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to such award.[42] Although forced to admit that the award, in the first instance, is based on the need for support during administration, the court pointed out that, under the statute, the minimum award was one thousand dollars and the personal representative of a surviving spouse is authorized to make the selection in case the spouse dies before payment.

VII. PUBLIC LAW

ADMINISTRATIVE LAW

Five decisions of the Appellate Court of Illinois for the First District, all involving the scope of judicial review in civil service cases,[1] incorporate the only interesting developments in this field for the past twelve months. The initial decision, typical of the entire group, is that of *Nolting* v. *Civil Service Commission of the City of Chicago*.[2] Therein, the Civil Service Commission discharged a police officer for abandoning his beat without permission as well as various other infractions. The order of dismissal, reviewed by the circuit court under the rules of the Administrative Review Act,[3] was reversed and the officer ordered reinstated by that court when it concluded that the commission's decision was excessively severe in relation to the charges against the officer. On appeal, however, the Appellate Court reversed the judgment, holding that the trial court had gone beyond the legitimate bounds of review. The so-called Civil Service Act authorizes a discharge for "cause" but, as it fails to define that term, it is deemed to be within the discretion of the commission to determine whether the charges alleged and proved are sufficient to warrant a dismissal. In reviewing decisions of this type prior to the passage of the present Administrative Review Act, the courts adhered to the principle that the findings of the commission as to the existence of "cause" would not be reversed

42 Ill. Rev. Stat. 1955, Vol. 1, Ch. 3, §§ 330 and 333.

1 Ill. Rev. Stat. 1955, Vol. 1, Ch. 24½, § 39 et seq.

2 7 Ill. App. (2d) 142, 129 N. E. (2d) 236 (1955).

3 Ill. Rev. Stat. 1955, Vol. 1, Ch. 24½, § 77a provides that judicial review of final administrative decisions under the civil service laws shall be governed by the Administrative Review Act. Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 264 et seq.

unless they were unrelated to the requirements of the service or so trivial as to be unreasonable. The result achieved followed naturally since the court found nothing in the Administrative Review Act which would justify an abandonment of this long-standing limitation upon the scope of judicial review in such cases.[4] The court, following this basic theory, reached identical conclusions in the other decisions of this series.[5]

An additional problem worthy of mention was involved in the last decision in this group, that of *McCaffery* v. *Civil Service Board of the Chicago Park District*.[6] In reviewing the Civil Service Board's order dismissing an officer, the trial court remanded the case to the former with instructions to eliminate from the record all hearsay evidence and also permitting the parties to submit additional evidence if they so desired. When the case ultimately reached the Appellate Court, that tribunal affirmed the action of the trial court despite the officer's contention that a trial *de novo* should have been held. The reviewing court needed only to point out that the board was merely following the orders of the trial court and that the latter had the jurisdiction to enter such an order. The decision would appear to be fundamentally correct inasmuch as the expensive trial *de novo* can thereby be eliminated with prejudice to no one since additional evidence may be offered.

CONSTITUTIONAL LAW

Although there have been no decisions of far-reaching importance during the past year, a number of cases have left their mark upon the law of Illinois. In the case of *Heimgaertner* v. *Benjamin Electric Manufacturing Company*,[7] for example, the

4 Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 264 et seq.

5 McCaffery v. Civil Service Bd. of Chicago Park Dist., 7 Ill. App. (2d) 164, 129 N. E. (2d) 257 (1955); Watkins v. Civil Service Com'n of City of Chicago, 7 Ill. App. (2d) 140, 129 N. E. (2d) 254 (1955); Martin v. Civil Service Com'n of City of Chicago, 7 Ill. App. (2d) 128, 129 N. E. (2d) 248 (1955); Foreman v. Civil Service Com'n of City of Chicago, 7 Ill. App. (2d) 122, 129 N. E. (2d) 245 (1955).

6 7 Ill. App. (2d) 164, 129 N. E. (2d) 257 (1955).

7 6 Ill. (2d) 152, 128 N. E. (2d) 691 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 254, 25 U. of Cin. L. R. 111, 17 O. St. L. J. 146, and 13 Wash. & Lee L. R. 168.

