

UNIVERSITY OF MARYLAND
SCHOOL OF LAW

Administrative Law
(3 ½ hours)

Mr. Dash
Day Division

No. _____

INSTRUCTIONS: Sign your name in the blank above. Put the number found above on each of your blue books. Do not put your name on or in the blue books at any place. Return the questions when you turn in your blue books.

I.
(30 points)

Section 24 of the National Banking Act provides that national banks "shall have power ... to exercise all such incidental powers as shall be necessary to carry on the business of banking." Section 92 of the Act provides that "in addition to the powers now vested in such [national banks], any such [bank] located and doing business in any place which does not exceed five thousand inhabitants may act as agent for insurance companies in the sale of insurance in the community."

In 1968 the Comptroller of the Currency who administers the National Banking Act issued an "interpretive bulletin" which states that national banks in cities of any size could act as "insurance agents for the purpose of selling insurance which is incidental to bona fide banking transactions, provided that before a national bank shall engage in such insurance business, it shall secure the approval of the Comptroller, Approval will customarily be granted except where in the opinion of the Comptroller it would be contrary to the public interest for the applicant bank to engage in such incidental insurance

In 1972 the First National Bank, located in Valdosta, a city of 100,000 population in the State of Y, applied to the Comptroller for approval to sell automobile insurance incidental to bona fide automobile loans made by the bank. The bank noted in its application that it would be in the public interest for it to be able to offer to its customers, receiving an automobile loan, the necessary insurance services as part of the transaction rather than the customer being forced to find the necessary automobile insurance elsewhere. The Comptroller approved the application.

A state bank also located in Valdosta and chartered and regulated by the State of Y, petitioned the Comptroller to withdraw its approval of the application and grant it a hearing on the public interest question. The state bank noted in its petition that it had become aware of the National Bank's new powers when the National Bank advertised that it could offer automobile insurance to automobile loan customers. The Comptroller refused to grant the petition, stating that the state bank had no right to intervene in this matter, but in any case it was too late as the

application had already been approved.

The State Bank immediately brought an action against the comptroller in the United States District Court for the District of Y. The State Bank requested a trial de novo on the public interest issue alleging that the Comptroller had violated his own rule in that the application of the First National Bank was not in the public interest.

On the same day the State of Y Insurance Association, a trade association composed of the fifty firms engaged in the insurance business in State Y, also brought an action against the Comptroller in the same court. The Trade association requested an injunction and declaratory relief claiming that the only issue was an issue of law in that "permitting the First National Bank to sell insurance would be an unauthorized and illegal act under the National Bank Act."

The comptroller moved for summary judgment against both parties alleging the following:

(A) The state bank has no right to intervene in a matter concerning a regulatee and the regulator; but even if it did it should have challenged the application prior to approval; for it would be unfair to the applicant to reopen the matter at this time. However, in any case there is no right to a trial de novo for the determination of the public interest issue is a discretionary decision for the Comptroller and should be left to him subject to an arbitrary and capricious review by the court.

(B) The Trade Association has absolutely no standing to intervene in this case as no legal rights of its own are involved. However, even if they had standing the real issue they raise is the legality of the 1968 "ruling" of the Comptroller which they should have raised when it was implemented. Further, the National Bank Act granted to the Comptroller the absolute discretion to "interpret Section 24 of the act and the Comptroller's interpretations are not subject to judicial review as long as he is within the scope of his authority

How should the court rule on the Comptroller's motions for summary judgment?

II (25 points)

The Federal Government employs a group of specially trained civilian pilots to test certain rocket powered aircraft as part of a NASA space project. As part of the legislation authorizing this project Congress provides that, in addition to any compensation granted under the Federal Employees Liability Act, the beneficiary of any pilot killed in the performance of his duties with NASA will receive an extra payment from the government equal to three times the pilot's current annual salary. NASA is empowered to decide who and when this compensation is to be made, no hearings are required; and the statute specifically states that, "the decision of the agency is final and shall not be reviewed."

