# FARRICIELLI v. PERSONNEL APPEAL BOARD

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On March 25, 1977, the plaintiff, CharlesFarricielli, was dismissed from his positionas an institutional security officer at

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Southern Connecticut State College for failure toobtain and retain Connecticut State Police powersas required by job specifications. The plaintiffappealed this dismissal to the Connecticutpersonnel appeal board (the board) on March 31,1977, pursuant to General Statutes 5-202 (a). Theboard dismissed the plaintiff's appeal for lack ofsubject matter jurisdiction on May 25, 1977.

On June 23, 1977, the plaintiff appealed fromthe decision of the board, under General Statutes4-183 (b),[1] to the Court of Common Pleas inHartford County. Service was duly made upon thedefendant by serving the office of the attorneygeneral in Hartford. The plaintiff resided inNew Haven County at the time he took the appeal tothe Court of Common Pleas. The defendant moved todismiss the plaintiff's appeal on the ground thatthe appeal was not filed in the Court of CommonPleas for the county in which the plaintiffresided as 4-183 (b) then required. The court,Fracasse, J., granted the motion to dismiss forlack of jurisdiction upon finding that the venueprovisions of 4-183 (b) were mandatory andjurisdictional and that strict compliance wasrequired. The plaintiff, after certification wasgranted, appealed to this court.

The main issue in this case is whether, on June24, 1977, the venue provisions of General Statutes4-183 (b) were mandatory and jurisdictional,thereby rendering lack of strict compliance afatal defect.

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In 1977, a person who had exhausted all administrativeremedies and was aggrieved by a finaldecision of an administrative agency could thenseek judicial review under General Statutes 4-183(b),[2] which is part of the UniformAdministrative Procedure Act (UAPA), whichprovided that "[p]roceedings for review shall beinstituted by filing a petition in the court ofcommon pleas in the county wherein the aggrievedperson resides . . . ." The plaintiff, however,instead of filing his appeal in the Court ofCommon Pleas in New Haven County, the county wherehe resided, filed his appeal in the Court ofCommon Pleas for Hartford County, the county wherethe defendant board is located. The plaintiff nowclaims that the lower court erred in dismissinghis appeal because the venue provisions of 4-183(b) are merely directory and not mandatory andfailure strictly to comply with these

provisionsdoes not rise to the level of a jurisdictionaldefect. He also claims that it would not be fairto allow the lower court to dismiss his appeal forimproper venue in light of the fact that the legislatureamended 4-183 (b) in 1977[3] to allowadministrative appeals "to the superior court forHartford County or for the county or judicial districtwherein the aggrieved personresides . . . ." (Emphasis added.)

We have stated that "`[a]ppeals to courts> fromadministrative agencies exist only under statutoryauthority. Tazza v. Planning & Zoning Commission,

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164 Conn. 187, 190, 319 A.2d 393 ; East SideCivic Assn. v. Planning & Zoning Commission,161 Conn. 558, 560, 290 A.2d 348 [1971]. A statutoryright to appeal may be taken advantage of only bystrict compliance with the statutory provisions bywhich it is created. In re Nunez, 165 Conn. 435,441, 334 A.2d 898 [1973]; Chanosky v. CityBuilding Supply Co., 152 Conn. 449, 451,208 A.2d 337 [1965]; 4 Am.Jur.2d, Appeal and Error, 4.'"Royce v. Freedom of Information Commission,177 Conn. 584, 587, 418 A.2d 939 (1979). See alsoVecchio v. Sewer Authority, 176 Conn. 497, 502,408 A.2d 254 (1979). In Royce, supra, we held thatthe time provisions of 4-183 (b) were mandatoryand that lack of strict compliance would be fatalto an appeal. We can find no justification fortreating the venue provisions of the same statuteany differently. We have said that not only doesthe UAPA provide for uniform standards by whichcertain agency action is to be judged but that itprovides a vehicle for judicial review as analternative to preexisting statutes or insituations in which no appellate review waspreviously provided. McDermott v. Commissioner ofChildren & Youth Services, 168 Conn. 435, 440-41,363 A.2d 103 (1975). This is the first time wehave construed the venue provisions of the UAPA.

