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Administrative Practice as a Guide to Judicial Interpretation of Statutes - Bouse v. Hutzler

ADMINISTRATIVE PRACTICE AS A GUIDE TO JUDICIAL INTERPRETATION OF STATUTES

Bouse v. Hutzler[1]

In her will, testatrix had made sundry bequests to collateral legatees. She provided as to these legacies that any collateral inheritance tax, or other tax, that should be payable on the bequests should be paid out of the residue of her estate, and not be deducted from such legacies. The executor, in calculating payments due the State under its Collateral Inheritance Tax Law, subtracted the amount of the tax on the specific legacy from the residuary estate and then calculated the amount of tax due on the residuary estate remaining after this deduction. The Register of Wills for Baltimore City contended that this method of calculation permitted the testatrix, by her provision that the tax on her gift be paid from the residuary estate, to diminish the amount of tax collectible by the State. His contention was that the *entire* estate of the testatrix was subject to tax, and that when a testator provides that the tax on specific legacies be paid out of the residue of his estate, the residue must bear this tax and must also pay a tax on the amount of the whole residue before such deduction is made. The lower court supported the executor. The Court of Appeals reversed and ruled in accordance with the contention of the Register of Wills.

Eliminating from this discussion the problems of arithmeticians in calculating the particular tax on this estate, the sole question in controversy is the construction of the applicable provisions of the Maryland inheritance tax statute.[2] The lower court, in its ruling supporting the method of calculation and the statutory construction for which the executor contended and holding that no additional tax was due the State, relied heavily on the assertion that such

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[1] 26 A. (2d) 767 (Md., 1942).

[2] Md. Code (1939) Art. 81, Secs. 109-112; Sec. 110 having special reference to the instant case reads, in part: "There is hereby levied and imposed a tax at the rate of seven and one-half per centum on every one hundred dollars *of the clear value of any and all property*, having a taxable *situs* in this State, passing at the death of any resident or non-resident decedent, in trust or otherwise, to or for the use of any person or persons, other than the father, mother, husband, wife, children or lineal descendants of such decedent . . ." (Italics added.)

calculation was in accordance with "unvarying administrative practice".[3] In reversing the lower court the Court of Appeals held that the fact that the residuary estate was designated to pay the collateral inheritance tax did not affect the amount of tax due the State; and, further, that when the taxing statute provided for the payment of a tax "on every $100 of *clear value of property bequeathed*", the payment of a tax for the legatee was receipt by him of inherited *property* which was taxable within the meaning of the statute. It was therefore concluded by the Court that the proper method of computing the tax was to treat the payment of the tax for the legatee as a *second gift* to him, which was subject to tax as any other property passing by inheritance must be subject, under provisions of the Maryland statute. In doing this, it stated that there "was no administrative practice", and so made its own interpretation of the Act.

The Court of Appeals was passing directly on the law involved for the first time in its 98 years on the statute books.[4] During the period of administration of this law, while there was no direct judicial interpretation, there were five Attorney Generals' opinions[5] as to the statute's meaning, with administration of the statute in accordance with these rulings. It was against this background of statutory provisions not judicially construed (but necessarily administered) for almost a hundred years that the Maryland court reiterated rules of administrative construction, some of which it had promulgated as early as 1829.[6]

Dealing first with a statute clear and unambiguous on its face, the Court said, "Where the language is clear and explicit and susceptible of sensible construction, it cannot be controlled by extraneous considerations. No custom, however long and generally it has been followed by officials, can nullify the plain meaning and purpose of a statute. An administrative practice contrary to the plain language of a statute is a violation of the law, and a violation of the law, even though customary, does not repeal the law." And in reference to ambiguous statutes which have been administered under settled administrative con-

[3] Opinion of Dennis, C. J., in Superior Court of Baltimore City, filed May 9, 1942, Baltimore Daily Record, May 23, 1942.

[4] Md. Laws 1844, Ch. 237 was the first appearance of the present provisions. See *supra*, n. 2.

