltimore City Court. The Court of Appeals, in reversing the lower court, held that the ordinary rules of *res judicata* applied, and that as a result the petitioner was bound by the prior determination of the Board. The direct holding in *Zoning Appeals Board v. McKinney*¹⁹ was that the Board, as such, had no power to appeal; but the Court stated that even if this were not true, the Board should not have the power to reopen this case on the basis of its factual presentation.²⁰ In the principal case, the Court allowed the Board to reverse its former finding of fact, although that same issue had been decided in favor of the same petitioner in a former hearing.

At first blush, the holding in the principal case seems inconsistent with other Maryland cases, and with the classical approach to the problem of *res judicata* discussed above. The Maryland cases are easily distinguished, however, when it is remembered that those cases in which the doctrine was applied were cases where the petitioner had been denied relief in former proceedings, while in the principal case, the facts were previously found in his favor. On the other hand, the result of the Maryland cases, when compared with a strict application of the classical approach is inconsistent with the rules there set forth. The reason lies in the fact that the Board of Zoning Appeals, where acting within its licensing authority, has been described as quasi-judicial.²¹ The result would be, therefore, that the doctrine of *res judicata* would apply.²²

It is submitted, however, that the classical approach does not necessarily produce the best social result in all cases. One reason is the practical difficulty in determining whether a board is acting in its quasi-judicial or quasi-legislative capacity.²³ In many cases, administrative

¹⁹ 174 Md. 551, 199 A. 540 (1938).

²⁰ After disposing of the appeal, the Court by way of dictum indicated that the power to reopen should not be hedged about with technicalities, but upon considering the *facts* in this particular case, the action of the board in reopening the determination was void. *Ibid.*, 566.

²¹ For a description of the Board of Zoning Appeals see *Zoning Appeals Board v. McKenney*, *Ibid.*

²² The Court, by way of dictum, recognized the classical approach in the McKenney case, *Ibid.* The Court quoted the following language from 43 C. J. 356: "When the board of appeals is considered a quasi-judicial tribunal, the general rule is that such board is not vested with the power to reopen and rehear a proceeding which has once been terminated, at least in the absence of mistake in the prior proceedings."

²³ For a similar criticism see Comment, *Operation of Administrative Orders as Res Judicata* (1929) 27 Mich. L. Rev. 677.

boards can act either ministerially or judicially. If the rule is to be strictly followed, the result in any given case will turn upon the Court's definition of terms rather than on the social ends to be realized. Another objection to the classical approach lies in the fact that the doctrine of *res judicata*, when applied to administrative tribunals in general, has not been the subject of any strict legal formula and therefore should not necessarily be so relegated merely because the board is a licensing tribunal.²⁴

However, without attempting labelling, certain general situations might be said normally to call for an application of *res judicata*. Where the past rights of an individual have been determined and vested by virtue of administrative adjudication, the doctrine of *res judicata* should apply for his protection.²⁵ Where the petitioner after a full and fair hearing has been denied a license, the doctrine of *res judicata* should protect the public from continued litigation on the same factual basis.²⁶ Moreover, in the majority of cases, if the petitioner has presented in good faith all the available facts, secured a license by virtue of administrative adjudication, and changed his position in reliance thereon, the doctrine of *res judicata* should protect him from a redetermination of the issues by the board.²⁷ Even in such cases, however, it has been urged that if the public would suffer as the result of the license having been granted, the administrative board should have the power to reopen the facts, notwithstanding the change in position made by the petitioner,²⁸ and that in such event the doctrine of *res judicata* should have no applicability.²⁹

With the exception of the illustrations analysed above, it is submitted that the strict legal doctrine of *res judicata* should not generally apply to a licensing administrative board. Clarity is not aided by making decisions turn on

²⁴ See Schopflocher, *The Doctrine of Res Judicata in Administrative Law* (1942) Wisc. L. Rev. 5, 198.

²⁵ See Comment, *Res Judicata in Administrative Law* (1941) 29 *Georgetown L. J.* 878, 881; HART, AN INTRODUCTION TO ADMINISTRATIVE LAW (1940) 367; *Brougham v. Blanton Manufacturing Co.*, 243 Fed. 503.

²⁶ HART, *supra*, n. 24; *Mayor and City Council of Baltimore v. Linthicum*, 170 Md. 245, 183 A. 531 (1936); *Zoning Appeals v. McKenney*, 174 Md. 551, 199 A. 540 (1938); *In re Barratt's Appeal*, 14 App. D. C. 225 (1899); *Cardinal Bus Lines v. Consolidated Coach Corporation*, 254 Ky. 586, 72 S. W. (2d) 7 (1934); *People v. Leon*, 120 Misc. 355, 193 N. Y. Supp. 391 (1923); *Little v. Board of Adjustment*, 195 N. C. 793, 143 S. E. 827 (1928).

²⁷ See *United States, ex rel. Straskey, v. Reimer*, 101 F. (2d) 267 (C. C. A. 2d, 1939).

²⁸ Such an approach to the problem was indicated in *F. C. C. v. Pottsville Broadcasting Co.*, 309 U. S. 134 (1940).

²⁹ This view is criticized in Comment, *Res Judicata in Administrative Law* (1940) *Yale L. J.* 1250, 1267.

whether the board is sitting in quasi-judicial or quasi-legislative capacity. Rather, each case should be decided on the basis of the facts that it presents with an eye to the policy behind the doctrine of res judicata and the purpose of the administrative action involved. Such seems to be the approach of the Maryland cases in general and the instant case in particular.