March 1951

Public Law - Survey of Illinois Law for the Year 1949-1950

Chicago-Kent Law Review

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VII. PUBLIC LAW

ADMINISTRATIVE LAW

Where the legislature has authorized an administrative tribunal to exercise a degree of discretion in a particular field, it is fundamental that the courts, upon a review of the agency's decision, cannot substitute their judgment for that of the administrative tribunal. On the other hand, it is equally true that the reviewing court may determine whether or not the administrative ruling or decision was in conformity with the powers delegated. On several occasions in the past year, the Illinois courts found it necessary to analyze orders of Civil Service Boards in respect to this particular problem and these decisions are important for they define the extent of the authority of such boards in what were previously uncharted areas.

The first case, that of People ex rel. Polen v. Hoehler,\(^1\) involved the removal of the plaintiff who enjoyed civil service status as an employee in the Illinois Soldiers & Sailors Children's School. The plaintiff had left her assigned post to attend an ailing sister without giving personal notice to any of her immediate superiors or to the superintendent of the institution. This failure arose because none of these individuals were available at the time of plaintiff's departure, but she did leave a message, to be forwarded to the superintendent, to the effect that she was taking advantage of a portion of her vacation allowance. Upon plaintiff's return, she was notified of her dismissal under a ruling previously adopted by the Commission to the effect that an employee "absent from duty without leave for a period of three successive days or longer, without proper written notice to and approval by his superior officer of the reason for such action, shall be considered to have resigned."  

\(^1\) 405 Ill. 322, 90 N. E. (2d) 729 (1950).
The statute governing the powers of the State Civil Service Commission allows that agency to discharge a civil service employee for cause but, upon proper application of the affected party, requires the granting of a hearing in reference to the reason for the removal. In accordance with this provision, the plaintiff sought a hearing which the Commission refused to grant on the theory that, as a resignation and not a discharge was involved, the hearing requirement was not applicable. Plaintiff thereupon petitioned for, and was granted, a writ of mandamus. Upon direct appeal to the Supreme Court, the decision was affirmed.

That tribunal found the rule so promulgated to be in direct contravention of the statute since it contemplated a discharge without the necessity of affording a hearing, even though requested. The theory that the plaintiff's actions amounted to a resignation was said to have no logical foundation as the severance of the individual from her employment occurred automatically, without reference to her own desires or wishes. The merit of the decision cannot be questioned since the statute clearly manifests a legislative intent to require a hearing on reasons for discharge, where one is requested, and any attempt to circumvent such a requirement should be thwarted.

Two companion cases, those of Drury v. Hurley and Connolly v. Hurley, involved individuals who have recently made newspaper headlines. It may be recalled that Drury and Connolly, members of the Police Department of the City of Chicago, were assigned to investigate a number of unsolved murders including the shooting of one James Ragen. In due course several witnesses were located who claimed that they could identify Ragen's assailants. Signed statements were obtained and, based thereon, an indictment was handed down. The witnesses later recanted and, because of their recriminations, the two police officers were summoned before the grand jury for interrogation.

3 Direct appeal was proper since the state was a party to the litigation.
5 339 Ill. App. 54, 88 N. E. (2d) 736 (1949). The subsequent history is the same as that noted in footnote 4, ante.
concerning their activities during the investigation. They were asked to sign immunity waivers but refused so to do. They were immediately suspended and charges were filed against them before the Civil Service Commission.

The commission, pursuant to statutory authorization empowering it to dismiss any municipal civil service employee for "cause," determined that the refusal on the part of the police officers to sign immunity waivers constituted such a cause and the officers were, as a consequence, discharged. Separate proceedings for writs of certiorari were then instituted and the trial court, upon reviewing the record, reversed the decision. The Civil Service Commission appealed directly to the Illinois Supreme Court, but the cases were subsequently transferred to the Appellate Court because no constitutional question was involved. That court, in reversing the lower court, pointed to the fact that the statute under which the commission had proceeded contained no definition of "cause," hence left it to the discretion of the agency to determine the exact meaning to be given to that term. This would not be an instance of uncontrolled discretion, for it has been decided that the reason for the discharge must bear some relation to the welfare of the public and the service. It was, therefore, within the scope of judicial review for the court to ascertain whether any such relationship existed. The discharge was upheld on the theory that, as the police officer's primary duty is to protect the public, the refusal to divulge information which might aid in the enforcement of law and order is inconsistent with that duty. It was, of course, argued that the officers had not refused to testify but merely declined to sign immunity waivers. The court felt that both types of refusal were equally reprehensible since, in either case, the main aim of those called upon to disclose information would be to protect themselves from a subsequent criminal prosecution. If the officers had testified without signing the immunity waiver, it is doubtful that criminal

