

ADMINISTRATIVE LAW

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This sixth annual report and analysis of the legislative and judicial developments in the field of administrative law in Georgia presents less material than some of the prior surveys,¹ though more than last year's product.²

As in the past, the legislative development was on a piecemeal basis, applying to both new governmental activity and the redefinition of administrative functions previously assigned to existing agencies. The judicial decisions mainly reaffirmed well-established doctrines though in a few instances the court decided questions with novel implications in administrative law.

It should be emphasized, as in the past, that this is a report on the legislative and judicial developments in the subject and is not a discussion of specific rules, regulations or orders of the various Georgia administrative agencies. Agency-made rules as such are discussed only in connection with specific litigated matters which came before the appellate courts of Georgia during the survey period.

While this study will in general conform to the organization used by this writer in discussing the same subject for the first five surveys, it seems unnecessary to reprint the subdivisional analysis previously used in its entirety.^{2a} Herein the legislative materials will be discussed first, followed by a short analysis of the judicial decisions handed down during the reporting period.

LEGISLATION

Delegation of Initial Rule Making Power. In a limited number of instances, the 1955 session of the General Assembly enacted statutes delegating rule making authority to specific agencies:

- (1) Rural Road Authority;³

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1. See Culp, *Administrative Law*, 2 MERCER L. REV. 1 (1950); 3 MERCER L. REV. 1 (1951); 5 MERCER L. REV. 1 (1953).
2. Culp, *Administrative Law*, 6 MERCER L. REV. 1 (1954).
- 2-a. The 10 subdivisions may be found at the beginning of each of the survey articles cited in note 1, *supra*.
3. Ga. Laws Jan.-Feb. Sess. 1955, p. 124.

- (2) Farmers Market Authority;⁴
- (3) State Board of Health, in licensing midwives;⁵
- (4) Soil Conservation Committees;⁶
- (5) Industrial Loan Commissioner;⁷
- (6) Structural Pest Control Commission.⁸

There was also a redefinition of administrative authority contained in the acts which revised the laws relative to the activities of the State Forestry Commission⁹ and consolidated the laws relative to game and fish and the activities of the State Game and Fish Commission.¹⁰

There was also one instance of the repeal of a law which had vested authority in an agency.¹¹

Important licensing authority was also delegated to the Industrial Loan Commissioner,¹² the State Board of Health, in the administration of the midwife licensing laws,¹³ the State Game and Fish Commission,¹⁴ the Structural Pest Control Commission,¹⁵ and the State Board for the Examination, Qualification and Registration of Architects.¹⁶

Several of these statutes go into more or less detail in the matter of revocation of licenses:

- (1) Midwife licensing;¹⁷
- (2) Licensing of industrial lenders;¹⁸
- (3) Licensing of person engaged in pest control work;¹⁹
- (4) Warehousemen who fail to observe the opening dates for tobacco sales fixed by the Commissioner of Agriculture.²⁰

However, only one of these statutes goes into detail on the procedure

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4. Ga. Laws Jan.-Feb. Sess. 1955, p. 224.
 5. Ga. Laws Jan.-Feb. Sess. 1955, p. 252. Under section 10 of this act, County Boards of Health are authorized to issue supplementary rules and regulations to those issued by the State Board.
 6. Ga. Laws Jan.-Feb. Sess. 1955, p. 257. This delegation of authority is of interest in that it is concerned with powers set forth in a federal statute, namely, the Federal Watershed Protective and Flood Control Act, approved, August 4, 1954.
 7. Ga. Laws Jan.-Feb. Sess. 1955, p. 431.
 8. Ga. Laws Jan.-Feb. Sess. 1955, p. 564.
 9. Ga. Laws Jan.-Feb. Sess. 1955, p. 309.
 10. Ga. Laws Jan.-Feb. Sess. 1955, p. 483.
 11. Turnpike Authority Act repealed, Ga. Laws Jan.-Feb. Sess. 1955, p. 256.
 12. Ga. Laws Jan.-Feb. Sess. 1955, p. 431, § 8.
 13. Ga. Laws Jan.-Feb. Sess. 1955, p. 252, § 5.
 14. Ga. Laws Jan.-Feb. Sess. 1955, p. 483, §§ 21, 22, 23.
 15. Ga. Laws Jan.-Feb. Sess. 1955, p. 564, § 9.
 16. Ga. Laws Jan.-Feb. Sess. 1955, p. 602, §§ 2 and 3.
 17. Ga. Laws Jan.-Feb. Sess. 1955, p. 252, § 5.
 18. Ga. Laws Jan.-Feb. Sess. 1955, p. 431, § 12, revocations and suspensions.
 19. Ga. Laws Jan.-Feb. Sess. 1955, p. 564, § 18.
 20. Ga. Laws Jan.-Feb. Sess. 1955, p. 589, § 6.