Supreme Court adhered to a position it had previously taken[8] and again struck down the so-called "pay-while-voting" legislation.[9] It might be noted that the attack was directed specifically at the pay provisions, as opposed to the authorized absence provisions, and the court concluded that the statute bore no substantial relation to the object of public welfare to be attained as well as creating a constitutionally improper classification.[10]

To the surprise of practically no one,[11] that portion of the so-called Wrongful Death Act which prohibits Illinois courts from entertaining wrongful death actions where the death occurred in another state[12] was held unconstitutional in *Allendorf* v. *Elgin, Joliet and Eastern Railway Company.*[13] This provision was said to violate the full faith and credit clause of the United States Constitution.[14] However, a contention that the entire "Wrongful Death Act" must fail because a part of it was invalid was rejected by the Supreme Court in the case of *Myers* v. *Krajefska.*[15] Following established technique, the court concluded that the remainder of the act was severable and might stand alone.

A rather interesting ramification of the problem of special legislation was involved in the case of *Pasfield* v. *Donovan.*[16] Therein, a statutory provision authorizing the court to award attorney's fees to the successful plaintiff in an action to enforce a zoning law[17] was challenged on the ground that it amounted to special legislation.[18] The court, however, thought otherwise and

8 See People v. C. M. & St. P. Ry. Co., 306 Ill. 486, 138 N. E. 155 (1923).

9 Ill. Rev. Stat. 1955, Vol. 1, Ch. 46, § 17—15.

10 The court was of the opinion that, since only salaried persons and wage earners were to be paid for time spent voting, the statute amounted to special legislation in violation of Ill. Const. 1870, Art. IV, § 22.

11 The U. S. Supreme Court had heretofore held unconstitutional a Wisconsin statute of essentially identical import. Hughes v. Fetter, 341 U. S. 609, 71 S. Ct. 980, 95 L. Ed. 1212 (1951).

12 Ill. Rev. Stat. 1955, Vol. 1, Ch. 70, § 2.

13 8 Ill. (2d) 164, 133 N. E. (2d) 288 (1956).

14 U. S. Const., Art. IV, § 1.

15 8 Ill. (2d) 322, 134 N. E. (2d) 277 (1956).

16 7 Ill. (2d) 563, 131 N. E. (2d) 504 (1956).

17 Ill. Rev. Stat. 1955, Vol. 1, Ch. 24, § 73—9.

18 Special legislation is forbidden where a general law can be made applicable by Ill. Const. 1870, Art. IV, § 22.

treated the subject law as an additional sanction imposed against violators rather than as a special privilege conferred on a particular group.

Of significance to a large percentage of the public is the case of *People* v. *Reiner*[19] wherein the Supreme Court upheld that portion of the Driver's License Act which requires judges or clerks of courts to report convictions for certain traffic offenses to the Secretary of State.[20] An attack charging that the act violated the doctrine of separation of powers[21] in that it imposed non-judicial duties on judicial officers was repulsed on the theory that the constitution does not require complete separation and this requirement does not unduly burden the judiciary. Also, of general significance is the fact that the so-called Reapportionment Act[22] was, in the case of *Donovan* v. *Holsman*,[23] held invulnerable with respect to the senatorial districts therein created on the ground that the constitution[24] requires only that area be the prime consideration and not the sole consideration in creating said districts.

Of passing interest is the case of *People ex rel. Chicago Dental Society* v. *A.A.A. Dental Laboratories, Inc.*,[25] wherein the Supreme Court sustained the statutory regulations relating to the practice of dentistry[26] which were challenged for a whole host of reasons. The so-called Habitual Criminal Act[27] was likewise upheld in the case of *People* v. *Kukoch*,[28] in which it had been assailed on the ground that it contained more than one subject.[29] The potency of the police power to censor motion pictures on the

19 6 Ill. (2d) 337, 129 N. E. (2d) 159 (1955), noted in 1955 Ill. L. Forum 767.
20 Ill. Rev. Stat. 1955, Vol. 2, Ch. 95½, § 73.32.
21 Ill. Const. 1870, Art. III.
22 Ill. Rev. Stat. 1955, Vol. 1, Ch. 46, § 158—1 et seq.
23 8 Ill. (2d) 87, 132 N. E. (2d) 501 (1956).
24 Ill. Const. 1870, Art. IV, §§ 6, 7, and 8.
25 8 Ill. (2d) 330, 134 N. E. (2d) 285 (1956).
26 In particular, Ill. Rev. Stat. 1955, Vol. 2, Ch. 91, § 60a.
27 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 602.
28 7 Ill. (2d) 255, 130 N. E. (2d) 505 (1955).
29 Ill. Const. 1870, Art. IV, § 13 provides that an act shall contain but one subject.