6 Ill. Rev. Stat. 1949, Vol. 1, Ch. 24½, § 51. As to whether the same type of conduct would be "cause" for the removal of a judge, see In re Holland, 377 Ill. 346, 36 N. E. (2d) 543 (1941).
8 Murphy v. Houston, 250 Ill. App. 385 (1928).
prosecution would have followed because of the constitutional provision against self-incrimination. By so refusing, the police officers were, in effect, placing self-interest before the interest of the public. They were, therefore, guilty of action detrimental to the welfare of the citizenry and the service.

In still another decision, that found in *People ex rel. Hurley v. Graber*, the Supreme Court recognized two legal devices by which an administrative tribunal can be prevented from overstepping its statutory authority. It appeared that, in 1947, the state legislature amended the City Civil Service Act to allow war veterans additional promotional credits based upon service in the armed forces. In accordance with this provision, certain ex-servicemen in the Chicago Police Department had been given promotions which, in the absence of the added credits, would have gone to non-veteran members. The Supreme Court subsequently decided the amendment was unconstitutional because it was vague and indefinite, thereby leaving the validity of the already consummated promotions in doubt. The City Civil Service Commission finally took the position, based upon an opinion furnished by the Corporation Counsel, that the advancements were invalid. It then made a public announcement that all veterans who had received promotions based on the added credits would be demoted and restored to their former positions. Two groups of those who would have been adversely affected by such an order instituted actions to prevent the demotion. One group sought a writ of prohibition; the other, an injunction. Both prayers were granted. The commission then filed an original action in the Illinois Supreme Court for a writ of mandamus designed to compel the trial judge to expunge these orders from the record. The Supreme Court, comparing the commission's power with its contemplated action, determined that the latter was in clear violation of its statutory authority. It decided that the power to discharge for "cause" would not support a re-

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9 405 Ill. 331, 90 N. E. (2d) 763 (1950), noted in 38 Ill. B. J. 367.


consideration or a demotion after an appointment had been completed. The commission was, therefore, in no position to question the validity of the advancements it had ordered, even though the same were consummated under an unconstitutional statute.

The remainder of the opinion is concerned with the more interesting and significant procedural questions concerning the availability of an injunction and the use of a writ of prohibition to forestall invalid administrative action. The court, when upholding the injunctive relief, was forced to overcome the simple proposition that, as an individual possesses no property right in a public office, equity would lack jurisdiction to issue an injunction in order to prevent his ouster. It did so, in the particular case, by establishing equity jurisdiction upon the basis of a necessity to prevent excessive litigation which might otherwise result from the many demotions there contemplated. As to the writ of prohibition, the court acknowledged the existence of two rules governing its use, to-wit: (1) the writ could only be addressed to an inferior tribunal exercising judicial power, and (2) the judicial power about to be exercised had to be one in excess of its jurisdiction. An administrative agency is ordinarily thought of as an arm of the executive rather than of the judicial branch of the government; consequently, it might logically be assumed that a writ of the type sought should not have been granted. The court, however, looked to the function performed by the Civil Service Commission and characterized it as being at least quasi-judicial, thereby finding the first essential element to be present. That approach is not as startling as it sounds for the Supreme Court has recognized the quasi-judicial aspects of commissions of this type when permitting review by means of certiorari. The existence of the second element was declared satisfied by the finding of a lack of authority to demote.

