ADMINISTRATIVE LAW

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There were no judicial decisions or legislative enactments of major importance during the period covered by this sixteenth annual survey of the judicial and legislative developments in administrative law in Georgia.

As the new Georgia Administrative Procedure Act[1] did not become effective until July 1, 1965, the practitioner will have to wait some time before he begins to receive the benefit of opinions from our appellate courts applying and interpreting this important legislative development in the field of administrative law. There were, however, certain judicial decisions reiterating views advanced in the area of administrative procedure and judicial review, or otherwise clarifying certain questions, which are of some interest. In addition there were a number of relevant statutes creating new agencies or amending existing legislation, such as the various amendments introduced to the Georgia Administrative Procedure Act.[2] Following the policy of previous surveys, the substantive and procedural rules, regulations or orders of agencies and agency officers are not discussed unless they are involved in specific litigation before the appellate courts of the state during the period of this survey.

LEGISLATION

NEW LEGISLATION

Four new statutes enacted during the 1965 session of the General Assembly should be of interest to the readers of this survey.

The new Georgia Sale-of-Checks Act[3] requires a license to be issued by the Superintendent of Banks before any person, other than a bank or an incorporated telegraph company which receives money for immediate transmission by telegraph, will be allowed to engage in the business of selling or issuing checks, money orders, other payment instruments, or similar payment papers. The Superintendent may issue, renew, suspend or revoke such licenses. His decision, whether denying an original license or refusing to renew an existing one, shall be subject to judicial review in the same manner as a decision to take possession of the assets and business of a bank. The Act foresees the civil liability of the licensee and establishes certain

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1. GA. LAWS, 1964, p. 338.
2. GA. LAWS, 1965, p. 283.
3. GA. LAWS, 1965, p. 81.

criminal penalties for violation of the Act. Finally, it provides that the Georgia Administrative Procedure Act, as amended, shall apply insofar as applicable to the necessary administrative procedures under the Georgia Sale-of-Checks Act.

Another relevant statute[4] requires all governing bodies of municipalities, counties, boards of public instruction, and all other boards, bureaus, authorities, or commissions, except grand juries, supported in whole or in part by public funds or expending public funds, to hold public meetings. However, before or after said public meetings, executive sessions may be held privately. Even then the ayes and nays of any balloting which may be conducted at these sessions shall be recorded. Willful violation of the Act is punishable as a misdemeanor.

A new statute, the Georgia Biological Permit Act,[5] was enacted to safeguard the public health, and requires the obtaining of a permit from the Department of Agriculture in order to operate, maintain, open, or establish any store, manufacturing plant, warehouse, or other establishment that manufactures, prepares, produces, sells, offers for sale, distributes, or stores any type biological product not used on human beings. This requirement does not apply to any department of the federal or state government, or any county board of health, or to any person, firm, association or corporation, whose primary use of such biological product is the sale at retail to the general public. The Commissioner of Agriculture shall make and publish such rules and regulations not inconsistent with the law as he deems necessary to carry out the provisions and intentions of the Act. Any person aggrieved by said rules and regulations shall be entitled to a hearing before the Commissioner in accordance with the Georgia Administrative Procedure Act. The statute sets forth causes for suspension or revocation of the permit, but further provides that no license, permit, certificate or other similar right shall be revoked or suspended without an opportunity for hearing in accordance with the Georgia Administrative Procedure Act. Any party that is refused a permit, or whose permit is revoked or suspended by the Commissioner, is entitled to appeal to the superior court of the county in which the business is located. In such cases a trial by jury will be provided. The operation without a valid permit of any business covered by the new statute is punishable as a misdemeanor. The Commissioner, or any person, firm or association, may also apply to a court having competent jurisdiction over the parties and subject matter for a writ of injunction to restrain continuous violations of the Act, even though such violations also constitute crimes and remedies at law.

The new Underground Storage Act[6] declares that the underground storage

4. GA. LAWS, 1965, p. 118.
5. GA. LAWS, 1965, p. 177.
6. GA. LAWS, 1965, p. 463.

of natural or manufactured gas for public use is in the public interest, and a "gas utility", as defined by the Act, shall have the right of eminent domain for the acquisition of property suitable for the construction and operation of suitable underground storage reservoirs. This right extends to the acquisition of easements and rights-of-way for access to, and egress from, such reservoirs. Any "gas utility" desiring to utilize or operate an underground reservoir shall make an application to the Georgia Public Service Commission which will fix the date for a hearing. The applicant shall cause notice of hearing and copies of the application to be served upon the Director of the State Department of Mines, Mining and Geology and the State Water Quality Control Board. Notice of hearing will be published in the county newspaper. After investigations and reports by the above-mentioned Department, the Board, and the Commission, and the holding of a public hearing, the Commission shall issue its order. Any party appearing at the hearing and directly affected by an order of the Commission approving or disapproving an underground storage project shall have the right to commence a civil action to test the lawfulness and reasonableness of such order. This is begun by filing a complaint against the Commission in any court of competent jurisdiction for review of such order. The practice, pleading and proceedings in such action are equitable in nature. Appeal may be taken in the same manner and to the same extent as in other civil actions. The Commission is authorized to adopt such rules, regulations and orders as it deems necessary in the enforcement or administration of the provisions of the Act, and it may enforce said provisions, and the rules, regulations and orders adopted thereunder, by instituting actions for injunctions, mandamus or other appropriate relief.

