

# ADMINISTRATIVE LAW

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This fifth annual report and analysis of the legislative and judicial developments in the field of administrative law presents the least material of any of the surveys prior to this time.<sup>1</sup>

While this study will in general conform to the organization used by this writer in discussing the same subject for the four previous surveys, it seems unnecessary to reprint the subdivisional analysis previously used in its entirety.<sup>2</sup> Herein the legislative materials will be discussed first, followed by a short analysis of the few judicial decisions available during this reporting period.

## DELEGATION OF INITIAL RULE MAKING POWER

In a limited number of instances the 1953 session of the General Assembly enacted statutes delegating rule-making authority to specific agencies:

- (1) The Georgia Turnpike Authority;<sup>3</sup>
- (2) The State Warehouse Act;<sup>4</sup>
- (3) The Tourist Court Act.<sup>5</sup>

This session of the legislature also delegated important licensing authority to the Commissioner of Agriculture<sup>6</sup> and the State Board of Health,<sup>7</sup> respectively. Also limited licensing authority

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1. See Culp, *Administrative Law*, 5 MERCER L. REV. 1 (1953). Other annual reports on this subject have appeared in 2 MERCER L. REV. 1 (1950); 3 MERCER L. REV. 1 (1951); 4 MERCER L. REV. 1 (1952).
2. The 10 subdivisions may be found at the beginning of each of the survey articles cited in note 1 *supra*.
3. Ga. Laws Nov.-Dec. Sess. 1953, p. 18 at p. 24, § 5 (h), (j) (to establish rules and regulations for the use of any project and to establish points of ingress and egress and to prohibit entrance at other points).
4. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 415 (§ 3 delegates to the Commissioner of Agriculture power to issue rules and regulations to carry out the provisions of the Act.).
5. Ga. Laws Nov.-Dec. Sess. 1953, p. 475 at p. 477 (The State Board of Health is empowered to promulgate rules and regulations to insure the protection of the public health in numerous ways; county boards of health are authorized to adopt and promulgate additional rules and regulations not in conflict with those promulgated by the State Board.).
6. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 416, § 5.
7. Ga. Laws Nov.-Dec. Sess. 1953, p. 475 at p. 476, § 2.

was retained by the Real Estate Commission through two separate acts.<sup>8</sup>

### NOTICE AND HEARING

One statute<sup>9</sup> appears to provide an important innovation in Georgia administrative practice regarding issuance of administrative regulations. It provides for the promulgation of rules or regulations or amendments thereto prior to their effective date in order that interested persons might have opportunity to be heard and to submit data and views, orally or in writing. This requirement that an administrative rule or regulation must be published and time afforded before it is finally made effective for the presentation of objections, is sound and fair procedure, and it is to be hoped that the General Assembly will require a waiting period prior to issuance generally.

Under this same statute the Commissioner of Agriculture is required to afford a hearing to any person with a real or substantial interest who is affected by a rule or regulation regarding warehouses which he believes to be unlawful or unconstitutional. This hearing must be afforded within 30 days of the demand, and any remedial action by the Commissioner must be taken within 30 days after hearing. Such a hearing is a condition precedent to any judicial review of the Commissioner's action.<sup>10</sup>

Both the Warehouse Act and the Tourist Court Act requires hearings before licenses may be revoked.<sup>11</sup> Another statute<sup>12</sup> concerned with zoning in certain counties seeks to safeguard the rights of interested persons by providing for an administrative appeal to the zoning board of appeals, vesting extensive modifying authority in the reviewing board.

