The John Marshall Law Review

Volume 1 | Issue 1 Article 9

Spring 1967

Citizens Savings and Loan Association, Belleville v. Knight : Administrative Law: Res Judicata, 1 J. Marshall J. of Prac. & Proc. 155 (1967)

Charles H. May

ADMINISTRATIVE LAW: RES JUDICATA

In a recent case, *Citizens Savings and Loan Association, Belleville* v. *Knight,** defendant-appellee, Edgemont Savings and Loan Association, filed an application to organize a savings and loan association in the East St. Louis area in July of 1960. The application was denied, and upon appeal the denial was affirmed by the Circuit Court.[1] Defendant re-applied to the Director of Financial Institutions two years later. Upon hearing by the Director, a permit to organize was issued.

Plaintiffs-appellants, thirteen savings and loan associations, made complaints for a hearing as provided for by the Savings and Loan Act.[2] The Director, upon hearing the complaints, affirmed his decision granting the permit. Thereafter, in accordance with the Administrative Review Act,[3] plaintiffs appealed to the Circuit Court, which affirmed the Director's decision. Plaintiffs appealed further to the Appellate Court contending that the ruling on the first application, and its subsequent affirmance by the Circuit Court, was res judicata as to the second application approved and affirmed by the Director. The court held that the prior decision of the Director was not res judicata.[4]

It is apparent from the language quoted and the authorities cited that the court based its decision upon a broad rule that the doctrine of res judicata does not apply to administrative bodies. Some Illinois cases, the opinions of which contain language to this effect, were cited. In *Illinois Power and Light Corporation* v. *Commerce Commission,*[5] the court, holding that an order previously entered by the agency was subject to change, stated: "The commission is not a judicial tribunal and its orders

---

* 74 Ill. App. 2d 234, 219 N.E. 2d 355 (1966).

[1] Industrial Savings and Loan Association v. Knight, 67 Ill. App. 2d 416, 214 N.E. 2d 910 (1966).

[2] LLL. REV. STAT. (1965), ch. 32, §860.
Proceedings on Objections to Commissioner's Action. Except as otherwise specifically provided by this Act, any person who deems himself aggrieved by any decision, order, or action of the Commissioner may receive a hearing . . .

[3] ILL. REV. STAT. (1965), ch. 110, § 268. "Jurisdiction to review final administrative decisions is vested in the Circuit Courts." §276 provides: "Any final decision, order, judgment or decree of the Circuit Court entered in an action to review a decision of an administrative agency may be reviewed by the Appellate Court . . . . "

[4] The court also found that the order of the director approving the application was supported by sufficient findings and was not contrary to the manifest weight of the evidence.

[5] 320 Ill. 427, 151 N.E. 236 (1926).

are not judgments."[6] In *Mississippi River Fuel Corporation* v. *Commerce Commission,*[7] the court said: "The commission, however, is not a judicial body, and its orders are not res judicata in later proceedings before it."[8] Likewise, in *Daley* v. *License Appeal Commission,*[9] the court said:

> A prior determination of an administrative body is not res judicata in subsequent proceedings before it. . . . An administrative review agency has the power to deal freely with each situation that comes before it regardless of how it may have dealt with a similar or even the same situation in a previous proceeding.[10]

Summarizing these holdings, the court in the *Citizens Savings and Loan* case cited and quoted from *Illinois Law and Practice:* "A determination of an administrative body is not res judicata in subsequent proceedings even though such a body was acting in its judicial capacity in making the determination."[11]

Without regard to the correctness of the decision in the *Citizens Savings and Loan* case, the question remains whether the doctrine of res judicata, distinctively judicial in origin, does have an area of operation in the field of administrative law and procedure. Administrative agencies are not the judiciary, yet they frequently exercise powers which are judicial in nature.

