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# Local Review Committee without Jurisdiction to Review State Committee's Apportionment of Acreage Allotment

by

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AGRICULTURE—ADMINISTRATIVE LAW—LOCAL REVIEW COMMITTEE WITHOUT JURISDICTION TO REVIEW STATE COMMITTEE'S APPORTIONMENT OF ACREAGE ALLOTMENT.—*Fulford v. Forman*, 245 F.2d 145 (5th Cir. 1957).

A cotton farmer complained to his local Review Committee, as constituted under the Agricultural Adjustment Act of 1938,[1] challenging the State Committee's distribution under the act of 1956 state cotton acreage allotment among Texas counties. The Review Committee decided that a regulation[2] promulgated by the Secretary of Agriculture prevented such review. On appeal, the district court upheld the regulation and dismissed for want of jurisdiction. *Affirmed.* Since the Agricultural Adjustment Act grants power to the Review Committee to consider only matters relating to the use and distribution of the county allotment, it cannot entertain protests against the State Committee's allocation of cotton acreage.

To achieve orderly production and marketing of cotton, the Secretary of Agriculture allocates cotton acreage among the states.[3] First responsibility for distributing each state's share of the national cotton acreage allotment is in a State Committee appointed by the Secretary.[4] Initially

[1] 52 STAT. 31 (1938), as amended, 7 U.S.C. §§ 1281–07 (1952), as amended, 7 U.S.C. pp. 209–31 (Supp. IV, 1956), as amended, 7 U.S.C.A. § 1334 (Supp. July 1957). For an excellent discussion of the Act as a whole see Brooks and Cambell, *Marketing Quotas Under the Agricultural Adjustment Act of* 1938, 26 GEO. WASH. L. REV. 255 (1958).

[2] ". . . . In all cases the review committee shall consider only such matters as, under the applicable provisions of the act and regulations of the Secretary of Agriculture thereunder, are required or permitted to be considered by the county committee in the establishment of the quota sought to be reviewed." 7 C.F.R. § 711.30(b) (1955), as revised, 7 C. F. R. 711.12 (Supp. 1956).

[3] A national marketing quota for cotton is promulgated by the Secretary of Agriculture after his determination that the "total supply" of cotton for the marketing year will exceed the "normal supply". 52 STAT. 56 (1938), as amended, 7 U.S.C. § 1342 (Supp. IV, 1956). It is submitted to the farmers for approval in the Farmers' Referendum. 52 STAT. 56 (1938), 7 U.S.C. § 1343 (1952). If approved by them, the national marketing quota is translated by the Secretary into a national acreage allotment which is then prorated among the states. 52 STAT. 56 (1938), as amended, 7 U.S.C. §§ 1344(a)-(d) (1952), as amended, 7 U.S.C. § 1344(b) (Supp. IV, 1956).

[4] From 3 to 5 State Committee members are selected by the Secretary from farmers who are legal residents of the state. The State Director of the Agriculture Extension Service is an ex officio member of the State Committee. 49 STAT. 1149 (1935), as amended, 16 U.S.C. § 590(h)(B) (1952), as amended, 16 U.S.C. § 590(h)(B) (Supp. IV, 1956); and 52 STAT. 68 (1938), 7 U.S.C. § 1388(a) (1952).

the state acreage is distributed on a uniform formula derived from the cotton acreage planted in each county during the preceding five years.[5] Variations from the basic formula are permitted by adjustments for abnormal weather conditions in prior years, and by withholding up to ten percent of the state allotment as a state reserve.[6] This reserve can be used to adjust the current county allotments for trends in acreage, the results of abnormal conditions affecting plantings, and for small and new farms.[7] The State Committee's failure to use the 1956 state reserve to adjust for trends in acreage as it had done in the past, caused a reduction in county allotments in many west Texas counties,[8] and provided the basis for plaintiff's complaint in the principal case.

The Agricultural Adjustment Act provides for appeal from the local Review Committee's determination to a state or federal district court,[9] but judicial review is limited to the authorized action of the County Committee,[10] the constitutionality of the statute involved,[11] and the validity of administrative regulations executed by the County Committee.[12] The court in the principal case justifiably refused to extend the scope of the Review Committee's authority. A contrary holding would authorize each local Review Committee to consider protests against the State Committee's apportionment of the reserve, or indeed the Secretary's allocation of the state acreage, thus creating chaos and completely thwarting the complex scheme of production control contemplated by the act.

In the absence of other statutory authority, review of the State Committee's apportionment of acreage among the counties is apparently available under the Administrative Procedure Act.[13] Section 10 of that act provides for review of administrative actions not committed to agency discretion by statute or expressly made nonreviewable[14] Fur-

[5] 52 STAT. 57 (1938), as amended, 7 U.S.C. § 1344(e) (Supp. IV, 1956).

