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## Tringham v. State Bd. of Ed.

Roger J. Traynor

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[L. A. No. 24958. In Bank. June 24, 1958.]

JAMES ALEXANDER TRINGHAM, Respondent, v.  
STATE BOARD OF EDUCATION, etc., et al., Ap-  
pellants.

- [1] **Administrative Law—Judicial Review—Hearing.**—In a mandamus proceeding to review an order of a statewide administrative board, it is the court's duty to exercise its independent judgment on the evidence, and its decision must be sustained if there is any credible, competent evidence to support its findings. (Code Civ. Proc., § 1094.5.)
- [2] **Schools — Teachers — Dismissal—Mandamus—Hearing.**—In a mandamus proceeding to review an order of the State Board of Education revoking a teacher's credentials, the trial court exercised its independent judgment on the evidence rather than acting in its appellate capacity in concluding that the proof was insufficient to establish a prima facie case against the teacher, though it stated in the findings that there was "no substantial evidence" to support the board's order, where it specifically found on credible evidence that the teacher did not commit the immoral acts of which he was accused, that none of the charges were true, and that the board's order was not supported by the weight of the evidence.

**APPEAL** from a judgment of the Superior Court of Orange County. John Shea, Judge. **Affirmed.**

Proceeding in mandamus to review the order of the State Board of Education revoking the credentials of a public school principal. Judgment granting writ, affirmed.

Edmund G. Brown, Attorney General, and Edward M. Belasco, Deputy Attorney General, for Appellants.

Joseph Scott, A. H. Risse and G. L. McFarland for Respondent.

**GIBSON, C. J.**—An accusation was filed with the State Board of Education charging that respondent committed immoral acts while serving as the principal of a public school.

[1] See Cal.Jur.2d, Administrative Law, §§ 179, 208, 215, 229, 232, 233.

**McK. Dig. References:** [1] Administrative Law, § 22; [2] Schools, § 105(1).

The matter was heard before a hearing officer, who prepared a proposed decision suspending respondent's credentials for one year. The board considered the evidence taken at the hearing, rejected the recommendation of the hearing officer as to punishment, and ordered that respondent's credentials be revoked.

Respondent brought this proceeding in mandamus in the superior court to review the order of the board, and the parties submitted the matter on the administrative record. The court found and concluded that respondent did not commit the acts with which he was charged, and judgment was entered setting aside the order of the board.

[1] In this type of proceeding it is the duty of the court to exercise its independent judgment on the evidence, and its decision must be sustained if there is any credible, competent evidence to support its findings. (Code Civ. Proc., § 1094.5; *Moran v. Board of Medical Examiners*, 32 Cal.2d 301 [196 P.2d 20].) [2] The board concedes, as is clearly shown by the record, that the evidence is in conflict on each of the accusations, but it contends that the court did not weigh the evidence, as was its legal right and duty. Instead, the board asserts, the court, acting in an appellate capacity, reviewed the record of the proceedings before the board to see if there was substantial evidence to support the order of revocation, and erroneously concluded that the proof was insufficient to establish a prima facie case against respondent. This contention is based upon a statement in the findings that there is "no substantial evidence" to support the order of the board. The statement is unfortunate as there is abundant evidence, consisting of the testimony of several witnesses, which if believed would justify the revocation of respondent's credentials. However, the court specifically found on credible evidence that respondent did not commit the acts of which he was accused and that none of the charges was true. The record shows that the court exercised its independent judgment on the evidence and determined that the board's order was not supported by the weight of the evidence.

The judgment is affirmed.

Shenk, J., Carter, J., Schauer, J., Spence, J., and McComb, J., concurred.

TRAYNOR, J., Concurring.—My views with respect to judicial review of administrative findings of fact under Code of Civil Procedure, section 1094.5, are set forth in dissenting opin-

ions in *Moran v. Board of Medical Examiners*, 32 Cal.2d 301, 315 [196 P.2d 20], and *Southern California Jockey Club, Inc. v. California Horse Racing Board*, 36 Cal.2d 167, 178 [223 P.2d 1]. These views remain unchanged, but since a majority of the court adhere to the Moran case, I concur in the judgment under the compulsion of that case.

[L. A. No. 24887. In Bank. June 27, 1958.]

WOODROW WILSON, Petitioner, v. THE STATE BAR OF CALIFORNIA, Respondent.

- [1] **Attorneys—Disciplinary Proceedings—Hearing.**—The accused attorney was not denied due process and a fair trial in a disciplinary proceeding where he declined to avail himself of the opportunity, afforded by the Board of Governors, to be heard and to present evidence, and where, though he had the right under Rules of Procedure of The State Bar, rule 20, to present a defense, he stated, after various hearings and continuances (some of which were granted at his request), that he was withdrawing from the hearing and left the room.
- [2] **Id.—Disciplinary Proceedings—Examination of Records.**—The accused attorney was not denied a reasonable opportunity to examine certain records in The State Bar's possession in accordance with Rules of Procedure of The State Bar, rule 8, where the president of the Board of Governors, on continuing a hearing until a later date, announced that in the meantime the attorney would be permitted to inspect the records and that he would be notified by letter "as to the exact time and place," the quoted words referring to the time and place of the continued meeting.
- [3] **Id.—Disciplinary Proceedings—Notice and Hearing.**—There was no material variance between the notice to show cause and the findings of fact, conclusions and recommendation in a disciplinary proceeding where the accused attorney did not direct attention to any offense included in the findings of which he was not informed in the notice to show cause served on him, and where the findings were in accord with the charges outlined against him in the notice to show cause.

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[1] See Cal.Jur.2d, Attorneys at Law, § 118 et seq.

McK. Dig. References: [1] Attorneys, § 172(8); [2] Attorneys, § 172; [3] Attorneys, §§ 172(7), 172(8).