RES JUDICATA IN THE COURTS

The doctrine of res judicata originated as a Roman concept, but the term itself did not find its way into English law until after Blackstone.[12]

As the modern courts have defined it, the doctrine requires that an adjudication by a court of competent jurisdiction be considered finally and conclusively settled regarding any subsequent

---

[6] *Id.,* 320 Ill. at 431, 151 N.E. at 237. The court stated that in a case such as this, dealing with a request for a certificate of convenience and necessity, the Commerce Commission could re-evaluate and enlarge the appellees' area of service when changed conditions warrant it.

[7] 1 Ill. 2d 509, 116 N.E. 2d 394 (1953).

[8] *Id.,* 1 Ill. 2d at 513, 116 N.E. 2d at 396. This case involved a company which sold natural gas to industrial users. In a prior proceeding, the commission had held that the company was not acting as a public utility. Subsequent to that, it re-examined the facts and held that the company was acting in the capacity of a public utility and, therefore, subject to regulation governing public utilities. The court stated that res judicata did not apply to such administrative proceedings, but reviewing the facts upon appeal, held that the company was not acting as a public utility.

[9] 55 Ill. App. 2d 474, 205 N.E. 2d 269 (1965).

[10] *Id.,* 55 Ill. App. 2d at 477, 205 N.E. 2d at 272. This case involved the determination of the good moral character of the liquor license applicant. Although the court commented upon the effect of res judicata in administrative proceedings, it held the question moot, in that the applicant withdrew his application upon appeal.

[11] ADMINISTRATIVE LAW AND PROCEDURE, ch. 2, §30.

[12] Parker, *Administrative Res Judicata,* 40 ILL. L. REV. 56 (1945).

litigation where the same question arises between the same parties in a court of concurrent jurisdiction.[13]

> Neither the parties to an action nor persons in privity with them can re-litigate any fact or question actually or directly in issue in such suit which was passed upon and determined by a court of competent jurisdiction, but where the former adjudication is relied on as a bar to a subsequent action it is essential that there shall be identity both of the subject matter and the parties.[14]

With respect to the function and policy interest served by the application of the res judicata doctrine, it has been stated that there is no maxim of the law more firmly established or of more value in the administration of justice than that which is designed to prevent repeated litigation between the same parties in regard to the same issues on substantially the same facts. "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between such parties."[15]

The desire to eliminate the uncertainty that can be caused by the lack of finality in litigation has also added support for the adoption of the doctrine of res judicata. It is essential in a modern, economically oriented society to be able to rely on decisions of courts in order to further economic stability; particularly with respect to matters affecting security of title and free marketability of land. When liability is established and damages are assessed, parties should be able to make financial arrangements to pay these judgments without the fear that they will later be assessed a larger amount.[16] Reference to the doctrine by the Supreme Court of the United States has been in terms of "the salutary influence which it exerts in giving permanence to estab-

---

[13] People *ex rel.* Graff v. C. B. & Q. R. R. Co., 247 Ill. 340, 93 N.E. 422 (1910).

[14] *Id.*, 249 Ill. at 343, 93 N.E. at 423. It is doubtful that any case has ever gone as far as holding anything res judicata short of this: "if such a decision should be found, it would be violative of plain legal principles, and would not be authoritative." Wadsworth v. Connell, 104 Ill. 369, 374 (1882). "A verdict not confirmed by judgment does not constitute estoppel or res judicata." Stubbing v. Durham, 210 Ill. 542, 551, 71 N.E. 586 (1904). *See* The People *ex rel.* David Williams v. The Board of Education of Pawnee Township High School, 350 Ill. 597, 601; 183 N.E. 633, 634 (1932). The court in this case said:

> [A] judgment cannot be pleaded in bar of a subsequent action unless it is a final judgment on the merits, adjudicating the rights in litigation in a conclusive and definite manner.

For a discussion on the necessity of having the same parties in the second action for the application of collateral estoppel *see generally*, Comment, *Developments in the Law — Res Judicata*, 65 HARV. L. REV. 820, 861-865 (1952). *See also* Lynch v. Chicago Transit Authority, 62 Ill. App. 2d 220, 210 N.E. 2d 792 (1965).

