

# Further on Res Judicata and Administrative Tribunals - Dal Maso, et.al. v. Board of County Commissioners of Prince George's County

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**FURTHER ON RES JUDICATA AND  
ADMINISTRATIVE TRIBUNALS*****Dal Maso, et al. v. Board of County Commissioners  
of Prince George's County***<sup>1</sup>

On April 17, 1942, appellants made application to the Maryland-National Capitol Park and Planning Commission for the rezoning of their property from Residential "A" to Commercial "D". The Planning Commission forwarded the petition to the Board of County Commissioners of Prince George's County, acting as a District Council as provided for by the Act of 1939, Ch. 714, and, pursuant to appellants' request for a public hearing and after the required notice had been given, a hearing was set and held on July 7, 1942. On that date, after hearing, the petition was approved by an order of the District Council and the property rezoned. Subsequently, on July 14, 1942, the County Commissioners rescinded their prior order and gave notice of a rehearing to be held on August 18, 1942. Before that day arrived appellants filed a petition for a writ of mandamus, seeking to compel the County Commissioners to reinstate and abide by their order of July 7, 1942. In answering the petition, the County Commissioners admitted the facts alleged, averred additional facts,<sup>2</sup> denied that the writ should issue, and prayed that the petition be dismissed. Appellants demurred to the answer. The lower Court, applying the familiar rule that a demurrer mounts up to the first error in the pleadings, found that the petition

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<sup>1</sup> 34 A. (2d) 464 (Md., 1943).

<sup>2</sup> The appellee's answer stated that the zoning amendment in question had been before the District Council on two prior occasions, and had been denied each time. Following the withdrawal of the second application certain residents and organizations of residents in the vicinity of the real estate sought to be rezoned requested the appellee to give them actual notice if at any time a new application should be filed for a similar purpose, and appellee agreed that it would so notify them. On July 7, 1942, appellee had before it another application for zoning amendment for the same property, but inadvertently no actual notice thereof was given to the residents who had specifically requested it. Immediately thereafter, the persons who had requested but had not received actual notice of the hearing stated to members of the Board of County Commissioners that they had no knowledge of the hearing, that they had not actually seen the published notices thereof, and that they were opposed to the amendment and wished an opportunity to be heard on the matter. Because of these facts, appellee determined that its action of July 7, 1942, in granting the zoning amendment was ill considered, and, wishing to give all parties a chance to be heard, rescinded the order of July 7, 1942, and set the matter down for rehearing on August 18, 1942. See Record, No. 2, October Term, Court of Appeals of Maryland, pp. 14-15.

was insufficient in law and therefore ordered it dismissed. This judgment was affirmed on appeal.

The question for decision in the principal case was whether the order passed by the County Commissioners sitting as a District Council on July 7, 1942, was *res judicata*, thereby making it beyond the power of the District Council to reopen the case at a later date. The appellants contended that the rule which forbids reopening of a matter once judicially determined by a competent authority applies as well to the judicial and quasi-judicial acts of County Boards acting within their jurisdiction as to the judgments of courts having general judicial powers.<sup>3</sup> In rejecting this premise, the Court of Appeals held that the County Commissioners, acting as a District Council, had no constitutional power to act judicially, and that as a result the familiar judicial doctrine of *res judicata* was inapplicable.

The principal case represents the second attempt by litigants in the short period of two years to shackle administrative boards with the doctrine of *res judicata*.<sup>4</sup> The first attempt was flatly rejected by the Court of Appeals in *Knox v. Mayor and City Council of Baltimore City*,<sup>5</sup> wherein the Court held that the Board of Zoning Appeals was not a court or judicial tribunal, and that the doctrine of *res judicata* could not be applied to foreclose the reopening of a matter by the Board. In a note to this case, appearing in a previous volume of the REVIEW,<sup>6</sup> it was pointed out that the strict judicial doctrine of *res judicata* had not had uniform application before administrative boards.<sup>7</sup> It was stated, however, that some cases might arise wherein the doctrine, or something akin thereto, could and should be applied to protect the vested rights of parties which might be affected by an administrative

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<sup>3</sup> Brief for appellants, p. 6.

<sup>4</sup> The word "shackle" is used advisedly. The doctrine of *res judicata* or *res adjudicata* antedates the existence of administrative boards as we know them today by several hundred years. The doctrine, in strict application, is opposed to the freedom of procedure which is associated with the administrative tribunal. Cf. Schopflocker, *The Doctrine of Res Judicata in Administrative Law* (1942) Wis. L. Rev. 5, 198. In many instances, the party who attempts to preclude further board action by utilization of the doctrine does so because the equities of the case are in favor of the other side. It is submitted that the principal case is an example of this kind of a situation.

