ADMINISTRATIVE LAW

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This thirteenth annual report and survey of the legislative and judicial developments in the area of administrative law in Georgia is marked by the lack of any truly major developments. There were only a few new statutes extending licensing to new areas. Also very few amendments affected existing administrative agencies. Likewise there was an extremely small volume of significant administrative law questions decided by the appellate courts.

This dearth of judicial development serves to re-emphasize a previous assertion that prompt and thorough development of administrative law in Georgia must come from a pioneering legislative effort.[1]

Since Georgia has no general administrative procedure act, the provision for appropriate administrative procedure should be a consideration whenever new administrative regulation is contemplated or whenever the significant amendment of existing agency legislation is under consideration. This manner of development produces marked variations in statutory procedure among administrative agencies in Georgia and necessarily required consideration of administrative law and procedure on an agency to agency and an officer to officer basis.

This report is limited to a consideration of the legislative and judicial developments in administrative law in Georgia. The substantive and procedural rules, regulations, or orders of agencies and officers are not discussed unless they are involved in some specific litigation which came before the Georgia appellate courts during this reporting period.

LEGISLATION

One of the significant new statutes is termed the "Georgia Permit Law".[2] This law seeks to regulate through licensing the manufacture, preparation, packaging and retail selling of drugs, medicines, and toilet articles. Thus the manufacturer, the retail drug seller, and other covered persons must procure a license from the State Board of Pharmacy annually. The board is given rule making power, including the

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1. Culp, *Administrative Law,* 12 MERCER L. REV. 1 (1960); 13 MERCER L. REV. 1 (1961).
2. Ga. Laws 1962, p. 105.

establishment of rules and procedure for hearings on permit granting, revocation, and suspension.

The statute makes it a crime to violate any provisions of the statute or any rule or regulation of the board.[3] Any person who feels aggrieved by the board's rules or regulations may obtain an administrative hearing by making a written demand. There is no express provision for any judicial review of this hearing.

If any person is refused a permit or has a permit revoked or suspended, he may appeal to the superior court of the county in which the business is located.[4] The board has express authority to seek injunctions to enforce the statute and its regulations.[5]

Exempted from the operation of the statute are sellers of patent medicines in the original packages and agricultural chemicals at retail, and it does not apply to manufacturers of insecticides, fungicides, or rodenticides normally used for agricultural purposes.[6] Physicians, dentists, and veterinarians prescribing, putting up their own prescriptions, and dispensing medicines to their own patients, are also excluded.[7]

Finally, the statute makes several changes in the laws relative to the licensing of pharmacists and to examination fees.[8]

Another statute[9] requires an annual registration of organizations, professional fund raisers, and professional solicitors of funds for charitable purposes. The organization must file stipulated data with the Secretary of State prior to solicitation from persons within the State of Georgia. Each organization must file a detailed annual report of its activities. Professional fund raisers also must register before any solicitation and file a surety bond. The filing is good for at most a calendar year, and it may be renewed annually on filing the required bond.[10]

Every professional fund solicitor must register before employment by a registered fund raiser. This license is renewable annually.[11] Persons required to register are prohibited from using the names of another person for fund raising purposes without written consent.[12]

This statute is enforced by the Attorney General. He may, if he has reason to believe any person required to register is violating the

3. Ga. Laws 1962, 105, §9.
4. *Id.* at §10.
5. *Id.* at §14.
6. *Id.* at §21.
7. *Id.* at §22.
8. *Id.* at §§18-20.
9. Ga. Laws 1962, p. 496.
10. *Id.* at 500.
11. *Id.* at 501.
12. *Id.* at 503.

law, seek to enjoin the violation or cancel the persons's registration.[13]

Section 12 of the law[14] contains a statement of policy concerning municipal ordinances governing soliciting of funds. The municipality may not alter any of the obligations imposed by this statute, but it may add other requirements which it deems proper.