[15] Baldwin v. Iowa State Traveling Men's Association, 283 U.S. 522, 525 (1931).

[16] Comment, *Developments in the Law — Res Judicata*, 65 HARV. L. REV. 820, 827 (1952).

lished rights, in putting an end to angry contests, and preserving tranquillity in society," along with the characterization of it as "one of the most beneficial principles of our jurisprudence."[17]

But the courts have also recognized another aspect of public policy which calls for greater flexibility in the application of this doctrine where the public has a direct concern in the litigation. Thus, in *Mercoid Corporation* v. *Mid-Continent Investment Company*[18] the Supreme Court held that failure to assert in a prior suit a separate statutory cause of action, such as one for damages under the Clayton Antitrust Act, which might have been asserted as a counterclaim therein, did not render the judgment in such suit res judicata as to it. The court said that in this area the determination of the policy was not "dependent on the usual rules governing the settlement of private litigation."[19] Referring to the greater latitude of discretion exercised by equity courts, in furtherance of the public interest, rather than when only private interests are involved, the court said: "The parties cannot foreclose the courts from the exercise of that discretion by the failure to interpose the same defense in an earlier litigation."[20]

RES JUDICATA IN ADMINISTRATIVE LAW

It would seem, at the outset, that these same forceful reasons; i.e., that no one should be vexed more than once for the same cause, that permanence should attach to established rights, and that the order of society should not be disturbed by repeated litigation; should have the same standing in administrative proceedings as they have traditionally been accorded by the judiciary.

But administrative agencies are not courts. Their function may be ministerial, legislative or judicial.[21] Clearly, if their function is not judicial the doctrine of res judicata has no application. The point at which an act of an administrative agency is judicial for purposes of res judicata is, at best, difficult to discern. This difficulty stems in part from the nature

---

[17] Aurora City v. West, 7 Wall. 82, 105, 106 (1882) (dissenting opinion). The dissenting opinion recognized, as did the majority, the significance and importance of the doctrine of res judicata in our judicial system but disagreed as to its application in this case.

[18] 320 U.S. 661 (1943).

[19] *Id.*, at 670.

[20] *Id. See also* Lawlor v. National Screen Service Corp., 349 U.S. 322, 329 (1955).

[21] The granting or revoking of an automobile license may be merely ministerial acts; i.e., the carrying out of an act or duty prescribed by a law without the exercise of personal judgment or discretion. Regulation to supplement litigation is legislative. *See* 2 F. Cooper, STATE ADMINISTRATIVE LAW 510 (1965).

of administrative agencies which were designed to administer the details of an expanding body of law and to adjust this law to meet the demands of a changing society.[22]

To determine whether an act of an administrative agency is judicial, according to *Harden* v. *City of Raleigh*,[23] the formal manner or means by which the power is exercised must be ascertained. If the agency's decision requires the investigation of facts, the drawing of conclusions and the exercise of discretion analogous to that of the courts, such determination would be characterized as judicial.[24]

On the other hand, the United States Supreme Court emphasized, in addition, the functional nature of the power exercised.[25] This view was controlling in the leading case of *Prentis* v. *Atlantic Coast Line Co.*[26] The Virginia state constitution established a state corporation commission and defined its powers at length. It exercised the authority of the state to regulate public service corporations. Pursuant thereto, the commission entered an order fixing maximum rates to be charged by Virginia railroads. This order was challenged by a bill in equity, seeking an injunction against its enforcement. By way of defense, the Commission asserted that their decision as to the legality of the rate was final under the doctrine of res judicata, and not subject to re-examination. The Supreme Court held otherwise. Justice Holmes writing for the court said it was plain that the proceedings drawn in question were legislative in their nature,

> . . . and none the less so that they had taken place with a body which at another moment, or in its principle or dominant aspect, is a court . . . . A judicial inquiry investigates, declares and endorses

[22] Parker, *Administrative Law*, 18 (1952). *See* Berle, *The Expansion of American Administrative Law*, 30 HARV. L. REV. 430 (1917); Frankfurter, *The Task of Administrative Law*, 75 U. OF PA. L. REV., 614 (1927). Licensing boards and officials, like all administrative agencies, are the product of necessity. Increased regulation and taxation have forced their development and growth. They seem to be the only efficient method by which to handle the maze of detail created by the regulation and taxation of countless different occupations and businesses. The extent of their powers is only limited by the extent of the power of their creator and the doctrine of separation of powers. Mortimer and Dunne, *Grant and Revocation of Licenses*, 1957 ILL. L. FORUM 28.