<sup>5</sup> 180 Md. 88, 23 A. (2d) 15 (1941) noted (1942) 6 Md. L. Rev. 256.

<sup>6</sup> Note, *Res Judicata in License Determinations Before Administrative Tribunals* (1942) 6 Md. L. Rev. 256.

<sup>7</sup> Note, *supra*, n. 6, 258.

order, or to protect an individual who had acted upon such an order and had changed his position in reliance thereon.<sup>8</sup>

The instant decision strengthens rather than weakens the fundamental principles enumerated above. In its brief before the Court of Appeals,<sup>9</sup> the County Commissioners relied heavily upon the fact that the interests of third parties were not involved, and that no party had changed his position in reliance on the order of the District Council dated July 12, 1942. The higher Court recognized this position by quoting from and relying upon a case in which similar considerations were stressed,<sup>10</sup> and by stating that:<sup>11</sup>

“There is no pretense here that there has been any change in the status of the appellants or their property in the week intervening between the order of July 7th and its rescission on July 14th.”

In the course of its opinion, the Court attempted to and did classify the nature of all administrative bodies in Maryland as legislative rather than judicial. Although this approach was not necessary to the decision,<sup>12</sup> the conclusion that administrative bodies are creatures of the legislature was technically correct. Strictly speaking, judicial authority can be exercised only by a judicial body, and no body can qualify under this definition in Maryland unless it is organized under and by virtue of Article IV of the Maryland Constitution. In this connection, some confusion has existed by reason of the fact that certain administrative boards act in the manner of courts, or have adopted procedure which is closely akin to that used in judicial forums. However, the touchstone of characterization should be neither the approach employed by the board nor the results attained, but rather, weight should be given

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<sup>8</sup> Note, *supra*, n. 6, 261.

<sup>9</sup> Brief for appellee, p. 6.

<sup>10</sup> *Cowlitz County v. Johnson*, 2 Wash. (2d) 497, 98 P. (2d) 644 (1940).

<sup>11</sup> *Dal Maso, et al. v. Board of County Commissioners of Prince George's County*, 34 A. (2d) 464, 467 (Md., 1943).

<sup>12</sup> In deciding the instant case it was unnecessary to characterize all administrative boards as “legislative”. The solution to the problem presented could easily have been found by an inquiry into what administrative boards do (i. e., the purpose for which they act) rather than what they are. The court could have decided the case by an application of the theory that the strict legal doctrine of *res judicata* is not a fundamental part of the administrative approach. It could then have been shown that the facts before the Court did not justify the application of the doctrine. In so doing, the Court would have completely refuted the position taken by the appellants and at the same time avoided a questionable bit of characterization which may prove to be a skeleton in the closet in some future year. Cf. *Oppenheimer, Administrative Law in Maryland* (1938) 2 Md. L. Rev. 185, 205.

to the authority which creates and brings the board into existence, and to the purpose for which it is created.<sup>13</sup>

Because administrative boards sometimes function in the manner of courts they have at times been styled as "quasi-judicial" bodies. In announcing that the Board of Education in the process of conducting a trial preferred against a teacher acts in a quasi-judicial capacity, our Court of Appeals is no exception to the general rule.<sup>14</sup> However, in passing upon the character of the State Industrial Accident Commission,<sup>15</sup> the Court of Appeals, after quoting from a leading case which stated that a similar state body acted quasi-judicially,<sup>16</sup> was careful to omit this

<sup>13</sup> See for example a discussion of characterization in *Robey v. County Commissioners of Prince George's County*, 92 Md. 150, 48 A. 48 (1900); *Baltimore City v. Bonaparte*, 93 Md. 156, 48 A. 735 (1901).

<sup>14</sup> *Riggs v. Green*, 118 Md. 218, 84 A. 343 (1912). In this case, plaintiff, a school teacher, was formally charged with inefficiency in the discharge of his duties, and a formal hearing was scheduled on June 28, 1911, before the Board of School Commissioners to determine whether or not he should be discharged. Plaintiff answered the charge by stating that the allegations were not sufficiently specific to advise him of the nature of his inefficiency and requested that he be represented by an attorney. This request having been denied, plaintiff sued out a writ of certiorari asking that the trial court review the regularity of the proceedings. The writ was issued as prayed, whereupon the Board appealed. The Court of Appeals held that in reviewing the regularity of a proceeding before the Board on a certiorari proceeding, the lower Court acted in its quasi-appellate jurisdiction, from which action no appeal could be taken to the Court of Appeals. In passing on the nature of the proceeding before the Board, the court said (p. 225):

"Under the provisions of the City Charter, the petitioner could only be removed by the board 'on the recommendation of the Superintendent of Public Instruction after charges preferred and trial had.' *In a trial of charges preferred against a teacher the board acts in a quasi judicial capacity.*" [Italics supplied.]