for the revocation. The Structural Pest Control Act²¹ requires an accusation either by the commissioner or other person, with notice of a hearing on the charges given to the licensee together with a copy of the charges at least 30 days prior to the hearing. If the licensee does not appear the commission may proceed as it deems best, suspending or revoking the license if the facts warrant. Where there is a contest, both sides are entitled to counsel, have the right to examine and cross-examine witnesses and the right to have compulsory process as in civil cases through subpoena from the secretary of the commission. The witnesses testify under oath. The statute disqualifies any commissioner who is an accuser.

Procedure in Issuing Rules and Regulations. Two of the statutes make an effort to insure that adequate publicity is given to rules and regulations prior to their effective dates.

The Structural Pest Control Act²² attempts to provide notice and hearing prior to promulgation. The rules and regulation of the commission shall not be effective until a public hearing shall have been granted and notification of such hearing has been given to all licensees. This seems a practical way of handling the matter of notice where the group affected is quite small.

The revised laws relative to the rules and regulations of the State Game and Fish Commission retain the provision for a posting at the court house in each county affected for 30 days prior to the effective date, and also prescribe the method for making emergency proclamations effective from the date and hour of proclamation.²³

Timely Action on License Applications. The possibility that the licensing agency may delay acting upon licensing applications gives rise to the possibility of a virtual denial through inaction. One statute, the Industrial Loan Act, seeks to require prompt action on applications for licenses which must be renewed annually.^{23a} It provides that the failure to act within thirty days of the filing of the application shall have the effect of a grant of the application.²⁴

Statutory Judicial Review. Previous survey articles have discussed the right to judicial review of administrative action in the Georgia courts despite the silence of the statute creating the agency.²⁵

However, since Georgia has no general administrative procedure act, it is very desirable that each statute creating rule making, licens-

21. Ga. Laws Jan.-Feb. Sess. 1955, p. 564, § 18.

22. Ga. Laws Jan.-Feb. Sess. 1955, p. 564, § 6, b.

23. Ga. Laws Jan.-Feb. Sess. 1955, p. 483, § 15.

23-a. Ga. Laws Jan.-Feb. Sess. 1955, p. 431, § 9.

24. Ga. Laws Jan.-Feb. Sess. 1955, p. 431, § 8 (b).

25. See survey articles cited in notes 1 and 2, *supra*.

ing and license suspension or revocation authority contain specific judicial review provisions. Only two of the statutes enacted during the report period contain any substantial judicial review provisions.

While the Structural Pest Control Act²⁶ declares that nothing therein contained shall deny any person his resort to the courts after exhausting the administrative remedies provided therein, the midwife licensing law²⁷ and the Industrial Loan Act²⁸ alone provide for specific judicial review of adverse action in reference to licensing and license suspension or revocation. The first statute authorizes a writ of certiorari to the superior court to review orders suspending or revoking a permit. The other is somewhat broader in one respect since it allows an appeal from an initial denial or refusal of a license as well as from a revocation or suspension, but the grounds for setting aside the order of the commissioner are limited to:

1. The commissioner acted arbitrarily or in excess of his powers;
2. The order or decision was obtained by fraud;
3. There is not sufficient competent evidence in the record to warrant the order or decision complained of; or
4. The order or decision is contrary to law.

