ADMINISTRATIVE LAW

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This eighth annual report and analysis of the legislative and judicial developments in the field of administrative law is very similar to the last report[1] and again an interesting contrast with the reports of earlier years.[2] There was apparently less judicial time consumed with the substantial problems of administrative law than at any time previous to the last survey period. Also, like the last previous period, there was considerable legislative development.

Since Georgia has not enacted a general administrative procedure statute, each of the enactments discussed devotes some space to procedure, but there is not uniformity in the amount of details or in the kinds of provisions written into the several acts. The judicial product mainly reaffirmed established judicial doctrines, although new ideas were expressed in the application of the doctrine of res judicata to administrative action and in defining the nature and scope of "findings of fact" required of an administrative agency by statute.

This report, like the last one, is limited to the legislative and judicial developments in administrative law. It does not discuss specific rules, regulations or orders of any specific Georgia administrative agency. Agency rules and other matters are discussed only 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, and because of the limited scope of the materials available for discussion, no attempt has been made to conform this discussion to the detailed outline adopted for some of the previous survey articles[3] on administrative law. The legislative materials will be discussed first and then will follow a short analysis of the relevant judicial decisions rendered during the survey period.

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1. Culp, *Administrative Law,* 8 MERCER L. REV. (1956).
2. See the Administrative Law article in each of the Annual Survey of Georgia Law issues of the MERCER L. REV., vols. 2-7 inclusive.
3. This outline appears in the following places: 2 MERCER L. REV. 1 (1950); 3 MERCER L. REV. 1 (1951); 5 MERCER L. REV. 1 (1953).

LEGISLATION

For convenience in discussion, the 1957 legislation will be divided into two topics: new legislation and amendatory legislation.

New Legislation

Six separate 1957 Acts of the Georgia General Assembly created either new agencies or granted new powers to an existing agency or officer. Of these Acts, four were concerned with the exercise of public authority, either legislative or executive.

The one new agency concerned primarily with legislative development is the Georgia Nuclear Advisory Commission.[4] While this Commission has no delegated administrative or rule making functions, the enabling statute expresses a legislative policy that no legislation relating to the field of nuclear energy be enacted unless first approved by the Commission.

Two other Acts were concerned with primarily public functions. A new statute[5] authorizes city, county and joint city-county planning commissions, and vests important zoning authority in the local government officials. Section 5 of this statute permits these officials to submit zoning regulations to the Commission before they become effective. Section 11 of the Act authorizes the creation of boards of zoning appeals, including joint city-county boards of appeals. When such a board has been created, appeals may be taken from the enacting authority to the board by any aggrieved person or by designated local officials. Normally the appeal will act as an automatic stay of any proceeding under the local legislation, but there is a provision for eliminating the stay upon proper certification of imminent harm to life or property, subject to the power of the board of appeals or a court to restrain enforcement of the zoning regulation notwithstanding the certificate.

Another new statute[6] enlarges the power of the governor to protect the public against violence, property damage, and overt threats of violence. Besides the vesting of purely executive power to carry out the policy of the statute, the Government receives delegated authority, after the issuance of an appropriate proclamation, to adopt emergency rules for the use of public facilities and public utilities. Whenever the governor does promulgate emergency rules and regulations, they must be published and posted during

4. Ga. Laws 1957, p. 60.
5. Ga. Laws 1957, p. 420.
6. Ga. Laws 1957, p. 44.

the emergency in the area affected, with copies filed with the Secretary of State for public record.

The Georgia Water Quality Control Act[7] vests rule making and enforcement authority in the State Board of Health together with extensive investigative, inspection and order issuing authority, over the waters of the State. A new agency, The Water Quality Council, is authorized, with power to make recommendations to the State Board of Health concerning rules, regulations, procedures, policies, standards, waste disposal certification and other matters required to carry out the purpose of this statute. The Council is also a reviewing body to hear objections against the acts or regulations of the State Board of Health, if an appeal is perfected within the statutory period. The State Board of Health may make its policy effective immediately whenever it declares the existence of an emergency, with an appeal to lie as soon as possible. A complete judicial review of the Council's final action is provided by means of an appeal to the appropriate superior court. The Director of the State Board of Health has an extensive enforcement authority, including an express authorization to request a court to issue an injunction in aid of enforcement.

The 1957 laws establish licensing systems for two previously unregulated activities. A State Board of Examiners for Registered Professional Sanitarians has been authorized, with authority to license all "Sanitarians."[8] This Board, under the statute, receives and passes on applications for licenses and has authority to grant, refuse, suspend, and revoke licenses. It may issue implementing rules and regulations. The Board may revoke licenses for the violation of any rule, regulation or the act itself. Revocation can only occur after notice and an opportunity for a hearing, with right of counsel, right to examine and cross examine witnesses, take depositions and have compulsory process for witnesses, granted to all parties. Judicial review is available to any party aggrieved by an order of the Board through an appeal to the appropriate superior court.

