

ADMINISTRATIVE LAW

By MAURICE S. CULP*

This seventh annual report and analysis of the legislative and judicial developments in the field of administrative law is an interesting contrast with the reports of previous years.¹ There was apparently less judicial time consumed with the substantial problems of administrative law than at any time since the survey started. On the other hand, there were probably more separate acts of the General Assembly devoted to some phase of the subject than in any preceding year of the survey.

Georgia has not yet enacted a general administrative procedure statute, and, as in the past, the legislative development was on a piecemeal basis. This legislative product represents a very considerable expansion into new fields of regulation together with some redefinition of administrative powers of existing agencies and the addition of functions to such agencies. The Commissioner of Agriculture received the most delegations of administrative and enforcement authority. The judicial product mainly reaffirmed or reemphasized established judicial doctrines.

This report, like previous ones, is limited to the legislative and judicial developments in the field and is not a discussion of specific rules, regulations or orders of any specific Georgia administrative agency. Agency rules and delegations of rule making are discussed only in connection with legislative delegations or in relation to specific litigated matters which came before the appellate courts of Georgia during this survey period.

This study is divided into two parts only, and because of the nature of the materials available for discussion, no attempt has been made to conform the discussion to the detailed outline adopted for some

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1. See the Administrative Law article in each of the Annual Survey of Georgia Law issues of the *MERCER L. REV.*, vols. 2-7 inclusive.

of the previous surveys in this series.² The legislative materials will be discussed first and then will follow a short analysis of the relevant judicial decisions rendered during the survey period.

LEGISLATION

Of the several acts which are concerned with some phase of administrative law or practice, it is significant that twelve of these apply to activities which were previously not subject to similar regulation; the other acts were wholly or partially in the form of amendment to existing law. One act was an outright repeal of existing authority.³ However, the authority under the repealed statute continues to be exercised under another existing law.

New Legislation

This body of new law is too voluminous to analyze in detail here. The most that can be done is to outline briefly the significant administrative law aspects of each.

Act No. 389⁴ provides for the licensing and regulation of manufacturers, bottlers and distributors of bottled soft drinks and soft drink syrup. Administration and enforcement of this act is delegated to the Commissioner of Agriculture who is authorized to establish sanitary standards and specifications, to adopt rules and regulations in furtherance of the objectives of the law, to issue licenses, suspend licenses after notice and hearing, to make inspections. The act is totally silent on judicial review.

Act No. 149⁵ brings under control sales and distribution of brake fluid to prevent misbranding and adulteration. Administration and enforcement is delegated to the State Revenue Commissioner. He is authorized to promulgate standards, issue stop sale orders, make seizures under certain conditions and to adopt rules and regulations for the administration and enforcement of this law. Judicial condemnation of allegedly adulterated or misbranded brake fluid is necessary before it is destroyed, and even then, the claimant is entitled to bring the product within compliance if possible or apply for its release. The statute is not self-executing, however, and the claimant must take the initiative by an application to the court. There is no express provision

2. This outline appears in the following places, Culp, *Administrative Law*, 2 MERCER L. REV. (1950); 3 MERCER L. REV. 1 (1951); 5 MERCER L. REV. 1 (1953).

3. Regulation of nonresident real estate brokers, Ga. Laws 1956, p. 402.

4. Ga. Laws 1956, p. 661.

5. Ga. Laws 1956, p. 237.

for any review of the Commissioner's standards, rules or regulations, but presumably their validity would be open to challenge in any condemnation proceeding or criminal prosecution initiated by the enforcement officials.