The exemptions set forth in the act are significant. Local community organizations or fund campaign managers affiliated with or acting for a qualified and registered state-wide parent organization by agreement or contract need not register individually. The registration of the state-wide organization is considered all inclusive.[15] Specific exemptions are granted to religious agencies, organizations and charities, and to educational institutions wherein the solicitation is confined to students, faculty, officials and alumni, solicitors for the aid of a named individual, and to members of fraternal, civil, benevolent, patriotic and social organizations where the solicitation is for the benefit of their members or is restricted to the county where the organization is located.[16]

The 1962 amendment of the 1961 act[17] relating to grants for education is basically a new statute and is here so treated.[18] The act, which is designed to apply through the high school level, provides detailed machinery for its administration. Several administrative law aspects of this statute are important. The State Board of Education has rule making power to prescribe minimum academic standards to be met by any non-sectarian private school which an eligible child desires to attend, subject to the limitation that these standards may not exceed those applicable to public elementary and secondary schools in Georgia. The board may not adopt rules about pupil eligibility to attend private non-sectarian schools, nor concerning the physical plant facilities of any private school.[19]

Applications for grants are filed by the parents of children eligible to attend a local school with the superintendent of that school. The application is in turn sent to the state superintendent of schools for approval or rejection. He may request additional information or records. A failure to comply is sufficient ground for denying the request. If he rejects an application, he must notify the parents in writing. Within ten days after receipt of this notice, the parents may file a written request for a hearing which shall be had within thirty days.

13. *Id.* at 501-502.
14. *Id.* at 504.
15. Ga. Laws 1962, p. 500, §3 (e).
16. Ga. Laws 1962, p. 499.
17. Ga. Laws 1961, p. 35.
18. Ga. Laws 1962, p. 552.
19. *Id.* at 555. This law became effective in July, 1962.

If the decision remains adverse, any parent, school or institution adversely affected by the final determination may appeal in writing not less than fifteen days after such final determination.[20] The appeals are handled in the same manner as appeals from local boards of education.[21]

The Southern Interstate Nuclear Compact Act[22] does not present any present administrative law problems. However, it provides for an interstate board from sixteen states which could exercise its powers in such a way as to become an important administrative rule making body with interstate authority.

The new commission on aging is another agency of potential future importance. The statute vests this commission with rule making power to implement its objectives and purposes. This is the state agency for handling programs of the federal government relating to the aged not specifically assigned to another agency and is charged with the responsibility of developing programs for the aged.[23]

A new statute authorizes the creation of tobacco boards of trade in municipalities where leaf tobacco is sold at auction on the warehouse floor. However, the board of trade cannot deal with prices or adopt rules or regulations in conflict with the acts of the commissioner of agriculture in exercising his delegated authority to regulate the sale of leaf tobacco.

When the warehousemen in a municipality organize under this statute, they are authorized to make membership on the board a condition to the operation of the business of operating a tobacco warehouse in that municipality. The primary purpose of these boards is to establish reasonable rules and regulations for the economical handling and sale of leaf tobacco at auction in the municipalities. Any member who is expelled or suspended by a board may appeal to the superior court of the county in which the board is located. The appeal is *de novo*. The statute also provides arbitration machinery for settling disputes growing out of an attempt to organize a board of trade in a municipality.[24]

One statute amended the act regulating the licensing and practice of veterinary medicine. The most significant change was the elimination of licensing by comity of licensees from other states.[25]

20. The language of the statute requires the filing to take place more than fifteen days after final determination. Would a filing within fifteen days give the Board of Education jurisdiction?
21. Ga. Laws 1962, pp. 555-556.
22. *Id.* at 505.
23. *Id.* at 604.
24. *Id.* at 102.
25. *Id.* at 543.

The Physical Therapists Practice Act of 1951[26] was significantly amended by the creation of a new body, the Board of Physical Therapy, to do the work formally done by the State Board of Medical Examiners. The new board holds the examinations to qualify persons for registration as physical therapists. It also administers the annual licensing of physical therapists. The statute authorizes the board to seek an injunction to prevent violations of the statute and its rules and regulations.

JUDICIAL DECISIONS

JURISDICTION

An interesting jurisdictional question arose in a controversy concerning certain adjustments made by the Worth County Agricultural Stabilization and Conservation Committee operating under the Federal Agricultural Adjustment Act,[27] in a farm tobacco acreage allotment situation. The committee adjusted the farm allotment for the future as well as for a prior year, 1957. While the findings of fact supported by evidence are made conclusive on a reviewing court by the federal statute, this does not preclude a review on questions of law, and the question whether the committee may make a retroactive adjustment in an allotment is a question of law. The aggrieved allotment holder appealed to the superior court of the county in which the farm was located for a review of the committee's action. The superior court affirmed the order as to the future adjustment, but reversed as to the past adjustment. In affirming this decision the Court of Appeals[28] concluded that the committee's sole adjustment authority is for the future. This is another example of the basic principle that an administrative agency can have only such authority as is granted by its authorizing statute.