Joe Hotrock, a pilot with the special project has just landed the X-1, an experimental rocket aircraft, and been debriefed for that day's tests. He drives his car off the air base, used for

the test, and is on the highway paralleling the base, when another experimental rocket aircraft comes in for a landing. The pilot of the aircraft has misjudged his rate of descent while on the final approach, uses up too much of the runway, crashes into the fence surrounding the base and explodes. Flaming debris is blown on to the highway and destroys Hotrock's car, killing him instantly.

Mrs. Hotrock, as his beneficiary, files a claim for special compensation with NASA, and files a regular claim before the Federal Employees Compensation Board. Within a short period of time NASA denies the claim for special compensation on the grounds that Pilot Hotrock was not killed as a result of the performance of his duties.

The Federal Employees Compensation Board notifies Mrs. Hotrock that they have no other choice but to also deny her claim. The Board explains that under the Federal Act they can only compensate for death or injury resulting from the employee's performance of duty. Inasmuch as NASA has found that the death of Hotrock was not a result of his employment, this decision is binding on them as NASA has primary jurisdiction over the issue and under the rule of res judicata they must accept NASA's findings. Mrs. Hotrock, through her attorney, requests a hearing before the Federal Employees Compensation Board which is required by the Federal Employees Compensation Board which is required by the Federal Employees Liability Act when the Board denies a claim. However, the Board denies the request for a hearing for the same reasons they denied the claim, stating that the statutory right to a hearing does not apply in this case, as the adjudication of the issue of death resulting from employment has already been made by NASA and is not reviewable.

Mrs. Hotrock, through her attorney, files a complaint in a Federal District Court seeking declaratory relief. What arguments could be made in Mrs. Hotrock's behalf to gain court relief?

III (25 points)

The University of State X, School of Law, has instituted an honor system administered by the Student Bar Association. Under this system the law school will automatically expel any student which the Student Bar Association recommends for expulsion for violation of the honor system. The S.B.A. has implemented rules and regulations which, in part, establish an honor committee composed of five students who will investigate any charges involving alleged honor violations. The recommendations of the committee are forwarded to the administrator of the law school as the recommendation of the Student Bar Association.

Joe Egar, a senior at the law school, is notified by the Honor Committee that upon investigation of charges brought against him they have found that he had in his possession a copy of the examination for the "Legal Erotica" course the day before the examination was given. The Committee permits Egar to appear before it, and offer any evidence he wishes in his behalf. Egar denies the charges and requests information as to the basis of the charge. He is informed that he was seen copying the exams on the library duplicating machine the day before the exam. The Committee further informs Egar that they have other information, but in order to

preserve the honor system they must maintain the confidentiality of the sources who have provided the Committee with the evidence establishing his guilt. Egar again denies the charge, but has no evidence to offer in his behalf.

The Honor Committee forwards a recommendation for expulsion of Egar to the school administrator. Shortly thereafter Egar is expelled from the law school.

Egar files a complaint in the Federal District Court for the District of X alleging that he had been denied due process of law by the State of X. The state files a motion to dismiss the complaint alleging that no state action is involved, as the honor system is operated by the students and if there is any valid complaint by the petitioner it should be against the Student Bar Association. The state further alleges that in any case there are no Federal rights involved as no student has a right to go to the state law school; nor is there any due process requirement for a state when it wishes to expel a student from a state university. The state argues, in the alternative, that even if due process was required for expulsion that Egar had been afforded due process in this case. The state notes that Egar had been notified of the charges and had been given an opportunity to be heard which more than satisfies the due process requirement.

How should the District Court rule?

IV
(20 points)

Briefly explain or answer the following:

- (6 points) A - Ripe for Review
- (6 points) B - Must he who decides hear?
- (8 points) C - Some writers have recommended that Federal agencies should have the power to enforce their own subpoenas. What do they mean and why do you agree or disagree?