

ADMINISTRATIVE LAW

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This eleventh annual report and analysis of the legislative and judicial developments in the field of administrative law in Georgia compares with the tenth report¹ in several respects. There were a few new statutes which provided for licensing authorization and revocation. There were also several amendments of existing statutes which modified existing administrative remedies. The most significant administrative law development was the enactment of the new Insurance Code,² with its abundance of administrative controls and judicial review provisions.

While there were significant court decisions which provided enlightenment in two important aspects of judicial review, there was a very small volume of significant administrative law questions decided by the courts. This illustrates that the prompt and thorough development of administrative law must come from legislation.

Again the reader should bear in mind that Georgia has no general administrative procedure act. This necessitates legislative attention to the problems of administrative laws and procedure whenever the amendment of existing legislation is contemplated or whenever new extensions of governmental authority are proposed. This situation is productive of great variations in administrative law and procedure, and necessarily requires consideration of Georgia administrative law and procedure on an agency by agency and officer by officer basis.

This report is limited to a discussion of the legislative and judicial developments in administrative law in Georgia. The substantive and procedural rules, regulations, or orders of the Georgia administrative agencies and offices are not discussed unless they are considered in connection with some specific litigated problem which came before the appellate courts in Georgia during this reporting period.

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1. Culp, *Administrative Law*, 11 *MERCER L. REV.* 1 (1959).

2. Ga. Laws 1960, pp. 289-750 inclusive. It should be noted that this Code is not effective until January 1, 1961. Ga. Laws 1960, p. 296.

The administrative and judicial procedural requirements of this new Insurance Code are so comprehensive in scope that they might well serve as a basis for a future administrative procedure code applicable to state officers and agencies generally.

LEGISLATION

A number of new statutes materially expanded the scope of public control through rule making authority and licensing, and in some cases individual statutes provided for administrative or judicial review by aggrieved parties.

A new act³ requires the licensing of all truck brokers engaged in the business of providing for compensation the procurement of trucks for the purposes of transporting or moving farm products. Before the license may issue, the broker must furnish a bond or cash in lieu of bond for the faithful performance of all contracts entered into by the broker. The administration of the licensing is vested in the Commissioner of Agriculture who is authorized to receive and hear written complaints of the breach of the conditions of the bond and report his conclusions after the hearing. If the broker does not effect the settlement recommended after hearing, either the commissioner or the producer may sue to enforce the claim. When the complainant is not satisfied with the ruling, he may sue the principal and surety on the bond as in any civil action.⁴

The Commissioner of Labor is authorized to administer and enforce the new act requiring certain persons including house movers not subject to the Public Service Commission to take precautions within the proximity of high-voltage lines. He is also authorized to prescribe rules and regulations consistent with this statute.⁵ Enforcement is through criminal prosecution for violations of the statute and the rules and regulations issued by the Commissioner of Labor.

A completely new⁶ act covering the sales of flue-cured tobacco replaced the several individual laws relating to the subject. The Commissioner of Agriculture administers the many provisions of this act, and may apply for an injunction to restrain violations of the statute or rules or regulations promulgated thereunder. This act provides for the fixing of the date for the beginning of auction sales, the licensing of auction operators, the labeling of tobacco lots, the licensing of purchasers for resale, and the inspection of the premises of each licensee. The statute requires the keeping of certain records by licensees, and authorizes the Commissioner of Agriculture to prescribe additional reporting requirements.

An important feature is the hearing requirement prior to the adoption or change of any of the Commissioner's rules and regulations,⁷

3. Ga. Laws 1960, p. 175, GA. CODE ANN. §84-42.

4. Ga. Laws 1960, p. 175, 177, §6, GA. CODE ANN. §84-4206.

5. Ga. Laws 1960, p. 181, 184, GA. CODE ANN. §34A-207.

6. Ga. Laws 1960, p. 214, GA. CODE ANN. §111-2.

7. Ga. Laws 1960, p. 214, 223, GA. CODE ANN. §111-219.

and any person with a real and substantial interest affected by a rule and regulation who believes the action taken is unauthorized, may petition the Commissioner for a repeal or rejection of the rule, pointing out the reason which supports the conclusion of unlawfulness or unconstitutionality. The Commissioner must afford the petitioner a hearing within 30 days and make a decision. All hearings before the Commissioner must be stenographically reported and made available to interested party upon payment of the stenographic cost.

This statute provides for a very comprehensive judicial review.⁸ Whenever any person aggrieved by any matter in which a hearing is required or authorized by the statute (this includes any license revocation within the scope of sections 22 (b) and 23 of this statute or under the Georgia or Federal Constitution) he may use the judicial review section. This procedure is initiated by filing a petition in the superior court of the County Commissioner's residence within 30 days of service of the final determination or decision which he seeks to review. The review is normally confined to the record and it is by the court without a jury. The decision of the court may be an affirmance or a remand of the case to the Commissioner for further proceedings. The statute also lists the power to reverse or modify the decision or compel action unlawfully withheld, whenever the substantial rights of the petitioners may have been prejudiced because of administrative findings, conclusions, or decisions on any of the following grounds:

1. in violation of constitutional provisions;
2. in excess of the statutory authority or jurisdiction of the commissioner, or affected by other error of law;
3. made upon unlawful procedure;
4. unsupported by substantial evidence as weighted in view of the entire record as submitted;
5. arbitrary or capricious.