AMENDATORY REGULATIONS

As has been the case in previous years, numerous statutes amending certain aspects of acts within the field of administrative law were enacted during the survey period. We will refer to the twelve most significant amendments.

The Georgia Administrative Procedure Act[7] was extensively amended.[8] No reference will be made to those amendments of the Act made for the purpose of correcting typographical errors or to others of minor importance.

Section 2 (b) of the Act relating to the definition of "contested cases" was replaced in its entirety. According to the new definition, " 'contested case' means a proceeding, including but not restricted to rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party

7. GA. LAWS, 1964, p. 338.
8. GA. LAWS, 1965, p. 283.

are required by law to be determined by an agency after an opportunity for hearing."[9]

Subsection (f) of section 2 was amended by eliminating the term "or particular applicability" from the general definition of "rule." It now reads: " 'Rule' means each agency regulation, standard or statement of general applicability that implements, interprets or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency."[10] The term includes the amendment or repeal of a prior rule, and subsection (f) expressly indicates certain exclusions. The express inclusion of the approval or prescription of future rate-making and price-fixing appearing in the original definition of the term "rule" has also been eliminated and now constitutes an express exclusion from that term.

Subsection (e) of section 4 has been stricken in its entirety. This subsection related to the applicability of the Act to certain rule-making proceedings.

Subsection (a) of section 5, providing for the filing of rules adopted by the agency prior to the effective date of the Act, has been amended to also provide for the filing of rules similarly adopted which will not become effective until after the effective date of the Act.

Section 7, relating to the publication of rules, was amended by adding a new subsection (e) which provides that the Secretary of State may engage the services of a privately operated editorial and publication firm to compile, index and publish the required rules. This compilation is to conform in its arrangement to the *Georgia Code Annotated.*

Section 10 has been eliminated in its entirety. This section provided that when the application or observance of a rule resulted in severe practical difficulties or unnecessary hardships, an affected person could petition the agency for a variation of an exception to such rule. This provision does not appear in the original or revised versions of the Model State Act prepared by the National Conference of Commissioners on Uniform State Laws. Apparently the legislature has considered as sufficient the procedure contained in section 9 by which an interested party may petition an agency for the amendment or repeal of a rule.

The first sentence of section 12, relating to declaratory rules by agencies, has been amended, and, as now worded, it authorizes each agency to provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision, rule or order of the agency. It further recognizes the right of an agency, pursuant to GA. CODE section 40-1602 (1933) or any other applicable statutory or constitutional provision, to seek the opinion of the Attorney General on any

9. *Ibid.*, at 284.
10. *Ibid.*

question of law connected with the duties of the agency. The last sentence, declaring that such rulings shall have the status of decisions or orders in contested cases, remains unchanged.

Section 13 authorized an aggrieved party, who was not given actual notice of the proceeding and who did not appear as a party, to demand a hearing. This section has been amended to limit the right to aggrieved taxpayers, who may demand that such a hearing be held by the Department of Revenue.

The second sentence of subsection (a) of section 16, relating to the rules of evidence to be applied by the agency, has been amended by striking the phrase "in civil cases in the superior courts of Georgia." The second sentence now reads as follows: "The rules of evidence as applied in the trial of civil nonjury cases in the superior courts of Georgia shall be followed."[11] Authorities on the subject consider the formula rather vague. In general, it has been difficult to determine what are the "rules" of evidence in civil nonjury cases since the practices of trial judges sitting without juries are quite diverse and no set of "rules" for nonjury cases has emerged. However, the amendment is in agreement with proposals by the second Hoover Commission and by the American Bar Association to the effect that federal administrative agencies should be guided, so far as possible, by the rules of evidence followed by courts in nonjury cases.[12]

Subsection (d) of section 16, relating to official notice by the agency of certain facts in contested cases, has been amended to specifically afford the parties an opportunity to contest the material so noticed. This important subsection is concerned with the difficult problem of reconciling the needs of procedural fairness with the need for adequate use of administrative expertness. Future guidance from the courts may be needed in finding a workable system in this respect.[13]

Subsection (b) of section 19, relating to the consequences of a timely application for the renewal of a license or a new license, was amended by adding that "the existing license does not expire until the application has been finally determined by the agency."[14]

