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ADMINISTRATIVE LAW

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It is unlikely that the legislative and judicial development of a particular subject will cover the principal subdivisions thereof during any given calendar year. This is especially true of Administrative Law. This subject has been truly described as the 20th century's most distinctive contribution to the development of American law. Until very recently the subject was not recognized as sufficiently important to deserve separate treatment in digest and treatise. Even today the experienced practitioner or scholar will find important contributions to the judicial development of the subject under digest labels of a different name, especially under the classification of Constitutional Law.

Administrative Law because of its very newness is also rather formless, unsystematic and vague in its subdivisions. For example, many scholars will emphasize the elements of judicial control over administrative action while a few will place emphasis upon the administrative process itself. Accordingly, any treatment of the subject, even the legislative and judicial developments in the field for only one year, necessitates some effort at classification, both to obtain orderliness in treatment and perspective within the entire range of the subject.

Some writers who have attempted similar studies in other states have used broad subdivisions of the entire range of the subject as a framework upon which to build their discussions of the specific developments within the period of time surveyed. It seems wise to follow that precedent in this case both for comparative reasons and to furnish a pattern for future discussions of this type.

The following subdivisional analysis will cover the important phases of the field of Administrative Law:

1. The attitude of legislature and court toward administrative finality.
2. Delegation of initial power to administrative agencies.
3. Notice and hearing.
4. Pleading.
5. Investigative powers, including the subpoena power.
6. Hearing procedures.

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7. Evidence.
8. Decision process, including rules as to responsibility for decisions and the necessity of findings to support such decisions.
9. Rule-making, both as to powers, including legislative reservation of the power of disapproval, and the necessity for publication.
10. Judicial review of administrative action.

ADMINISTRATIVE FINALITY

Legislation enacted and court decisions rendered during the period of the survey indicate a strong desire on the part of both departments of government to maintain firm control over administrative action.

The statute creating the State Board of Funeral Service has a specific section authorizing an appeal from a license revocation order by the board to a jury in superior court.[1] Under the Georgia Code[2] this appeal means a de novo proceeding in superior court. Also the statute outlining the procedure for the revocation, suspension or cancellation of a license of a registered or certified public accountant permits a licensee who feels aggrieved by the board's decision to have a de novo trial in the superior court of his county at which all parties to the record shall be permitted to introduce any admissible evidence.[3]

Some of the most important administrative agencies in the State of Georgia are not expressly subject to judicial review by statute, and it therefore becomes a question of the attitude of the Georgia courts toward administrative finality as to whether a judicial examination of administrative action in such situations will be undertaken. The Supreme Court of Georgia spoke very emphatically concerning its attitude on this important matter in the case of *Conley v. Brophy*[4] relative to a contest to determine the proper directors of a local school board. The Georgia Code[5] constitutes the County Board of Education a tribunal for hearing and determining any matter of local controversy in reference to the construction and administration of the school laws. The Code further provides that the State Board of Education has appellate jurisdiction in all school matters which may be appealed from any county or city board of education and its decision shall be final and conclusive. The Supreme Court held that this statutory method of review was not intended to take away from the courts the power to inquire into the right to hold public office. It therefore sustained the jurisdiction of the superior court to entertain a *quo warranto* proceeding.

The court's opinion contains the following significant paragraph which is indicative of its attitude toward the legislative exclusion of judicial review:

> "We are not unmindful of the modern tendency to clothe boards and bureaus composed of men not trained in the law with judicial functions. This tendency we consider dangerous, and for this reason, the statutes will be strictly con-

1. Ga. Laws 1950, p. 238.
2. GA. CODE § 6-501 (1933).
3. Ga. Laws 1950, p. 163.
4. 207 Ga. 30, 60 S.E.2d 122 (1950). (It should be observed that this case, also cited in notes 45 and 52 *infra*, was decided after the survey period. The same is true of *Liberty Mutual Insurance v. Meeks*, notes 26 and 27 *infra*. Editor's note.)
5. GA. CODE §§ 32-414, 32-910 (1933).

> strued. We do not believe that the above cited provision of the school law is intended to, or has the effect of, taking from the courts of this state the power to inquire into the right to hold public office and to confer this important power upon the school board, composed of men not required to be trained lawyers. We therefore hold that the superior court did have the right and duty to try and determine the quo warranto proceeding in the instant case."