It should be noted that this judicial review section is very complete and embodies most of the judicial review elements contained in the Federal Administrative Procedure Act and many of the state acts.^{8a}

The new Georgia Motorboat Numbering Act vests licensing authority in the State Game and Fish Commission.⁹ The statute delegates rule making authority in two areas: (1) rules and regulations necessary for the administration and enforcement of the statute, and (2) rules and regulations relative to safety in equipment operation,

8. Ga. Laws 1960, p. 214, 224, §22, GA. CODE ANN. §111-222.

8a. See Davis, *Administrative Law Text*, cc. 29-30 (West Publishing Co. 1959).

9. Ga. Laws 1960, p. 235, 237, GA. CODE ANN. §17-604.

lights, navigation rules.¹⁰ These safety rules remain in force and effect until the next regular session of the legislature which either confirms or rejects them. There is no statutory provision for judicial review.

The Georgia Fertilizer Act of 1960 completely revises the laws of the state relative to this subject.¹¹ The administration and enforcement of this statute is vested in the Commissioner of Agriculture. It provides for the registration and labeling of each brand and grade of commercial fertilizer. The Commissioner has the duty of inspection, sampling and analysis of commercial fertilizers, and he may after public notice and public hearing prescribe such reasonable rules and regulations as he may find necessary for the better enforcement of the statute. It provides for the licensing of fertilizer manufacturers and contractors and for reporting sales by distributors. A separate section applies to non-residents requiring the designation of an agent in fact within the state for service of process prior to offering or selling commercial fertilizers in the state.

The statute authorizes the Commissioner to cancel any registration or license for a violation of the statute or rules or regulations issued thereunder after notice and an opportunity to be heard. The Commissioner may also issue "stop sale orders". In addition to these remedies, the statute provides for enforcement through criminal prosecutions and a special injunctive process which enables the Commissioner to obtain a restraining order without the necessity of showing the inadequacy of the remedies at law and even though a criminal prosecution is concurrently in progress. Section 19¹² indicates a policy of administrative assistance in the enforcement of criminal sanctions by authorizing the Commissioner to hold hearings on purported violations by registrants, distributors or possessors, under such procedural rules and regulations as the Commissioner may promulgate. If it appears, after hearing, whether the person notified is present or absent, that any of the provisions of the Act or rules and regulation issued thereunder have been violated, the Commissioner may certify the facts to the Court having jurisdiction for prosecution for a misdemeanor. The Commissioner has discretion as to whether to report a violation for prosecution, and he may choose not to report the violation when he believes that the public interest will be best served by other methods.¹³ While section 26 only designates a violation of the Act as a misdemeanor, section 19 provides that any person convicted of

10. Ga. Laws 1960, p. 235. GA. CODE ANN. §17-6.

11. Ga. Laws 1960, p. 916. GA. CODE ANN. §5-10.

12. Ga. Laws 1960, p. 916. 931. GA. CODE ANN. §5-1019, §5-9936.

13. Ga. Laws 1960, p. 916. 932. GA. CODE ANN. §5-1019, §5-9936.

violating any provision of the Act or the rules and regulations issued thereunder shall be guilty of a misdemeanor.¹⁴

A new statute relates to payment of cost of care of patients in state institutions.¹⁵ The administration of this statute is in the State Department of Public Health. The purpose of this statute is to make the patients or their dependents share in the cost of care. Patients and other persons liable for the cost of care who do not pay the amount required are assessed by the Department of Public Health after notice and hearing at which the persons charged are entitled to show cause why the assessment should not be made. The hearings are open to all parties at interest and their counsel, and they may submit relevant evidence on the issues involved. Evidence may also be presented by affidavits or depositions. Assessment follows, and this may be collected as a debt due the state, by suit at law or in equity in any court in Georgia or any other state where it may be necessary to collect the amount due.

Section 18¹⁶ provides for judicial review in the superior court of an aggrieved party's residence, of any determination of the Georgia Department of Public Health, in the same manner as appeals are entered from the court of ordinary.

The Georgia Insurance Code of 1960¹⁷ is in part¹⁸ devoted to administrative procedure and rule-making before the Insurance Commissioner and judicial review of this administrative action. Unless specifically excluded or limited,¹⁹ the rule-making procedures,²⁰ and the requirements of the hearing,²¹ as well as the provisions for judicial review,²² apply to any situation in which the Commissioner holds a hearing pursuant to the Title; or is required to hold a hearing under the Insurance Code, or upon written demand for a hearing made by an aggrieved person complaining of any act, threatened act, or failure to act if failure is deemed an act, under the Insurance Code, or any report, promulgation or order other than an order following a hearing of which the person was actually notified or at which he appeared as a party, or an order pursuant to the order on such hearing. Thus the chapter provides a common method for reviewing administratively the rules and regulations promulgated by the Com-