Section 23, relating to appeals to the superior court from agency decisions, has been stricken out in its entirety. There was general feeling that section 23 overlapped or duplicated other sections of the Act, such as section 20 (b), and the possible difficulty in reconciling both sections was foreseen.[15]

Finally, section 24 was amended to provide that the Act shall become effective July 1, 1965, instead of April 1, of the same year, as originally

11. *Ibid.*, at 293.
12. DAVIS, ADMINISTRATIVE LAW, §14.04, at 270 (1959).
13. *Id.*, §15.14, at 431.
14. GA. LAWS, 1965, p. 294.
15. See editorial note, GA. CODE ANN. §3A-123 (Supp. 1964).

required. This section further states that the Act shall not apply to contested cases pending on July 1.

A new statute[16] replaces GA. CODE chapter 84-15 relating to the regulation of the practice of veterinary medicine in its entirety. The new chapter 84-15 is known as the Georgia Veterinary Practice Act. This statute purports to make a complete and exhaustive revision of the laws relating to the practice of veterinary medicine. Consequently, we shall only refer to the most significant aspects from the point of view of administrative law.

No person may practice veterinary medicine in the state who is not a licensed veterinarian. The Act defines the terms "veterinary medicine" and "practice of veterinary medicine," setting forth certain acts not prohibited in the old chapter 84-15. The Board of Veterinary Medicine (no longer the Georgia State Board of Veterinary Examiners, but whose members shall continue to serve as members of the new Board until expiration of the term for which they were appointed) shall examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine. If the Board determines that the applicant has the necessary qualifications, he may take an examination administered by the Board. The Board will then issue a license if the examination is successfully completed, but if an applicant is found by the Board to be unqualified to take an examination, he may require a hearing on the question of his qualifications. Upon written sworn complaint, the Board may, after hearing and upon the concurrence of four of its five members, revoke or suspend the license of, or otherwise discipline, any licensed veterinarian for any of the reasons set forth in section 84-1509. Section 84-1510 requires that all hearings shall be conducted by the Board in accordance with the provisions of the Georgia Administrative Procedure Act, as it may be amended from time to time, and all rules and regulations of the Board shall be adopted and promulgated in accordance with said procedural statute. Any person who shall practice veterinary medicine without a valid license shall be guilty of a misdemeanor and upon conviction may be fined or imprisoned. The Board or any person may bring an action to enjoin such unauthorized practice.

The Uniform Act Regulating Traffic on Highways was amended[17] so as: (1) to provide additional safety materials to be used in motor vehicles; (2) to increase to thirty days the time within which a vehicle may be allowed to meet the requirements prescribed for a certificate of inspection; (3) to exempt certain vehicles from requirements of the inspection law; (4) to authorize the Director of Public Safety to make necessary rules and regulations concerning equipment used by inspectors; (5) to require new and used car dealers to have a certificate of inspection placed on vehicles required

16. GA. LAWS, 1965, p. 92.
17. GA. LAWS, 1965, p. 188.

to be inspected sold after July 1, 1965; and (6) to extend the time within which the initial inspection shall be made to October 31, 1965.

An Act governing and regulating the use of the public roads and highways of this state was amended[18] so as to authorize farming equipment to be operated without special permit on certain public roads or highways during daylight hours and within a certain radius of the owner's residence.

Of the various amendments introduced to the Motor Vehicle Certificate Act by the 1965 session of the General Assembly,[19] the one of interest from an administrative law point of view is the addition to section 30. Section 29 of the Act authorizes the Georgia State Revenue Commissioner to establish a board to hear complaints of persons aggrieved by the Commissioner's acts, and section 30 provides for a review of a hearing conducted pursuant to section 29 by the superior court of the county of said person's residence. The addition provides that the hearing conducted under section 29 will come under the Georgia Administrative Procedure Act, and that appeals to the superior court should also be in accordance with this latter enactment.

The Milk Control Act was amended[20] so as to express the true legislative intent of the 1959 amendment[21] which was not to relocate the authority, powers and duties of the Georgia Milk Commission in the Commissioner of Agriculture, but merely to reconstitute the Georgia Milk Commission as an agency of the Department of Agriculture, possessing all of its prior independent power with respect to the making of rules and orders regulating the sale of milk, the granting, denying, suspending and revoking of licenses and permits, the conduct of hearings, the assessment and collection of fees, and, generally, the doing of all things necessary to carry out the Milk Control Act. The amendment also provides that the Milk Commission shall possess and exercise all powers and perform all duties heretofore vested in the Milk Control Commission, and that after the effective date of this amendment, the name of the Georgia Milk Control Commission will be the Georgia Milk Commission.