The Supreme Court's attitude toward administrative finality is again displayed in a controversy relative to the powers of the Georgia Public Service Commission. The Atlanta Gas Light Company filed a bill in equity to enjoin the enforcement of an order of the commission, challenging the power of the commission to make the order on numerous grounds. There is, under the Georgia statutes, no specific method for reviewing the orders of the Public Service Commission. The court held that the orders were nevertheless subject to judicial review. Inasmuch as the action of the commission in this particular case was quasi-legislative in character, the traditional writ of *certiorari* was not available, and the court declared that the aggrieved party need not incur the possibility of criminal and civil penalties prescribed for a violation of the commission's orders before questioning the validity of such orders. The bill in equity was held proper.[6]

The court's opinion stated in part:

> "Unless the State provides access for review by a judicial tribunal, regulatory orders of a public service commission fixing rates would be unconstitutional. We hold that the ground of demurrer that plaintiff had an adequate remedy at law, either by the writ of certiorari, or by asserting the invalidity of the orders upon any future action to enforce the penalties prescribed by law for a violation of the commission's order, was properly overruled."

Delegation of Initial Power

It is the common practice for the Georgia legislature to expressly delegate to an administrative official the power to issue rules and regulations to effectuate legislation already enacted. A good example of this type of delegation is afforded by the 1950 act establishing milk standards in Georgia.[7] Section 1 of this law prohibits the sale of fluid milk, cream, buttermilk and milk beverages for the purpose of human consumption except that it be Grade "A" in accordance with specifications in the regulations promulgated by the Commissioner of Agriculture. Section 2 then specifically authorizes the Commissioner of Agriculture to promulgate rules and regulations prescribing the sanitary standards requirements of all milk sold or offered for sale in Georgia. Likewise, the 1950 act, creating a Board of Naturopathic Examiners,[8] authorizes the board to formulate rules and regulations for the purpose of carrying out and enforcing the provisions of this act. Other delegations of rule-making power by the 1950 session of the General Assembly were to the State Board of Funeral Serv-

6. Georgia Public Service Commission v. Atlanta Gas Light Co., 205 Ga. 863, 55 S.E.2d 618 (1949).
7. Ga. Laws 1950, p. 167. *See also*: Ga. Laws 1950, p. 254, *amending* GA. CODE §§ 84-15 *et seq.* (1933), *and adding* § 84-1509 which authorizes the Board of Veterinary Examiners to adopt and promulgate such reasonable rules and regulations as may be necessary in the enforcement of the specific chapter.
8. Ga. Laws 1950, p. 168.

ice[9] and to the Public Service Commission[10] relative to the issuance of certificates of public convenience and necessity to telephone systems.

It is quite clear that an administrative officer has no quasi-legislative power to create criminal penalties for the violation of his rules and regulations. In *Glustrom v. State*[11] the Supreme Court reviewed a criminal conviction which grew out of the violation of a rule of the Revenue Commissioner's regulations controlling alcoholic beverages and liquors. The accused demurred to the accusation on the ground that there was no valid law making it a misdemeanor to violate Rule 602 of the commissioner's regulations. It was true that the General Assembly had made certain violations of the commissioner's rules misdemeanors when they were in "accord" with what had been established by the legislature. The court agreed with the accused that the crime charged went beyond anything set forth in the statute and that there was therefore no crime charged.

The court's opinion contains the following statement:

> "The declaration, that a violation of rules and regulations in accord with this Act shall be a misdemeanor, limited the power to promulgate rules, the violation of which would be a misdemeanor, to those in harmony with what the Assembly had already declared to be a crime.
>
> "Unrestrained and unrestricted power by the State Revenue Commissioner to declare a violation of his administrative and policing regulations to be a misdemeanor, or such declaration by the General Assembly without limiting the power to those things declared to be a misdemeanor by the Assembly, would offend the Constitution."

However, in *Atkins v. Manning*,[12] where the commissioner's regulation was considered to be within the scope of the legislative enactment and to be an effective means of enforcing and administering the law, the court held that it had the force and effect of law, and that a violation thereof was a misdemeanor under the statute. The regulation in question contained a provision that any violation of its terms would be a misdemeanor. The court held that this invalid portion of the regulation did not affect the validity of the substantive portion which the accused had violated. A quotation from the opinion indicates its attitude toward administrative legislation:

> "While the Revenue Commission would be without authority to make any act a crime, yet here, the statute makes a violation of the rules a misdemeanor, and the rule in question merely repeats that part of the statute. This will not invalidate the other rule here assailed.
>
> "In view of the provisions of the law and its expressed purpose to control all traffic or trade in liquor therein defined, the rules and regulations of the Commissioner come clearly within the permissible legislative authorization."