14. Ga. Laws 1960, p. 916, 932, GA. CODE ANN. §5-1019, §5-9936.

15. Ga. Laws 1960, p. 1138, GA. CODE ANN. §35-11.

16. Ga. Laws 1960, p. 1138, 1143, GA. CODE ANN. §35-1115.

17. Ga. Laws 1960, pp. 289-764, GA. CODE ANN. §56-101 et seq.

18. Ga. Laws 1960, p. 289, 296, GA. CODE ANN. §56-208 through 56-229 (1960 Rev.).

19. Ga. Laws 1960, p. 289, 313, GA. CODE ANN. §56-229 (1960 Rev.).

20. Ga. Laws 1960, p. 289, 305, GA. CODE ANN. §56-216 (1960 Rev.).

21. Ga. Laws 1960, p. 289, 306-309, GA. CODE ANN. §56-218 to 56-224 (1960 Rev.).

22. Ga. Laws 1960, p. 289, 309-312, GA. CODE ANN. §56-225 to 56-227 (1960 Rev.).

missioner, examinations, reports, and orders issued prior to a hearing. If the order is only issued after a hearing, the next step is judicial review, but any required statutory hearing under his Title may be initiated by a notice given in the form of a rule to show cause why the proposed action should not be taken.²³

The rule-making authority of the Commissioner covers the organization and assignment of duties within the Insurance Department, rules and regulations to effectuate the provisions of the Insurance Code, interpretive rules and prescription of forms, as well as any rules governing procedure in proceedings before the Insurance Commissioner. Conditions precedent to promulgation of a rule or regulation or the amendment or repeal thereof include: (1) notice published or circulated indicating the intended action and an opportunity afforded to interested persons to submit data or views either orally or in writing, (2) approval for legality by the attorney general, (3) and having been on file as a public record in the office of the Commissioner for at least 10 days.²⁴

Orders and notices of the Commissioner must be written and signed by him or his authority. Besides an effective date, the order must state its intent or purpose, the grounds on which it is based, and the provisions of the Code pursuant to which action is taken or proposed.²⁵ An order or notice may be given by delivery to the person involved or sent by prepaid mail to the address of his principal place of business as last of record in the Commissioner's office.²⁶

The hearings before the Commissioner may be required by the Insurance Code, ordered on the initiative of the Commissioner, or demanded by an aggrieved person. In the latter instance the hearing must be held within 30 days of the receipt of the demand by the Commissioner, but only if he shall find that the demand was made in good faith, that the applicant would be aggrieved, and that "such grounds otherwise justify holding the hearing." The hearing which is public shall be held at the place designated by the Commissioner and not less than 10 days after notice has been given pursuant to statute and to all persons directly affected by the hearing, with publication at least 10 days prior to the hearing in the event that all persons directly affected are unknown.²⁷

A specific section on the conduct of hearings²⁸ permits any party

23. Ga. Laws 1960, p. 289, 307, GA. CODE ANN. §56-221 (1960 Rev.).

24. Ga. Laws 1960, p. 289, 305, GA. CODE ANN. §56-216 (1960 Rev.).

25. Ga. Laws 1960, p. 289, 306, GA. CODE ANN. §56-217 (1960 Rev.).

26. Ga. Laws 1960, p. 289, 306 GA. CODE ANN. §56-217 (3) (1960 Rev.).

27. Ga. Laws 1960, p. 289, 306, GA. CODE ANN. §56-220 (1960 Rev.).

28. Ga. Laws 1960, p. 289, 307, GA. CODE ANN. §56-222 (1960 Rev.).

to appear by counsel or in person, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the Commissioner to compel the attendance of witnesses and the production of evidence in his behalf. The Commissioner is required to allow the timely intervention of any person who may be aggrieved by the order issued upon the hearing. Upon written request seasonably made by a party to the hearing, and at the expense of the party, a full record of the proceedings shall be made, and copies may be had by any other party to the hearing at the cost of the party. In any event the Commissioner is required to prepare an adequate record of the evidence and the proceedings.

There is no requirement that formal rules of pleading or evidence be observed at such a hearing. If written request for a rehearing is made within 30 days after an order has been mailed, the Commissioner may in his discretion grant a rehearing or reargument of the matter involved in the hearing, and formal notice of the rehearing or reargument must be given as provided in the case of the original hearing. Hearings may be adjourned without other than notice at the place of hearing and the validity of the hearing held in accordance with the notice of adjournment is not affected by the failure of any person to attend or remain in attendance.²⁹

A specific section³⁰ applies to witnesses and evidence at any examination, investigation or hearing conducted by the Commissioner or his delegate. This section sets forth the usual method for compelling the testimony of a witness, defines the giving of wilful false testimony under oath as to any material matter as false swearing, and declares that the failure or refusal to attend and testify or produce records and documents without just cause is a misdemeanor.