"`Appellate jurisdiction is derived from theconstitutional or statutory provisions by which itis created, and can be acquired and exercised onlyin the manner prescribed. Thus, the determinationof the existence and extent of appellatejurisdiction depends upon the terms of thestatutory or constitutional provisions in which ithas its source.' 4 Am.Jur.2d 535, Appeal and Error,4." LaReau v. Reincke, 158 Conn. 486, 492,264 A.2d 576 (1969); In re Nunez, 165 Conn. 435, 438, 334 A.2d 898

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(1973). In this case, the legislature chose toconfer exclusive appellate jurisdiction in appealsunder the UAPA to "the court of common pleas inthe county wherein the aggrieved personresides . . . ." "`The decisive question hereinvolves the appellate jurisdiction of aparticular. . . court to review a particularadministrative decision; "venue" in the usualsense is not involved.'" State ex rel. State TaxCommission v. Luten, 459 S.W.2d 375, 377 (Mo.1970).[4] See also Minnesota Valley Canning Co. v.Rehnblom, 242 Iowa 1112, 49 N.W.2d 553 (1951); 2Cooper, State Administrative Law (1st Ed. 1965),pp. 613-14. "In many instances matters of venue arenot determined either by general venue statutes orby statutes relating generally to actions againstpublic officers but by specific provisions as

tovenue in administrative procedure acts or statutesrelating to particular administrative agencies." 2Am.Jur.2d, Administrative Law 737. See also 73C.J.S., Public Administrative Bodies and Procedure26(2), p. 320. Moreover, our conclusion that theprovisions of 4-183 (b), as it was when theplaintiff took his appeal, were mandatory and notdirectory, is buttressed by the fact that 4-183selectively used the words "shall" and "may" in anumber of its subsections. Section 4-183 (b) providedthat "[p]roceedings for review shall beinstituted by filing a petition in the court of common

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pleas in the county wherein the aggrieved personresides . . . ." (Emphasis added.) It also statedthat "[c]opies of the petition shall be servedupon the agency and all parties of record."(Emphasis added.) Section 4-183 (c), for example,provided "[t]he agency may grant, or the reviewingcourt may order, a stay upon appropriate terms."(Emphasis added.) The use of "shall" and "may"which are words "commonly mandatory and directoryin connotation, [is] a factor that evidencesaffirmative selectivity of terms with specificintent to be distinctive in meaning . . . . [They]must then be assumed to have been used withdiscrimination and a full awareness of thedifference in their ordinary meanings." Jones v.Civil Service Commission, 175 Conn. 504, 509,400 A.2d 721 (1978) - See Shulman v. Zoning Board ofAppeals, 154 Conn. 426, 428-29, 226 A.2d 380(1967); Blake v. Meyer, 145 Conn. 612, 616,145 A.2d 584 (1958). There is nothing in 4-183 (b)expressive of any contrary intent. Thus, the words"shall" and "may" should be interpreted accordingto their plain and ordinary meaning. GeneralStatutes 1-1; Jones v. Civil Service Commission,supra.[5] As further support for our conclusionthat the venue provision of 4-183 (b) ismandatory, we point to General Statutes 38-62(c) which in providing for appeals from certainorders of the insurance commissioner provides

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that "[a]ny person aggrieved by any suchorder of the commissioner may appeal therefrom inaccordance with the provisions of section 4-183,except venue for such appeal shall be in the judicialdistrict of Hartford-New Britain." (Emphasisadded). The venue provisions of 4-183 (b) arejurisdictional and "mandatory, and, if notcomplied with, render the appeal subject toabatement. Daley v. Board of Police Commissioners,133 Conn. 716, 719, 54 A.2d 501 ." Royce v.Freedom of Information Commission, supra, 587; seeSavings Bank of Danbury v. Downs, 74 Conn. 87,49 A. 913 (1901).