Special Remedies on behalf of the Administrative Agency. It is common practice to specifically vest enforcement of an administrative agency's own rules and regulations in its own hands. An example of this in the legislation of this current survey period is the specific delegation to the wildlife rangers of power to enforce all laws, rules and regulations of the State Game and Fish Commission.²⁹ However, the General Assembly chose to authorize the use of the injunction in express terms in the cases of the State Board for the Examination, Qualification and Registration of Architects,³⁰ and the State Board of Registration for Professional Engineers.³¹

JUDICIAL DECISIONS

The judicial decisions relative to administrative law finally decided during the reporting period may be grouped into a few categories for purposes of discussion.

26. Ga. Laws Jan.-Feb. Sess. 1955, p. 564, § 18.

27. Ga. Laws Jan.-Feb. Sess. 1955, p. 252, § 6.

28. Ga. Laws Jan.-Feb. Sess. 1955, p. 431, § 13.

29. Ga. Laws Jan.-Feb. Sess. 1955, p. 483, § 18.

30. Ga. Laws Jan.-Feb. Sess. 1955, p. 602, § 5.

31. Ga. Laws Jan.-Feb. Sess. 1955, p. 611, § 1. These statutory expressions are useful but in view of the decision cited in note 51, *infra*, it would seem that any agency could use the injunction whenever it is an appropriate remedy for enforcement.

Exclusive Primary Jurisdiction of Administrative Agency. It is a matter of legislative interpretation as to whether a specific controversy may be so vested in the administrative agency that the courts are excluded from any initial or primary jurisdiction. In *Central of Georgia Ry. Co. v. Brotherhood of Railway Trainmen*,³² the majority of the supreme court determined that the Georgia trial court was without jurisdiction to entertain a declaratory judgment petition concerning rights under an arbitration award. This decision was based upon the fact that the Supreme Court of the United States had held in similar cases that the Railway Adjustment Board had exclusive jurisdiction over such matters to the exclusion of any state court, and that the federal decisions were controlling because the dispute involved federal law.

Necessity of Exhaustion of Administrative Remedies. Two decisions refused to examine the claims of the plaintiff for failure to use the statutory methods provided for review of the specific administrative decisions. In *Murphy v. Dominy*³³ a petition for a writ of mandamus against the Director of Public Safety for reinstatement of a driver's license was denied for failure to follow the statutory procedure. Also, in *Boatright v. Yates*³⁴ equitable relief was denied because the statutory appeal from a County Board of Education had not been availed of.

Evidence. As in former years, the courts were primarily concerned in this area with the problems growing out of appeals from the granting or denying of awards by the State Board of Workmen's Compensation. Settled principles, largely statutory, were involved. A mere restatement of these principles with a citation of the cases applying them seems adequate for this survey since they are discussed in more detail in the article on Workmen's Compensation.

The decisions of the Board will be affirmed if supported by evi-

32. 211 Ga. 263, 85 S.E.2d 413 (1955). The dissenting opinion by Justice Mobley expressed the view that the existence of an agreement was the question at issue, and if there is no such agreement there is nothing for the Railway Adjustment Board to consider. Therefore the court did have jurisdiction to decide whether an agreement actually existed.

33. 211 Ga. 70, 84 S.E.2d 193 (1954), construing Ga. Laws, 1951, pp. 565, 567, GA. CODE ANN. § 92A-602 (Supp. 1951).

34. 211 Ga. 125, 84 S.E.2d 195 (1954), construing GA. CODE ANN. §§ 32-414, 32-910 (1952 Rev.).

dence.³⁵ Likewise, the decisions of the Board will be sustained if there is any competent evidence in the record.³⁶ Also where there is conflicting evidence the Board of Workmen's Compensation will be sustained.³⁷ However, the award must be supported by some evidence,³⁸ and where the evidence is all against a denial of an award the court cannot affirm.³⁹ Nevertheless, where there is evidence supporting the Board's findings, its decision is conclusive on the courts.⁴⁰ However, the Board's decisions on questions of law or where there is only an issue of law involved, are not binding on the court.⁴¹

Method of Review. The decisions of the reporting period afford several examples of the more frequently used methods of judicial review, aside from the special methods that may be provided by statute for specific agencies. Some of these actions were unsuccessful for reasons other than the choice of remedy, while others were unsuccessful because the use of the particular remedy was inappropriate under the circumstances.