In permitting the utilization of both the injunction and the writ of prohibition, the court appears to have overlooked certain other factors which have previously governed the availability of these two remedies. Thus, the issuance of the extraordinary

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12 Marshall v. Board of Managers, 201 Il. 9, 66 N. E. 314 (1902).
writ of prohibition has been conditioned upon the fact that the litigant has lacked any other method for obtaining relief.\textsuperscript{14} Similarly, equity usually intervenes only in the absence of an adequate legal remedy. Since the court found that injunctive relief was available, it might logically have refused the writ.\textsuperscript{15} On the other hand, as the legal remedy of prohibition was deemed appropriate, it would have been equally logical to have denied the injunction.\textsuperscript{16} The court, by not discussing this aspect of the case, has simply added to the mist of uncertainty surrounding the use of extraordinary legal and equitable devices in the field of administrative law.

While the reports are void of any significant decisions dealing with the Illinois Administrative Review Act, there have been several which simply reiterate a position previously taken by the Supreme Court with reference to the weight to be accorded administrative findings of fact. The Act provides such findings and conclusions are to be considered prima facie true and correct.\textsuperscript{17} Soon after the enactment of the statute, the Illinois Supreme Court interpreted this particular provision as limiting the reversal of agency findings to situations where they were against the manifest weight of the evidence or unsupported by substantial evidence.\textsuperscript{18} This view has been adhered to in an assortment of decisions handed down during the period of this survey,\textsuperscript{19} an

\textsuperscript{14} People v. Circuit Court of Wash. County, 347 Ill. 34, 179 N. E. 441 (1931).
\textsuperscript{15} Typically, prohibition has been denied where an ordinary legal remedy such as a writ of error, etc., could have been utilized. It might, therefore, be argued that since an injunction does not fall within this classification, its presence as a possible method of attack should not affect the availability of the extraordinary writ. This argument was apparently rejected in State v. Perry, 113 Ohio St. 641, 150 N. E. 78 (1925), where the court refused to issue a writ of prohibition on the ground that relief by injunction was adequate.
\textsuperscript{16} However, it might be reasonably urged that the extraordinary aspect of the writ of prohibition took it out of the realm of customary adequate legal remedies and therefore its availability would not bar the issuance of an injunction.
\textsuperscript{17} Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 274.
\textsuperscript{18} Drezner v. Civil Service Commission, 398 Ill. 219, 75 N. E. (2d) 303 (1947). The failure to adopt the classical "manifest weight of the evidence" rule or the "substantial evidence" rule was due to the fact that a previous attempt to utilize the former in restricting judicial review of agency findings was held unconstitutional as a usurpation of judicial power; Otis Elevator Co. v. Industrial Commission, 302 Ill. 90, 134 N. E. 19 (1922).
\textsuperscript{19} Local Union No. 222, Oil Workers' Int. Union v. Gordon, 406 Ill. 145, 92 N. E. (2d) 739 (1950); Brown Shoe Co. v. Gordon, 405 Ill. 384, 91 N. E. (2d) 381 (1950); Local No. 658, Boot & Shoe Workers' Union v. Brown Shoe Co., 403 Ill. 484, 87 N. E. (2d) 625 (1949); Overbey v. Board of Fire & Police Commissioners, 339 Ill. App. 574, 90 N. E. (2d) 503 (1950), abst. opin.
indication that the Illinois courts have adopted the classical view concerning the scope of judicial review of findings of fact. That view had previously existed in this state before the enactment of the new statute and is typical of the one found elsewhere.

CONFLICTS OF LAW

Federal courts sitting in this area were called upon to decide two interesting and complicated conflicts of law problems of first impression in this jurisdiction. The case of *Hynes v. Indian Trails, Inc.* involved the applicability of a particular provision in the Illinois Workmen’s Compensation Act. The plaintiff, a motorman for a Chicago street railroad, sustained injuries when a motor bus operated by one of the defendant’s employees collided with his street car. He instituted an action sounding in tort to which the defendant pleaded Section 29 of the Illinois Workmen’s Compensation Act as a bar to the suit. If the defendant was bound by the Illinois act, dismissal of the plaintiff’s action would be proper for he would have no right to maintain a common law action and would have to be satisfied with his statutory remedy. In an effort to prove that the Illinois statute controlled the case, the defendant submitted that it was a Michigan corporation with an office in Chicago; that it operated buses across Michigan and Indiana into Illinois; and that it had complied with the provisions of the Illinois Compensation Act, which covered many of its employees.