The last new statute[9] discussed in this subdivision authorizes the State Game and Fish Commission to issue and revoke licenses or permits for the establishment of hunting preserves. Any administrative decision of the Director may be appealed to the Commission.

Another Act of general interest is the revised Georgia Securities Act.[10] This revised law designates the Secretary of State to serve

7. Ga. Laws 1957, p. 629
8. Ga. Laws 1957, p. 219.
9. Ga. Laws 1957, p. 295.
10. Ga. Laws 1957, p. 134.

as Commissioner of Securities. It delegates rule making power to the Commissioner and provides a statutory review of such rules for any person affected, by appeal to the superior court.

Under the registration of securities division of the Act, the Commissioner may deny registration or forbid further sale of securities; also under the dealer and salesman registration division, he may refuse, suspend, or revoke a dealer's or salesman's registration. Section 8 provides a satisfactory administrative hearing applicable to a variety of acts of the Commissioner dealing with registrations of both persons and securities, makes provision for the use of a qualified referee for holding hearings who must make a written report containing his findings of fact, conclusion of law and a recommended decision. The referee's decision is subject to administrative review by the Commissioner upon request. Appeal from the Commissioner's administrative orders and acts may be taken to the superior court.

Amendatory Legislation

An amendment[11] to the Georgia Commission on Education Act of 1953 authorizes that body to hold hearings, conduct investigations and collect data in preparing and drafting legislation dealing with problems of education in Georgia. The Commission is given subpoena power to obtain the attendance of witnesses, and the superior courts are authorized to issue show cause orders against recusant witnesses.

A new section[12] concerning the refusal or revocation of the licenses of medical practitioners was added to the statutes governing the Board of Medical Examiners. Besides listing twenty acts which, after notice and hearing are a sufficient basis for suspending or revoking a license, the statute provides that a license of anyone adjudicated incompetent or insane shall be automatically suspended. Another new section sanctions the use of the injunction against unlawful practice but only after notice and hearing, in addition to revocation, suspension or criminal prosecution, to prevent violation of the law.

Act No. 244 amends the Structural Pest Control Act[13] in many of its administrative provisions. New licensing requirements are set up and annual licenses are now required of licensees and their employees, provision has been made for working out reciprocal licensing agreements with other states so that duly licensed persons in such states may be licensed in Georgia without examination. A license or a registration may be revoked by a majority vote of the Commis-

11. Ga. Laws 1957, p. 67.
12. Ga. Laws 1957, p. 129.
13. Ga. Laws 1957, p. 299.

sion, after notice and opportunity for a hearing, for violation of the Act or any rule or regulation. The Commission may request the use of the injunction as a sanction in aid of enforcement.

Section 8[14] of the 1955 Industrial Loan Act was completely revised. The Commissioner is required to investigate each application for a license, and if he has any doubts, he must give a written notice of a hearing on the matter. After holding the hearing, he may make a finding that the application is in the public interest or, in the alternative, write a denial. Action must be taken upon each application within 60 days after its date of filing. The Commissioner may apply to the superior court for an injunction as an aid to enforcement of the rules and regulations, and section 11 also authorizes an administrative cease and desist order as a method of enforcement.

In another amendment[15] of special interest to milk producers, the Chairman of the Georgia Milk Commission received authority to adulterate the milk of any person who has not complied with the law by securing a license. Before adulteration may take place, a 10 day notice must be given by the Chairman unless a license has been previously denied or currently denied after opportunity for a hearing. A timely application for a license will stay adulteration until a denial has been issued if filed within 8 days after the Chairman's notice of intention to adulterate.

JUDICIAL DECISIONS

The appellate court decisions rendered during the survey period are not unusually significant in development of the Georgia Administrative law. A few matters were considered for the first time.

Exclusive Administrative Jurisdiction

A supreme court decision[16] of 1955 held that the exclusive jurisdiction of the Federal Railway Adjustment Board in matters of interpretation or railway-union contracts did not preclude the regular courts from considering issues relative to the validity of such contracts. A later decision, reported in the same volume,[17] adheres to the doctrine of exclusive administrative jurisdiction in approving a trial court's ruling sustaining a plea to the jurisdiction in an action by employees against a railroad for alleged violation of seniority rights and for damages.