Scott v. Oxford[29] is another example of an attempt by an administrative agency to act beyond the scope of its authority. The State Personnel Board sought to delegate a part of its authority to approve a bond to the clerk of the superior court. While this could not be done under the statute authorizing it to act, the Court of Appeals held on the merits that the bond under all the circumstances was sufficient.

26. *Id.* at 633.
27. 7 U.S.C. §§1365-1366 (1958). See also 7 U.S.C. §1313(g) (1958), for another limitation on the authority of the county committee.
28. Hasty v. Carter, 105 Ga. App. 139, 123 S.E.2d 563 (1961).
29. 105 Ga. App. 301, 124 S.E.2d 420 (1962).

PROCEDURE IN ADMINISTRATIVE HEARINGS

A court in reviewing the decision of an administrative body acting quasi-judicially does not hold it to the procedural standards required of a court, providing the prime criterion to be applied is the existence of sufficient legal evidence to support the decision.

Loose practices, by judicial standards, in the examination of witnesses or the admission of incompetent or illegal evidence are not fatal if there is sufficient competent evidence to sustain the decision of the administrative agency. These propositions were decided in *Jones v. Mayor of Athens*,[30] reviewing an order of the City Civil Service Commission discharging a city policeman. Here also the Court of Appeals indicated that prejudicial remarks made by members of the commission, unobjected to at the time of the hearing, are insufficient grounds for a reversal. This case illustrates the frustrating dilemma facing the attorney conducting his client's case before the administrative agency. When should he not object or should he object to procedural irregularities in every instance?

JUDICIAL REVIEW

REVIEWABILITY OF EVIDENCE

Many statutes declare that findings of fact made by administrative agencies if supported by evidence or competent evidence may not be disturbed by the reviewing court. Two areas in which this question is frequently presented are public utility regulation and workmen's compensation.

The formula for attacking orders of the Public Service Commission involves an attempt to show that an order is not rendered in the exercise of discretion but rather that it is arbitrary, unreasonable and capricious. When there is evidence before the commission to support its conclusions that "the public interest requires such operation," an aggrieved party cannot enjoin the issuance of a certificate of public convenience and necessity.[31] The very existence of the supporting evidence negatives any charge that the order is issued in the abuse of discretion.

The workmen's compensation statute is very clear on the matter of affirming an order which is supported by any competent evidence.

30. 105 Ga. App. 86, 123 S.E.2d 420 (1961).
31. J. & M. Transportation Co., Inc. v. Georgia Public Service Commission, 217 Ga. 296, 122 S.E.2d 227 (1961).

Numerous cases applied this rule.[32] The evidence issue is nearly always raised, and occasionally an order is reversed because there is no evidence to support it.[33]

TIME FOR APPEAL

Under the Georgia revenue laws,[34] an appeal must be taken within fifteen days from the date of the decision by the Revenue Commissioner. Suppose, however, that the first order of the Commissioner is issued on July 26th. Thereafter the Commissioner continues to consider the scope of the order and modified it on three later occasions, the last one being September 12th. Is the date of the decision for purposes of starting the fifteen days for purposes of appeal the July date or the September date? The Court of Appeals held[35] that the fifteen day period did not begin to run so long as the Commissioner had the issue under active consideration. In the case of judgments the time for appealing from an amended judgment is reckoned from the date of the amendment. Analogously, the last order of the Commissioner starts the fifteen day limitation period running.