Within 30 days after the termination of the hearing or of any rehearing or reargument, the Commissioner shall make his order covering the matters involved, giving a copy to each person notified of the hearing. This order must contain a concise statement of the facts as found by the Commissioner together with a concise statement of his conclusions, and the effective date. Depending on the manner of initiation of the hearing, the order may affirm, modify, or nullify action previously taken, or may constitute the taking of new action within the scope of the notice.³¹

29. Ga. Laws 1960, p. 289, 308, GA. CODE ANN. §56-223 (1960 Rev.) .

30. Ga. Laws 1960, p. 289, 304, GA. CODE ANN. §56-215 (1960 Rev.) .

31. Ga. Laws 1960, p. 289, 309, GA. CODE ANN. §56-224 (1960 Rev.) .

The very comprehensive judicial review sections are complicated by the variety of circumstances which give rise to a right of review. There is the matter of standing to appeal; this includes as a party to a hearing, any person whose pecuniary interests are directly and immediately affected by a refusal or failure to grant a hearing, any person whose pecuniary interests are directly and immediately affected by a refusal or failure to grant a hearing, and any person who is aggrieved by an order after hearing, or by a refusal or failure to grant a hearing.³²

The appeal must be made within 30 days after the applicable one of the following actions:

1. An order on hearing has been mailed or delivered;
2. The order denying rehearing or reargument has been mailed or delivered;
3. The Commissioner has refused or failed to make his order on the hearing as required by law;
4. The Commissioner has refused or failed to grant or hold a hearing as required by law.

The judicial review is initiated by a petition in the Superior Court of Fulton County, and follows the course of civil actions in the superior court, with appropriate discretion vested in the superior court to grant extensions of time for filing of pleadings and to expedite hearing or trial of the proceeding as justice or the public interest may require.³³ Pending judicial review discretion is vested in the Commissioner, the reviewing court, or any appellate court, to postpone the effective date of the action under review. A party seeking judicial review should observe carefully the statutory requirements concerning the contents of the petition.

The scope of judicial review of the facts is dependent upon the extent to which a hearing has been held at the administrative level as well as to the extent that the court has received evidence under the pleadings not previously presented at a hearing. When the facts have been determined after a hearing required by the Insurance Code or a hearing authorized thereunder, or the determination is a matter committed by law to the commissioner's discretion, the review of the facts is not *de novo*.³⁴

Where proceedings have been held before the Commissioner, he files with his reply to the reviewing court, a certified transcript of the proceedings and the evidence, provided the parties may by written

32. Ga. Laws 1960, p. 289, 309, GA. CODE ANN. §56-225 (1960 Rev.).

33. Ga. Laws 1960, p. 289, 310, GA. CODE ANN. §56-226 (1960 Rev.).

34. Ga. Laws 1960, p. 289, 311, GA. CODE ANN. §56-227 (2) (1960 Rev.).

stipulation agree upon an abbreviated record containing the material necessary to determine the questions under review. The court's decision shall be upon the basis of the pleadings and the records so presented, and the Commissioner's findings as to any fact are conclusive if supported by substantial evidence upon consideration of the whole record. When the pleadings present issues of fact outside the record, they may be found by the court. The court may remand any matter for further proceedings or findings.

When necessary to a decision or where the issue is presented by the pleadings to the court, it must determine all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action.

The court may in its decision compel Insurance Department action which is unlawfully withheld or unreasonably delayed. The court may also hold unlawful and set aside Department action, findings, and conclusions for any one or more of the following reasons:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. Contrary to legal or constitutional right, power, privilege, or immunity;
3. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
4. Without observance of procedure required by law; and
5. On the facts, where there is (a) no de novo examination but the court determines upon the whole record that the Department act is unsupported by substantial evidence, or (b) unwarranted by the facts in cases where there is a de novo examination of the facts by the court.

The court is required to review the whole record in making its determination or such part as the parties have designated, with due account taken of the rule of prejudicial error.³⁵

The reviewing court may also grant such further relief either legal or equitable, or both, as the interest of the public and the aggrieved parties in the proceedings may require.

While it is not expressly so stated, it would also appear that the court may affirm the action of the Insurance Department if it finds no error of law or fact in the proceedings being reviewed.

Rate making procedures in the chapters concerned with (1) casualty, surety and vehicle insurance and (2) property, marine and transportation insurance, are expressly excepted from the administrative

35. Ga. Laws 1960, p. 289, 312, G.A. CODE ANN. §56-227 (3) (1960 Rev.).

and judicial review provisions discussed above.³⁶ Instead, each of these chapters has its own built in administrative procedure and judicial review. Each chapter provides numerous opportunities for invoking administrative action, and each has a single judicial review section. While the reviewing court in each instance is the Superior Court of Fulton County, there is a different measure of evidence used in evaluating the Commissioner's ruling, order, or decision. The reviewing court is required to reverse or modify the Commissioner's action when upon the whole record it is not supported by the preponderance of the evidence.³⁷ The court must hear and decide the appeal within sixty days, and must affirm, reverse or modify the action under review. If the action is not in accordance with law it must reverse or modify.