### THE DECISION PROCESS

The Warehouse Act requires that all hearings before the Commissioner shall be stenographically reported and be made

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8. Ga. Laws Nov.-Dec. Sess. 1953, p. 166; Ga. Laws Nov.-Dec. Sess. 1953, p. 203.
  9. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 426, § 26 (a). If the General Assembly should adopt such a policy in each individual statute or, better, in a general administrative procedure act, experience in other states indicate that a uniformly better quality of regulation would probably be issued.
  10. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 426, § 26 (b).
  11. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 427, § 28 (a), and under subparagraph (b) the Commissioner in addition to the revocation of the license is authorized in his discretion to file a petition for receivership and liquidation in the superior court of the county in which the warehouse is located; Ga. Laws Nov.-Dec. Sess. 1953, p. 475 at p. 476, § 3, applying also to the denial of an initial application for a license to operate a tourist court.
  12. Ga. Laws Nov.-Dec. Sess. 1953, p. 124, § 2, amending Ga. Laws, 1951, p. 481, § 20.

available to any interested party upon payment of the stenographic cost.<sup>13</sup> There is, however, no express requirement that the Commissioner give his reasons for his action in writing to the petitioner as is the requirement of the State Board of Health in the denial or revocation of licenses to operate tourist courts.<sup>14</sup>

### JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Previous survey articles on administrative law provide illustrations of the existence of judicial review powers in the Georgia courts despite the silence of the statute creating an administrative agency. However, in the absence of a general administrative procedure act, it is good practice to have specific judicial review provisions in each such statute.

Three of the statutes discussed herein contain specific judicial review provisions.

The zoning appeals statute<sup>15</sup> provides generally for an appeal to the superior court. If the appeal is not filed within 30 days following the adverse decision, the administrative action becomes final. Thus the 30 day limitations period appears to be jurisdictional. Also a 30 day period after the decision of the State Board of Health is allowed in which the aggrieved party may file an appeal to the superior court of the county in which the tourist court in question is located. This period starts running from the date of notice of decision.<sup>16</sup>

As previously indicated in the discussion of the Warehouse Act,<sup>17</sup> the Commissioner of Agriculture is directed to stenographically report all hearings. This statute provides an elaborate judicial review of the Commissioner's final decisions or determinations. Judicial review must be commenced within 30

13. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 427, § 26 (c).

14. Ga. Laws Nov.-Dec. Sess. 1953, p. 475 at p. 476, § 3, which reads in conclusion as follows:

"In the event that such application is finally denied or such permit finally suspended or revoked the applicant or holder of the permit shall be notified thereof in writing, specifically stating any and all reasons why the application or permit has been suspended, revoked or denied."

This is a very important requirement, and should be incorporated into every new statute. It is considered a basic requirement in the Federal Administrative Procedure Act and under several state administrative procedure statutes.

15. Ga. Laws Nov.-Dec. Sess. 1953, p. 124, § 2.

16. Ga. Laws Nov.-Dec. Sess. 1953, p. 475 at p. 476, § 4. This section contains an important proviso, that the appeal does not stay the order which is being challenged unless the reviewing court specifically so directs.

17. See note 13 *supra*.

days of the service of the commissioner's decision upon the aggrieved party.<sup>18</sup>

There is a legislative declaration that this statutory judicial review is the exclusive judicial remedy for the review of the Commissioner's decisions under this statute.<sup>19</sup> The reviewing court in its discretion may permit other interested parties to intervene.

A timely application to present additional evidence may be made to the reviewing court.<sup>20</sup> If the application is favorably received, the court may order the presentation to be made to the Commissioner who can as a result thereof reopen the record and make such changes in findings or decisions as the additional evidence warrants. It appears to be the purpose of the statute to confine the review to the record except on the issue of irregularities of procedure before the Commissioner and not shown on the record.<sup>21</sup>

Normally the reviewing court will either affirm the decision or remand the record to the Commissioner for further proceedings consistent with the court's decision. However, in the five instances set forth below,<sup>22</sup> the court is authorized to directly revise or modify the decision or compel action unlawfully withheld.

Presumably on account of the exclusive judicial review provision previously mentioned, the General Assembly deemed it necessary to authorize a review of the final decision of the superior court by writ of error to the appropriate appellate court.<sup>23</sup>

18. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 428, § 29 (a). The filing of this petition does not automatically stay enforcement of the Commissioner's order.

19. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 428, § 29 (a), 1.

20. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 423, § 29 (a), 5. Before granting the motion the court must be satisfied that the additional evidence is material and that there was sufficient reason for the failure to present it to the Commissioner.

21. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 429, § 29 (b).

22. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 429, § 29 (b) reads in part as follows:

"or it may reverse or modify the decision or compel action unlawfully withheld, if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusion or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the Commissioner or affected by other error of law; or
- (c) made upon unlawful procedure; or
- (d) unsupported by substantial evidence as weighed in view of the entire record is submitted; or
- (e) arbitrary or capricious."

23. Ga. Laws Nov.-Dec. Sess. 1953, p. 412 at p. 429, § 29 (c).

## JUDICIAL DECISIONS

Owing to the very limited number of decisions on administrative law issued during the reporting period, it is neither necessary nor economical to subdivide the brief discussion of such decisions.

In *Mayor of Union Point v. Jones*<sup>24</sup> the Court of Appeals held that certiorari would not lie to the superior court to review action taken by the State Board of Education in its capacity as an appellate administrative body on appeals from county or city boards of education. The writ of certiorari is a remedy for the review of judicial action and may not be used in the absence of express statutory authority to review administrative action, even though that action be appellate in nature.

Another case<sup>25</sup> considered the nature of the proceedings wherein the statute expressly provided for review of administrative action in the courts by the use of the writ of certiorari. The court held that a proceeding for the revocation of a license was not a criminal proceeding and that the statutory provisions for obtaining the writ of certiorari must be observed meticulously.

In the course of a proceeding instituted to remove the members of a county board of education from office for misconduct, the Court of Appeals had occasion to discuss the standards the courts use in passing upon administrative judgments.<sup>26</sup> In such cases the courts look to the sufficiency of the evidence to support an exercise of discretion and do not concern themselves with possible errors in judgement as to what may be the better course of action. If the administrative action under review is not in violation of law and is taken in the exercise of discretion and not arbitrary, it is not subject to judicial evaluation.

There were an unusually small number of decisions reviewing the determinations of the Board of Workmen's Compensation during the reporting period. Only one decision requires a brief mention in this article. The court<sup>27</sup> affirmed an award based upon a decision of the Board that the applicant was justified in refusing to submit to a physical examination of unusual severity, holding that the Board had jurisdiction and that there was sufficient evidence before the Board to sustain its decision and the award.

Finally, a single decision<sup>28</sup> touched upon the problem of the

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24. *Mayor of Union Point v. Jones*, 88 Ga. App. 848, 78 S.E.2d 348 (1953).

25. *Bickers v. Georgia Real Estate Commission*, 89 Ga. App. 815, 81 S.E.2d 535 (1954).

26. *State v. Walker*, 88 Ga. App. 413, 76 S.E. 2d 852 (1953).

27. *Hartford Acc. & Indemnity Co. v. Barfield*, 89 Ga. App. 562, 80 S.E.2d 84 (1954).

28. *Central of Georgia Ry. Co. v. Culpepper*, 209 Ga. 844, 76 S.E.2d 482 (1953). Editorial Note: This case was decided May 11, 1953, rehearing denied June 11, 1953. It has been included in this survey owing to its omission from the preceding survey and because of its importance.

exclusive primary jurisdiction of an administrative agency. A committee of a railroad union had filed an injunction suit against the carrier to enjoin the execution of a work assignment plan which allegedly violated a collective bargaining agreement between the union and the carrier. After an extensive examination of Federal decisions regarding the exclusiveness of the remedy provided by the Railway Labor Act, the Supreme Court of Georgia determined that the Federal statute creating the administrative agency did not vest exclusive primary jurisdiction in the agency and held that the petition for injunctive relief was good as against a general demurrer.