The Court of Appeals is apparently consistent in holding that local Supervisors of Elections when required to exercise judgment and discretion in the discharge of their duties when sitting for a recount of ballots act in a quasi-judicial capacity. *White v. Laird*, 127 Md. 120, 96 A. 318 (1915); *Roe v. Wier*, 181 Md. 26, 28 A. (2d) 471 (1942). In the *White* case, *supra*, the court said (127 Md. 123):

"There would seem to be no room to doubt that the Supervisors are called upon and required to exercise judgment and discretion in the discharge of their duties and act in at least what is called a *quasi judicial capacity.*"

<sup>15</sup> *Solvuca v. Ryan & Reilly Co.*, 131 Md. 265, 101 A. 710 (1917).

<sup>16</sup> In *Borgins v. Falk Co.*, 147 Wis. 327, 133 N. W. 209 (1911) the court in sustaining the constitutionality of the Workmen's Compensation Law of Wisconsin had said:

"We do not consider the Industrial Commission a Court, nor do we construe the act as vesting in the commission judicial powers within the meaning of the Constitution. It is an administrative body or arm of the government, which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, *and in so doing acts quasi judicially*; but it is not thereby vested with judicial power in the constitutional sense." [Italics supplied.]

terminology in describing the Maryland Commission. In this connection the Court said:<sup>17</sup>

“The Workmen’s Compensation law, which was passed in the exercise of the police power of this State, creates a commission known as the State Industrial Accident Commission to administer the provisions of the Act. In the discharge of its duties and the exertion of its powers it is required to exercise judgment and discretion, and to apply the law to the facts in each particular case, but it is clear that the Legislature never intended to constitute the Commission a Court, or to confer upon it the judicial power of the State within the meaning of the constitutional provisions referred to.”

Courts which characterize administrative boards as judicial or quasi-judicial, and base their decisions in reliance on such classifications are apt to reach artificial and fictitious results. On the other hand, courts which refuse to classify administrative boards in any particular capacity are left free to decide cases in accordance with substantial justice. The better approach in such cases is to recognize the ends to be obtained, and determine whether the Board has reached those ends in a proceeding that was fair to all parties in interest.

The instant case illustrates to a limited degree the point under consideration. If the Court of Appeals had sustained the position that the District Council was a “judicial” or “quasi-judicial” body, any result other than the applicability of the doctrine of *res judicata* would have been hard to justify. By rejecting this artificial terminology, the Court was free to look at the facts as they actually existed and to determine the issues in accordance with substantial justice.<sup>18</sup> Moreover, the Court indicated that the function of *res judicata*, whether it be applied by that or some other name, would be applied to the administrative process if the exigencies of the case so demanded.<sup>19</sup>

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<sup>17</sup> *Solvuca v. Ryan & Reilly Co.*, 131 Md. 265, 284, 101 A. 710 (1917).

<sup>18</sup> The additional facts alleged by the appellee in its answer in the lower court which were admitted to be true by appellants’ subsequent demurrer indicate that a rehearing was justified. See *supra*, n. 2.

<sup>19</sup> As indicated, the court qualified the board’s power to reopen a case after decision by stating that the right to reopen should not be hedged by legal technicalities if no rights had arisen which would be injured. *Cf. Board of Zoning Appeals v. McKinney*, 174 Md. 551, 199 A. 540 (1938). It is not unreasonable to believe that the court would apply a doctrine somewhat akin to equitable estoppel to preclude a board from reopening a case where a party had relied on a prior administrative ruling and changed his

However, in reaching its conclusion, the Court followed a pattern of other Maryland decisions, which, although they fail to recognize the modern approach to administrative law, give the elasticity needed to make the administrative process a success.<sup>20</sup>

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position in reliance thereon to such a degree that vested rights would be destroyed by a subsequent shift in position. In adopting this or a similar approach, however, the court would still be free to weigh relative equities and to determine whether public policy would justify the abrogation of existing interests.

<sup>20</sup> See Oppenheimer, *Administrative Law in Maryland* (1938) 2 Md. L. Rev. 185, 187.