



COALEX SIGNIFICANT ISSUE REPORT - 242

January 1993

Interstate Mining Compact Commission
Herndon, VA

TOPIC: TEN DAY NOTICES: DEFINITION OF "ABUSE OF DISCRETION"

INQUIRY: 0 CFR 842.11(b)(1)(ii)(B)(2) states that "an action or response by a state regulatory authority that is not arbitrary, capricious, or an abuse of discretion under the state program shall be considered 'appropriate action' to cause a violation to be corrected or 'good cause' for failure to do so." Please locate federal decisions that define "abuse of discretion" in the context of administrative proceedings or agency interpretations of (state) regulations.

SEARCH RESULTS: A number of relevant cases were identified using LEXIS and are listed below. Copies are attached.

CITIZENS TO PRESERVE OVERTON PARK v VOLPE, 401 U.S. 402 (1971).

Two statutes "prohibit the Secretary of Transportation from authorizing the use of federal funds to finance the construction of highways through public parks if a 'feasible and prudent' alternative route exists. If no such route is available, the statutes allow him to approve construction through parks only if there has been 'all possible planning to minimize harm' to the park." Petitioners contended that the Secretary's authorization for the construction of a six-lane interstate highway through the Memphis public park violated the statutes. None of the announcements made by the Secretary regarding the project were accompanied by "factual findings".

The Court determined that a "thorough, probing, in-depth review" of the Secretary's approval of the route was required to determine:

1. Whether "the Secretary acted within the scope of his authority, whether his decision was within the small range of available choices, and whether he could have reasonably believed that there were no feasible alternatives."
2. Whether "the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.... Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency."
3. Whether "the Secretary followed the necessary procedural requirements."



The case was remanded to the district court for "plenary review of the Secretary's decision. That review is to be based on the full administrative record that was before the Secretary at the time he made his decision."

WONG WING HANG v INS, 360 F 2d 715 (2nd Cir 1965).

In ruling on the denial of suspension of deportation to an eligible alien, the court determined that the administrative agency decision "would be an abuse of discretion if it were made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as an invidious discrimination against a particular race or group" or did not conform to congressional intent.

Also see excerpts from 11 cases that cite to CITIZENS and WONG WING HANG.

CITY OF ST. LOUIS v DOT, 936 F 2d 1528 (8th Cir 1991).

The court affirmed two orders of the Department of Transportation approving the sale of foreign airline routes. "DOT's findings of fact are supported by substantial evidence. Its holding that both transfers are in the 'public interest,' Sec. 401(h) of the Federal Aviation Act of 1958, as amended 49 U.S.C. App. Sec. 1371(h), rests upon reasonable (and therefore permissible) interpretations of the various statutes involved. And its weighing of the various statutory ingredients of the 'public interest' is not so far out of balance as to be arbitrary, capricious, or an abuse of discretion."

"To say that an agency (or a lower court) has 'discretion,' or that a certain question is 'discretionary,' is not to say that the agency may do whatever it wishes. This formulation simply recognizes that many legal questions are imprecise. They involve a number of factors that cannot be quantified, no one of which is dispositive in every case. So long as the agency considers all of the relevant factors, is not significantly influenced by any irrelevant factor, and comes up with a conclusion after mixing all the proper factors together that is not clearly wrong, there is no abuse of discretion, and we must affirm."

CHEVRON U.S.A. INC. v NATURAL RESOURCES DEFENSE COUNCIL, 467 U.S. 837 (1984).

Holding EPA's rules allowing states to regulate pollution-emitting devices were valid, the court stated that where Congress did not directly address "the precise question at issue", the agency's "formulation of policy and the making of rules" will not be considered an abuse of discretion if the regulations are based on "a permissible construction of the statute."

U.S. v WRIGHT, 826 F 2d 938 (10th Cir 1987), cert. denied 491 US 909.

The court discussed "abuse of discretion" with regard to the granting or denial of a motion for a bill of particulars:



"An abuse of discretion occurs when a judicial determination is arbitrary, capricious or whimsical. It is not merely an error of law or judgment, but an overriding of the law by the exercise of manifestly unreasonable judgment or the result of impartiality, prejudice, bias or ill-will as shown by evidence or the record of proceedings. 1 Words and Phrases 45 (1986 Cum. Sup.) While clearly not the situation in the case at bar, an abuse of discretion could occur where the trial court fails to articulate a reason for denial of a motion for bill of particulars and no such reason is readily apparent from the record. As stated in *United States v. Moore*, 556 F.2d 479, 483 (10th Cir. 1977)."

Also see excerpts from 3 cases that cite to *US v WRIGHT*.

LOGAN v DAYTON HUDSON, 865 F 2d 789 (6th Cir 1988).

The circuit court affirmed the district court's ruling granting the defendants a new trial on the issue of damages holding that the "district court did not abuse its discretion in granting a new trial on the grounds that Dr. Glass gave an opinion to the jury beyond the scope of his qualified expertise to the substantial harm of Dayton Hudson."

"Abuse of discretion is defined as a definite and firm conviction that the trial court committed a clear error of judgment. *Balkan v. Immigration and Naturalization Service*, 669 F.2d 1157 (11th Cir. 1982)."

Also see excerpts from 14 cases that cite to LOGAN or address these issues:

1. Trial court made error of judgment or exceeded bounds of permissible choice.
2. Error of judgment in the conclusion court reached upon a weighing of the relevant factors.

Also included are two additional case excerpts.

ATTACHMENTS

- A. *CITIZENS TO PRESERVE OVERTON PARK v VOLPE*, 401 U.S. 402 (1971).
- B. *WONG WING HANG v INS*, 360 F 2d 715 (2nd Cir 1965).
- C. Excerpts from 11 cases that cite to *CITIZENS* and *WONG WING HANG*.
- D. *CITY OF ST. LOUIS v DOT*, 936 F 2d 1528 (8th Cir 1991).
- E. *CHEVRON U.S.A. INC. v NATURAL RESOURCES DEFENSE COUNCIL*, 467 U.S. 837 (1984).
- F. *U.S. v WRIGHT*, 826 F 2d 938 (10th Cir 1987), cert. denied 491 US 909.
- G. Excerpts from 3 cases that cite to *US v WRIGHT*.
- H. *LOGAN v DAYTON HUDSON*, 865 F 2d 789 (6th Cir 1988).
- I. Excerpts from 14 cases that cite to LOGAN.
- J. Two additional case excerpts.