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Administrative Law—Combination of Functions: May an Administrative Tribunal Be Both Prosecutor and Judge?—State ex rel. Beam v. Fulwiler, 76 Wn.2d 313, 456 P.2d 322 (1969)

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RECENT DEVELOPMENTS

ADMINISTRATIVE LAW—COMBINATION OF FUNCTIONS: MAY AN ADMINISTRATIVE TRIBUNAL BE BOTH PROSECUTOR AND JUDGE?—*State ex rel. Beam v. Fulwiler*, 76 Wn.2d 313, 456 P.2d 322 (1969).

Respondent Beam was Chief Examiner and Secretary to the Spokane Civil Service Commission. About two years before the instant action, the Commission requested Beam to retire. When he refused, the Commission was instrumental in reducing his pay and in demoting him by creating a position superior to his for another person. Beam successfully brought action to have his duties restored and to set aside the new position created by the Commission.[1] Subsequently, the Commission members investigated Beam's conduct, formed conclusions, promulgated charges, transmitted accusations personally signed by four of the five board members to the City Manager and recommended his discharge. The City Manager, pursuant to the recommendation, notified Beam of his discharge. Beam sought review, but since the Spokane City Charter designates the city Civil Service Commission as the sole tribunal to hear appeals from an employment discharge, he requested the Commission to disqualify itself. The Commission refused. Beam then sought superior court review of his discharge in place

1. The case here noted is one of three to arise out of the increasingly strained relationship between the Spokane Civil Service Commission and its Secretary, Mr. Beam. Beam was appointed Secretary in 1942 as the sole employee of the Commission that then had a budget of $3,200. There were then over 400 employees under civil service. By 1967 the Commission employed seven persons, had a budget of $61,000, and there were 1,750 city employees under civil service. Brief for Appellants at 2-3, State *ex rel.* Beam v. Civil Serv. Comm'n., 77 Wash. Dec. 2d 964, 468 P.2d 998 (1970). Initially the city attempted to remove some of Beam's administrative duties by creating a position superior to his. Beam successfully brought suit in superior court to set aside this action. The Commission then changed its tactics: it recommended Beam's discharge, and pursuant to this recommendation the City Manager dismissed Beam. The Commission then refused to disqualify itself from hearing Beam's appeal of his discharge. However, Beam won again in court. The Supreme Court disqualified the Commission and held that the superior court had jurisdiction to hear the matter on its merits. State *ex rel.* Beam v. Fulwiler, 76 Wn. 2d 313, 456 P.2d 322 (1969) (the principal case). The Commission then renewed its efforts to relieve Beam by appealing the superior court decision that set aside their original plan to create the position superior to Beam's; again the Commission lost. State *ex rel.* Beam v. Civil Serv. Comm'n., 77 Wash. Dec. 2d 964, 468 P.2d 998 (1970). Finally, Beam appealed his discharge to the superior court which held a hearing on the merits. The trial court dismissed with prejudice Beam's appeal of the city manager's discharge. State *ex rel.* Beam v. Civil Serv. Comm'n. No. 187,856 (Spokane County Super. Ct. Mar. 12, 1970). Beam has filed notice to appeal that decision.

of a hearing before the Civil Service Commission, alleging that, under the circumstances, he would not be accorded a fair hearing before the Commission. On certiorari asking a determination of the superior court's jurisdiction in the matter, the Washington Supreme Court held that the Civil Service Commission was disqualified from hearing Beam's appeal and that the superior court was possessed of inherent jurisdiction to hear and determine the controversy on the merits. *State ex rel. Beam v. Fulwiler*, 76 Wn. 2d 313, 456 P.2d 322 (1969).

Beam is a case of potentially broad significance. The decision can be read to stand for the following: (1) persons who have investigated and prosecuted another are disqualified from adjudicating his case, and where there is such a combination of inconsistent functions, exhaustion of administrative remedies is not required; and (2) the "rule of necessity" will not prevent the courts from deciding the case on the merits.

I. COMBINATION OF FUNCTIONS V. EXHAUSTION OF REMEDIES

Two firmly rooted legal doctrines collided in *Beam*: the ancient principle that no man should be the judge in his own case[2] and the requirement that administrative remedies be exhausted prior to judicial review.[3] The former prevailed over the latter. This section explores possible rationales for this result and examines some of its implications.