[23] 192 N.C. 395, 135 S.E. 151 (1926).

[24] *Id.*, 192 N.C. at 397, 135 S.E. at 152.

[25] *See, e.g.*, Pearson v. Williams, 202 U.S. 281 (1906), wherein the Supreme Court held that the Secretary of Commerce and Labor might direct a second hearing before a board of special inquiry, looking to the deportation of certain aliens, although the first decision of the board of inquiry at the time of their landing was unanimously in their favor. Speaking for the court, Justice Holmes said the board "is an instrument of executive power, not a court," made up of subordinates of the commissioner of immigration, whose duties were declared by statute to be administrative. *Id.*, at 284, 285.

[26] 211 U.S. 210 (1908).

> liabilities as they stand on present or past facts and under laws supposed already to exit. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind . . . . Proceedings legislative in nature are not proceedings in a court . . . no matter what may be the general or dominant character of the body in which they may take place.[27]

Once the court determines that the action of the agency is not a judicial function, the doctrine of res judicata is not a bar to any subsequent re-examination on the part of the agency.[28] But once it has been determined that the agency is acting in a judicial function, the court must then consider the application of the doctrine.

However, even after it is ascertained that the administrative agency is performing a judicial function, the application of the doctrine of res judicata results in a degree of asymmetry when compared to its application to the judicial acts of the courts. These difficulties in adapting judicial techniques and concepts to the administrative process, often more apparent than real, were pointed out by Justice Frankfurter in *Federal Communications Commission* v. *Pottsville Broadcasting Company*.[29] In the course of his opinion he stated that the procedural rules which develop from the interrelationship of judicial tribunals are out of place when strictly applied to define the extent of control to which legislative power, exercised through a delegated agency, is subjected.[30] He went on to say:

> Courts, like other organisms, represent an interplay of form and function. The history of Anglo-American Courts and the more or less narrowly defined range of their staple business have determined the basic characteristics of trial procedure, the rules of evidence, and the general principles of appellate review. Modern administrative tribunals are the outgrowth of conditions far different

---

[27] *Id.*, at 226. *But see* Schopflocher, *Doctrine of Res Judicata in Administrative Law*, 1942 WISC. L. REV. 5, 39, 40.

[28] *See, e.g.*, Mulcahy v. Public Service Commission, 101 Utah 245, 117 P. 2d 298 (1941), wherein the court held that where there is no inherent right in controversy there is no exercise of the judicial function and, therefore, there could be no final and conclusive determination of the rights or issues therein involved and decided by it. The court allowed a trucking company, whose application for certificate of convenience and necessity to operate as a common motor carrier in a certain territory had been denied, to reapply and be granted a certificate on facts similar to those existing at the time of the order denying the first application. In holding that the Public Service Commission did not act in a "quasi-judicial" manner the court, following Holmes' decision in Prentis, said:

> The test is: Was the particular decision judicial in its nature and effect? The measuring rod, the test to be applied in determining this question, is not to be found in the mechanics of the proceeding. The mere fact that hearings are had, evidence taken, and decision rendered thereon, does not make the decision a judicial one. The power test is the functional one. *Id.*, 101 Utah at 255, 117 P. 2d at 302.

[29] 309 U.S. 134 (1940).

[30] *Id.*, at 141.