The Chapter on Unfair Trade practices makes provision for special administrative hearings³⁸ which may result in a cease and desist order.³⁹ Such orders are subject to judicial review under the provisions of Chapter 56-2, with the additional provision that the court shall also issue its own order commanding obedience to the extent that it affirms the order of the Commissioner.⁴⁰ A special section authorizes an intervenor in a proceeding to have judicial review of the report of the Commissioner which does not charge a violation.⁴¹ For such acts are not specifically designated by statute as unlawful practices, the Commissioner has investigative and hearing powers, with authority to charge a violation of the law, and if it is not discontinued, he refers the matter to the Superior Court of the county of the person's residence, through the Attorney General, for enforcement. Any further action taken is then judicial action.⁴²

The chapter on Agents and Counselors in the matter of Life, Accident and Sickness insurance, vests specific rule and regulation making power in the Commissioner, and sets forth elaborate procedures for licensing and license refusal, suspension or revocation.⁴³ Judicial review of an action under this chapter is in accordance with Chapter 56-2.⁴⁴ Similarly the chapter of the Insurance Code⁴⁵ dealing with agents, solicitors, brokers, counselors, and adjusters in the matter of property, casualty, surety and allied lines of insurance, has detailed

36. Ga. Laws 1960, p. 289, 313, GA. CODE ANN. §56-229 (1960 Rev.).

37. Ga. Laws 1960, p. 289, 354-356, GA. CODE ANN. §56-518b (1960 Rev.).

38. Ga. Laws 1960, p. 289, 399-401, GA. CODE ANN. §56-706 (1960 Rev.).

39. Ga. Laws 1960, p. 289, 401, GA. CODE ANN. §56-707 (1960 Rev.).

40. Ga. Laws 1960, p. 289, 403, GA. CODE ANN. §56-709 (1), (2), (3) (1960 Rev.).

41. Ga. Laws 1960, p. 289, 403, GA. CODE ANN. §56-710 (1960 Rev.).

42. Ga. Laws 1960, p. 289, 402, GA. CODE ANN. §56-708 (1960 Rev.).

43. Ga. Laws 1960, p. 289, 408-424, GA. CODE ANN. §56-8A (1960 Rev.).

44. Ga. Laws 1960, p. 289, 423, GA. CODE ANN. §56-813a (5) (1960 Rev.).

45. Ga. Laws 1960, p. 289, 424-457, GA. CODE ANN. §56-8B (1960 Rev.).

provisions for administrative action, and judicial review as provided in Chapter 56-2.⁴⁶

Several other chapters contain special administrative action provisions. Under the Hospital Service Nonprofit Corporations chapter there is the approval of rates and the reporting requirements.⁴⁷ Under the Nonprofit Medical Service Corporations chapter there is supervision of rates,⁴⁸ and provisions for an administrative review of disputes, with judicial review by writ of certiorari.⁴⁹ The chapter⁵⁰ concerned with Fraternal Benefit Societies has numerous administrative provisions concerning licensing of societies and agents, with judicial review provided in accordance with Chapter 56-2.⁵¹ Finally, the Commissioner has been delegated rule and regulation making power, licensing authority under the provisions governing Credit Life Insurance and Credit Accident and Sickness Insurance.⁵² The Commissioner's action is judicially reviewable under Chapter 56-2.⁵³

AMENDATORY LEGISLATION

Numerous statutes were changed to modify or add new administrative provisions such as reporting requirements, authorizing rules and regulations, licensing and license revocation, inspections, and appeals. The banking laws were amended in relation to the authority of the Superintendent of Banks to approve and permit or disapprove the operation of a bank office or bank facility within the same city as that of the applicant,⁵⁴ and to issue regulations and orders requiring reports, and to make examinations as may be necessary to administer and carry out the statutory provisions applicable to bank holding companies.⁵⁵ An amendment of the laws applicable to the inspection and analysis of naval stores has abolished the office of Supervising Inspector of Naval Stores.⁵⁶ The powers of this officer are continued and vested in "inspectors of naval stores."

The Tobacco Tax Act was amended to extend the Revenue Commissioner's licensing (including license suspension and revocation)

46. Ga. Laws 1960, p. 289, 448, GA. CODE ANN. §56-826b (1960 Rev.).

47. Ga. Laws 1960, p. 289, 575, GA. CODE ANN. §56-17 (1960 Rev.).

48. Ga. Laws 1960, p. 289, 585, GA. CODE ANN. §76-18 (1960 Rev.).

49. Ga. Laws 1960, p. 289, 589, GA. CODE ANN. §56-1829 (1960 Rev.).

50. Ga. Laws 1960, p. 289, 590-633, GA. CODE ANN. §56-19 (1960 Rev.).

51. Ga. Laws 1960, p. 289, 622, GA. CODE ANN. §56-1932 (1960 Rev.).

52. Ga. Laws 1960, p. 289, 742-750, GA. CODE ANN. §56-33 (1960 Rev.).

53. Ga. Laws 1960, p. 289, 750, GA. CODE ANN. §56-3312 (1960 Rev.).

54. Ga. Laws 1960, p. 67, GA. CODE ANN. §13-2 (1960 Rev.).

55. Ga. Laws 1960, p. 67, GA. CODE ANN. §13-2 (1960 Rev.).

56. Ga. Laws 1960, p. 82, GA. CODE ANN. §5-16 (1960 Rev.).

authority, and to grant power to make rules and regulations for persons selling cigars and cigarettes in vending machines.⁵⁷