A possible result of the controversies recently concluded with reference to the Revenue Commissioner's quasi-legislative power to create criminal penalties is a 1950 Georgia law[13] which makes it a misdemeanor to violate or fail to obey or comply with any rule or regulation of the State Board of Health issued pursuant to authority vested in the State Board of Health by law.[14]

9. Ga. Laws 1950, p. 238.
10. Ga. laws 1950, p. 311.
11. 206 Ga. 734, 57 S.E.2d 534 (1950).
12. 206 Ga. 219, 56 S.E.2d 260 (1949).
13. Ga. Laws 1950, p. 190.
14. The scope of the statute is limited to the following specific Code Sections: GA. CODE §§ 88-107, 88-112, 88-117 (1933).

A Supreme Court decision indicates that quasi-ligislative authority must be very strictly complied with. The State Game and Fish Commission is vested with rule-making authority,[15] and a violation of its valid rules is by law declared to be a misdemeanor. In *Todd v. State*[16] Todd was charged with a misdemeanor in that he fished in certain salt waters of the state with a power-drawn net in violation of the rule of the commission. One of the requirements which must be observed in the promulgation of such rules is that the proposed rule be posted at the courthouse door and filed in the office of the ordinary in the counties to be affected thirty days before the effective late of the rule. This requirement had not been observed in Todd's case, and the regulation was held ineffective. The court very definitely adopts a rule of strict compliance with all requirements of the enabling statutes before administrative regulations may have the effect of law.

If, however, the State Game and Fish Commission acts within its strict authority, the Court of Appeals has held that its regulations will be enforced even though they do not have state-wide application.[17] The commission is vested with the power to select the counties wherein it is necessary to prevent the use of power-drawn nets, and in matters of administrative policy in the exercise of a quasi-legislative function, the discretion and judgment of the commission will be respected.

Notice and Hearing

Georgia, like so many other states, has no general statute dealing with the fundamentals of administrative procedure.[18] The requirements of administrative procedure must be determined on an agency-by-agency basis in Georgia, or from the court decisions relative to administrative practice in general or with reference to a specific agency. Several of the more important agency statutes do make some attempt at establishing a framework for procedure before the administrative body governed by the law in question. Also, several Georgia agencies have developed rules of practice and procedure governing matters coming before them.

During the period studied, only one case was decided on the matter of hearing. In *Hartford Accident and Indemnity Co. v. Garland* [19] the Court of Appeals decided that the granting of a rehearing in the case of a matter before the State Board of Workmen's Compensation is within the discretion of the agency. Therefore, on appeal to the superior court that court, if the award is otherwise sustainable, cannot disturb an award of the board because of its decision on the question as to whether the case should be reopened to receive allegedly newly discovered evidence. The court ac-

15. Ga. Code § 45-146 (1933).
16. 205 Ga. 363, 53 S.E.2d 906 (1949).
17. Briggs v. State, 80 Ga. App. 664, 56 S.E.2d 802 (1949).
18. There is no general statute similar to the one enacted by Congress for applicability to most Federal Administrative Agencies and known as the Administrative Procedure Act of 1946, 60 U. S. Stat. 237, 5 U.S.C.A. §§ 1001-1011 (Supp. 1949).
A few states have attempted some general measures of procedural control, but none have gone so far as the Model State Administrative Procedure Act recommended by the Commissioners on Uniform State Laws and printed in the Handbook of the National Conference on Uniform State Laws for 1944. See also Stason, *The Model State Administrative Procedure Act*, 33 Iowa L. Rev. 196 (1948).
19. 81 Ga. App. 667, 59 S.E.2d 560 (1950).

corded the board the same respect on this matter of discretion as is generally accorded to judicial and quasi-judicial tribunals in the exercise of a judicial discretion.