The central issue in *Beam* was whether a combination of investigating, prosecuting and adjudicating functions within the same persons gives rise to an imputation of disqualifying bias without further

2. State *ex rel.* Barnard v. Board of Educ., 19 Wash. 8, 52 P. 317 (1898). There is a tension between this principle and the goal of efficient administrative dispute settlement. To promote the latter, legislatures have combined functions of quasi-judicial administration within single agencies. To protect against the potentially prejudicial effects of such combinations, statutory schemes generally provide for internal separation of roles within agencies. *See* notes 40, 41 and accompanying text, *infra.*

3. *See* L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 424-58 (1965). The requirement for exhaustion of administrative remedies is an aspect of the judicial tendency to defer to the expertise of agency personnel. Statutory strictures serving the same policy are found in limitations on the scope of judicial review of agency decisions. *See, e.g.*, Northern Pac. Transp. Co. v. Washington Util. & Transp. Comm'n., 69 Wn. 2d 472, 418 P.2d 735 (1966).

evidence of actual bias. While it is possible that the court, after looking at the history of ill-will between Beam and the Commission, concluded that there was evidence of actual prejudgment in addition to the combination of inconsistent functions, this view cannot be inferred from the majority opinion. The court condemns the combination, without more, of prosecuting and adjudicating functions.[4]

Although the Spokane Charter authorized the Civil Service Commission to conduct investigations, the Charter clearly contemplated that employee supervision and discipline were to rest largely in the hands of each department head.[5] In the normal course of events the City Manager would discharge an employee upon the recommendation of the appropriate department head. The employee would then have the right to appeal his discharge to the Civil Service Commission for a hearing at which the contentions of the department head and of the employee would be considered in resolving the matter.[6] How-

4. After citing State *ex rel.* Barnard v. Board of Educ., 19 Wash. 8, 52 P. 319 (1898), and State *ex rel.* Caffrey v. Superior Court, 72 Wash. 444, 130 P. 747 (1913), the *Beam* court stated:

> We find no distinction, in principle, between the two cases just referred to and the instant case. Both give rise to the disqualification of a tribunal where, as here, it is made to appear that the hearing tribunal is composed of an individual or individuals who investigated, accused, prosecuted and would judge the controversy involved.

76 Wn. 2d at 318, 456 P.2d at 325.

Justice Neill, dissenting in *Beam*, however, found a distinction between the earlier cases relied on by the majority and the instant dispute. He thought the *Barnard* and *Caffrey* cases involved evidence of prejudgment in addition to the combination of inconsistent functions. *Beam*, in his view presented no such additional evidence of bias. 76 Wn. 2d at 323, 456 P.2d at 328.

5. SPOKANE, WASH., CITY CHARTER art. VI, § 55 (1960).

6. SPOKANE, WASH., CITY CHARTER art. VI, § 55 (1960) states:

> Suspension, Reduction in Rank and Discharges—Appeals. An employee may be suspended, reduced in rank or discharged only by the city commissioner in whose department the employee is employed, or the city manager, if the mayor-council-manager form of government is adopted, as follows: (a) Any employee may be suspended for a period of not more than five days for disciplinary purposes with loss of salary and without right of appeal by filing a copy of such order of suspension with the commission, provided that no employee may be given more than one such suspension in any calendar year. (b) Any employee may be suspended for a period of not more than 60 days for cause, and with loss of salary. (c) Any employee may be reduced in rank for cause. (d) Any employee may be permanently discharged from city service for cause. The person making an order of suspension, reduction in rank or permanent discharge under Subdivisions (b), (c) or (d) hereof shall forthwith file with the commission a statement of such order which shall contain the reasons therefor, and serve a copy of the order on the employee. Within ten days after filing and service of said order, the employee may file a written appeal with the commission who shall hold a hearing thereon within ten days after filing the appeal. The commission shall render its decision in writing within ten days after the hearing. The commission may sustain the order of suspension, reduction in rank

ever, the *Beam* case is anomalous; Beam's department head and immediate supervisor was the Commission itself. As a result the same Commission which personally investigated and filed the charges that resulted in Beam's dismissal was also the sole tribunal designated by the Charter to hear appeals of employee discharges.

Interpreting Beam's Charter-given appeal right,[7] the Washington Supreme Court stated: "Implicit in such provisions is that such a hearing shall be fair and impartial, and before an unbiased tribunal."[8] The court observed:[9]

> [I]t is highly unlikely, under the unusual circumstances prevailing, that the respondent or anyone in a like situation could approach or leave a hearing presided over by a tribunal so composed with any feeling that fairness and impartiality inhered in the procedure.