Act No. 392⁶ provides for the licensing and bonding of dealers in agricultural commodities, with administration by the Commissioner of Agriculture. Every dealer, as defined in the act, is required to apply for a license, and one of the conditions for obtaining the license is the filing of a bond in the amount of the dealer's estimated monthly business for a faithful accounting to the dealer's suppliers; cash may be deposited in lieu of this bond. The Commissioner is authorized to hold administrative hearings upon complaints against the dealer and to make findings of damage. This administrative finding of damage may be enforced in court by the Commissioner or any injured party, and if any injured party is not satisfied with the Commissioner's decision on the amount of damage, he may bring a civil action on the bond. Thus the injured party may sue on the statutory cause of action flowing from the administrative determination or, if not satisfied, sue upon contract and prove his damages in court. The Commissioner is specifically authorized to invoke the powers of a court of equity and to aid in enforcement. He may decline to grant, suspend or revoke a license, after giving at least ten days notice to the respondent and after a hearing. Immediate notice of the action taken at the hearing must be given to the applicant or licensee. The Commissioner has specific authority to adopt rules and regulations for the administration and enforcement of the act. There is no statement about judicial review in the act.

Two acts deal with the administrative approval of insurance policy forms by the Insurance Commissioner. Act No. 344⁷ applies to any future policy of accident, sickness or hospitalization insurance issued for delivery in Georgia. Act No. 179⁸ is applicable to insurance policy forms of any class. It is therefore much more comprehensive than the coverage of Act. No. 344, and grants the Commissioner very broad powers of exemption of policy forms from the requirements of the act. Under both acts any form which has been on file with the Insurance Commissioner for as much as thirty days without any action having been taken by him, is deemed approved. The Commissioner is, however, empowered to withdraw approval after notice of at least twenty days and a hearing. Action of the Commission in disapproving

6. Ga. Laws 1956, p. 617.

7. Ga. Laws 1956, p. 532.

8. Ga. Laws 1956, p. 279.

or withdrawing approval is subject to review by writ of certiorari to the Superior Court of Fulton County.

Act No. 453⁹ vests in the Commissioner of Agriculture authority to regulate the sanitary condition of all dairies, meat, poultry or dairy processing plants in the state. To this end he is vested with authority to establish an adequate system of inspection and to issue rules and regulations for the administration and enforcement of the law. He may prescribe a system of records for limited purposes, and he is authorized to issue licenses and suspend or revoke them after notice. After any suspension or revocation hearing, the licensee is entitled to a reasonable time to correct the condition or circumstances found to exist. No provision is made for any judicial review.

Act No. 107¹⁰ establishes the State Board of Dispensing Opticians and regulates the sale, dispensing and supply of ophthalmic appliances eyeglasses, and all aids to human vision to the consumer. An examination is required of any person who seeks to practice this work, and a minimum education or hours of experience is required. The Board may refuse to license and it may revoke or suspend a license for any of the enumerated statutory causes. There is an appeal, *de novo*, to the Superior Court of Fulton County, from the Board's decision to revocation or suspension. No appeal is provided in the case of an initial denial of a license.

Act No. 127¹¹ covers the manufacture and sale of "Food", and vests in the Commissioner of Agriculture authority to establish standards of quality and identity, adopt regulations for administration and enforcement, and set up a permit system. He may revoke permits after notice and hearing. The Commissioner may detain or embargo any food which he finds or has "probable" cause to believe to be adulterated or misbranded so as to be dangerous to health. Provision is made for the Commissioner or the claimant to petition the superior court for an order of disposition of any seized food, and where the trouble can be corrected the claimant is entitled to correct the condition and repossess the food, upon compliance with the statutory conditions. Summary destruction of perishable items is authorized. The Commissioner may resort to the injunction as an aid to enforcement, and he must refer a matter of violation, other than a minor one, to the solicitor general for criminal enforcement. Before this reference can be made, it must be preceded by notice and opportunity to be heard

9. Ga. Laws 1956, p. 748.

10. Ga. Laws 1956, p. 148.

11. Ga. Laws 1956, p. 195.

upon the proposed referral. The act contains provisions whereby limited classes of persons may obtain exclusion from the terms of the law.

Act. No. 100¹² brings under control the construction or operation in intrastate commerce of any pipeline distribution system or extensions. Administration is vested in the Public Service Commission which is authorized to issue rules and orders, administer a system of certificates of convenience and necessity, and after notice and opportunity for hearing, suspend, revoke, alter or amend any certificate of convenience and necessity. It has similar power over extension and existing systems. The act makes no effort to cover judicial review.