PLEADING, INVESTIGATIVE POWERS AND HEARING PROCEDURES

There were no court decisions during the period under review regarding matters of *Pleading, Investigative Powers and Hearing Procedures* before Georgia administrative agencies. Several 1950 statutes deal with the matter of hearings before specific agencies. The laws establishing the State Board of Funeral Service[20] and the Board of Naturopathic Examiners[21] make provision in some detail for hearings in the matter of revocation and reinstatement of licenses. Also, the act relating to the revocation of licenses of registered and certified public accountants sets up details of procedure in a suspension or other proceeding affecting the continuance of the licenses. It requires the board to give the licensee written notice of the charges brought against him to be mailed 30 days before the date of the hearing.[22] The licensee is entitled to be represented by counsel. After the hearing the act requires the board to make a finding on the "basis of evidence."

The act reconstituting the Milk Control Board[23] is designed to secure a more representative administrative body for the decision of matters coming before it.

EVIDENCE

Most statutes governing evidence before administrative agencies do not specify the quality of the evidence to be received by the agencies in question. For example the Workmen's Compensation Act refers to "competent evidence,"[24] and the accountant's act[25] just mentioned uses the phrase, "basis of evidence." It is impossible to make any generalization regarding the quality of evidence which must form the core of any decision by an administrative tribunal in Georgia. This is a problem which must be dealt with on an agency-to-agency basis.

Most of the judicial decisions on evidence during the periol covered deal with proceedings before the State Board of Workmen's Compensation. In *Liberty Mutual Insurance Co. v. Meeks*[26] the Court of Appeals states that the agency in its quasi-judicial function sits in the capacity of a court, sifting out inadmissible evidence and considering only that which is admissible under the rules of evidence, whether actually ruled out or not. It pointed out that hearsay evidence was without probative value, but sustained the action of the board because there was "sufficient competent evidence." The court also pointed out that it was incumbent on the parties in a hearing before the board or a single member to object to incompetent

20. Ga. Laws 1950, p. 238.
21. Ga. Laws 1950, p. 168.
22. Ga. Laws 1950, p. 163.
23. Ga. Laws 1950, p. 136.
24. GA. CODE § 114-710(4) (1933).
25. Ga. Laws 1950, p. 163.
26. 81 Ga. App. 800, 60 S.E.2d 258 (1950).

evidence if its consideration is to be avoided by the agency as it sits in the capacity of a jury. Most of the other decisions are not so helpful on the quality of the evidence upon which the board must act. Several[27] simply affirm the award on the basis of "sufficient competent evidence," while one decision[28] affirms on the basis that the findings of fact are "supported by some evidence." Another decision[29] discusses the requirement that direct evidence be used instead of circumstantial evidence where available, but actually based its decision on the fact that there was sufficient direct evidence to support the findings of fact and the award of the board.

In *Stowers v. City of Atlanta*[30] the Court of Appeals reviews the findings of the police committee of the City of Atlanta in the matter of a dismissal from the police force. The court found that there was "sufficient competent evidence" to authorize the judgment of the committee. Does this mean the same quality of evidence as that required by the court in *Liberty Mutual Insurance Co. v. Meeks* discussed above?

There is one decision regarding burden of proof before the State Board of Workmen's Compensation.[31] The Court of Appeals stated that the burden of proof in cases arising under the Workmen's Compensation Act is upon the claimant to establish the applicability of act to injury. But it also indicated that the decision of the board that this burden has been met is not subject to judicial re-examination where the evidence is in conflict.

Decision Process

There are no court decisions during the reporting period which deal with the *details of the decision process* nor with the *matter of the necessity of findings* in support of the orders issued. However, two of the 1950 Acts[32] impliedly require the boards in question to make findings on the basis of evidence submitted before issuing orders of revocation or reinstatement.

Rule-Making

One decision[33] during the period deals with the matter of rule-making. It involves the rules and regulations of the State Game and Fish Commission. A prohibition against fishing with a power-drawn net in certain salt waters of Georgia was challenged because the rule of the commission was not posted at the courthouse door of the county in question in accordance with the requirement of the statute authorizing rule-making. The Supreme