The Liquefied Petroleum Safety Act was amended⁵⁸ through the addition of two procedural sections. The authority of the State Fire Marshall to suspend or revoke licenses issued under the statute was defined.⁵⁹ After notice of ten days by means of a show cause order to the licensee stating the contemplated action, and opportunity to be heard, the Fire Marshall may suspend or revoke any license, or in lieu assess a penalty not in excess of \$1,000, for the failure to pay any fee, or for a knowing violation of this statute or any of the rules or regulation promulgated under the statute. The Fire Marshall's action is not final, prior to the expiration of the time allowed for appeal. The limited judicial review section, authorizes any applicant or licensee deeming himself aggrieved to appeal with in 30 days from the entry of the final order to the superior court of the county of his residence. The appeal is initiated by a written request to the Fire Marshall asking for the appeal together with the grounds stated generally. If none of the enumerated grounds for reversal or modification of the order are found to exist by the court, it must affirm the order. The court upon setting aside an order has discretion to remand a case to the Fire Marshall for further proceedings.

The grounds⁶⁰ which require the court to set aside the order or decision are:

1. The officer acted arbitrarily or in excess of his powers;
2. The order or decision was obtained by fraud;
3. The order or decision is contrary to law; and
4. Insufficient competent evidence in the record to warrant the order or decision.

An amendment to the Used Car Dealers' Registration Act rewrote the section concerning complaints about dealers' conduct and providing for administrative hearing on the matter of suspension or revocation of licenses for violations of the statutory grounds enumerated.⁶¹ Also, a new section providing for judicial review was added.⁶² Under this, any act of the State Board of Registration of Used Car Dealers in granting, refusing to grant, revoking, suspending or refusing to revoke or suspend a license is subject to appeal to the Superior Court by a writ of certiorari as provided by law as in other cases.

57. Ga. Laws 1960, p. 125, GA. CODE ANN. §92-22 (Supp. 1960) .

58. Ga. Laws 1960, p. 143, GA. CODE ANN. §73-3 (Supp. 1960) .

59. Ga. Laws 1960, p. 143, 144, GA. CODE ANN. §73-3 (Supp. 1960) .

60. Ga. Laws 1960, p. 143, GA. CODE ANN. §73-3 (Supp. 1960) .

61. Ga. Laws 1960, p. 801, GA. CODE ANN. §84-39 (Supp. 1960) .

62. Ga. Laws 1960, p. 801, GA. CODE ANN. §84-39 (Supp 1960) .

Ten days notice must be given to the Board of a person's intention to appeal.

Extensive amendments of the Act creating the Board of Funeral Service included a revision of the license revocation, reinstatement⁶³ and enforcement provisions. The act creating a new Structural Pest Control Commission, revised the inspection and enforcement, licensing and licensing revocation provisions of the existing law.⁶⁴ An amendment to the Used Car Dealers' Registration Act revised the administrative provision governing the application for and the grant of a certificate of self-insurance.⁶⁵ Finally, an amendment of Chapter 72-2 of the Code of Georgia governing inspection, sale, etc. of petroleum products, vests administration of this statute in the State Revenue Commissioner and revises the rules and regulations promulgation authority, and the enforcement and inspection powers of the administrative officer⁶⁶ involved.

JUDICIAL DECISIONS

In *Adams v. Ray*,⁶⁷ the structural Pest Control Commission had issued an order to show cause why a license should not be revoked. The Commission had authority to promulgate reasonable rules and regulations to protect the interest, health and safety of the public. It issued a regulation after notice and hearing which stated that "Misleading advertising in any form is prohibited." It had statutory authority to suspend or revoke any license or registration, after notice and hearing to the person involved, for any violation of the act or any regulation promulgated under it. The suit was brought to enjoin the Commission from further proceedings on constitutional grounds of lack of authority. The trial court sustained a general demurrer to the petition. This decision was affirmed on appeal, holding that there was no genuine constitutional issue raised and that the statutes in question authorized the issue of the regulation under which the Commission was acting.

ADMINISTRATIVE PROCEDURE

There are a few situations in which basic procedural mistakes will invalidate administrative action. When the agency statute requires that notice be given to an interested party, and the agency proceeds to issue an order without notice, the failure to give notice is a funda-

63. Ga. Laws 1960, p. 806, 807, GA. CODE ANN. §84-8 (Supp. 1960).

64. Ga. Laws 1960, p. 813, GA. CODE ANN. §84-34 (Supp. 1960).

65. Ga. Laws 1960, p. 980, GA. CODE ANN. §84-3908 (Supp. 1960).

66. Ga. Laws 1960, p. 1043, GA. CODE ANN. §§73-2, 99 (Supp. 1960).

67. 215 Ga. 656, 113 S.E.2d 100 (1960).

mental defect, the agency has acted in excess of its powers, and its decision must be reversed. It was the right to notice which was sustained.⁶⁸

Another case illustrated the requirement that an agency must act strictly in accordance with its statute. A procedural step cannot be disregarded even though both parties to a controversy consent to the agency's taking jurisdiction and entering an award.⁶⁹ The Court of Appeals held that jurisdiction could not be conferred by consent, especially when another agency had exclusive statutory jurisdiction over the claim.⁷⁰

Though the "finding of fact" requirement has been before the Georgia courts previously,⁷¹ the problem continues to arise.⁷² The latest decision involved a finding which summarized the evidence as well as contained specific findings of fact. The agency was reversed by the lower court on authority of the previous cases which had held that a mere narrative of the testimony of witnesses is not a sufficient finding of the true facts. This was error because the administrative record did contain a finding of fact which satisfied the statutory requirement.