The foundation of the holding in *Beam*, then, was that the right to a hearing granted by the Spokane Charter is a right to a fair hearing. The court, however, leaves unclear whether constitutional due process, statutory interpretation or a common law conception of procedural propriety was the doctrinal basis of its decision.

That court's statement that the Charter provision granting a hearing requires an impartial hearing before an unbiased tribunal suggests that implied legislative intent is the basis of the decision. However, the court stated that the protections of a fair and impartial hearing and the concepts of fundamental fairness they project are inherent in the notion of "administrative due process", citing *Smith v. Skagit*

or permanent discharge or may order the employee reinstated to his employment. Any reinstatement shall carry back salary from the date of the order of suspension, reduction in rank or permanent discharge to date of re-employment. Requiring an employee to work more than his regular work week or during his vacation, except in an emergency, shall be equivalent to a suspension, and the employee shall have a right of appeal direct to the commission within ten days after termination of such occurrence. A hearing shall be held as herein provided, and if a violation of this Article or the rules is found to exist, the commission shall order proper salary adjustments, which order shall be served upon the city auditor and honored by him. No employee may be suspended twice for the same act. The decision of the commission shall be final.

7. *Beam* does not arise under the Washington Administrative Procedure Act, which applies to state agencies, boards, commissions, departments or officers. WASH. REV. CODE § 34.04.010(1) (1967). Since the Spokane Civil Service Commission is not a state body, the Act is not applicable.

8. 76 Wn. 2d at 316, 456 P.2d at 324.

9. *Id.* at 315-16, 456 P.2d at 324.

County.[10] In *Smith* the court stated: "The word *hearing* in a statute shows a manifest purpose to afford due process of law."[11] The *Smith* court did not suggest it was referring to some kind of due process outside the ambit of constitutional law, but it placed an interpretive gloss on statutes conferring a hearing right which compels that they be read in light of constitutional due process standards. Arguably, then, the *Beam* decision holds that a combination of inconsistent functions in an adjudicatory tribunal is unconstitutional. If not a constitutional holding, the decision at least shows a willingness to adopt standards which are the functional equivalents of constitutional due process through the device of implicit legislative intent.

To interpret *Beam* as holding that the combination of functions alone is determinative explains why exhaustion of administrative remedies was not required. The majority opinion in effect declares the futility of further recourse to administrative action under the facts.[12] If acting as both prosecutor and judge is sufficient to impute disqualifying bias, then there is no need for a court to have any proof of actual bias from an administrative hearing record.

Justice Neill, dissenting vigorously from the decision reached by the majority, argued that the cases relied on by the majority contained evidence of prejudgment as well as combination of functions and were therefore distinguishable from *Beam*.[13] He also disagreed with the court's holding that a combination of inconsistent functions alone is sufficient to disqualify the tribunal, advocating instead the rule adopted by the Alabama and Minnesota courts which requires exhaustion of administrative remedies in combination of functions cases but enlarges the scope of judicial review to scrutinize the record with a view toward protecting the fundamental rights of the parties.[14]

In addition Justice Neill, supported by a line of Washington cases which holds to the traditional view that government employment is not a vested property right, argued that it was inappropriate for the

10. 75 Wn. 2d 715, 453 P.2d 832 (1969).
11. *Id.* at 741, 453 P.2d at 847.
12. When the interests of justice so require, the rule of exhaustion will not be applied. *See* 2 F. Cooper, State Administrative Law 573 (1965).
13. *See* note 4, *supra*.
14. 76 Wn. 2d at 326, 456 P.2d at 330; State *ex rel.* Steele v. Board of Educ., 252 Ala. 254, 40 So. 2d 689 (1949); State *ex rel.* Ging v. Board of Educ., 213 Minn. 550, 7 N.W.2d 544 (1942).

majority to base the *Beam* decision on due process grounds rather than on common law principles.[15] Under the traditional view, government employment is denominated a privilege rather than a right, and the government may discharge an employee at will subject only to the employee's contractual or statutory rights.[16] Following this right-privilege dichotomy, Justice Neill concluded that a statutory hearing granted to determine issues regarding a mere privilege is not controlled by the dictates of due process, but that common law fairness should govern such proceedings.[17]

However, the right-privilege dichotomy should not be determinative in the *Beam* context. Beam was not contending that he had a right to a hearing on the matter of his employment, but was insisting that the hearing to which he was already entitled under the Charter be fair. Even if government employment is regarded as only a privilege, the *Beam* case falls within the qualification previously mentioned: employee dismissals are subject to statutory rights.[18] Here a statutory right to a hearing existed. Although no right may have existed independent of the statute, if such a hearing is granted, it must comport with due process.[19]

Furthermore, the right-privilege dichotomy is an analytical tool

15. Justice Neill states:

> The concepts of fairness which are so critical in actions based upon due process, then, are also very relevant when considering the common law rules providing for disqualification of administrative officials exercising quasijudicial functions in areas not protected by the due process clause.