27. Bussey v. Globe Indemnity Co., 81 Ga. App. 401, 59 S.E.2d 34 (1950); Liberty Mutual Insurance Co. v. Meeks, 81 Ga. App. 800, 60 S.E.2d 258 (1950); Kell v. Bridges, 80 Ga. App. 53, 55 S.E.2d 309 (1949).
28. London Guarantee & Accident Co. v. Herndon, 81 Ga. App. 178, 58 S.E.2d 510 (1950).
29. Aetna Casualty & Surety Co. v. Daniel, 80 Ga. App. 383, 55 S.E.2d 854 (1949); *See also* Whitehill Laundry v. Daniel, 80 Ga. App. 396, 55 S.E.2d 861 (1949).
30. 79 Ga. App. 568, 54 S.E.2d 540 (1949).
31. Maddox v. Buice Transfer & Storage Co., 81 Ga. App. 503, 59 S.E.2d 329 (1950).
32. Ga. Laws 1950, p. 238 at 251 (§ 21). *See also*: Ga. Laws 1950, pp. 163 and 164, relative to the action of the State Board of Accountancy where the following language appears: "If the Board shall find that the charges against such applicant have been sustained it shall enter an order revoking or suspending such certificate or registration card as herein provided."
33. Todd v. State, 205 Ga. 363, 53 S.E.2d 906 (1949).

Court held the regulation invalid because of a failure to publish, holding that this posting requirement was a condition precedent to the regulation becoming effective. The opinion written in support of this full bench decision sets forth the attitude of the court toward administrative rule-making very well:

> "We do not now pass upon the question of whether or not such authority can legally, under our Constitution, be delegated by the General Assembly to the Game and Fish Commission. If such authority can be leglly delegated, certainly it should be strictly construed, and the Commission should be required to comply with all requirements."

Judicial Review of Administrative Action

In Georgia, judicial review of agency action depends upon the individual agency statutes, whenever they are explicit on the subject, and upon judicial decisions establishing standards for review in the absence of specific legislation. There is no general statute in Georgia providing for judicial review of administrative rules and decisions.

Judicial review may be appropriately discussed both on the basis of scope of review and manner of review.

If a statute is explicit on both phases, the courts will follow the statutory methods if they are considered adequate.

Two of the 1950 Scope of Review acts[34] expressly provide for judicial review. In both instances the review is by appeal to the superior court. This is a full and complete review, a trial de novo to a jury. On the other hand, the Milk Standards Act of 1950 makes no provision for any form of judicial review.

Most of the decisions on scope of review during the survey period deal with the decision of the State Board of Workmen's Compensation. The Code[35] is explicit on the grounds for judicial review of this agency and imposes rigid limitations. The scope of review granted my be described as limited in contrast with the two statutes previously discussed under this heading. The grounds of appeal are five in number: three are definitely matters of law, a fourth is fraud in the procurement of an award, and the last one is "not sufficient evidence" in the record to warrant the order. The quality of this evidence has previously been discussed herein.

These decisions reviewing the awards of the board are based on three of the five categories. Three decisions[36] reversed the superior court in its affirmance of an award because the facts found did not support the order. Two other decisions[37] are based on the rule that the award is contrary to law. The remaining decisions relate to the power of the courts to review the finding of facts upon which the board's order or award is based. The sufficiency of the evidence has already been discussed.

In Georgia the courts adhere to the literal language of the statute and

34. Ga. Laws 1950, p. 238 (§ 22); Ga. Laws 1950, p. 163.
35. Ga. Code § 114-710 (1933).
36. Liberty Mutual Insurance Co. v. Fricks, 81 Ga. App. 727, 59 S.E.2d 671 (1950); Hall v. Kendall, 81 Ga. App. 592, 59 S.E.2d 421 (1950); Studdard v. Phoenix Indemnity Co., 79 Ga. App. 467, 54 S.E.2d 280 (1949).
37. Liberty Mutual Insurance Co. v. Haygood, 81 Ga. App. 726, 59 S.E.2d 731 (1950); Lumbermen's Mutual Casualty Co. v. Coward, 81 Ga. App. 423, 59 S.E.2d 15 (1950).

deny[38] that there is any authority in the court to set aside an award which is supported by competent evidence. In *Kell v. Bridges*[39] the Court of Appeals expresses this principle very well:

Or as the Court of Appeals said in the *Bussey v. Globe Indemnity Co.*[40] case:

> "Findings of fact made by a Director of the State Board of Workmen's Compensation or by the full Board upon an appeal, when supported by any competent evidence are, in the absence of fraud, conclusive on the courts and such findings will not be set aside in the absence of errors of law."
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> "If the Board's award was authorized by the evidence and legitimate inference from the facts proved, the superior court was without authority to set it aside. If the evidence authorized the award, it cannot be set aside even if the Board considered illegal evidence or assigned erroneous reasons for the award provided it was not based on an erroneous legal theory."