EVIDENCE

A typical statute limits the reviewing court to a consideration of whether there is sufficient competent evidence in the record to sustain the decision of the agency.⁷³ As in the previous surveys, most of the appellate cases which have considered evidentiary problems before administrative agencies have been in the field of workmen's compensation.

There are a number of situations where the courts are able to correct the administrative agency in the area of evidence. Such a situation existed where the agency's decision was supported by the evidence but it made a mistake of law concerning the qualifications of the claimant.⁷⁴ Likewise the agency may be reversed where it decides an issue on an erroneous legal theory, namely that the burden of proof to sup-

68. *Yates v. U.S. Rubber Co.*, 100 Ga. App. 583, 112 S.E.2d 182 (1959). The Court of Appeals held that the trial court could not, as it did, enter final judgment for the defendant. The proper action was to reverse the board.

69. *Griffin v. Employers Mutual Liability Insurance Co.*, 100 Ga. App. 157, 110 S.E.2d 539 (1959).

70. Under Ga. Laws 1946, p. 102, 113, GA. CODE ANN. §114-819 (1956 Rev.), occupational disease claims were referred to the Medical Board, while the Compensation Board could not enter an award in conformity with the decision of that body.

71. See Culp, *Administrative Law*, 11 MERCER L. REV. 1, 9-10 (1959).

72. *Michigan Mutual Liability Ins. Co. v. Alford*, 100 Ga. App. 234, 110 S.E.2d 710 (1959).

73. GA. CODE §114-710 (1933).

74. *New Amsterdam Casualty Co. v. Thompson*, 100 Ga. App. 677, 112 S.E.2d 273 (1959).

port an award was upon the claimant rather than upon the party seeking a modification of the award.⁷⁵ The court may also review the findings of the agency on an issue which is a jurisdictional fact.⁷⁶ An administrative decision reached after the rejection of competent evidence may be reversed.⁷⁷ This was illustrated by the case of the director who refused to accept evidence showing a casual connection because it was not presented hypothetically.⁷⁸ On the other hand, an award supported by competent evidence may not be reversed⁷⁹ though predicated on an erroneous theory which does not amount to action in excess of the agency's powers. The failure of the agency to consider competent relevant testimony may result in a reversal⁸⁰ and a return to the agency to receive the rejected evidence. However, an administrative decision will not be disturbed for the admission of improper evidence where there is sufficient other competent evidence in the record to support the award.⁸¹

When, however, the statutory minimum requirement for evidence has been met, numerous cases⁸² support the statutory rule that the reviewing court must affirm the decision. This is true even when the parties agree to a disposition contrary to the evidence.⁸³

It is the duty of the reviewing court to apply the statutory test of competent evidence in its examination of the administrative record,

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75. *American Casualty Co. v. Herron*, 100 Ga. App. 661, 112 S.E.2d 160 (1959).
 76. *Thompson v. Walker*, 99 Ga. App. 748, 109 S.E.2d 833 (1959). When the reviewing court finds the board's decision of no jurisdiction supported by some evidence, it should affirm the decision.
 77. *Cook v. Georgia Department of Revenue*, 100 Ga. App. 172, 110 S.E.2d 552 (1959).
 78. *Crawford W. Long Hospital v. Mitchell*, 100 Ga. App. 276, 111 S.E.2d 120 (1959).
 79. *Peacock v. Manufacturers' Casualty Ins. Co.*, 100 Ga. App. 346, 111 S.E.2d 111 (1959).
 80. *American Mutual Liability Ins. Co. v. Grimes*, 100 Ga. App. 51, 109 S.E.2d 837 (1959).
 81. *General Accident Fire and Life Assurance Corp. v. Teal*, 100 Ga. App. 314, 111 S.E.2d 113 (1959).
 82. *Fidelity & Casualty Co. of New York v. Scott*, 215 Ga. 491, 111 S.E.2d 223 (1959). The Court of Appeals being evenly divided, transferred the case to the Supreme Court for determination. *City of Acworth v. McLain*, 99 Ga. App. 407, 108 S.E.2d 831 (1959); *Atlantic Co. v. Moseley*, 99 Ga. App. 534, 109 S.E.2d 74 (1959); *Wilson v. Sears, Roebuck & Co.*, 99 Ga. App. 710, 109 S.E.2d 694 (1959); *Thane v. Maryland Casualty Co.*, 99 Ga. App. 753, 109 S.E.2d 829 (1959); *General Motors Corporation v. Allen*, 100 Ga. App. 112, 110 S.E.2d 431 (1959); *Actna Casualty & Surety Co. v. Mary Emma Green*, 100 Ga. App. 298, 111 S.E.2d 124 (1959); *Baynes v. Liberty Mutual Ins. Co.*, 101 Ga. App. 85, 112 S.E.2d 826 (1960); *Wolverine Insurance Co. v. Leach*, 100 Ga. App. 570, 112 S.E.2d 10 (1959); *Fireman's Fund Indemnity v. Moody*, 100 Ga. App. 690, 112 S.E.2d 174 (1959); *American Surety Corp. v. Bush*, 100 Ga. App. 819, 112 S.E.2d 635 (1959).
 83. *King v. Fulton Bag & Cotton Mills*, 99 Ga. App. 340, 108 S.E.2d 765 (1959).