ground that they are immoral or obscene was confirmed by a United States District Court in the case of *Times Film Corporation* v. *City of Chicago*.[30] Therein, the court upheld the same municipal ordinance[31] that was heretofore under fire before the Supreme Court of Illinois.[32]

Although mentioned elsewhere in this survey, the cases of *Trustees of Schools of Township No. 1* v. *Batdorf*[33] and *International College of Surgeons* v. *Brenza*[34] also possess constitutional significance. In the former case, the Supreme Court upheld the act limiting possibilities of reverter and rights of re-entry to a duration of fifty years.[35] In the latter case, a legislative attempt to exempt from taxation property used by societies for philosophical purposes[36] was held invalid by the Supreme Court.

MUNICIPAL CORPORATIONS

The most striking development in the law of municipal corporations is contained in the unfortunate decision rendered by the Appellate Court for the First District in the case of *Ward* v. *Village of Elmwood Park*.[37] It appearing that a zoning ordinance might bar his intended use, the plaintiff therein filed suit for a declaration of his right to use his property. The trial court held this ordinance to be invalid and an amendatory ordinance, passed while the suit was pending, to be inapplicable. The Appellate Court, however, concluded that the plaintiff's rights were to be determined according to the latter ordinance and decided against him since its validity had not been challenged. The net result is to leave the landowner with a pre-

30 139 F. Supp. 837 (1956).

31 Mun. Code Chicago 1939, Ch. 155, §§ 1 and 3.

32 American Civil Liberties Union v. City of Chicago, 3 Ill. (2d) 334, 121 N. E. (2d) 585 (1954). The case was remanded for further proceedings and has not reappeared in the published reports so the final disposition thereof is unknown.

33 6 Ill. (2d) 486, 130 N. E. (2d) 111 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 250, and 1956 Ill. L. Forum 298. See also Section VI, Property, note 5.

34 8 Ill. (2d) 141, 133 N. E. (2d) 269 (1956).

35 Ill. Rev. Stat. 1955, Vol. 1, Ch. 30, §§ 37b to 37h.

36 Ill. Rev. Stat. 1955, Vol. 2, Ch. 120, § 500(10).

37 8 Ill. App. (2d) 37, 130 N. E. (2d) 287 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 261.

carious decision to make. "Should he elect to make improvements of a substantial nature so as to acquire a non-conforming use, he risks having to remove them if the ordinance is subsequently upheld; should he, on the other hand, elect to forbear from making such improvements in order to first exercise his legal right to challenge the validity of the zoning ordinance, his intended use may be barred by further action of the municipality during the pendency of his suit, as in the instant case."[38]

Another case which has evoked editorial comment is that of *Slaton* v. *City of Chicago*,[39] wherein the Appellate Court for the First District was called upon to interpret the statute imposing liability on municipalities for injuries sustained as a result of mob violence.[40] The defendant city was therein held liable for injuries inflicted upon the plaintiff by a mob when the court construed the statute to create liability "where it is shown that the unlawful crowd of people was assembled for the purpose of carrying out what it believed was its collective or community interest, and in the execution of that purpose took over the powers lawfully delegated to and vested in the local authorities in order to exercise such powers correctionally and summarily over the plaintiff."[41]

A somewhat unusual construction was placed upon the statute giving municipalities the right to participate in the Illinois Municipal Retirement Fund[42] by the Supreme Court in the case of *People ex rel. Schuwerk* v. *Illinois Municipal Retirement Fund*.[43] Although the general rule would be that the power to enact an ordinance includes the power to repeal, it was there held that the power given the municipality was exhausted by a single exercise and, once having elected to participate, the municipality could not thereafter withdraw. The case seems significant

38 34 CHICAGO-KENT LAW REVIEW 261 at 263.