76 Wn. 2d at 322, 456 P.2d at 327.

16. Yantsin v. Aberdeen, 54 Wn. 2d 787, 345 P.2d 178 (1959) and the cases cited therein; Reynolds v. Kirkland Police Comm'n., 62 Wn. 2d 720, 384 P.2d 819 (1963). *But cf.* Reich, *The New Property*, 73 YALE L.J. 733 (1964).

17. 76 Wn. 2d at 322, 456 P.2d at 327.

18. *See* note 16 and accompanying text, *supra*.

19. *Cf.* Griffin v. Illinois, 351 U.S. 12 (1956). This case involved the right of an indigent defendant to a free transcript when his case presented a substantial question for appeal. Although this decision is generally cited for its equal protection language, both the Court's opinion by Justice Black and the concurring opinion by Justice Frankfurter speak of due process and equal protection. For example the Court stated:

> It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. . . . But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations.

351 U.S. at 18.

See also Ohio Bell Tel. Co. v. Public Util. Comm'n., 301 U.S. 292 (1937).

which has been declining in use by the judiciary.[20] Courts have given due process protection to "privileges" in such areas as federal employment and higher education.[21] In the words of one federal court:[22]

> Private interests are to be evaluated under the due process clause of the Fourteenth Amendment, not in terms of labels or fictions, but in terms of their true significance and worth.

Although Washington apparently still adheres to the conventional right-privilege distinction,[23] *Beam* may herald a movement toward broad application of due process protections in government employment.

In any event the case stands for the proposition that persons who have investigated and pressed charges are per se disqualified from adjudicating that case. *Beam* is thus a significant departure from what has been identified by textwriters as the majority position:[24] in the absence of actual bias, the combination of inconsistent functions is not enough to disqualify a tribunal. A critical examination of combination of functions cases cited in support of the "majority" position reveals, however, that where the same individuals would participate as prosecutors and judges, state courts do, in fact, often disqualify the tribunal.

A New Jersey case frequently cited for the proposition that a combination of functions alone does not disqualify the tribunal is *Mackler v. Board of Education*.[25] There the court refused to disqualify the two members of a nine member board who signed a complaint against the business manager, but it did so on the basis that:[26]

> The making of a complaint does not disqualify a board member where its making is a formality of office and no personal interest is shown.

20. Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968). *See also* Reich, *The New Property*, 73 YALE L.J. 733 (1964).
21. *E.g.*, Green v. McElroy, 360 U.S. 474 (1959) (employment); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961) (higher education).
22. Knight v. State Bd. of Educ., 200 F. Supp. 174, 178 (M.D. Tenn. 1961).
23. *See* note 16 and accompanying text, *supra*.
24. *See, e.g.*, 1 F. COOPER, STATE ADMINISTRATIVE LAW 340 (1965); 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE 175 (1958); 1 AM. JUR. 2D *Administrative Law* § 64 (1962).
25. 16 N.J. 362, 108 A.2d 854 (1954).
26. 108 A.2d at 856-57.

In short, the combination of functions in *Mackler* was more formal than real. Another case from the same jurisdiction emphasized the importance of the limiting language in *Mackler*. In *Hoek v. Board of Education*,[27] one of five board members personally conducted an investigation, made private comments, interviewed witnesses, and brought charges. That board member was disqualified and the Board's discharge was vacated.

A similar result was reached in a California case where one member of a city commission who had investigated, accused and filed charges against the city physician was about to sit at the physician's discharge hearing.[28] The court stated:[29]

> Were [the investigating member] permitted to sit on the commission during the trial he would appear in the capacities of a complaining witness who filed the charges, a juror to weigh the evidence, and a judge to pass sentence. Thus he would be more than a judge sitting on his own case. Good ethics should not permit him to occupy those positions. We have no hesitancy in holding that under the facts before us he is not qualified to do so.