and if there is no competent evidence to sustain the administrative decision, it has a duty to reverse the agency's decision.⁸⁴

JUDICIAL REVIEW

One Court of Appeals decision dealt with the problem of the proper time from which to count the statutory 30 day period within which judicial review of a decision of a county board of adjustment must be instituted. The board had granted two rehearings but not within 30 days of the date of the initial final decision of the board. The board's statute made no provision for a rehearing. The court held that the Superior Court was without jurisdiction of the appeal,⁸⁵ and there was no estoppel because of participation in the rehearing. Judge Felton in his concurring opinion argued that the board was without constitutional authority to provide for or grant a rehearing.

Another decision⁸⁶ defined more specifically the statutory allowance of an appeal to those having a "substantial interest" who are not parties to a zoning proceeding before an administrative judge. The party seeking judicial review of a zoning decision was a property owner located at some distance from the position of the granted variance. It could show no special damage, only the kind of inconvenience from increased traffic and congestion on the streets which would be suffered by all other persons similarly situated. The court indicated that a property owner has no strictly private right in the enforcement of zoning ordinances unless rights are conferred by statute. In order to have a substantial interest within the meaning of this judicial review statute, the appellant must show some special damage as a result of the Zoning Board's decision.

Often a statute in describing an agency's action will provide that its decision "shall be conclusive." Does this statute preclude judicial review of the decision? In *Dougherty County Council of Architects v. Beckanstin*⁸⁷ the Court of Appeals considered the method of obtaining judicial review of a license revocation order issued under a statute which indicated finality in the language quoted above. The

84. *Atlantic Co. v. Moseley*, 215 Ga. 530, 111 S.E.2d 239 (1959); *Allen v. Clein*, 99 Ga. App. 133, 108 S.E.2d 291 (1959); *State Department of Revenue v. McCray*, 101 Ga. App. 348, 114 S.E.2d 64 (1960). In the last case the Court of Appeals had previously dismissed the state's bill of exception because of the lapse of 36 days between the time it was returned by the trial judge for correction and the time it was retendered to the trial judge for certification. *State Department of Revenue v. McCray*, 215 Ga. 678, 113 S.E.2d 132 (1960).

85. *Alexander v. Muscogee County Board of Adjustment*, 101 Ga. App. 10, 112 S.E.2d 690 (1960).

86. *Victoria Corp. v. Atlanta Merchandise Mart, Inc.*, 101 Ga. App. 163, 112 S.E.2d 793 (1960).

87. 100 Ga. App. 790, 112 S.E.2d 423 (1959).

appellant had sought review in the superior court through a writ of certiorari. The appellate court held that the trial court had no jurisdiction to undertake appellate review by this method because the license revocation order was not judicial action by the agency. The Court of Appeals assumed that some appellate review was possible and suggested an action in equity would be appropriate.⁸⁸

The dissatisfied appellant obtained a writ of certiorari in the Supreme Court.⁸⁹ That court's decision established two significant propositions: (1) that a statute which does contain language describing administrative action as conclusive does not preclude judicial review—this means "final" except for appellate review: (2) the writ of certiorari is an appropriate method of judicial review whenever the parties have a right under the law to demand a trial in accordance with judicial procedure. The court examined the administrative procedure set out in the code,⁹⁰ providing for written charges, designation of a place for hearing, notice, representation by counsel, the right to introduce evidence, and to examine and cross-examine witnesses and held that this was a trial which was reviewable through the writ of certiorari.⁹¹

Finally, since there is a slight overlap in dates between this survey and the preceding one, attention should be called to the unusual decision in *Hunt v. McCollum*⁹² which was reported during this survey period, holding a statutory method of judicial review invalid because of a conflict with a constitutional grant of power.⁹³ *Roberts v. McCollum*⁹⁴ was a similar case, holding that a general demurrer was properly sustained to a petition for a *de novo* appeal from a decision of a county commissioner rezoning property.

88. The court cited *Daniels v. Commissioner*, 147 Ga. 295, 93 S.E. 887 (1918) and *Wofford Oil Co. of Ga. v. City of Calhoun*, 183 Ga. 511, 189 S.E. 5 (1936), in support of the use of an action in equity.

89. *Beckanstin v. Dougherty County Council of Architects*, 215 Ga. 543, 111 S.E.2d 361 (1959).

90. GA. CODE §84-320 (1933).

91. The Supreme Court cited for authority the case of *Gill v. Mayor and Council of Brunswick*, 118 Ga. 85, 44 S.E. 830 (1903).

92. 214 Ga. 809, 108 S.E.2d 275 (1959).

93. See Note 71, *Supra*.

94. *Roberts v. McCollum*, 215 Ga. 174, 109 S.E.2d 744 (1959).