39 8 Ill. App. (2d) 47, 130 N. E. (2d) 205 (1955), noted in 5 DePaul L. R. 312, 44 Ill. B. J. 780, and 54 Mich. L. R. 1184.

40 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, §§ 512-7.

41 8 Ill. App. (2d) 47 at 59, 130 N. E. (2d) 205 at 210.

42 Ill. Rev. Stat. 1955, Vol. 1, Ch. 24, §§ 1175-1201.

43 6 Ill. (2d) 405, 128 N. E. (2d) 923 (1955).

in that the language used in the opinion appears to be broad enough to include other legislation of this type. Another construction problem of general interest was involved in the case of *People* v. *Herbster,*[44] a quo warranto proceeding to oust the commissioners of a park district. The statute there pertinent provided that the commissioners should hold office for a stated term "or until their successors are elected and qualified."[45] For some twenty years no elections were held and, for that matter, very little else was done. The Appellate Court for the First District, however, concluded that the carryover provision did not entitle the commissioners to remain in office forever and that their conduct amounted to an abandonment or implied resignation from office.

Two other cases of some general significance might be noted in passing. In the case of *Humphrey Chevrolet, Inc.* v. *City of Evanston,*[46] the Supreme Court held valid an ordinance of the defendant city which prohibited commercial activity on Sunday though excepting the sale of certain commodities from its operation. In the case of *Lindburg* v. *Zoning Board of Appeals of the City of Springfield,*[47] a zoning board of appeals had granted a variation pursuant to a statute authorizing such action where there are "practical difficulties or particular hardship[s]."[48] The Supreme Court, however, held that findings couched in the generalized statutory language were insufficient to support the action and invalidated the variation.

TAXATION

The nebulous and ephemeral tax deed received a further setback at the hands of the Supreme Court, in the case of *Pickens* v. *Adams,*[49] when that tribunal determined that the Reconveyance

[44] 7 Ill. App. (2d) 342, 129 N. E. (2d) 448 (1955).
[45] Ill. Rev. Stat. 1955, Vol. 2, Ch. 105, § 2—10.
[46] 7 Ill. (2d) 402, 131 N. E. (2d) 70 (1956).
[47] 8 Ill. (2d) 254, 133 N. E. (2d) 266 (1956).
[48] Ill. Rev. Stat. 1955, Vol. 1, Ch. 24, § 73—4.
[49] 7 Ill. (2d) 283, 131 N. E. (2d) 38 (1956), noted in 1956 Ill. L. Forum 309. Hershey, C. J. wrote a dissenting opinion.

Act[50] was applicable to tax deeds to separate mineral estates. The statute in question provides in substance that unless the grantee of a tax deed shall be in possession or occupation, or institute proceedings to take possession within one year, the owner of the real estate may effect a redemption of the property. The majority of the court seemed almost oblivious to practical realities respecting the difficulty of taking "possession" or maintaining a suit to obtain possession of a mineral estate. These difficulties were superficially overcome on the theory that such grantee might somehow obtain constructive possession or might institute a suit in ejectment. It would seem, however, that the grantee would already have constructive possession and that an action in ejectment would not lie inasmuch as no one would be in actual possession of the property. The most that can be said for the decision is that tax deeds to mineral estates are not thereby afforded a better status than tax deeds to other estates.

Another case having considerable impact on the practical aspects of tax collection is that of *People ex rel. Callahan* v. *Gulf, Mobile & Ohio Railroad Company.*[51] The case involved objections made by the taxpayer on the ground that his property had been assessed at the full cash value whereas other property in the area had been assessed at a lesser figure. It will be recalled that such a proceeding must be predicated on the doctrine of constructive fraud and, to sustain this burden, the taxpayer had alleged that its property was assessed at full value; that other local property was assessed at a certain percentage thereof; that the County Board of Review made no revisions; and that equalization procedures resulted in a final assessment that still fell short of full value by a stated percentage. The Supreme Court, however, held that these allegations were insufficient to sustain the theory of constructive fraud. What, exactly, the court would expect of a taxpayer was left open, but it is difficult to imagine what more he could do, at least short of alleging and proving the

[50] Ill. Rev. Stat. 1955, Vol. 2, Ch. 120, §§ 736-8.