Three supreme court cases illustrate the effective use of the injunction as a method of judicial review. In *Cobb v. House Authority of the City of Athens*⁴² the injunction was successfully used against the House Authority for not acting in accordance with law. Another use of the injunction was to prevent unauthorized action in the consolidation of schools.⁴³ The third use was a challenge of the action of the Georgia Public Service Commission acting beyond the scope of its jurisdiction and authority.⁴⁴

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35. *Atkinson v. Fairforest Co.*, 90 Ga. App. 425, 83 S.E.2d 243 (1954); *Georgia Marble Co. v. McBee*, 90 Ga. App. 406, 83 S.E.2d 253 (1954); *Travelers Insurance Co. v. Hammond*, 90 Ga. 595, 83 S.E.2d 576 (1954); *Ocean Accident and Guarantee Co. v. Lovern*, 90 Ga. App. 708, 83 S.E.2d 862 (1954); *Fulton Bag and Cotton Mills v. Speaks*, 90 Ga. App. 685, 83 S.E.2d 872 (1954); *Atlanta v. Crouch*, 91 Ga. App. 38, 84 S.E.2d 475 (1954); *Davis v. Atlantic Steel Corp.*, 91 Ga. App. 102, 84 S.E.2d 839 (1954); *General Motors Corp. v. Craig*, 91 Ga. App. 239, 85 S.E.2d 441 (1954).
 36. *Persons v. Mashburn*, 211 Ga. 477, 86 S.E.2d 319 (1955); *Ocean Accident & Guarantee Co. v. Lovern*, 90 Ga. App. 708, 83 S.E.2d 862 (1954); *Wolfe v. Williams*, 92 Ga. App. 1, 87 S.E.2d 436 (1955).
 37. *Williams v. United States Fidelity & Guaranty Co.*, 90 Ga. App. 409, 83 S.E.2d 225 (1954).
 38. *Hoffman v. National Surety Corp.*, 91 Ga. App. 414, 85 S.E.2d 784 (1955).
 39. *Hollifield v. Craft Chenille Co.*, 90 Ga. App. 594, 83 S.E.2d 584 (1954); *Bituminous Casualty Corp. v. Humphries*, 91 Ga. App. 271, 85 S.E.2d 456 (1954).
 40. *Aetna Casualty & Surety Co. v. Watson*, 91 Ga. App. 657, 86 S.E.2d 656 (1955); *American Mutual Liability Insurance Co. v. Casey*, 91 Ga. App. 694, 86 S.E.2d 697 (1955).
 41. *Diamond Cab Co. v. Adams*, 91 Ga. App. 220, 85 S.E.2d 451 (1954); *Travelers Insurance Co. v. Smith*, 91 Ga. App. 305, 85 S.E.2d 484 (1954).
 42. 210 Ga. 676, 82 S.E.2d 848 (1954).
 43. *Hobbs v. Bishop*, 210 Ga. 818, 82 S.E.2d 839 (1954).
 44. *Georgia Power Co. v. Georgia Public Service Commission*, 211 Ga. 223, 85 S.E.2d 14 (1954); *Georgia Power Co. v. Georgia Public Service Commission*, 211 Ga. 230, 85 S.E.2d 20 (1954).

The writ of mandamus was successfully used in another case to compel action on the part of the Superintendent of Banks.⁴⁵ Also the ordinary *taxpayer's suit* was successfully used to compel current administrative action in another case.⁴⁶

The declaratory judgment procedure was unsuccessful in a case previously discussed⁴⁷ because the subject-matter was not within the jurisdiction of the court.⁴⁸ Ordinarily the declaratory judgment remedy may be used within the appropriate limits of that procedural method.