[5] 6 Op. Atty. Gen. 495 (Md., 1921); 9 Op. Atty. Gen. 244 (Md., 1924); 12 Op. Atty. Gen. 282 (Md., 1927); 19 Op. Atty. Gen. 488 (Md., 1934); Op. Atty. Gen. (Md., 1941), Baltimore Daily Record, Nov. 11, 1941.

[6] Hays v. Richardson, 1 G. & J. 366 (Md., 1829).

struction, the Court said, "It is quite true that where language of a statute is ambiguous and susceptible of two reasonable constructions, a long and unvarying administrative practice has a very persuasive influence, if not an entirely controlling effect, upon the judicial construction of the statute. But the rule of contemporaneous construction does not preclude an inquiry into the correctness of such a construction."

As to the Court's statement on interpretation of ambiguous statutes, all courts agree that there is no occcasion for reference to administrative interpretation.[7] As to the value of administrative, as a guide to judicial, interpretation where an ambiguous statute is in question, it is not so simple to draw an accurate picture. The Virginia Court[8] states that administrative construction is allowed the same effect as a course of judicial decisions; while the Colorado Court[9] states that, though executive construction is entitled to great weight, it has never been of controlling force.

The Court of Appeals has used stronger language than that in the instant case when construing what it has held to be ambiguous statutes, saying in several cases, "Courts should refrain from putting on a statute an interpretation differing from that implied by administrative officials, *except for the most potent and urgent reasons.*"[10]

Vom Baur, in his work on Federal Administrative Law,[11] published in 1942, lays down three rules as to the weight Federal courts have given administrative construction in situations where an agency has administered a statute over a period of time during which no judicial interpretation has been obtained. These three rules are so much a statement of the law of Maryland that it seems of interest to state them, particularly in regard to Rule III, frequently pronounced by the Maryland Court, but to which no reference was made in the instant case.

The first rule the author states is that where the meaning of a statute is clear and unambiguous an administrative construction thereof is not material and has no persuasive

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[7] See note, *Statutes—Construction—Effect Given to Practical Construction*, (1935) 20 Minn. L. R. 59, n. 12, for full list of citations.

[8] Smith v. Bryan, 100 Va. 199, 40 S. E. 652 (1902); Ballard v. Commonwealth, 156 Va. 980, 159 S. E. 222 (1931).

[9] People v. Higgins, 67 Colo. 441, 184 Pac. 365 (1919).

[10] Arnreich v. State, 150 Md. 91, 101, 132 A. 430, 434 (1926); American-Stewart Distillery, Inc., v. Stewart Distilling Company, 168 Md. 212, 217, 177 A. 473, 475 (1935). (Italics supplied.)

[11] 1 VOM BAUR, FEDERAL ADMINISTRATIVE LAW (1942) Secs. 478, *et seq.*

force. This rule is stated in the instant case, as well as in earlier Maryland cases.[12]

The second rule laid down by Vom Baur is that settled administrative construction of an ambiguous statute is of persuasive force. This is close to the language of the Maryland Court in the instant case, where the Court says, "A long and unvarying administrative practice has a very persuasive influence." This rule has found application in many Maryland cases, though the language of the Court is couched in considerable stronger terms in some of the earlier cases.[13]

The third rule refers to situations where a statute has received settled and uniform construction by the officers charged with its administration and where during such time the statute has been re-enacted without material change. In such a situation Vom Baur states the re-enactment without material change will be presumed to be a ratification by the legislative body of the administrative construction. This rule, although conceivably applicable,[14] was not applied in the instant case. It is, nevertheless, a statement of the Maryland law. In the case of *Arnreich v. State*,[15] involving construction of a licensing statute, under which it was sought to collect a license tax from a class hitherto not required to pay such license, the Court pointed

[12] Alexander v. Worthington, 5 Md. 471 (1854); Frazier v. Warfield, 13 Md. 279 (1859); Smith v. State, 134 Md. 473, 107 A. 255 (1919).