Three other cases deal with the scope of appeal from three different administrative agencies. *Abercrombie v. Ford Motor Co.*[41] considers the scope of appeal from the decisions of the Commissioner of Labor under the unemployment compensation provisions of the code. This decision respected the literal terms of the statute which limited the appeal to the superior court to questions of law where no fraud was involved, but held that the application for review by the superior court was a matter of right and not subject to dismissal.

Several city charters in Georgia provide that a tax assessment may be appealed from the taxing authorities of the city to the superior court, with disposition in that court as in other appeal cases. In *City of Griffin v. Southeastern Textile Company*[42] the Court of Appeals held that Code Section 6-501 controlled the scope of review in such cases, and that the appeal is in fact a de novo investigation which brings up the whole record and permits the trial of any issue therein which may have been permitted before the tribunal originally hearing the case. The decision is therefore quite significant in indicating the scope of appeal from assessment determinations under similar charter provisions in other cities.

One decision reviewing a superior court certiorari to the Board of Zoning Appeals of the City of Atlanta[43] indicates the extremely limited scope of review in some cases where judicial review is non-statutory. Under the charter of the City of Atlanta, the board had descretion in determining whether property should be used for church purposes. The Court of Appeals affirmed the judgment of the superior court dismissing the writ of certiorari, stating that the courts will not interfere with the exercise of a discretion of this type unless it is manifestly abused.

38. Fireman Fund Insurance Co. v. Buchanan, 79 Ga. App. 439, 54 S.E.2d 156 (1949); Bussey v. Globe Indemnity Co., 81 Ga. App. 401, 59 S.E.2d 34 (1950); Pacific Employers Insurance Co. v. Donaldson, 81 Ga. App. 629, 59 S.E.2d 529 (1950); Chevrolet-Atlanta Division, General Motors Corp. v. Nash, 81 Ga. App. 673, 59 S.E.2d 681 (1950); Aetna Casualty & Surety Co. v. Daniel, 80 Ga. App. 383, 55 S.E.2d 854 (1949).
39. 80 Ga. App. 53, 55 S.E.2d 309 (1949).
40. 81 Ga. App. 401, 59 S.E.2d 34 (1950).
41. 81 Ga. App. 690, 59 S.E.2d 664 (1950).
42. 79 Ga. App. 420, 53 S.E.2d 921 (1949).
43. Galfas v. Ailors, 81 Ga. App. 13, 57 S.E.2d 834 (1950).

METHOD OF REVIEW

Judicial review of administrative action is either statutory or judicial in method. It is the modern trend to provide for adequate statutory methods of review. Two of the 1950 acts[44] make provision for appeal from board action to the superior court. The decisions cited in footnotes 32 through 37 are based on appeals taken under some form of statutory judicial review.

However, the silence of the statute does not mean that there is no adequate judicial review. As the Supreme Court stated in *Conley v. Brophy*,[45] the courts are jealous of the right to inquire into the legality of administrative action. In *Georgia Public Service Commission v. Atlanta Gas Light Co.*[46] the same court intimates that there must be opportunity for review of the orders of the Public Service Commission by a judicial tribunal.

Since most quasi-legislative administrative action carries the misdemeanor penalty for its violation, administrative action may be appropriately challenged in a criminal prosecution[47] against the violator. This, however, is not an adequate remedy, and the Supreme Court,[48] during the period under review, held that a bill in equity is an appropriate remedy to challenge the validity of administrative legislation or rule-making. The court pointed out that the writ of ceritorari is unavailable to review such administratve action because the agency is acting quasi-legislatively and not judicially in making rules and regulations. Thus, the orders of the Public Service Commission are reviewable as to validity by a bill in equity.

Where the action of an administrative agency is quasi-judicial in character, the common law courts have long exercised supervisory control over administrative officials through the great common law writs such as certiorari, quo warranto, prohibition and habeas corpus.