Act No. 154¹³ established the Advisory Livestock and Poultry Disease Control Board. Under the act the Commissioner of Agriculture must call a meeting and consult with the Board before promulgating rules and regulations on matters pertaining to livestock and poultry disease control.

Act No. 324¹⁴ provides a complete system of control over the activities of insurance agents, vesting administrative control in the Insurance Commissioner. It establishes methods of licensing for both resident and non-resident agents, provides for limited licensing, and sets forth administrative provisions for qualifying examinations. The Insurance Commissioner may issue rules and regulations for administration and enforcement, and is vested with authority to refuse licenses, or their renewal, suspend or revoke licenses. The suspension, revocation or refusal to renew may take place only after notice and hearing. The findings at any such hearing must be reduced to writing and sent by registered mail to the person involved. All orders of the Commissioner refusing to license, suspending a license, revoking or refusing to renew a license or permit of any kind are subject to review by writ of certiorari to the superior court.

Act No. 139¹⁵ is the new seed law. It applies to all resident and non-resident wholesale or retail seed dealers making sales in Georgia and requires them to obtain a license from the Commissioner of Agriculture. In addition certain itinerant sellers are required to file a bond for the protection of their customers. The Commissioner may issue rules and regulations for the administration and enforcement of the act, and he is authorized to apply for injunctive aid in enforcing

12. Ga. Laws 1956, p. 104.

13. Ga. Laws 1956, p. 247.

14. Ga. Laws 1956, p. 505.

15. Ga. Laws 1956, p. 217.

its provisions. The Commissioner may either institute criminal prosecutions or refer the evidence to the appropriate solicitor-general. The act authorizes a Seed Advisory Committee for the purpose of assisting in the promulgation of rules and regulations, and no rule or regulation may be issued without first consulting the Committee. Seed offered in violation of the act, the rules or regulations issued thereunder, may be seized upon complaint filed in superior court which court shall determine whether it is offered in violation. If found by the court to be offered in violation, it may be disposed of in accordance with law, first, giving the claimant an opportunity to apply to the court for the release of the seed or for permission to process or relabel it in accordance with law.

Act. No. 112¹⁶ is a complete revision of the laws relative to the State Board of Corrections and related matters, setting forth many far-reaching administrative powers, but the subject matter is more pertinent to criminal law and public administration and is not outlined in this article.

Amendatory Legislation

Act No. 20,¹⁷ amending the Egg Marketing Act, adds a new section authorizing the Commissioner of Agriculture to promulgate rules and regulations establishing minimum qualifications for egg candlers and graders and requires each candler and grader to obtain a license, first demonstrating his capacity and qualifications.

Act No. 21¹⁸ authorizes the Board of Dental Examiners to institute injunction proceedings against the unlicensed practice of dentistry, there being no necessity for it to allege and prove that there is no adequate remedy at law.¹⁹

Act No. 140²⁰ amends the game and fish laws to require licenses of resident wholesale and retail fish dealers and of certain non-resident dealers, obtainable from the State Game and Fish Commission, and that agency is authorized to issue regulations or proclamations limiting or prohibiting the importation of bait minnows, live fish or fish eggs found to be harmful to existing fish.

Act No. 151²¹ adds another ground for revoking a license to practice

16. Ga. Laws 1956, p. 161.

17. Ga. Laws 1956, p. 21.

18. Ga. Laws 1956, p. 25.

19. See Ga. Laws p. 193, Act. No. 124 which changes the examination requirements and also annual licensing fees for nurses.

20. Ga. Laws 1956, p. 231.

21. Ga. Laws 1956, p. 242.

Chiropody, namely the failure to pay the annual license fee.

