

THE SUPREME COURT

Walsh J.  
Griffin J.  
Hederman J.

303/85

THE STATE (AT THE PROSECUTION OF DENIS HARRINGTON)

Prosecutor

and

DISTRICT JUSTICE BRENDAN WALLACE

Respondent

JUDGMENT delivered on the 27th day of July 1988 by

WALSH J.

On the 8th June 1984 at the Bantry District Court the prosecutor was convicted of the offence of having on the 28th January 1984 under his charge a flock of sheep which had not been dipped under the supervision of a sheep dipping inspector during the prescribed period from the 15th September 1983 to 30th November 1983, and that he failed to produce a certificate of dipping signed by an inspector for the Cork Co. Council or by an inspector acting for another local authority contrary to the Disease of Animals Acts 1894-1966, the Sheep Dipping Orders 1965 and 1977 and the Sheep Dipping Regulations of 1983.

The respondent, who was the District Justice presiding in the Court, ordered the defendant to pay a fine of £20 payable within twenty eight days in default of which he would serve seven days imprisonment.

On the 16th July 1984 the prosecutor was granted a conditional order of certiorari by Mr. Justice Barron in the High Court on the ground that the Regulations in respect of which he was prosecuted and convicted were invalid.

On the 5th November 1984 the conditional order was set aside by Mr. Justice D'Arcy upon the cause shown by the Co. Council and Mr. Justice D'Arcy was satisfied that the Regulations in question were validly made. Against this decision an appeal is being taken to this Court.

This case turns upon the construction of the County Management Act, 1940, sections 17 and 19. Section 17 provides that every power, function, or duty of the county council which is not a reserved function shall, for the purpose of the Act, be an executive function of

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such council. The section went on to provide that every county manager shall exercise and perform for the council of his county all the executive functions of such council other than a power which was by law, including, in the Act in question, vested in such council and is by the Act of 1940 made exercisable by resolution of the council. S. 19 provides that every act or thing done or decision taken by a county manager for the council of his county or an elective body which, if done or taken by such council or elective body would be required by law to be done or taken by resolution of such council or elective body shall be done or taken by such county manager by an order in writing signed by him and containing a statement of the time at which it was so signed. Therefore every power, function or duty of a council which is not a reserved function is an executive function to be performed by the county manager. The Second Schedule to the Act sets out a number of matters which constitute reserved functions and the one relevant to the present case is No. 4 in the Second Schedule to

the Act which reads "the making, amending, or revoking a bye-law."

The point in this case is whether the Sheep Dipping Regulations in question constitute bye-laws or not. If they are not then it is not within the competence of the County Council to make them and such function would be reserved for the County Manager. The Regulations in the present case were made by the County Council and not by the County Manager. They were made on the 21st March 1983 and applied to the entire area of the County of Cork and were declared to come into force on the 1st June 1983. At the meeting of the County Council held on the 21st March 1983 the Secretary to the County Council informed the members that the Chief Veterinary Officer had recommended that the Council should again operate a compulsory summer sheep dipping programme for 1983. The proposed Sheep Dipping Regulations were put before the Council for consideration, and according to the minute of the meeting, certain revised charges were recommended, the details of which were set out in the minute of the

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meeting. The resolution passed was "that the following Sheep Dipping Regulations 1983 be accepted and that the official seal of the Council be affixed thereto." It is quite clear that the County Council treated the making of the Regulations as a reserved function when the resolution was passed and the question raised in this case is whether it is or is not a reserved function. It has been contended on behalf of the appellants that it is not a reserved function but is an executive function, and therefore one which could only be exercised by the County Manager as distinct from the Council.

The prosecutor particularly relied upon the opening words of the Sheep Dipping Regulations which read as follows:-

"The Council of the County of Cork being the local authority under the Disease of Animals Acts, for the administrative County of Cork, acting through and by the Cork County Manager, hereby for the purpose specified in Articles 16 and 20 of the Sheep Dipping Order 1965

amended by the Sheep Dipping Order 1965 (Amendment Order) 1976 and Sheep Dipping Order 1965 (Amendment Order) 1977, and in pursuance of the said Orders make the following Regulations...".

It is quite clear that if it is a reserved function then the recital just quoted with reference to "acting through and by the Cork County Manager" cannot change the legal nature of it and would not in itself be sufficient to make the function an executive function. In the Regulations themselves a certain discretion was given to the County Manager to decide in particular instances whether or not sheep dipping which had taken place should be deemed to satisfy the requirements of the Regulations. I am satisfied that such a power is not sufficient to determine whether or not the function exercised by the Council in making the Regulations was an executive or a reserved function.

The statutory basis for the making of such Regulations is to be found in the Disease of Animals Act, 1966 and

under s. 38 of the Act the Minister can authorise a local authority to make regulations for any of the purposes of that Act or of any Order made thereunder. In the present case it is clear that the Veterinary Officer of the Council recommended the making of the Order and the local authority in pursuance of the power already vested in them by statute and by the empowering Orders of the Minister for Agriculture decided to make the Regulations. No question has been raised in this case as to whether the Regulations as to their content are ultra vires the Act or not. The Regulations for the purpose of this case must be presumed to be within the powers conferred by the Act and by the Ministerial Orders. The net question in this case therefore is whether the Regulations in question were bye-laws within the meaning of the County Management Act, 1940.

It would be hard to improve on the definition of a bye-law given by Lord Russell C.J. in Kruse v. Johnson 1898 2 Q.B. 91 where he defined it as "an ordinance affecting the public or some portion of the public

imposed by some authority clothed with statutory powers ordering something to be done, or not to be done, and accompanied by some sanction or penalty for its non-observance."

It is quite clear that every regulation does not amount to a bye-law and frequently where there is a sanction for the breach of regulations the sanction is not to be found in the regulation itself but in some other instrument, such as a section of a statute. Such regulations would not amount to bye-laws. A bye-law within its own sphere is something which carries an authority akin to the authority of a statute. The Regulations in the present case do create a criminal offence and impose a sanction for non-observance. In my view that is sufficient to make it a bye-law within the meaning of the County Management Act, 1940. The fact that bye-laws headed the word "Regulations" does not alter the character of it. I am therefore of opinion that the High Court Judge was correct in his decision and this appeal should be dismissed.

J.W.  
27-7-88