Plaintiff, on the other hand, noting that the driver of the vehicle was a resident of Michigan, had been hired in that state, and was covered by its statute, pointed to the fact that, as the defendant was not bound by the Illinois act in its relation to the particular employee, defendant could not have the advantage of Section 29. The federal district court agreed with plaintiff and that decision was sustained by the Court of Appeals for the Sev-

21 Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 166, directs that when a compensable injury arises without the negligence of the employer or his employee, and is caused under circumstances creating a legal liability for damages in some other person, other than the employer, then the employer is the one to bring legal proceedings against the third person.
enth Circuit. The latter pointed out that the subjection imposed on the defendant by the Illinois statute as to some of its employees did not extend to all injuries arising in this state but that the test to determine the applicability of Section 29 was whether or not the employee at fault could have secured an award under the Illinois act if he had been the one who had been injured.

The defendant asserted that, even using such test, it was entitled to plead the applicable provision since the specific employee, if he had been injured, could have recovered an award under the Illinois statute. In support of that premise, the defendant cited United States Supreme Court decisions which declare that a state wherein the injury occurs is free to apply its own compensation laws to the exclusion of the law of the state of the employer and employee. The existence of such decisions was acknowledged by the court but it was noted that the same were permissive rather than mandatory in character. It then pointed to the fact that a policy had been developed in Illinois under which its courts would refuse to apply the Illinois statute in cases where the only contact with Illinois lay in the fact that the injury occurred within its limits. From this, it easily followed that the defendant was not in any position to take advantage of the defense offered by the Illinois statute.

The second case, that of Anderson v. Linton, was one commenced by the plaintiff as administratrix of her husband's estate for his alleged wrongful death and for her own personal injuries sustained in the same accident. It appeared that the collision occurred when a trailer, being transported through the state of Iowa, became detached from the tractor pulling it, veered across the highway, and came into contact with the automobile in which the plaintiff and her husband were driving. The defendants were the transport company and the manufacturer and assembler of the house trailer, the latter being joined on the theory that the accident was the direct result of their negligence in so unskilfully welding the hitch to the trailer that it snapped.

24 178 F. (2d) 304 (1949), noted in 38 Ill. B. J. 339.
The second defendant contended that the welding which constituted the alleged negligence had been done in Illinois, a state which was said not to permit recovery unless a contractual relationship exists between the manufacturer and the injured party. The court declined to pass on the state of the Illinois law on this particular point, because the actual injury had been inflicted in Iowa and Iowa law was said to control. No Iowa decisions specifically in point could be found but it was said to be the law of that jurisdiction to permit suit against a manufacturer despite the absence of contractual privity. Other contentions, such as one based on the absence of an Iowa wrongful death statute and another concerning the appropriate statute of limitations for the personal injury aspects of the case, were readily answered.

The wrongful death portion of the action, however, produced a more difficult problem as to choice of law. The limitation period controlling death cases is typically found in the wrongful death statute itself so as to be part and parcel of the remedy, hence a matter of substantive law rather than of procedural law. Such being the general case, the *lex loci delicti* normally would govern and would have required the court to apply the Iowa limitation period. But, the situation was not susceptible to that solution for the Iowa survival statute, unlike the usual wrongful death act, does not contain a limitation provision. The court then fell back on the ordinary practice of applying the statute of limitations of the forum. Not even this solved the problem for Illinois possesses two limitation periods; a general two-year provision as to most torts, and a one-year requirement for wrongful death actions. The court saw fit to utilize the latter and barred the suit brought by the administratrix.

25 This was no more than an application of the familiar doctrine calling for reference to the *lex loci delicti* in tort cases.

26 The Iowa survival statute was, on the authority of Major v. Burlington, C. R. & N. Ry. Co., 115 Iowa 309, 88 N. W. 815 (1902), held to warrant suit by the administratrix to recover for the wrongful death. On the accepted principle that the law of the forum controls as to procedural matters, Horan v. New Home Sewing Machine Co., 280 Ill. App. 340, 7 N. E. (2d) 491 (1937), the Illinois limitation period was utilized to settle the question of whether the personal injury suit had been instituted in apt time.