[51] 8 Ill. (2d) 66, 132 N. E. (2d) 544 (1956). Hershey, C. J. filed a dissenting opinion.

full cash value of every parcel of property on the assessment rolls of the county. From a practical point of view, the result in this case would seem to constitute a very serious limitation upon the scope of judicial review of assessments.

The Supreme Court has also rendered several decisions clarifying and limiting the Illinois policy relating to exemptions of lodges, fraternal orders and similar societies and activities. The most significant of these decisions is that of *In re Estate of Schureman*[52] where it was held that bequests to a Masonic building corporation and a similar unincorporated association were not charitable within the meaning of Section 28 of the Inheritance Tax Act[53] if the bequests were not expressly limited to use for specified charitable purposes. Although the instant case appears to be the first application of this doctrine to inheritance tax problems, the court was able to justify its position by reference to earlier decisions holding that real estate owned and managed by Masonic groups is subject to real property taxes. However, it may be noted that situations where the property is used solely for public charity were distinguished.[54]

In the other decisions of this type, the court had before it the question of exemption from real property taxes. In the case of *International College of Surgeons* v. *Brenza,*[55] the court denied exemption to a not for profit corporation claiming to be a charitable or philosophical organization. In *People* v. *Turnverein Lincoln,*[56] the court likewise denied exemption to another not for profit corporation with reference to real property used primarily for classes in physical education. Similarly, in *Rogers Park Post No. 108* v. *Brenza,*[57] the court denied exemption to the improved real estate of an American Legion Post.

52 8 Ill. (2d) 125, 133 N. E. (2d) 7 (1956).
53 Ill. Rev. Stat. 1955, Vol. 2, Ch. 120, § 401.
54 281 Ill. 480, 117 N. E. 1060 (1917).
55 8 Ill. (2d) 141, 133 N. E. (2d) 269 (1956).
56 8 Ill. (2d) 198, 132 N. E. (2d) 499 (1956).
57 8 Ill. (2d) 279, 133 N. E. (2d) 16 (1956).

TRADE REGULATION

Almost sixty years ago, the Appellate Court for the First District indicated, by way of dictum, that a trade mark could not be conveyed in gross and might be transferred only with the right to manufacture the product to which it was appurtenant.[58] The apparent silence intervening since that decision has at last been broken in Illinois by the case of *Goodman* v. *Motor Products Corporation.*[59] The same court there affirmed its earlier position and promulgated a like rule with respect to trade names as well. While recognizing that such intangibles may, for some purposes, amount to property rights, the court, in both decisions, appears to have been more strongly influenced by the deception which could be practiced on the public if such transfers were tolerated.

VIII. TORTS

The outstanding decision in the law of torts, that of *Nudd* v. *Matsoukas,*[1] produced two changes of consequence in the law of Illinois. In one count of the complaint, a child, through his next friend, sought to hold his father and a third party liable for injuries sustained in an automobile accident between cars driven by the defendants. In a separate count, predicated on a prior wrongful death law,[2] the father was charged with causing the death of the mother of the same child. With respect to the first count mentioned, the Supreme Court reversed its earlier position[3] and held that an unemancipated minor could maintain an action in tort against his parent, at least where such action was predicated upon the wilful and wanton misconduct of the parent.[4] In reaching that conclusion, the court acknowledged,

58 The Fair v. Jose Morales & Co., 82 Ill. App. 499 (1899).

59 9 Ill. App. (2d) 57, 132 N. E. (2d) 356 (1956).

1 7 Ill. (2d) 608, 131 N. E. (2d) 525 (1956), noted in 34 CHICAGO-KENT LAW REVIEW 333, 5 DePaul L. R. 302, 44 Ill. B. J. 840, and 42 Va. L. R. 687.

2 Ill. Rev. Stat. 1953, Vol. 1, Ch. 70, § 2.

3 See Hazel v. Hoopeston-Danville Motor Bus Co., 310 Ill. 38, 141 N. E. 393, 390 A. L. R. 491 (1923).

4 This allegation may well have been otherwise necessary because of Ill. Rev. Stat. 1955, Vol. 2, Ch. 95½, § 58a, which denies recovery by a guest passenger against a host driver in simple negligence cases.