The New York, West Virginia and Idaho courts have also held that one individual may not act as the accuser and the judge in the same cause.[30]

There is inconclusive support for *Beam* in federal decisions on the issue of combination of functions where the Federal Administrative Procedure Act does not apply. These decisions fall into two specialized categories: deportation and contempt proceedings. In the area of deportation the United States Supreme Court, following a statutory enactment permitting a combination of functions, held that due process is not violated by an arrangement involving supervision of adjudicating

27. 75 N.J. Super. 192, 182 A.2d 577 (1962). Interestingly, New Jersey also adopted a statute, N.J. STAT. ANN. § 18A:6-10 (1968), that provided for a hearing before the State Commissioner of Education which:

> would eliminate the vice which inhered in the former practice . . . of the board's being at one and the same time investigator, prosecutor and judge.

182 A.2d at 582.

28. Nider v. Homan, 32 Cal. App. 2d 11, 89 P.2d 136 (1939).

29. 89 P.2d at 141.

30. Sharkey v. Thurston, 268 N.Y. 123, 196 N.E. 766 (1935); *In re* Cross v. Pearsall, 29 App. Div. 2d 533, 286 N.Y.S.2d 136 (1967); State *ex rel.* Ellis v. Kelly, 145 W. Va. 70, 112 S.E.2d 641 (1960); Abrams v. Jones, 35 Idaho 532, 207 P. 724 (1922).

officers by officials charged with investigating and prosecuting duties.[31] Other deportation cases are cited by Justice Neill in *Beam*,[32] but all of these decisions are of limited precedential value outside of the immigration field in view of the clear congressional power to accord aliens fewer rights than citizens.[33]

In summary contempt cases, the United States Supreme Court has reached apparently inconsistent results. In *In re Murchison*[34] the Court held that due process was denied when a judge serving as a "one man grand jury" charged the defendant with contempt and then presided at the trial for contempt. In *Nilva v. United States*[35] and *Sacher v. United States*[36] both dealing with similar facts, the Court rejected combination of functions arguments based on due process grounds and reached decisions which appear irreconcilable with *Murchison*.

However, as previously shown, the view that disqualification follows from a combination of inconsistent functions alone has widespread support.[37] Even in the cases cited by the dissent in *Beam* for the contrary proposition the boards' decisions were reversed.[38] Some courts

31. Marcello v. Bonds, 349 U.S. 302 (1955).
32. 76 Wn. 2d at 319-20, 456 P.2d at 326.
33. U.S. CONST. art. I, § 8, cl. 4. *See also* Takahashi v. Fish & Game Comm'n., 334 U.S. 410 (1948).
34. 349 U.S. 133 (1955).
35. 352 U.S. 385 (1957).
36. 343 U.S. 1 (1952). *See generally* Annot., 64 A.L.R.2d 600 (1959).
37. *See* notes 27-30 and accompanying text, *supra*.
38. The dissent relies primarily upon four cases to support the proposition that combination of functions alone is not enough to disqualify a tribunal: (1) In Mackler v. Board of Educ., 16 N.J. 362, 108 A.2d 854 (1954), the court found that the combination was merely pro forma and thus this case is not in point here; *see* notes 25-27 and accompanying text, *supra*; (2) however, in State *ex rel.* Steele v. Board of Educ., 252 Ala. 254, 40 So. 2d 689 (1949), the court vacated the action of the board because certain testimony was not given; (3) in State *ex rel.* Ging v. Board of Educ., 213 Minn. 550, 7 N.W.2d 544 (1942), the court reversed and remanded the board decision because the court found the board had conducted its entire proceedings upon an erroneous theory of law; and (4) in Hawkins v. Common Council, 192 Mich. 276, 158 N.W. 953 (1916), the court vacated the council's action because of certain statements made at the hearing by council members which tended to show bias. Thus, in these cases, where they are in point, the courts reversed the board and it would seem that where there is such a combination of functions the court is unlikely to uphold an agency decision that is adverse to the appellant.

SEC v. R.A. Holman & Co., 323 F.2d 284 (D.C. Cir. 1963), another case heavily relied upon by the dissenting justice, is factually distinguishable from *Beam*. In *Holman* the court held, in an opinion written by Chief Justice Burger while on the circuit bench, that except in unusual and limited circumstances a litigant may not enjoin an administrative proceeding by claiming alleged disqualification of a commission member because of a combination of inconsistent functions where the commission affirmatively asserted

have broadened the scope of review while holding that a commission is not disqualified because of a combination of functions per se.[39] In all of these state cases, the decision of a commission whose members exercised inconsistent functions did not stand.

Thus, the ultimate result under either the majority or dissenting approach in *Beam* is often the same. The majority view appears far more efficient and satisfactory to the parties, however, since it involves only one trial. Justice Neill's approach might result in an administrative hearing, an appeal to the courts, a reversal and then another administrative hearing.