Act. No. 183²² amends the laws relative to concentrated commercial feeding stuffs to authorize the Commissioner of Agriculture to refuse to register any feeding stuff under a name which is misleading as to material used or where the analysis is below the legal standards; he may also revoke a registration for violation of the standards required by law. The Commissioner may seize substandard feeding stuffs, and he must give immediate written notice of that fact to the possessor. An administrative hearing before the Commissioner must be accorded the claimant before any court proceeding regarding the feeding stuffs so seized may be instituted.

Act No. 197,²³ among other things, denies retirement benefits, disability payments and death benefits to any peace officer, as defined, who knowingly refused or fails to attempt to enforce any law of the state relative to segregation. The act sets up machinery for hearing complaints against peace officers before the Board of Commissioners of the Peace Officers Annuity and Benefit Fund of Georgia instituted by any aggrieved persons. The hearing is held in accordance with the rules of evidence applying in the superior courts, and if the charges are found to be true, the Board shall declare all benefits forfeited. Either party may appeal from the decision of the board within 30 days to the superior court in the county where the violation allegedly occurred. The hearing in the superior court is *de novo*.

Act No. 200²⁴ amends the chapter relative to barbers and beauticians, the name of the administrative body is changed to State Board of Barber and Beautician Examiners. The act vests important rule-making power in the Board, relative to the sanitary conditions of barber and beauty shops. Failure to observe these regulations subjects any license to license revocation proceedings and ultimate revocation after notice and hearing. The act sets forth important requirements for barber and beauty colleges which are also subject to the rule and regulation-making authority of the Board. Definite rules for the renewal and revocation of practitioners' certificates are set forth.

Act No. 362²⁵ made important changes in the Motor Vehicle Safety Responsibility Act. It provides for a suspension of an operator's license for failure to furnish adequate security. There is also mandatory suspension of an operator's license following conviction of certain of-

22. Ga. Laws 1956, p. 293.

23. Ga. Laws 1956, p. 314.

24. Ga. Laws 1956, p. 316.

25. Ga. Laws 1956, p. 543.

fenses. Administration of the act is placed in the Director of Public Safety, with extensive rule-making power. A statutory hearing on the orders of the Director is required upon the request of an aggrieved person, and the director's decision is final except for the effect of an appeal to the superior court, in the same manner as appeals from the court of ordinary to the superior court. The hearing on the appeal is *de novo*.

Act No. 382²⁶ authorizes the Commissioner of Agriculture to place an inspector in any place of business which has been found violating the laws, rules and regulations pertaining to the sale and distribution of fluid milk at the expense of the violator which may be stopped, however, by demanding a hearing within two days, and the charges cease until hearing. If on hearing the Commissioner finds a violation he may assess a fine of not more than \$500. Upon a second offense the license or permit of the violator may be revoked.

Act No. 393²⁷ sets forth the procedure to be followed by a person who has had his driver's license revoked three times in seeking another license. First, no hearing may be had except upon recommendation of the presiding judge who imposed sentence in the last conviction. Notice of the hearing is required, and the hearing is to be informal. The license then may not be issued unless the Director or his agent finds that the petitioner is capable of operating a motor vehicle with safety.

Act No. 404,²⁸ after requiring that all tobacco offered at a warehouse and all livestock offered at sales or auction barns shall be weighed by a bonded, certified public weigher, delegates to the Commissioner of Agriculture the administration of the act, together with the necessary rule-making power. A surety bond is also required to each certified public weigher.

Act No. 416²⁹ makes the failure of a warehouseman to increase the amount of his surety bond when the Commissioner of Agriculture determines that it is insufficient, grounds for suspension or revocation of his license. Also whenever the Commissioner determines that there has been a violation of the law or rules and regulations, he may suspend the license of a warehouseman pending investigation, and the books and records may be impounded until the investigation has been completed. In addition to the power to suspend and revoke any license,

26. Ga. Laws 1956, p. 604.

27. Ga. Laws 1956, p. 624.

28. Ga. Laws 1956, p. 631.

29. Ga. Laws 1956, p. 688.

the Commissioner may petition for a receivership and liquidation of a warehouse in the public interest.