28 Ibid., Vol. 1, Ch. 70, § 2.
The decision on this phase of the case would appear to be remarkable. While the action was instituted upon an Iowa law allowing recovery for wrongful death, the court applied the limitation period fixed by the Illinois statute. As the remedy for wrongful death cannot usually be separated from its period of limitation, is it logical to separate the limitation period from the remedy? If any rationale exists, it might lie in the fact that the court may have felt that a policy had been established in Illinois to restrict wrongful death actions to a period of one year which should be applied to suits commenced under the laws of a sister state where no contrary policy has been manifested.

CONSTITUTIONAL LAW

Aside from constitutional issues presented in *People ex rel. Bernat v. Bicek*\(^2^9\) over legislative attempts to create special divorce divisions in the judicial circuits of the state, only two other cases possess significance and they deal with the constitutionality of taxing provisions as applied to non-residents of the state. The first, entitled *Board of Regents of University of Wisconsin v. State of Illinois*,\(^3^0\) involved the state inheritance tax. The controversy arose when the deceased, a resident of Cook County, died testate and left the residue of his estate to the University of Wisconsin. The County Court entered an order assessing an inheritance tax at normal rates to which an objection was filed based on the proposition that as the Board of Regents was actually the State of Wisconsin it would be improper to impose a tax upon a legacy payable to a sovereign state. The lower court ruled against the contention and, on direct appeal to the Supreme Court because a question of revenue was involved, the decision was affirmed.

It having been determined that the tax provisions were applicable to the Board of Regents, even though it was an instru-

\(^2^9\) 405 Ill. 510, 91 N. E. (2d) 588 (1950). See discussion thereof ante under the heading of Family Law.

mentality of the State of Wisconsin, because it was a corporate entity, the court then considered the various constitutional arguments. The first of these revolved around the contention that the right of the State of Wisconsin to receive a legacy arose from its sovereignty which Illinois could not constitutionally restrict. The Supreme Court quickly disposed of this contention by pointing out that the right to acquire property under the will of an Illinois resident owes its existence to the law of this state, from which it followed that Illinois could impose any reasonable restriction and regulation upon the right. It was then urged that the Illinois inheritance tax, being based upon the right to receive a legacy, constituted a direct burden upon the sovereign state. The Supreme Court, however, noted that the tax "is extracted from the legacy before it passes and therefore the tax assessed here is not a direct burden upon the Board of Regents of the University of Wisconsin or upon Wisconsin even though it incidentally reduces the legacy." This being the very reasoning applied by the United States Supreme Court in upholding the validity of inheritance taxes imposed in identical situations, the decision of the Illinois court appears to be based upon a firm foundation.

The Retailers' Occupational Tax Act was the other provision to come under judicial surveillance. In Norton Company v. Department of Revenue, the plaintiff filed a claim with the defendant alleging that, in the computation of its tax liability, receipts from certain types of sales should not have been included

31 Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 375, is made to apply to a "person," an "institution," or to a "corporation."

32 Kochersperger v. Drake, 167 Ill. 122, 47 N. E. 321 (1897).

33 Ibid.

34 404 Ill. 193 at 201, 88 N. E. (2d) 489 at 493.

35 U. S. v. Perkins, 163 U. S. 625, 16 S. Ct. 1073, 41 L. Ed. 287 (1895). Reference to that case was made by the United States Supreme Court when it dismissed the appeal in the instant case: 339 U. S. 906, 70 S. Ct. 571, 94 L. Ed. (adv.) 454 (1950).

36 The Illinois legislature, in 1945, amended the Inheritance Tax Act to allow the same exemption to institutions of sister states as is enjoyed by those organized in Illinois, if reciprocal exemption is granted: Ill. Laws 1945, p. 1242, S. B. No. 183. The provision was inapplicable to the particular case as the controversy arose before the amendment took effect.

in the final figure utilized as the tax base. The plaintiff was a Massachusetts corporation with its plant and main office in that state, but it maintained a branch office and a small warehouse in Chicago. The controverted sales fell into one or the other of two types: (1) those wherein the orders were sent by Illinois customers direct to Massachusetts, were filled there, and the goods were then shipped to the purchasers; or (2) those wherein orders were transmitted from the Chicago office to Massachusetts to be filled from the last mentioned place because the items requested were not kept in stock in the Illinois warehouse. The Department of Revenue rendered a decision adverse to the plaintiff and, upon appeal under the provisions of the Administrative Review Act, the trial court affirmed the decision. Again, on direct appeal to the Illinois Supreme Court because a question of revenue was involved, the judgment was affirmed.