The resolution of the *Beam* controversy is also consistent with the federal and Washington administrative procedure acts.[40] An objective of both acts is to prevent combination of prosecuting and investigating functions with judging activities. Both acts require internal separation within agencies by isolating hearing officers from investigating and prosecuting personnel.[41] Such internal separation presumably safeguards the interests of individuals by promoting the objective of fair hearings.

that there was no combination of functions within the commissioner in question. It is this last assertion that makes *Holman* significantly different from *Beam*. In *Beam* there was no factual dispute over whether there would be a combination of functions if the commission were allowed to continue. Under these circumstances *Beam* comes squarely within the holding of Amos Treat & Co. v. SEC, 306 F.2d 260 (D.C. Cir. 1962), where the commission did not deny the petitioner's allegations of disqualification. There the court was "satisfied that the petitioner had presented 'the exceptional case' which entitled it to relief." 323 F.2d at 286. Hence the *Beam* case comes under the exception to the *Holman* rule and it is fully consistent with the *Amos Treat* holding.

39. *See* note 14 and accompanying text, *supra*.

40. 76 Wn. 2d at 319, 456 P.2d at 326.

41. 5 U.S.C. § 554(d) (Supp. V, 1970) states in part:

> The employee who presides at the reception of evidence . . . may not—
>
> (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
>
> (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.
>
> An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

WASH. REV. CODE § 34.04.115 (1967) states:

> Except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, no hearing examiner or agency or member of an agency presiding in a contested case or preparing a decision, or proposal for decision shall consult with any person or party on any issue of fact or law in the proceeding, except that in analyzing and appraising the record for decision any agency member or hearing examiner may (1) consult

II. THE RULE OF NECESSITY

The *Beam* decision also raises a question about the continued validity of the "rule of necessity" in Washington. This rule was explained by the Washington court and followed as recently as 1957 in *Kennett v. Levine*:[42]

> It is established by the great weight of authority that where a public officer, or an administrative board, or a legislative body—such as the city council—is given exclusive jurisdiction to conduct a hearing and to determine whether an individual should or should not be removed from office, and no alternate or substitute is provided, disqualification will not be permitted to destroy the only tribunal with power in the premises.

Beam, however, relied on the earlier case of *State ex rel. Caffrey v. Superior Court*,[43] which is directly contrary to *Kennett* in this matter. In *Beam* the court stated:[44]

> [W]here, as here, there is no provision for another tribunal to hear the matter, the *Caffrey* case stands for the proposition that the superior court is possessed of inherent jurisdiction to hear and determine the controversy on the merits.

There was no mention of *Kennett* in *Beam*. While *Kennett* was not expressly overruled in *Beam* and the rule of necessity probably still survives as a principle of self-limitation when the court chooses to use it, the *Beam* rationale undermines the necessity doctrine.[45] If the requirements of a fair hearing are not satisfied when there is a combination of prosecuting and adjudicating functions within the same

with members of the agency making the decision, (2) have the aid and advice of one or more personal assistants, (3) have the assistance of other employees of the agency who have not participated in the proceeding in any manner, who are not engaged for the agency in any investigative functions in the same or any current factually related case and who are not engaged for the agency in any prosecutory functions.

42. 50 Wn. 2d 212, 219, 310 P.2d 244, 249 (1957), wherein the court declined to disqualify the Seattle City Council from holding a hearing into the affairs of a transit commissioner even though the court assumed that the council was prejudiced against the commissioner.

43. 72 Wash. 444, 130 P. 747 (1913).

44. 76 Wn. 2d at 318, 456 P.2d at 325.

45. Textwriters are also in conflict over the desirability of the rule of necessity. *Compare* 2 K. Davis, Administrative Law Treatise 169-70 (1958) *with* 1 F. Cooper, State Administrative Law 349 (1965).

persons, then it follows that such requirements would be violated in a hearing conducted under the rule of necessity.

CONCLUSION

The *Beam* decision replaces the civil service commission with the superior court in appeals concerning employees of civil service commissions that do not have internally separate investigative units. More importantly, however, the court has extended the prohibition against combination of functions to administrative units of local government not covered by the state administrative procedure act.[46] Hopefully *Beam* will contribute to raising administrative standards at the local level where the need for reform is sometimes great.[47]

46. *See* note 7, *supra*.
47. *E.g.*, Smith v. Skagit County, 75 Wn. 2d 715, 453 P.2d 832 (1969).