Act No. 431³⁰ authorizes a taxpayer who files a written protest with the tax collector or tax commissioner at the time the intangible property tax is collected, to file a petition for a refund with the State Revenue Commissioner, within 30 days after the date of payment. The taxpayer may sue for a refund in the superior court if the claim is denied or if no decision is rendered within 30 days of the filing of the petition.

Act No. 434³¹ deals with matters of obtaining evidence in connection with hearings before the State Board of Workmen's Compensation regarding disagreements.

Act No. 451,³² among other things, revises the prior statute governing the reports of Credit Unions to the Superintendent of Banks, the examination of such institutions, the revocation of the union's certificate after notice of delinquency has been given to the union, and after hearing to direct that the union discontinue illegal practices, and if the union is insolvent, or has failed to comply with any order within a reasonable time, take possession of the business and property.

Act No. 452³³ now governs the procedure by which a County Board of Education may suspend a teacher or superintendent. A hearing must be granted to the respondent, after a mandatory notice which specifies the charges in at least a limited manner. An appeal may be taken from the county board to the State Board of Education.

Only two of the 1955 acts seem to involve administrative powers. Act No. 134 governs applications for refunds of the motor fuel tax, made to the State Revenue Commissioner. It also authorizes the Commissioner to require reports from motor carriers and to make inspections of books and records. Act No. 7,³⁵ relative to the income tax, delegates to the State Revenue Commissioner authority to make such rules and regulations as will prevent the allowing of more than one personal exemption to an individual taxpayer.

30. Ga. Laws 1956, p. 720.

31. Ga. Laws 1956, p. 725.

32. Ga. Laws 1956, p. 742.

33. Ga. Laws 1956, p. 747.

34. Ga. Laws June-July Sess. 1955, p. 9, GA. CODE ANN. § 92-1401a *et seq.* (Supp. 1955).

35. Ga. Laws June-July Sess. 1955, p. 27, GA. CODE ANN. § 92-3102 (Supp. 1955).

JUDICIAL DECISIONS
Rule Making

Two supreme court decisions were concerned with the proper exercise of delegated authority in rule making. Both cases rely upon the principle of strict construction of delegated authority. The first case³⁶ determined that a county zoning ordinance adopted by a County Commissioner of Road and Revenue was invalid because not adopted strictly in accordance with the enabling statute.

The other decision,³⁷ while recognizing the principle of strict construction, held that the State Highway Department had employed sound discretion in exercising the state's power of eminent domain. Thus, if the administrative authority is acting within its sphere of legally designated power, there will be no judicial interference unless the action taken is arbitrary and amounts to an abuse of discretion.³⁸

Exhaustion of Administrative Remedies

The doctrine that administrative remedies must be exhausted before resorting to the courts, was considered in two cases, both concerning zoning. Under the general zoning act of 1946, there is a statutory right of appeal to a board of adjustment from the decision of the municipal building inspector in issuing a building permit. The existence of this remedy precludes prior judicial interference³⁹

If, however, the question is one of validity of the zoning ordinance or of amendments to a zoning ordinance, there is no adequate administrative remedy, the board of adjustment, not having jurisdiction to determine matters of validity, and the courts are open for injunctive relief.⁴⁰

Exclusive Primary Jurisdiction

One Georgia Supreme Court case considered the exclusive jurisdiction of the Railway Adjustment Board to determine disputes involving the validity of railway-union contracts. Relying upon the authority of the *Howard* case,⁴¹ the court held that the regular courts do have jurisdiction over disputes which involve the validity of the contracts rather than a matter of interpretation.⁴²

36. *Toomey v. Norwood Realty Co.*, 211 Ga. 814, 89 S.E.2d 264 (1955).

37. *Elberton Southern Railway Co. v. State Highway Department*, 211 Ga. 838, 89 S.E.2d 645 (1955).

38. *Atlanta Motor Lines, Inc. v. Georgia Public Service Commission*, 211 Ga. 698, 88 S.E.2d 386 (1955); *Elberton Southern Railway Co. v. State Highway Department* *Supra*.