The mere fact that a state levies a tax upon transactions which are merely a part of interstate activity does not necessarily mean that the tax is unconstitutional. It must reach the point of being a burden on interstate commerce before invalidity will be declared. In cases of this kind, courts have usually considered two factors: (1) whether the tax discriminates against interstate transactions; and (2) whether the activities occurring in the taxing state are of sufficient magnitude to warrant the assessment, for extensive operations receiving the benefit of state protection should share the tax burden. As the company was obligated to pay no more than the same tax required of residents and citizens, there was no discrimination. The court also concluded that, since the plaintiff maintained an office and warehouse in Illinois, it conducted a sufficient amount of its interstate activity here to warrant a tax upon its gross receipts from Illinois purchasers even though some of the orders were filled in Massachusetts. The plaintiff was obviously doing more than simply soliciting orders in the state.

38 Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 441, states that the tax is to be computed upon the gross receipts from the sale of tangible personal property.
39 Ibid., Vol. 2, Ch. 110, § 264 et seq.
40 It has been held that the activity of doing no more than soliciting orders in the state cannot be taxed: Allis Chalmers Mfg. Co. v. Wright, 383 Ill. 363, 50 N. E. (2d) 508 (1943).
Attention has been directed, in another section of this survey, to two important cases respecting the discharge of municipal police officers for refusal to sign immunity waivers when called before the grand jury to be examined concerning their activities. Other aspects of the law relating to municipal corporations have also been settled during the past year. The case of People v. Levinson, for example, received almost as much attention from the press because the Supreme Court there reversed the conviction of the parents of a seven-year old girl who had been charged with a violation of the compulsory school attendance law. It found the child to be in attendance at a "private school," inasmuch as the child's mother was supplying it with instruction at home comparable to that given in the public schools. Parents who send their children to established private schools are, of course, exempt from the compulsory school attendance law. It should be noted, however, that the burden of showing the home-taught substitute is adequate in terms of prescribed courses of instruction rests upon parents who would wish to take advantage of any such exemption.

Two attempts by cities to impose licenses upon particular pursuits led to decisions of interest. While the statute does not empower cities to license, tax or regulate insurance agents, it was held, in City of Chicago v. Barnett, that a license may properly be required of an insurance broker. The decision was based upon the fact that the word "broker" was used in the statute and that term was said to include within its meaning all persons who bore that relationship, regardless of the type of business in which they might engage. Greenhouse operators, according to Youngquist v. City of Chicago, are "wholesalers" within

42 404 Ill. 574, 90 N. E. (2d) 213 (1950).
44 Ibid., Vol. 1, Ch. 24, § 23—91.
45 404 Ill. 136, 88 N. E. (2d) 477 (1949).
46 405 Ill. 21, 90 N. E. (2d) 205 (1950).
the provision of a city ordinance and a statute empowering the city to license florists, but are also entitled to the benefit of a statute granting immunity to farmers, gardeners, and the like, from tax or license on the theory that the operators thereof qualify as "gardeners."

Further indication of the territorial limitations which exist on the powers of a city to regulate milk production is contained in three cases decided during the year. Although the ordinances there concerned were dissimilar, all three attempted, to some degree, to restrict the sale of milk products produced beyond the corporate limits. All three were declared void by reason of attempts to exercise extra-territorial powers which had not been conferred upon the municipalities by the legislature.

One case in the field of municipal tort liability took still another situation out of the group of incidents which are neither fish nor fowl until a decision makes them so. The Supreme Court, in Johnson v. City of East Moline, upheld the judgment of a lower court which had imposed liability on a city for its negligent failure to replace a damaged traffic signal, the absence of which had caused the plaintiff to enter an intersection protected only by signals controlling traffic from the three other directions. Such maintenance was said to be a corporate, rather than a governmental, function despite the fact that the weight of authority in other states is to the contrary. The decision, however, may be said to in harmony with a long-followed tendency in Illinois to squeeze many activities into the corporate function category so long as the activity bears some connection with street maintenance.