> from those. To a large degree they have been a response to the felt need of governmental supervision over economic enterprise — a supervision which could effectively be exercised neither directly through self-executing legislation nor by the judicial process.[31]

Justice Frankfurter further commented that administrative agencies, unlike courts, have the power of initiating their own inquiry, or, when their authority is invoked, of controlling the scope and development of the investigation in order to ascertain what the public interest demands. Thus greater latitude is essential to enable the administrative agency to minister to the expanded needs of the public in the use of the available facilities for transportation, communication and other essential public services.[32] "These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial, and review which have evolved from the history and experience of courts," he concluded.[33]

The difference in the respective natures of administrative agencies and the courts does not itself entirely eliminate or displace the application of the doctrine of res judicata to administrative determinations. To the extent that finality and stability are feasible, the doctrine of res judicata still has utility. The New York Court of Appeals in *Evans* v. *Monaghan*,[34] reviewing an administrative order suspending policemen from the New York police force, said:

> Security of person and property requires that determinations in the field of administrative law should be given as much finality as is reasonably possible . . . [T]he rule of res judicata is applicable to such determinations as well as to the courts wherever consistent with the purposes of the tribunal, board or officer . . . Such departures from the rule as there may be in administrative law appear to spring from the peculiar necessities of the particular case of the nature of the precise power being exercised, rather than from any general distinction between courts and administrative tribunals. . . .[35]

In areas where the proceeding involves a more static situation without change of circumstances, such as awards of money damages in workmen's compensation cases, the doctrine of res judicata is strongly applicable. The acceptance of this view in the area of workmen's compensation is exemplified by the decision in the case of *Trigg* v. *Industrial Commission*,[36] in which the court said that the function of the Industrial Commission is

---

[31] *Id.*, at 142.
[32] *Id.*, at 143.
[33] *Id.*
[34] 306 N.Y. 312, 118 N.E. 2d 452 (1954).
[35] *Id.*, 306 N.Y. at 323, 324; 118 N.E. 2d at 457, 458.
[36] 364 Ill. 581, 5 N.E. 2d 394 (1936).

closely akin to a judicial proceeding, and applied the doctrine of res judicata.[37]

In the case of *Little* v. *Board of Adjustment of City of Raleigh*,[38] the Supreme Court of North Carolina held that once the Board of Adjustment denied a construction permit, the applicant was not entitled to a new hearing on such application where the facts were identical to those in the record of the board's initial refusal.[39] It would also seem that the same reasoning should preclude an agency from revoking a license when there has been no change of circumstances or where the public interest has not been affected.[40]

---

[37] The daughter of a deceased worker attempted to have Workmen's Compensation payments, originally granted to her mother, paid to her after her mother remarried. In the original claim, the wife of the deceased was found to be the only dependent. This finding by the Commission in the original proceeding was held to be res judicata as to this later claim by the daughter. *See* Centralia Coal Company v. Industrial Commission, 297 Ill. 451, 130 N.E. 727 (1921); Stromberg Motor Device Company v. Industrial Commission, 305 Ill. 619, 137 N.E. 462 (1922). *See also* Andrews v. Gross and Janes Tie Company, 214 Ark. 210, 216 S.W. 2d 386 (1949), wherein the court held that the commonly stated rule is that:

> The award in compensation proceedings has the force and effect of the verdict of a jury. Being in the nature of a judgment, it finally and conclusively determines the rights of the parties under the workmen's compensation acts unless set aside in a proper manner, and is as binding as a judgment of a court entitled to the same faith and credit as such a judgment.

Id., 214 Ark. at 212, 216 S.W. 2d at 388. However, revision of awards are often allowed by statute on the theory that the individual hardship often outweighs the added expense of re-examination and the desire to rely on the final judgment. *Consult* N.Y. WORKMEN'S COMPENSATION LAW, §123 (McKinney 1965).