14. Ga. Laws 1957, p. 331.
15. Ga. Laws 1957, p. 342.
16. Lamon v. Georgia Southern and Florida Railway Co., 212 Ga. 63, 90 S.E.2d 658 (1955); 8 MERCER L. REV. 10.
17. Stevens v. Seaboard Air Line Railroad Co., 212 Ga. 599, 93 S.E.2d 754 (1956).

Since this involved a matter of the interpretation of a collective bargaining agreement, the court reasoned that it was within the exclusive province of the Railway Adjustment Board since the courts are without power to interpret union collective bargaining agreements whenever the interpretation to be made will govern future relations between the contracting parties.

Continuing Jurisdiction After Final Order

When the time for an appeal from an agency such as the Workmen's Compensation Board, has expired the agency has no jurisdiction to reopen the matter to determine a fact not capable of determination at the time of the original proceeding. The courts[18] hold that jurisdiction is lost after the time for an appeal has expired.

Notice of Appeal as Jurisdictional

A zoning statute required that notice of an appeal from the decision of a building inspector should be given to all parties in interest. A property owner appealed the denial of an application to erect a business building in a residential zone but failed to give the building inspector notice. The Board of Adjustments nevertheless reversed the building inspector. The trial court on appeal, upheld the building inspector. The court of appeals affirmed[19] this judgment, declaring that the decision of the board of adjustment was void for lack of notice to an interested party, as required by the statute.

Evidence

As usual the largest volume of cases in number involved questions of the sufficiency of the evidence in support of specific administrative action. These cases invariably involve awards of the Workmen's Compensation Board. Settled principles, mostly statutory rules, were involved in these cases and no detailed discussion is therefore necessary. These cases sustained the action of the agency when there was competent evidence in the record in support of its decisions,[20] irrespective of conflicting evidence.

18. Arnold v. Indemnity Insurance Co., 94 Ga. App. 29, 95 S.E.2d 29 (1956).
19. Ledbetter v. Roberts, 95 Ga. App. 652, 98 S.E.2d 654 (1957).
20. Delta, C & S Airlines v. Perry, 94 Ga. App. 107, 97 S.E. 771 (1956); Clark v. Payne, 94 Ga. App. 139, 93 S.E.2d 792 (1956); Davison-Paxon Co. v. Ferguson, 94 Ga. App. 501, 95 S.E.2d 306 (1956); Weathers v. American Casualty Co., 94 Ga. App. 530, 95 S.E.2d 436 (1956); Fitzgerald Motor Co. v. Ross, 94 Ga. App. 636, 95 S.E.2d 721 (1956); Grooms v. Pacific Employers Insurance Co., 94 Ga. App. 865, 96 S.E.2d 525 (1957); United States Fidelity & Guaranty Co. v. Holland, 95 Ga. App. 18, 96 S.E.2d 625 (1957); Dill v. Ocean Accident

Where there is conflicting evidence before the agency, the weight and sufficiency of the evidence is a matter for the exclusive determination of the Board and the courts may not disturb its decision.[21] Also when the record has been held open for additional testimony, such as medical evidence, the award is properly based on all evidence received prior to the time of the findings and the award.[22]

However, an award cannot be sustained which is not supported by any evidence and is contrary to such evidence as there is in the record.[23]

Findings

Many statutes now require their administrative agencies to make findings of fact. Such a requirement rests upon the Workmen's Compensation Board. The purpose of this requirement is to enable the losing party to intelligently prepare an appeal and the court to review the appeal in a proper manner. A narrative of the testimony of witnesses is not proper in the findings.[24] Findings must represent the agency's conclusions as to the true facts established by the evidence. This requires a concise but comprehensive statement of the cause and circumstances of the transaction found by the agency to be true. The proper procedure when the agency makes such an erroneous finding is to recommit the case to the agency for a hearing de novo.

Res Judicata in Administrative Proceedings

The doctrine of res judicata which is a policy rule of the courts that a fact or a legal right determined by a judgment cannot be disputed in a subsequent suit between the parties or their privies, does not apply in a technical sense to the decisions of administrative bodies.[25]

& Guarantee Co., 95 Ga. App. 60, 96 S.E.2d 638 (1957); Godbee v. American Mutual Liability Insurance Co., 95 Ga. App. 86, 96 S.E.2d 648 (1957); Fountain v. Georgia Marble Co., 95 Ga. App. 21, 96 S.E.2d 656 (1957); Francis v. Liberty Mutual Insurance Co., 95 Ga. App. 225, 97 S.E.2d 553 (1957); Short v. Glendale Mills, 95 Ga. App. 238, 97 S.E.2d 541 (1957); Allstate Insurance Co. v. Starnes, 95 Ga. App. 274, 97 S.E.2d 625 (1957); Brewer v. Pacific Employees Insurance Co., 95 Ga. App. 270, 97 S.E.2d 643 (1957); Hurt v. United States Fidelity & Guaranty Co., 95 Ga. App. 280, 97 S.E.2d 646 (1957); Federal Insurance Co. v. Coram, 95 Ga. App. 622, 98 S.E.2d 214 (1957); Borden Co. v. Fuerlinger, 95 Ga. App. 556, 98 S.E.2d 410 (1957); Royal Indemnity Co. v. Coulter, 96 Ga. App. 157, 98 S.E.2d 899 (1957).