METHODS OF JUDICIAL REVIEW

The person who may have an opportunity to use a judicial remedy to prevent or restrain administrative action should carefully consider whether he should go to the admiinstrative agency at all. If he does not present his problem to the agency, he may find that he is precluded from using the judicial remedy because he did not resort to the administrative procedure available to him. If, on the other hand, he goes to the administrative agency first, he may find that his judicial review is limited to a single remedy which does not provide as adequately for his needs. *City of Atlanta v. Lopert Pictures Corpora-*

32. Van Alexander v. Globe Indemnity Co., 105 Ga. App. 212, 124 S.E.2d 428 (1962); Garrett v. Employers Mutual Liability Ins. Co., 105 Ga. App. 308, 124 S.E.2d 450 (1962); Hansard v. Georgia Power Co., 105 Ga. App. 486, 124 S.E.2d 926 (1962); Great Atlantic and Pacific Tea Co. v. Shaw, 105 Ga. App. 102, 123 S.E.2d 342 (1961); Ocean Accident and Guarantee Corp. v. Bates, 104 Ga. App. 621, 122 S.E.2d 305 (1961) (reversed on the ground that the director applied an erroneous legal theory in evaluating and making findings of fact); Troup County v. Henderson, 104 Ga. App. 29, 121 S.E.2d 65 (1961); General Accident Fire and Life Assurance Corp. v. Titus, 104 Ga. App. 85, 121 S.E.2d 196 (1961); Aetna Insurance Co. v. Gibson, 104 Ga. App. 108, 121 S.E.2d 256 (1961); United States Casualty Co. v. Young, 104 Ga. App. 373, 121 S.E.2d 680 (1961); Indemnity Insurance Co. v. O'Neal, 104 Ga. App. 305, 121 S.E.2d 689 (1961); Zurich Insurance Co. v. Planter, 103 Ga. App. 755, 120 S.E.2d 635 (1961); Truelove v. Hulette, 103 Ga. App. 641, 120 S.E.2d 342 (1961).

33. Rucker v. Anderson, 103 Ga. App. 641, 120 S.E.2d 325 (1961).

34. GA. CODE ANN. §92-8446 (1961 Rev.).

35. Nikas v. Oxford, 103 Ga. App. 721, 120 S.E.2d 677 (1961).

tion,[36] is a good illustration of the latter difficulty. The film exhibitor sought a permit from the Atlanta Board of Censors to show the film "Never on Sunday". The censors denied him a permit. The board was exercising a quasi-judicial function in hearing the application, and, in the absence of an express statutory method of review, a proper method of review is by certiorari in the superior court. Could the exhibitor desist from his administrative agency choice and file either an injunction suit or a declaratory judgment petition in order to have a more adequate judicial consideration of his problem? The Supreme Court declared that neither remedy is available to him. He may not go into equity when he chose to procure a decision from the administrative agency. He has an adequate legal remedy of review through certiorari. Nor may he petition for a declaratory judgment under this circumstance because that remedy is not available against administrative decisions and judgments to which no exceptions have been taken.

In another decision the Supreme Court held[37] that mandamus is not a proper remedy to use in reviewing the action of an administrative agency taken in the exercise of its quasi-judicial function. Thus a county merit system council in hearing charges preferred against a person employed in the merit system is subject to review by certiorari and not by mandamus.

In the absence of a specific statutory review procedure, certiorari is perhaps the only method of reviewing the quasi-judicial action of an administrative agency[38] in which a person has participated. Several of the cases already discussed came to the courts through the use of the certiorari procedure.[39]

The injunction may be an appropriate method of obtaining judicial review of a specific agency. The use of this remedy was upheld in favor of a person who challenged the issuance of a certificate of public convenience and necessity by the Public Service Commission although the decision was against the plaintiff on the merits.[40]

36. 217 Ga. 432, 122 S.E.2d 916 (1961).
37. Anderson v. McMurray, 217 Ga. 145, 121 S.E.2d 22 (1961).
38. See City of Atlanta v. Lopert Pictures Corporation, 217 Ga. 432, 122 S.E.2d 916 (1961), holding that a person who had submitted to the jurisdiction of the administrative body could use neither declaratory judgment or equitable proceedings to obtain judicial review.
39. Scott v. Oxford, 105 Ga. App. 301, 124 S.E.2d 420 (1962); Jones v. Mayor of Athens, 105 Ga. App. 86, 123 S.E.2d 420 (1961). The two preceding cases involved judicial review of an administrative appeal determination affirming the executive's discharge of a public employee. In Anderson v. McMurray, 217 Ga. 145, 121 S.E.2d 22 (1961), the Supreme Court held that certiorari rather than mandamus was the proper remedy to review a quasi-judicial determination of a merit system council.
40. J. and M. Transportation Co., Inc. v. Georgia Public Service Commission, 217 Ga. 296, 122 S.E.2d 227 (1961).