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Lussier v. Maryland Racing Commission

In November, 1996, the Court of Appeals of Maryland confronted the issue of an administrative agency's legislative authority to impose sanctions for violations of agency regulations in *Lussier v. Maryland Racing Commission*, 343 Md. 681, 684 A.2d 804 (1996). Following a long history of prior cases expanding administrative agencies' powers to include the imposition of sanctions, the court of appeals upheld the agency's legislatively-vested authority to impose a penalty on individuals who violate that agency's rules, regardless of whether an express statutory authority for the penalty exists. Thus, the court of appeals reaffirmed its position that administrative officials should be given broad discretion in creating and enforcing regulations.

In 1991, Frank P. Lussier ("Lussier"), a Vermont resident, purchased three thoroughbred racehorses. Lussier subsequently hired Michael Downing ("Downing"), a New England horse trainer, to train and maintain the horses. Downing entered Lussier's horses in three separate \$12,000 claiming races at Maryland's Laurel Race Course.

Prior to each race, Lussier appeared to sell or transfer the horse that was scheduled to run in the race to another owner. Lussier bet heavily on each horse. In all three races, Lussier won. After winning, Lussier repurchased the horse or transferred the horse back

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to his trainer. Actual sales of the horses, however, were never consummated.

Finding that the *Daily Racing Form* had published the names of the new owner or trainer of the horse and false workout times for each horse prior to each race, the Maryland Racing Commission ("Commission") and the Thoroughbred Racing Protective Bureau initiated an investigation of Lussier and Downing in February, 1992. Following a hearing, the Commission decided that Lussier had acted improperly under the racing rules set forth in the Code of Maryland Regulations and therefore was subject to a fine of \$5,000. Lussier appealed to the Circuit Court for Baltimore County for judicial review of the Commission's order. The circuit court upheld the Commission's imposition of the fine. Lussier then appealed to the Court of Special Appeals of Maryland, which affirmed the lower court's decision. Next, Lussier petitioned for certiorari in the Court of Appeals of Maryland, and was granted certiorari as to the question

of whether the Commission possessed the authority to impose a fine for a violation of its regulations absent an express statutory provision granting the power to so fine.

Maryland courts have consistently upheld broad interpretations of administrative agencies' powers under their enabling statutes. *Lussier v. Maryland Racing Comm'n*, 343 Md. at 695-96, 684 A.2d at 811. The *Lussier* court followed precedent by holding that the Commission may impose penalties (i.e. monetary fines) on individuals who violated the Commission's regulations despite the absence of any express statutory authority to impose such penalties. In making this decision, the court of appeals agreed with the court of special appeals' analysis of the Commission's legislatively conferred powers. *Id.* at 699, 684 A.2d at 813.

Relying on Chapter 273 of the Acts of 1920, the court of appeals established its basis for declaring the Commission's regulation imposing a reasonable fine valid. *Id.* at 691-92, 684 A.2d at 809. Although this statute does not specifically grant the Commission power to impose fines, the court maintained that an agency's ability to act in a particular manner is determined by the statutes, legislative history, and policies applicable to the agency. *Id.* at 686, 684 A.2d at 806. The Legislature need not specifically authorize the

agency's powers. *Id.* at 686-87, 684 A.2d at 807.

According to the court, the complexities of modern life preclude government officials from becoming experts in all areas. *Id.* at 702, 684 A.2d at 814. Agencies must be created to assist government in acquiring knowledge and understanding of these complexities. *Id.* When establishing these agencies, the Legislature often employs broad language in the enabling statute due to the void in the Legislature's expertise. *Id.* This lack of specificity is intended by the Legislature to facilitate the administration of laws. *Id.* (citing *Sullivan v. Board of License Comm'rs*, 293 Md. 113, 121, 442 A.2d 558, 563 (1982)). Thus, the explicit language of the statute does not completely constrain the agency's actions. *Id.* at 686-87, 684 A.2d at 806-07 (citing *Comptroller of the Treasury v. Washington Restaurant Group, Inc.*, 339 Md. 667, 670-73, 664 A.2d 899, 901-02 (1995); *Holy Cross Hospital v. Health Services Cost Review Comm'n*, 283 Md. 677, 686, 393 A.2d 181, 185 (1978)).

The court of appeals has repeatedly held agency regulations valid as long as the regulations did not contradict the language and intention of the agency's enabling statute. *Id.* at 687-88, 684 A.2d at 806-07. Furthermore, the court of appeals accorded the administrative interpretation of the statute and the legislative response to agency enactments great weight.

Id. at 688, 684 A.2d at 807.

As the court of appeals held that the imposition of a fine is consistent with the legislative intent underlying the statute and the Commission's statutory authority, the Commission may create punitive regulations to enforce its regulations. *Id.* at 689-90, 684 A.2d at 808. This power falls into the discretionary void left by the Legislature in the statute. *Id.* at 691-92, 684 A.2d at 809. The Legislature did not intend the statute to limit the Commission's power and preclude the agency from enforcing its regulations. *Id.* at 699-700, 684 A.2d at 813.

In his dissenting opinion, Judge Bell challenged the majority's broad interpretation of the statute by arguing that the broad discretion accorded to the administrative agency is a violation of the separation of powers doctrine. *Id.* at 707-09, 684 A.2d at 817. Judge Bell reasoned that agency authority must be limited to those powers expressly granted in the statute. *Id.* Thus, statutory authority with proper safeguards must exist for an agency to impose fines. *Id.* at 708-709, 684 A.2d at 817.

An alternative approach, alluded to in Judge Bell's dissent in delegating authority to an agency, is the use of legislative oversight and judicial review prior to an agency's enactment of a punitive regulation. *Id.* The majority supported an uncomplicated delegation of authority to the agency.

Administrative agencies are created to administer laws, not to make laws. *Id.* at 708-09, 684 A.2d at 817-18. The creation and enactment of laws should be undertaken by the public's elected officials, not by the elected officials' administrative appointees. *Id.* Although the courts and the Legislature must afford some deference to the experts in these agencies, the Legislature cannot allow these agencies to usurp the Legislature's authority to promulgate public policy and law. *Id.* at 689, 684 A.2d at 808 (citing *Fogle v. H & G Restaurant, Inc.*, 337 Md. 441, 455, 654 A.2d 449, 456 (1995)).

As a result of the court of appeals' decision in *Lussier* to interpret administrative agencies' enabling statutes broadly, the court has empowered the agencies to assert greater control over their areas of expertise. By allowing administrative agencies to attach penalties to their regulations, the agencies have evolved from executive branch departments to miniature legislatures and judiciaries. The agencies will undoubtedly become more intrusive in the lives of the citizens of Maryland. The citizens of Maryland would receive greater benefits from broad statutory interpretation of agency authority, however, if such administrative power is coupled with legislative oversight and judicial review of the enactment of punitive agency regulations.