The court decisions during the survey period afford examples of two

44. Ga. Laws 1950, p. 238; Ga. Laws 1950, p. 163.
45. 207 Ga. 30, 60 S.E.2d 122 (1950).
46. 205 Ga. 863, 55 S.E.2d 618 (1949).
47. Atkins v. Manning, 206 Ga. 219, 56 S.E.2d 260 (1949); Todd v. State, 206 Ga. 363, 53 S.E.2d 906 (1949); Glustrom v. State, 206 Ga. 734, 58 S.E.2d 534 (1950); Bridges v. State, 80 Ga. App. 664, 56 S.E.2d 802 (1949).
Much state administrative action is enforceable through criminal prosecutions as a result of statutes which declare that a violation of the administrative regulation is a misdemeanor. A full defense to the validity of the regulation can, of course, be raised in such a proceeding. Also, some statutes subject the violator of administrative regulations to severe civil penalties. Here again the validity of the regulation may be challenged as a defense in a suit for the penalty, but neither remedy is completely adequate as the Supreme Court pointed out in the *Atlanta Gas Light Co.* case, *infra* note 48.
48. Georgia Public Service Commission v. Atlanta Gas Light Co., 205 Ga. 863, 55 S.E.2d 618 (1949). Another interesting point was developed in this case as to whether it was a ground for demurrer that such an injunction suit was a suit against the state. Relying upon previous authority in this state, the court pointed out that when an act is attacked as being unconstitutional and it appears that the plaintiff is threatened with irreparable injury to his property by reason of the acts of an officer proceeding under the allegedly invalid act, the suit against such officer cannot be considered as one against the state. The courts will in such cases take jurisdiction of the action as a suit against the officer acting as an individual without constitutional authority. So in the instant case the demurrer was overruled because the state was not a party and no judgment was asked which would in any way affect the state or its money.

of these methods of review. Three cases involve the use of the writ of certiorari. Two of these[49] involved decisions of local zoning officials and one[50] arose from the quasi-judicial action of a police committee. In one of the zoning decisions, *Johnson v. The Evangelical Lutheran Church of the Messiah*,[51] the Court of Appeals succinctly sets forth the rigid limitations of this method of review:

> "Under the broad discretion vested . . . the judge of the superior court had no power to disturb the action of the commissioners in rezoning unless it should be made to appear that the proceedings were contrary to law, or that there had been no exercise of the discretion vested in the commissioners by the law, or a manifest abuse of that discretion.
>
> "There was no error of law, and evidence at the hearing would support the action in rezoning, and so the action taken by the commissioners was within the discretion vested in them under the law."

In *Conley v. Brophy*[52] the Supreme Court held that the writ of quo warranto was an appropriate means of inquiry into the right to hold public office even though the statute in question vested final authority over school matters in the State Board of Education. It viewed with alarm the legislative tendency to vest broad powers in non-judicially trained administrators and refused to construe the statute in question as precluding judicial review in accordance with traditional methods.

Another decision raises a question concerning the timeliness of judicial review in a license revocation proceeding.[53] Briefly, the Georgia Real Estate Commission held a hearing in December, 1948, and revoked a real estate broker's license. The respondent gave notice of appeal to the superior court and obtained a stay of execution until further order of the court. In March, 1949, the case was called and a motion to dismiss the petition on the ground of mootness was sustained, the court dismissing the petition. The contention of the assistant attorney general who made the motion was that the only question and the subject-matter of the case became moot by the actual expiration of the license at the end of 1948. But the Court of Appeals pointed out that a real estate broker who has once obtained an annual license is entitled under the statute to have the license renewed from year to year upon payment of the license fee, provided he has not violated any of the provisions of the statute—a right which may not arbitrarily be denied. Therefore, the valuable right to do business as a real estate broker of which the plaintiff was deprived by the revocation order for the remainder of 1948 involved a valuable right of renewal thereafter which could be restored to him in case his license was originally revoked. The question presented by the petition was not moot and the superior court was in error in dismissing the action.

49. Galfas v. Ailors, 81 Ga. App. 13, 57 S.E.2d 834 (1950); Johnson v. The Evangelical Lutheran Church of the Messiah, 79 Ga. App. 671, 54 S.E. 722 (1949).
50. Stowers v. City of Atlanta, 79 Ga. App. 568, 54 S.E.2d 540 (1949).
51. 79 Ga. App. 671, 54 S.E.2d 722 (1949).
52. 207 Ga. 30, 60 S.E.2d 122 (1950).
53. Leakey v. Georgia Real Estate Commission, 80 Ga. App. 272, 55 S.E.2d 818 (1949).