The fact that the legislature subsequentlyamended the statute to allow the very act which ithad previously not allowed, i.e., to institute theaction by petition filed in the Superior Court forHartford County, is not persuasive and does notsupport the plaintiff's claim. See City Council v.Hall, 180 Conn. 243, 251, 429 A.2d 481 (1980). "Astatute which provides that a thing shall be donein a certain way carries with it an impliedprohibition against doing that thing in any otherway." State ex rel. Barlow v. Kaminsky, 144 Conn. 612,620, 136 A.2d 792 (1957); see State ex rel.Barnard v. Ambrogio, 162 Conn. 491, 498,294 A.2d 529 (1972). Moreover, it is well settled that itcan be assumed that in

amending 4-183 (b), thelegislature acted "to accomplish some purpose";.Brown v. Cato, 147 Conn. 418, 421, 162 A.2d 175(1960); see In re Application of Plantamura,149 Conn. 111, 176 A.2d 61 (1961), cert. denied, 369 U.S. 872,82 S.Ct. 1141, 8 L.Ed.2d 275 (1962); and "we may notpresume that the legislature has enacted futile ormeaningless legislation." Hartford Electric Light Co.v. Sullivan, 161 Conn. 145, 152, 285 A.2d 352 (1971).

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"`"The General Assembly is always presumed to knowall the existing statutes and the effect that itsaction or non-action will have upon any one ofthem. And it is always presumed to have intendedthat effect which its action or non-actionproduces." State v. Staub, 61 Conn. 553, 566,23 A. 924 [1892]; Coombs v. Darling, 116 Conn. 643,646, 166 A. 70 [1933]; Hartley v. Vitiello,[113 Conn. 74, 82, 154 A. 255] [1931].' Knoll v.Kelley, 142 Conn. 592, 595, 115 A.2d 678 [1955]."New Haven Water Co. v. North Branford, 174 Conn. 556,565, 392 A.2d 456 (1978). At the time thatthe plaintiff filed his appeal, the only courtwith subject matter jurisdiction was the Court ofCommon Pleas for New Haven County.

The plaintiff has also claimed that his administrativeappeal should not fail for improper venuebecause General Statutes 51-347b and 51-351[6]operate to transfer the appeal to the proper court.The court, however, was powerless to so act underthese statutes as claimed.

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"A court has no power or jurisdiction to order achange of venue where it has no jurisdiction ofthe subject matter of the parties defendant." 92C.J.S. Venue 129, 157. See Bell v. Union Trust Co.of Indianapolis, 213 Ind. 333, 12 N.E.2d 510(1938); Newell v. Huston, 35 App. Div.2d 908,317 N.Y.S.2d 66 (1970). Proceedings conducted ordecisions made by a court are legally void wherethere is an absence of jurisdiction over thesubject matter. Marshall v. Clark, 170 Conn. 199,205, 365 A.2d 1202 (1976); see Chrysler Credit Corporationv. Fairfield Chrysler-Plymouth, Inc., 180 Conn. 223, 229,

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429 A.2d 478 (1980); Krueger v. Krueger, 179 Conn. 488,493, 427 A.2d 400 (1980). Since we have heldthat the lower court had no jurisdiction of thesubject matter, a motion by the plaintiff totransfer venue could not have been granted.

There is no error.

In this opinion SPEZIALE, C.J., and ARMENTANO,J., concurred.

1. In June, 1977, General Statutes 4-183 (b)provided: "Proceedings for review shall beinstituted by filing a petition in the

court ofcommon pleas in the county wherein the aggrievedperson resides within thirty days after mailing ofthe notice of the final decision of the agency or,if a rehearing is requested, within thirty daysafter the decision thereon. Copies of the petitionshall be served upon the agency and all parties ofrecord."

2. As amended by Public Acts 1975, No. 73-620,13 and Public Acts 1976, No. 76-436, 252.

3. Public Acts 1977, No. 77-603, 1(b), effectiveJuly 1, 1977. This statute was amended againbefore July 1, 1978, to substitute "the judicialdistrict of Hartford-New Britain" for "HartfordCounty." Public Acts 1975, No. 78-280, 10,effective date July 1, 1978.