21. Smith v. United States Fidelity and Guaranty Co., 94 Ga. App. 507, 95 S.E.2d 35 (1956).
22. Fulton Bag & Cotton Mills, 94 Ga. App. 492, 95 S.E.2d 32 (1956).
23. Coulter v. Royal Indemnity Co., 95 Ga. App. 124, 97 S.E.2d 358 (1957).
24. Atlanta Transit System, Inc. v. Harcourt, 94 Ga. App. 503, 95 S.E.2d 41 (1956).
25. American Mutual Liability Insurance Co. v. Dyer, 94 Ga. App. 619, 95 S.E.2d 727 (1956).

An obvious reason is that they are not courts and their determinations are not judgments. There is, however, frequent recognition by state agencies of the rule that a prior determination will not be reversed to the detriment of an individual who fairly relied upon an earlier ruling on the same matter, and when an agency refuses to reopen a case or change its decision on rehearing, it sometimes states that it is following its original decision because of the doctrine of res judicata.[26]

Two courts of appeals decisions have used similar language in denying the power of the Workmen's Compensation Board to reopen awards. One decision considered it improper for the current full Board to reopen a case and make another finding of fact and another award when there had been a previous finding of fact and an award by prior full board.[27] The other decision used the following language in its opinion:[28] "The doctrine of res judicata applies to workmen's compensation cases except in the particular instances named in the act." "While the doctrine of res judicata does not make forever conclusive the determination of the issues of the amount of disability and dependency, such determinations are conclusive as to those issues up to and at the time of the hearing and remain conclusive unless a change in condition or dependency occurring after such hearing is shown."

There is also dictum in this opinion to the effect that any issue which could have been determined on the first hearing is res judicata in the later hearing.[29]

Judicial Review

There was a dearth of cases dealing with the specific problem of judicial review during this survey period.

Only one case involved the scope of judicial review. This case involved an order of the Public Service Commission in transferring a class "B" certificate from one carrier to another. The supreme court[30] reaffirmed its many previous holdings that it cannot on judicial review disturb the exercise of the Commission's discretion within its jurisdiction unless there is a showing that the order in question is clearly unreasonable, arbitrary, or capricious.

26. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS, pp. 241, 242 (1951).
27. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS, pp. 247, 248 (1951).
28. Ideal Mutual Insurance Co. v. Ray, 94 Ga. App. 785, 96 S.E.2d 377 (1956).
29. Fishten v. Campbell Coal Co., 95 Ga. App. 410, 98 S.E.2d 179 (1957).
30. Woodside Transfer & Storage Co. v. Georgia Public Service Commission, 212 Ga. 625, 94 S.E.2d 706 (1956), citing Atlanta Motor Lines, Inc. v. Georgia Public Service Commission, 211 Ga. 698, 88 S.E.2d 387 (1956).

Four supreme court decisions dealt with two methods of obtaining non-statutory judicial review of zoning regulations or ordinances. Three of these actions were initiated through an application for a writ of mandamus, and the fourth involved the use of an injunction to attack an illegal zoning ordinance.

The holdings as to mandamus may be summarized as follows: (1) mandamus is not the proper remedy to obtain the issuance of a building permit in the absence of an attack on the constitutional validity of an ordinance and where there is an apparent adequate remedy at law;[31] (2) mandamus is never an available remedy where there is a plain, specific legal remedy;[32] (3) a mandamus absolute is a proper remedy where a zoning ordinance is invalid because it is lacking in due process of law (constitutional invalidity).[33]

The injunction is an equally proper remedy by which to challenge the invalidity of an illegal or ultra vires zoning ordinance.[34]

31. Wofford v. City of Gainesville, 212 Ga. 818, 96 S.E.2d 490 (1957).
32. Wofford v. Porte, 212 Ga. 533, 93 S.E.2d 690 (1956).
33. Sikes v. Pierce, 212 Ga. 567, 94 S.E.2d 427 (1956).
34. Neal v. City of Atlanta, 212 Ga. 687, 94 S.E.2d 867 (1956).