While the courts generally hesitate to apply the doctrine of res judicata to administrative determinations which were not subjected to judicial review in a court of law, there is less reluctance in applying this doctrine to agency determinations which have been passed through such review. This distinction is predicated upon the theory that the barring effect attaches to the decision of the court of law rather than that of the order of the administrative agency. *See, e.g.*, City of Jackson v. Holliday, 246 Miss. 412, 149 So. 2d 525 (1963), Woodlawn Area Citizens Ass'n v. Board of County Commissioners, 241 Md. 187, 216 A. 2d 149 (1965). The Illinois court in the case under consideration refused to apply this distinction relying on the case of 222 East Chestnut Street v. 199 Lake Shore Drive, Inc., 24 Ill. App. 2d 545, 165 N.E. 2d 71 (1960).

> It has consistently been held that a former adjudication does not rest on the opinion of the court of review, but on the judgment of the trial court which has become final through affirmance.

Id., 241 Ill. App. 2d at 550, 165 N.E. 2d at 73. Thus, the court in Citizens Savings and Loan reasoned that if the initial determination at the agency level was not subject to the binding effect of res judicata, subsequent judicial review of such an agency determination could not change its character in this respect.

[38] 195 N.C. 793, 143 S.E. 827 (1928).

[39] *See also* Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control, 55 Cal. 2d 728, 361 P. 2d 712 (1961); Cardinal Bus Lines v. Consolidated Coach Corp., 254 Ky. 586, 72 S.W. 2d 7 (1934); Watkins v. Mississippi State Board of Pharmacy, 170 Miss. 26, 154 So. 277 (1934); Polsky v. Atkins, 197 Tenn. 201, 270 S.W. 2d 479 (1954).

[40] *See, e.g.*, Bockman v. Arkansas State Medical Board, 299 Ark. 143, 313 S.W. 2d 826 (1958); Aylward v. State Board of Chiropractic Examiners, 31 Cal. 2d 833, 192 P. 2d 929 (1948).

The doctrine of res judicata in the administrative area, just as in the courts, has no application where there is a change of circumstances. It has been recognized, thus, that a change of physical conditions or an allegation of new facts, not in existence at the time of the prior ruling, permits licensing of a previously unsuccessful applicant.[41] In the zoning field the courts have point out that caution must be used in applying res judicata in areas where there might be a change of circumstances.[42] Consequently, where there has been a substantial change in facts, the petitioner should be granted a rehearing.[43]

Under the same circumstances, but with the additional presence of a strong public interest factor, the doctrine of res judicata has no application. Thus, a wholesale liquor license of a chain grocery store was held to have been properly revoked on substantially the same grounds which were present when the license was previously renewed.[44] Similarly, a corporation which sold natural gas to industrial concerns was properly subject to reexamination to determine whether it was a public utility corporation despite a previous ruling by the agency to the contrary.[45] In each of the foregoing cases the overriding social and economic public interest affected by the administrative determination transcended the values of finality and stability which are implemented by the res judicata doctrine.

Licensing, more than other areas, involves the public interest. It does not merely center upon adjusting the rights and duties existing between private individuals, but it involves adjusting the rights and balancing the interests between the licensee and the public to the extent that the public is affected by the activity of the licensee. Moreover, the private interest is out-

---

[41] *See, e.g.*, Matthews v. State *ex rel.* St. Andrews Bay Transportation Co., 111 Fla. 587, 149 So. 648 (1933). *See also* Comment, 65 HARV. L. REV. 820, 867 (1952).

[42] *See* City of Miami Beach v. Parking Facilities, Fla. App. 120 So. 2d 209, 210 (1960).

[43] Fiorilla v. Zoning Board of Appeals of Norwalk, 144 Conn. 275, 129 A. 2d 619 (1957); Russell v. Board of Adjustment, 31 N.J. 58, 155 A. 2d 83 (1959). *See also* North American Holding Corporation v. Murdock, 9 Misc. 2d 632, 167 N.Y.S. 2d 120, *appeal dismissed* 6 App. Div. 2d 596, 180 N.Y.S. 2d 436 (1958).