Worthy of at least brief mention is the case of Daniels v.

48 Ibid., Vol. 1, Ch. 5, § 91.
49 Dean Milk Co. v. City of Waukegan, 403 Ill. 597, 87 N. E. (2d) 751 (1949); Dean Milk Co. v. City of Aurora, 404 Ill. 331, 88 N. E. (2d) 827 (1949); Dean Milk Co. v. City of Elgin, 405 Ill. 204, 90 N. E. (2d) 112 (1950). See also comments in 28 CHICAGO-KENT LAW REVIEW 173, 1950 Ill. L. Forum 142, and 38 Ill. B. J. 235.
51 See Green, "Freedom of Litigation," 38 Ill. L. Rev. 355 (1944), and comment in 45 Ill. L. Rev. 124.
Cavner, a decision of first impression. It was there determined that a statute which requires the filing with the clerk of the municipality of nomination papers at least thirty-five days previous to the date of election is not satisfied by an attempted filing with the clerk at his home after business hours on the last day for filing. Cases from other jurisdictions were followed in the course of a discussion which indicated that the "filing" must be done at the clerk's official place of business during the usual business hours.

The only significant case involving any element of tax law happened also to be one with aspects of municipal law. An attempt by a village to exact a sum equivalent to three per cent. of the gross receipts of all firms who had been granted authority to maintain pipes, poles, conduits, and the like, in streets or public places, was declared improper in Village of Lombard v. Illinois Bell Telephone Company. While both the litigants were in some doubt as to the nature of the charge, the Supreme Court held it invalid regardless of terminology. If it was intended to be a rental arrangement, it was improper because the municipality had no power to rent the streets. Viewed as an occupation tax, the lack of legislative authority for such an enactment was clearly fatal to its success.

TRADE REGULATION

No novel concepts are involved in the only decision having bearing on the law of trade regulation but it is appropriate to note that the Supreme Court affirmed a trial court decision holding the Mandatory Fair Trade Act to be invalid. The question of the power of the legislature to enact the controls intended thereby, and to impose uniform price standards on retailers of liquor, was

52 404 Ill. 372, 88 N. E. (2d) 823 (1949).
54 405 Ill. 200, 90 N. E. (2d) 105 (1950).
55 Other tax cases, such as Board of Regents of University of Wisconsin v. Illinois, 404 Ill. 193, 88 N. E. (2d) 489 (1949), and McLaughlin v. People, 403 Ill. 493, 87 N. E. (2d) 637 (1949), are discussed ante under the headings of Constitutional Law and Family Law, respectively.
not reached. Instead, the court found the act to be an attempt to amend the Liquor Control Act in a manner violative of Section 13 of Article IV of the Illinois Constitution or, if not, was incomplete in its provisions, hence ineffective to stand as an independent statute.

VIII. TORTS

Traditional tort questions concerning the liability of owners of animals for injury done by their beasts still receive attention in states where open range conditions exist, but rarely does an Illinois court have trouble with the matter. One recent Appellate Court decision would indicate that general principles of negligence have taken charge of situations where, at common law, absolute liability might have been imposed as well as in cases where statutes have tended to place strict liability on motorists who tangle with animals found running at large. In Guay v. Neel,\(^1\) it was decided that a motorist was not entitled to recover for damage sustained in a collision with an escaped horse, provided the owner of the animal had used due care in restraining it.\(^2\) With equal detachment, the court said the owner would be unable to recover on a counterclaim for damage to his livestock if the motorist was free from negligence.

Recognizing a trend away from the doctrine which permits of an immunity in favor of a municipal corporation for the torts of its agents while acting in the course of a governmental activity, the Appellate Court for the First District added its bit to the mounting collection of objections to that theory by its holding in Both v. Collins.\(^3\) The court there construed the 1945 amendment to the Cities and Villages Act,\(^4\) one which placed a municipality in the position of indemnitor as to judgments recovered against policemen, to presuppose liability on the part of the policeman. As a consequence, it denied the defendant officer's contention that immunity attached to his actions. The section of the

\(^1\) 340 Ill. App. 111, 91 N. E. (2d) 151 (1950).