39. *Ledbetter v. Callaway*, 211 Ga. 607, 87 S.E.2d 317 (1955).

40. *Toomey v. Norwood Realty Co. Supra*; *Taylor v. Shetzen*, 212 Ga. 572, 90 S.E.2d 572 (1955).

41. *Brotherhood of Railway Trainmen v. Howard*, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283 (1952).

42. *Lamon v. Georgia Southern and Florida Railway Co.*, 212 Ga. 63, 90 S.E.2d 658 (1955).

Administrative Appeals

Under the Georgia Workmen's Compensation Law, administrative findings of facts based on conflicting evidence are conclusive and binding upon the courts. One court of appeals decision presented an interesting application of this rule. It appears that a single director had found in favor of the claimant, and upon administrative appeal, his finding was reversed by the board. Since it was the action of the board rather than the director which was on appeal to the superior court, the board's determination was the final determination for purposes of the statute.

Another court of appeals decision⁴⁴ was concerned with the nature of the administrative appeal from a single director to the full board. It was held that the appeal from the director results in a de novo proceeding by the board, and it is free to adopt the findings of the single director or to make other findings based on the same evidence.

Evidence

The great volume of administrative law cases decided during the survey period dealt with the matter of sufficient evidence to support the granting or denying of awards by the State Board of Workmen's Compensation. Settled principles, largely statutory, were involved in these cases. No detailed discussion of the cases is therefore necessary. They⁴⁵ establish that the decisions of the board will be sustained where there is competent evidence in the record in support of their decisions, even though there is a conflict in the evidence.

43. Fortson v. American Surety Co., 92 Ga. App. 625, 89 S.E.2d 671 (1955).

44. Ideal Mutual Insurance Co. v. Ray, 92 Ga. App. 273, 88 S.E.2d 428 (1955).

45. Ladson Motor Co. v. Croft, 212 Ga. 275, 92 S.E.2d 103 (1956); Orkin Exterminating Co. v. Wright, 92 Ga. App. 224, 88 S.E.2d 205 (1955); Great American Indemnity Co. v. Overton, 92 Ga. App. 238, 88 S.E.2d 498 (1955); Creech v. Sirkin, 92 Ga. App. 509, 88 S.E.2d 697 (1955); Atlanta Transit Co. v. Knight, 92 Ga. App. 469, 88 S.E.2d 768 (1955); Roberson v. Lumbermen's Mutual Casualty Co., 92 Ga. App. 572, 89 S.E.2d 270 (1955); Wisebram Department Store v. Bowman, 92 Ga. App. 587, 89 S.E.2d 547 (1955); Field v. Liberty Mutual Insurance Co., 92 Ga. App. 621, 89 S.E.2d 573 (1955); Griffith v. County of Barrow, 92 Ga. App. 698, 89 S.E.2d 895 (1955); Globe Indemnity Co. v. Reid, 92 Ga. App. 828, 89 S.E.2d 905 (1955); General Motors Corp. v. Hall, 93 Ga. App. 181, 91 S.E.2d 57 (1956); White v. St. Paul-Mercury Indemnity Co., 93 Ga. App. 124, 91 S.E.2d 62 (1955); United States Fidelity & Guaranty Co. v. Rosser, 93 Ga. App. 201, 91 S.E.2d 64 (1956); Aetna Casualty & Surety Co. v. Corn, 93 Ga. App. 260, 91 S.E.2d 293 (1956); United States Fidelity & Guaranty Co. v. Landen, 93 Ga. App. 349, 91 S.E.2d 857 (1956); Refrigerated Transport Co. v. Shirley, 93 Ga. App. 334, 92 S.E.2d 26 (1956); Roberts v. Lockheed Aircraft Corp., 93 Ga. App. 440, 92 S.E.2d 51 (1956); Rivers v. Travelers Insurance Co., 93 Ga. App. 779, 92 S.E.2d 818 (1956); Indemnity Insurance Co. v. Westmoreland, 93 Ga. App. 888, 93 S.E.2d 193 (1956).