[6] *Ibid.*

[7] *Ibid.*

[8] See 20 FED. REG. 8951–52 (1955), amending 7 C. F. R. § 722.716 (Supp. 1954). A substantial part of the 1954 and 1955 state reserves were applied to adjust trends in acreage, and much of it had been allocated to the newly productive areas of west Texas counties. When no part of the 1956 state reserves was used for adjusting trends in acreage, substantial decreases in acreage resulted to those counties. Fulford v. Forman, 245 F.2d 145, 147–48 (5th Cir. 1957).

[9] 52 STAT. 63 (1938), 7 U.S.C. §§ 1365–67 (1952). Brooks and Cambell, *op. cit. supra* note 1.

[10] Smith Land Co. v. Christenson, 148 F.2d 184 (10th Cir. 1945); Lee v. Roseberry, 94 F. Supp. 324, 327 (E.D. Ky. 1950) (dictum.).

[11] Lee v. Roseberry, *supra* note 10; see Oklahoma v. United States Civil Service Comm'n, 330 U.S. 127 (1947).

[12] Rigby v. Mitchell, 152 F. Supp. 492 (C. D. Utah 1957); see Fulford v. Forman, 144 F. Supp. 536 (N.D. Tex. 1956). *aff'd* 245 F.2d 145 (5th Cir. 1957); see also Boske v. Comingore, 177 U.S. 459 (1900).

[13] 60 STAT. 237 (1946), 5 U.S.C. §§ 1001–11 (1952).

[14] *Id.* at § 1009.

ther, any person who suffers a legal wrong because of any agency action or who is adversely affected or aggrieved by such action within the meaning of any relevant statute is entitled to judicial review.[15] The Agricultural Adjustment Act of 1938 clearly does not make action by the State Committee nonreviewable. Because the act permits a farmer to use his land for planting specified basic crops only to the extent of his acreage allotment, he is to that extent deprived of a property interest in his land. Any inequity in apportionment of the allotment would give rise to a "legal wrong because of agency action" sufficient to entitle the farmer to judicial review under the Administrative Procedure Act.[16] Due process requires judicial review of the deprivation of property which occurs in the apportionment of acreage.[17] True, the issue of validity of an acreage allotment could be raised in an action brought by the Government to collect civil penalties for overproduction,[18] but one is not ordinarily required to risk fines or loss of property in order to secure review to which he is constitutionally entitled.[19]

A farmer who has exhausted his administrative remedies, as in the principal case, should be able to challenge the distribution of state acreage by proceeding under the Administrative Procedure Act for a declaratory judgment and an injunction prohibiting collection of penalties from him for planting in excess of his farm acreage allotment.[20] Since the power of enforcing the penalties under the act is vested in the Secretary of Agriculture,[21] the action may be brought against him in a federal district court[22] whenever the farmer can demonstrate the likelihood of harm to his property interest resulting from the objectionable state allotment. Danger of harm can be demonstrated as soon as the farmer receives notice of his acreage allotment[23] and the Farmers' Referendum adopts the allotment program for the current planting year.[24] In light

[15] *Id.* at § 1009(a).

[16] *Cf.* Shaughnessy v. Pedreiro, 349 U.S. 48 (1955); United States v. Jones, 336 U.S. 641, 672–73 (1949) (dictum). *But cf.*, Kansas City Power and Light Co. v. McKay, 225 F.2d 924, 931–34 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 884 (1955).

[17] See Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 (1936).

[18] Over-production of cotton is penalized in 52 STAT. 59 (1938), as amended, 7 U.S.C. § 1346 (1952).

[19] *Ex parte* Young, 209 U.S. 123 (1908).

[20] See Shaughnessy v. Pedreiro, 349 U.S. 48 (1955); DAVIS, ADMINISTRATIVE LAW §§ 211, 213 (1951). *But see* United States v. Jones, 336 U.S. 641, 672–73 (1949) (dictum).

[21] 52 STAT. 65 (1938), 7 U.S.C. § 1372 (1952). See Hawthorne v. Fisher, 33 F. Supp. 891 (N.D. Tex. 1940).

[22] See Hawthorne v. Fisher, *supra* note 22; *cf.* Sellas v. Kirk, 200 F.2d 217 (9th Cir. 1953); *cert. denied*, 345 U.S. 940 (1953). *But see* Hawkins v. State Agricultural Stabilization and Conservation Comm'n, 149 F. Supp. 681 (S.D. Tex. 1957). *But cf.* Shaughnessy v. Pedreiro, 349 U.S. 48 (1955).

[23] 52 STAT. 62, as amended, 7 U.S.C. § 1362 (1952).

[24] 52 STAT. 56 (1938), 7 U.S.C. §§ 1343, 1344 (1952).

of the limited power of the Review Committee as confirmed in the principal case, the farmer desiring to protect his economic well-being should, by following the procedure suggested, be able to effectively procure judicial review of an adverse apportionment of the state acreage allotment.

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