4. For an example of such a provision seeRadzanower v. Touche Ross & Co., 426 U.S. 148, 96S.Ct. 1989, 48 L.Ed.2d 540 (1976), where theUnited States Supreme Court held that the "narrowvenue provision" of the National Bank Act, whichallows national banking associations to be servedonly in the district where they are established,was not repealed by the broad venue provisions ofthe subsequently enacted Securities Exchange Actwhich provided that any action to enforce anyliability or duty under that Act may be brought inany district where the violation occurred or inthe district wherein the defendant is found ortransacts business.

5. Section 4-183 (b) is only one subsection of4-183 which is entitled "Appeal to Superior Court."We note that in a number of the other subsectionsof 4-183 the words "shall" and "may" are used,again indicating affirmative selectivity of thoseterms by the legislature. Although not crucial onthe specific issue before us, it is clearly afactor of the continuing legislativedetermination, at least in 4-183, not only to usethem according to their commonly accepted meaning,but with discrimination as to their connotations.See Mazzola v. Southern New England Telephone Co.,169 Conn. 344, 365, 363 A.2d 170 (1975).

6. General Statutes 51-347b, at the time ofthe plaintiff's appeal to the Court of CommonPleas, was codified as 52-31 and provided:"TRANSFER OF CAUSES BY MOTION, AGREEMENT OR CHIEFCOURT ADMINISTRATOR. Any cause or the trial of anyissue or issues therein may be transferred, byorder of the court on its own motion or on thegranting of a motion of any of the parties, or byagreement of the parties, from the superior courtfor one county or judicial district to thesuperior court for any other county or judicialdistrict or from the court of common pleas for onecounty or judicial district to the court of commonpleas for any other county or judicial district,upon notice by the clerk to the parties after theorder of the court, or upon the filing by suchparties of a stipulation to that effect in thecause, signed by them or their attorneys. Thechief court administrator may, on his own motion,when required for the efficient operation of the and to insure the prompt and proper administrationof justice, order like transfers. Uponthe order of the court or the chief courtadministrator and the notices to the parties or onthe filing of such stipulation, the clerk of thecourt shall transfer the files in the cause to theclerk of the court for such other county orjudicial district, and, if simply the trial of anissue or issues in such cause has been transferred, thefiles, after such issues have been disposed of,shall be returned to the clerk of the court forthe original county or judicial district, andjudgment may be entered in such court. No entryfee shall be required to be paid to the court towhich any such transfer was made." Section 51-351 was enacted in 1977, Public Acts1977, No. 77-576, 10, 65, effective July 1, 1978,and provides: "RETURN TO IMPROPER LOCATIONS. Nocause shall fail on the ground that it has beenmade returnable to an improper location." The dissent indicates that 31-351 should beapplied retroactively to a pending case. We do notagree. This statute, which was enacted as PublicActs 1977, No.

77-576, 10, did not becomeeffective until July 1, 1978, which was after theplaintiff brought his action in the Court ofCommon Pleas at Hartford. "It is a rule ofconstruction that statutes are not to be appliedretroactively to pending actions, unless thelegislature clearly expresses an intent that theyshall be so applied." New Haven v. PublicUtilities Commission, 165 Conn. 687, 726,345 A.2d 563 (1974). "The test of whether a statute is tobe applied retroactively, absent an expresslegislative intent, `is not a purely mechanicalone' and even if it is a procedural statute, whichordinarily will be applied retroactively without alegislative imperative to the contrary, `it willnot be applied retroactively if considerations ofgood sense and justice dictate that it not be soapplied. Lavieri v. Ulysses . . . [149 Conn. 396,401, 180 A.2d 632] [1962]; E. M. Loew'sEnterprises, Inc. v. International Alliance,127 Conn. 415, 418, 17 A.2d 525 [1941].' Carvette v.Marion Power Shovel Co., 157 Conn. 92, 96,249 A.2d 58 [1968]; Jones Destruction, Inc. v. Upjohn,161 Conn. 191, 196, 286 A.2d 308 [1971]." AmericanMasons' Supply Co. v. F. W. Brown Co., 174 Conn. 219,223, 384 A.2d 378 (1978). The legislature hasexpressed no such intent here and we do not feelthat it should be applied retroactively.

7. The motion to dismiss was not filed until April25, 1979.