Also, the injunction was unsuccessful in a couple of cases. One was a road closing controversy wherein it was held that the plaintiff did not have the proper standing to maintain the action.⁴⁹ The other denial arose in a license revocation action taken by the Revenue Commissioner wherein the court held that there was a full, complete and adequate remedy provided by law, and there was therefore no equity in the petitioner's claim.⁵⁰

These remedies are also apparently equally available to the administrative agencies in appropriate cases. An example of the use of the injunction by an agency is afforded in the case of *Southeast Shippers Association, Inc. v. Georgia Public Service Commission*⁵¹ wherein the injunction was used to prevent the association from operating motor vehicles without a certificate of public convenience and necessity.

Two supreme court decisions raise a serious doubt concerning the effectiveness of the injunction as a method of reviewing administrative rules and regulations where their violation is made a criminal act by statute or ordinance and where prosecution is the only or principal method of enforcement. The rules and regulations of two agencies discussed under the legislation part of this article are enforced in that manner.⁵²

Proceeding upon the theory that equity takes no part in the administration of the criminal law,⁵³ the supreme court denied injunctions against the enforcement of municipal ordinances which compelled com-

45. *Malcolm v. Webb*, 211 Ga. 449, 86 S.E.2d 489 (1955).

46. *Flemming v. St. Paul-Mercury Indemnity Co.*, 91 Ga. App. 582, 86 S.E.2d 637 (1955).

47. See note 32, *supra*.

48. *Central of Georgia Ry. Co. v. Brotherhood of Railway Trainmen*, 211 Ga. 263, 85 S.E.2d 413 (1955).

49. *Avery v. The Berry Schools*, 211 Ga. 581, 87 S.E.2d 401 (1955).

50. *Rozier v. Redwine*, 211 Ga. 208, 85 S.E.2d 34 (1954).

51. 211 Ga. 550, 87 S.E.2d 75 (1955).

52. *State Forestry Commission*, Ga. Laws Jan.-Feb. Sess. 1955, p. 309; *State Game and Fish Commission*, Ga. Laws Jan.-Feb. Sess. 1955, p. 483, § 16.

53. The court relied upon GA. CODE § 55-102 (1933).

pliance through criminal prosecution,⁵⁴ indicating that their validity could be tested through a defense to the criminal prosecution, invalidity being a complete defense.

Effect of Violation of Administration Rules or Regulations in Civil Litigation. It is sometimes held that the rules and regulations of administrative boards never have the full effect of law, but have legal effect only in the sense that they have enforceability, and violation of them does not constitute negligence per se.⁵⁵ There is much authority the other way, and the court of appeals had occasion to consider the problem in a recent case.⁵⁶ The petition alleged that the fire damage for which action was brought resulted directly and proximately from the defendant's negligence in violating the rules and regulations of the Fire Commissioner. The court pointed out that violation of the valid rules and regulations of the Commissioner would constitute negligence per se, although the violation of the regulation alone could not be made the basis of a criminal prosecution in Georgia.⁵⁷ It was held in this case that a release to the defendant from compliance with the Fire Commissioner's rules and regulations was void as against public policy and no defense to the civil action for negligence.⁵⁸

54. *Staub v. Mayor of Baxley*, 211 Ga. 1, 83 S.E.2d 606 (1954), ordinance required a license of all solicitors; *Baker v. Atlanta*, 211 Ga. 34, 83 S.E.2d 682 (1954), barber ordinance.

55. *Matz v. Curtis Cartage Co.*, 132 Ohio St. 271, 7 N.E.2d 220 (1937).

56. *Bishop v. Act-O-Lane Gas Service*, 91 Ga. App. 154, 85 S.E.2d 169 (1954).

57. See *Glustrom v. State*, 206 Ga. 734, 58 S.E.2d 534 (1950); *State v. Schafer*, 82 Ga. App. 753, 62 S.E.2d 446 (1950), and comment on the problem, *Culp, Administrative Law Survey*, 3 *MERCER L. REV.* 1, at p. 4 ff. (1951).

58. *Bishop v. Act-O-Lane Gas Service Co.*, 91 Ga. App. 154, 85 S.E.2d 169 (1954).