[44] Louis Stores v. Dept. of Alcoholic Beverage Control, 57 Cal. 2d 749, 758, 371 P. 2d 758, 762 (1962),

> In the present case both of these factors: i.e., public interest and effect upon third persons, strongly indicate that the prior determination of the board should not operate to preclude either the department or the courts from re-examining the statute and applying the correct interpretation.
>
> . . .

[45] Mississippi River Fuel Corporation v. Commerce Commission, 1 Ill. 2d 509, 513, 116 N.E. 2d 394, 396 (1954).

> The concept of public regulation includes of necessity the philosophy that the commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding.

weighed by the public interest because there is "little likelihood of substantial reliance by those who opposed the petition, their only detriment being the expense of relitigation."[46]

Thus in the case of *Louis Stores, Inc.* v. *Department of Alcoholic Beverage Control*[47] the court affirmed the decision of the agency in revoking a wholesale liquor license on the grounds that the licensee had failed to make sales to retail licensees other than himself. In a prior decision involving the same licensee the agency refused to revoke the license although the same practice of selling only to himself was considered. The agency stated in its prior proceeding that such action "has presented no problem which is contrary to public welfare and morals."[48] The court in upholding the agency's revocation in the subsequent proceeding stated that such use of the wholesale license "will be contrary to public welfare in that Louis Stores will thus secure the right to maintain an unfair competitive advantage. . . ."[49] The court concerned itself, although not expressly, with the public interest in regulating the effect of the licensee's wholesale liquor business on the community welfare. Similarly, it would appear that if the agency has made a mistake in applying the law or has applied the wrong law, they are not bound by such a mistake but are, in light of the public interest involved in the proceeding, free to re-examine and correct such errors.[50]

In the *Citizens Savings and Loan Association* case the Illinois Court was faced with the applicability of the doctrine of res judicata to the area of licensing. The cases cited by the court in *Citizens Savings and Loan Association* made statements that appear to support the view that the res judicata doctrine has little application in administrative proceedings. In the *Illinois Power and Light Corporation* case the court stated that the commission was not a judicial tribunal and, therefore, its orders were not judgments.[51] Such language would seem to indicate that the court was rejecting the application of res judicata on the grounds that the action of the agency was not the exercise of a judicial function. But while the court made such statements about the application of res judicata doctrine, it was concerned with the grant of a certificate of convenience and necessity, which by its very nature demands strong examination of

[46] Comment, 65 HARV. L. REV. 820, 866 (1952).

[47] 57 Cal. 2d 749, 371 P. 2d 758 (1962).

[48] *Id.*, 57 Cal. 2d at 755, 371 P. 2d at 761.

[49] *Id.*, 57 Cal. 2d at 758, 371 P. 2d at 762.

[50] *See, e.g., In re* Whitford's Liquor License, 166 Pa. Supp. 48, 70 A. 2d 708 (1950).

[51] *See* text at note 6, *supra.*

public interest, and thus the court might have considered this aspect in allowing re-evaluation.[52]

In the *Mississippi River Fuel Corporation* case, the court did focus upon the public interest factor involved in the regulation of the appellant's business observing that: "The concept of public regulation included, of necessity, the philosophy that the commission shall have power to deal freely . . ."[53] While the courts have in the cases cited rejected the applicability of res judicata in broad general language indicating that the agencies in question were not functioning in a quasi-judicial manner, the tacit basis for rejecting the doctrine can be related to the strong underlying public interest considerations.

In *Daley* v. *License Appeal Commission*,[54] apparently the only significant decision on res judicata in the licensing field in Illinois, the court cited and followed the *Illinois Power and Light Corporation* and the *Mississippi River Fuel Corp.* cases in holding that res judicata would not apply.[55] Again the court in its opinion failed to commit itself to an analysis of the action of the agency. In light of decisions involving similar agencies in other jurisdictions[56] the court might have found that the agency was exercising a judicial function, but that its decision was nevertheless justified in terms of the public interest involved.[57]

"The extension of the doctrine of res judicata from that of purely judicial proceedings into the field of administrative law

---

[52] *See* Mulcahy v. Public Service Commission, 101 Utah 245, 117 P. 2d 298 (1941). In discussing the concept of convenience and necessity, the court said: "The 'convenience' and 'necessity' required to support an application of a certificate are those of the public not those of individuals." *Id.*, 101 Utah at 250, 117 P. 2d at 300.

