

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000218-MR

TRANSPORTATION CABINET,  
DIVISION OF DRIVERS LICENSING

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE GARLAND HOWARD, JUDGE  
ACTION NO. 98-CI-01000

THOMAS A. COOMES, JR.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, EMBERTON AND KNOPF, JUDGES.

EMBERTON, JUDGE: Thomas A. Coomes, Jr., was operating a motor vehicle when it collided with another vehicle. Three passengers in Coomes' vehicle and four people in the other vehicle were injured as a result of the collision. Coomes was indicted on seven counts of assault in the first degree. He pled guilty to three counts of wanton endangerment in the first degree; the remaining counts were dismissed. The present action concerns the suspension by the Transportation Cabinet of his driver's license pursuant to Kentucky Revised Statutes (KRS) 186.560(5).

Based on the guilty plea, on February 19, 1997, the Transportation Cabinet suspended Coomes' driver's license for: Count Two - 6 months; Count Three - 1 year; and, Count One - 2 years; for a total suspension of two years. Contemporaneous with the suspension, the Cabinet reported Coomes to the Daviess County Attorney as a habitual violator under KRS 186.641.

Pursuant to KRS Chapter 13B, Coomes appealed the Cabinet's decision to the Division of Administrative Hearings, and on May 20, 1998, the hearing officer filed "Findings of Fact, Conclusions of Law and Recommended Order" recommending that the Cabinet: (1) rescind its decision to impose a two-year suspension; (2) recall the habitual violator set-up; and (3) impose a six-month suspension of Coomes' driver's license effective February 19, 1997. The hearing officer noticed each party of the right to file exceptions pursuant to KRS 13B.110(4) and to appeal the Final Order of the Cabinet pursuant to KRS 13B.140(1).

Within fifteen days the Cabinet filed its exceptions to the hearing officer's Findings of Fact, Conclusions of Law and Recommended Order. However, because of what can only be assumed to be an error, the Cabinet entered a Final Order on July 21, 1998, adopting the hearing officer's recommended order and served the parties by notice of filing on July 31, 1998. Having realized its error, the Cabinet issued an Amended Final Order on August 7, 1998, suspending Coomes' license for a period of two years. Coomes appealed to the circuit court seeking enforcement of the Cabinet's initial Final Order. The trial court,

consistent with the hearing officer's recommendations and the first Final Order, ordered the Cabinet to rescind its two-year suspension; recall the habitual violator set-up; and impose a six-month suspension of Coomes' license effective February 19, 1997.

The substance of the Cabinet's appeal is its contention that under KRS 186.560(5) the two-year suspension is mandatory because Coomes had three separate convictions regardless of the fact that the convictions arose from one single incident. We do not reach the merits of the Cabinet's argument because we find that the Cabinet had no jurisdiction to enter an Amended Final Order seventeen days after it entered the Final Order on July 21, 1998.

The Cabinet erroneously assumes that its jurisdiction over the case continued until the time for appeal of its decision, thirty days from its mailing, had expired. In doing so, it relies heavily on the following language in Union Light, Heat & Power Co. v. Public Service Com'n:<sup>1</sup>

. . . we know of no rule of law that denies to a court the right to revoke an order and substitute in lieu thereof a new and different one, provided that court has not lost jurisdiction over the case involved. An administrative agency unquestionably has the authority, just as has a court, to reconsider and change its orders during the time it retains control over any question under submission to it.

We have no quarrel with the basic proposition that a court or administrative agency can revoke an order any time prior to the

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<sup>1</sup> Ky., 271 S.W.2d 361 (1954).

time it loses jurisdiction. In the case of our trial courts, it is well settled that jurisdiction is lost ten days after the day of entry of a final order, unless an authorized motion is made or court action is taken within that time.<sup>2</sup>

The authority of an administrative agency, however, is derivative of its enabling statute. Recognizing that it is often difficult to determine when an agency's order is "final," the court in Phelps v. Sallee,<sup>3</sup> concluded that:

The confusing factor that intertwines the power of the court with that of an administrative agency is the fact that courts lose jurisdiction over cases after the lapse of certain periods of time or the occurrence of certain events, most of which are covered either by statute or by rules of the court. Such is not true of many administrative agencies, and it is almost impossible to ascertain with any degree of certainty the time when an administrative order becomes so final that the agency involved no longer has jurisdiction over the question involved.<sup>4</sup>

In Western Kraft Paper Group v. Department of Natural Resources Environmental Protection,<sup>5</sup> the agency's amendment of a prior order was permitted, but the court specifically noted that the order was not final and that KRS 224.081(2) authorizes the Department of Natural Resources Environmental Protection to reverse its own decisions. A similar result was reached in Mike

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<sup>2</sup> Ohio River Pipeline Corp. v. Landrum, Ky. App., 580 S.W.2d 713 (1979).

<sup>3</sup> Ky., 529 S.W.2d 361 (1975).

<sup>4</sup> Id. at 365.

<sup>5</sup> Ky. App., 632 S.W.2d 454 (1981).

Little Gas Co. v. Public Service Commission,<sup>6</sup> where the court emphasized that the Commission can correct clerical errors in a prior order and retains authority to modify its order until suspended or vacated by a court of competent jurisdiction.<sup>7</sup>

KRS 186.570 simply provides for a hearing, a cabinet decision and an appeal, pursuant to KRS Chapter 13B. Following a final order of the Cabinet, there is no statute permitting it to review, amend, or reconsider its order. Upon mailing or delivery of its Final Order, the jurisdiction of the Cabinet was lost, and consequently, it had no authority to reconsider, alter, or amend its July 21, 1998, order.

The judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
APPELLANT:

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BRIEF FOR APPELLEE:

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<sup>6</sup> Ky. App., 574 S.W.2d 926 (1978).

<sup>7</sup> KRS 278.390.