[13] Hays v. Richardson, 1 G. & J. 366 (Md., 1829); The State v. Mayhew, 2 Gill 487 (Md., 1845); Frazier v. Warfield, 13 Md. 279 (1859); Baltimore City v. Johnson, 96 Md. 737, 54 A. 646 (1903); Musgrove v. Balto. & Ohio R. Co., 111 Md. 629, 75 A. 245 (1909); Mayor & City Council of Balt. v. Machen, 132 Md. 618, 104 A. 175 (1918); Hess v. Westminster Savings Bank, 134 Md. 125, 106 A. 263 (1919); Smith v. State, 134 Md. 473, 107 A. 255 (1919); Adding Machine Co. v. State, 146 Md. 192, 126 A. 127 (1924); Arnreich v. State, 150 Md. 91, 132 A. 430 (1926); Congoleum Nairn v. Brown, 158 Md. 285, 148 A. 220 (1929); American Stewart Distillery, Inc., v. Stewart Distilling Co., 168 Md. 212, 177 A. 473 (1935); Election Supervisors v. Welch, 179 Md. 270, 275, 18 A. (2d) 202 (1941).

[14] A reference to the Record in this case and the Briefs of appellant and appellee will reveal that there had been five Attorney Generals' opinions as to this Statute's meaning. The first of these opinions, filed in 1921 (see n. 5) favored the construction for which appellee contended, but this was reversed in 1924 and four later opinions (see n. 5) followed, each supporting the construction for which appellant contended and the construction which the Court reached in the instant case. For the period, 1924-1941, then, it should be noted there was continuous, uniform executive construction and administration of the tax under these rulings. This administration was coupled with a re-enactment of these statutory provisions at six sessions of the Legislature (see n. 17). This circumstance was fully set out in the Brief filed by the appellant. However, as indicated in the text of this note, *supra*, third sentence after n. 3, the Court stated that there was no consistent administrative practice; also, *infra circa*, n. 18.

[15] 150 Md. 91, 132 A. 430 (1926).

to the 50 years that the statute had stood on the statute books and the unvarying administrative construction during that period, coupled with re-enactment of the Act by the Legislature without material change. The Court said that re-enactment without inclusion of this particular class, in the face of a known administrative practice of collecting no license tax, was "practical ratification of the administrative construction placed upon the statute."[16]

Since the statute in question in the instant case had been on the statute books for 98 years and had been re-enacted six times between 1924 and 1941 without material change,[17] except for changes in rates of the tax, the statement of the Court that, in its opinion, there "was no administrative practice"[18] would seem to be the only explanation for the Court's failure to apply this third well-recognized means of determining the legislative intent, which is the sole goal in all statutory construction.

Aside from this omission of consideration of the rule just discussed, the statements of the Court in the instant case are in harmony with trends throughout the country and are especially in accord with Federal practice. The cases which the Court cites in its opinion, together with many others on the subject of contemporaneous construction, illustrate principles of administrative law which have been evolved in Maryland over more than 100 years. They demonstrate that this subject is new only in the terminology of the law.[19] This modern segregation by name is wise, if not necessary, because of rapidly expanding spheres of administrative action which cause more frequent litigation and greater popular and professional interest.

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[16] *Ibid.* See also: Baltimore City v. Johnson, 96 Md. 737, 54 A. 646 (1903); Mayor & City Council of Balt. v. Machen, 132 Md. 618, 104 A. 175 (1918); Adding Machine Co. v. State, 146 Md. 192, 126 A. 127 (1924); Drug & Chemical Co. v. Claypoole, 165 Md. 250, 166 A. 742 (1933).

[17] Md. Laws 1924, Ch. 413; Md. Laws 1927, Ch. 242; Md. Laws 1929, Ch. 226, sec. 105; Md. Laws 1933, Ch. 323; Md. Laws 1935, Ch. 90, sec. 105; Md. Laws 1936, s.s., Ch. 124, sec. 105.

[18] See *supra*, n. 14.

[19] See GELLHORN, FEDERAL ADMINISTRATIVE PROCEEDINGS (1941) 3.