[53] 1 Ill. 2d 509, 513, 116 N.E. 2d 394, 396 (1953). *See also* Stratton v. Railroad Commission of California, 186 Cal. 119, 198 Pac. 1051 (1921).

[54] 55 Ill. App. 2d 474, 205 N.E. 2d 269 (1965).

[55] *See* text at note 10, *supra.*

[56] *See* Louis Stores, Inc. v. Department of Alcoholic Beverage Control, 57 Cal. 2d 749, 371 P. 2d 758 (1962); Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control, 55 Cal. 2d 728, 361 P. 2d 712 (1961); Polsky v. Atkins, 197 Tenn. 201, 270 S.W. 2d 479 (1954).

[57] The Illinois Court in Daley, in holding that a liquor license applicant, rejected because of bad moral character, might later re-apply, without being barred by the doctrine of res judicata, indicated that the mere passage of time would present to the commission a new situation which might be re-examined, stating,

> The court's prior judgment, having been based on a different record would not be res judicata of the issue raised in the new cause of action: Burnette's [the applicant's] fitness to have license as of the date of his second application.

55 Ill. App. 2d at 478, 205 N.E. 2d at 277. Such language would seem to indicate that the passage of time would be considered a change in circumstances, thus demanding a re-examination.

has been anything but uniform in the various states."[58] Although the court in *Citizens Savings and Loan Association* recognized this, it did little to clarify the problem. It raised generally: (1) the trifold and distinct nature of administrative agencies; (2) that there was a change of circumstances in the case since its prior adjudication; and (3) that there was a strong and overriding public interest in the area of savings and loan institutions. "Based upon [all] the foregoing observations [the Court was] of the firm belief that the doctrine of res judicata [was] not applicable. . . ."[59]

While the court probably reached a proper decision, it failed to specify which and to what extent each of the foregoing considerations was dispositive in determining whether to apply the doctrine of res judicata to the administrative proceeding. The opinion, therefore, has limited value as an analytic tool to guide the practitioner and future courts in this area. It is unclear from the facts of the case whether the agency was acting in a ministerial capacity or in a judicial capacity. Under the test set out in the *Prentis* case[60] it would be ministerial,[61] while under *Harden*[62] it would be judicial.[63] Nevertheless, even if the agency was acting in a judicial capacity, its rejection of the applicability of the res judicata doctrine may still be justified because of the changed circumstances existing at the time of the petitioner's re-application. Further, since the case involved the granting of a license, a strong element of public interest was present.[64] A clear statement to this effect by the court would do much to eliminate the confusion resulting from its bland assertion that res judicata does not apply to administrative agencies in Illinois.

Charles H. May

---

[58] 74 Ill. App. 2d 339, 219 N.E. 2d 358.

[59] *Id.*, 74 Ill. App. 2d at 243, 219 N.E. 2d at 359.

[60] 211 U.S. 210 (1908).

[61] *See* text at notes 25-27, *supra*. The Court in Citizen's Savings and Loan Association seems to indicate that they would follow the Prentis test for determining quasi-judicial functions. "[W]here the administrative agency is not a party to the proceedings and those involving conflicting claims of parties coming before it," the action may be referred to as quasi-judicial. 74 Ill. App. 2d at 239, 219 N.E. 2d at 358. However, the court fails to make use of this test in concluding that res judicata does not apply to administrative orders.

[62] 192 N.C. 395, 135 S.E. 151 (1926).

[63] *See* text at note 24, *supra*. In giving approval and a permit to organize a savings and loan association, the Commissioner exercises certain judicial-like discretion in applying the prescribed law. ILL. REV. STAT. (1965), ch. 32, §724.

[64] *See* text at notes 44-46, *supra*.