The Georgia Public Assistance Act of 1965[22] provides for payment in or by money, medical care, remedial care, goods or services to, or for the benefit of, needy persons under any categories that may be established pursuant to the Act by the Department of Family and Children Services. An applicant for, or recipient of, public assistance who is aggrieved by the action or inaction of the state department or county department of Family and Children Services may request a hearing; and the decision of the Director of the Department of Family and Children Services on any appeal "shall be final."

18. GA. LAWS, 1965, p. 206.
19. GA. LAWS, 1965, p. 304.
20. GA. LAWS, 1965, p. 366.
21. GA. LAWS, 1959, p. 46.
22. GA. LAWS, 1965, p. 385.

The Act provides for the repeal of obsolete and inconsistent provisions of the assistance laws.

GA. CODE title 36, relating to the right of eminent domain and the related procedure has been amended[23] by inserting between chapter 36-1 and 36-2 a new chapter 36-1.1 to be known as the State Properties Acquisition Law. A new agency, the State Properties Acquisition Commission, composed of the Governor, the State Auditor, and the Attorney General has been created with authority to purchase, take or damage by condemnation private property for the public purposes of the State of Georgia upon its first paying or tendering just compensation to the owner thereof. Condemnation proceedings shall take the form provided in either part II of title 36 or chapter 36-11 of the CODE OF GEORGIA of 1933. Every department and agency of the state with the exception of the State Highway Board of Georgia and the Regents of the University System of Georgia will acquire its real property through said Commission.

An Act authorizing the governing authorities of municipalities and counties to establish planning commissions was amended[24] so as to authorize any municipality or county to continue, create, or retain its own local planning commission and to provide that any municipality or county may specify which powers granted shall be exercised by the local planning commission and which by the joint planning commission. According to the amending act, the power and authority granted municipal, county, and joint municipal-county planning commissions and boards of appeals shall be in addition to all the powers and authority such planning commissions and boards of appeals now have or may later have under other laws.

The act creating the Mineral Leasing Commission was amended[25] to increase the membership of the commission by five members who shall be appointed by the Governor to serve at his pleasure.

Another statute[26] has extensively amended GA. CODE chapter 84-4 relating to barbers, manicurists, barber shops, barber schools and barber colleges. The State Board of Barbers is vested with the authority to approve courses of study for all barber shops, to inspect and require certain information from them, to require qualifications for apprentices and applicants for certificates of registration as master barbers, and to license instructors in barber schools and colleges. The statute further indicates the grounds upon which the Board may refuse to grant a certificate of registration or license, and provides for written examinations by applicants, the manner of renewal of registrations and licenses, and the suspension and revocation of such permits after notice and hearing. The chapter has also been amended

23. GA. LAWS, 1965, p. 396.
24. GA. LAWS, 1965. p. 536.
25. GA. LAWS, 1965, p. 590.
26. GA. LAWS, 1965, p. 603.

to authorize the Board to bring a petition of injunction in the proper superior court of the state for the purpose of restraining violations.

Finally, we should note that the statute[27] amending the State Property Control Code expressly provides that the State Property Control Commission shall not be subject to the provisions of the Georgia Administrative Procedure Act, as amended.

JUDICIAL DECISIONS

EXERCISE OF POWER BY ADMINISTRATIVE BODIES

An administrative body possesses only such jurisdiction, powers, and authority as are conferred upon it by the legislature, or such as arise therefrom by necessary implication to carry out the powers granted.[28]

In the case of *Murdock v. Perkins*,[29] the Supreme Court of Georgia ruled that in the absence of specific statutory authority, a state administrative board which has made a judicial determination is without lawful authority to reverse its decision. The court held that where the State Board of Education dismissed a county school superintendent, and the latter did not avail himself of the available remedy by certiorari, the State Board could not reverse its original decision affirming the action of the county board, since no statutory provision existed authorizing the State Board to reconsider or reverse the decision. The Board is limited to the exercise of such power as has been expressly granted to it by the General Assembly. The court referred to a previous decision[30] which, in discussing the construction of statutes clothing the State Board of Education with power, stated:

> We are not unmindful of the modern tendency to clothe boards and bureaus composed of men not trained in the law with judicial functions. This tendency we consider dangerous, and for this reason, the statutes will be strictly construed.

A similar holding to the effect that the exercise of power by a governmental authority has to be within the limits of the authority given by the statute or charter was rendered by the Supreme Court in the case of *City of Atlanta v. Henry Grady Hotel Corp.*[31] This was an action brought by a city liquor dealer against the city. The court held that the City of Atlanta's special license tax of $1.44 per case on spirituous liquor was invalid as not having been authorized by the city's charter or by the statute authorizing municipal corporations to issue, and charge for, licenses to sell spirituous

27. GA. LAWS, 1965, p. 664.
28. Glustrom v. State, 206 Ga. 734, 58 S.E.2d 534 (1950); Bentley v. State, 152 Ga. 836, 111 S.E. 379 (1921).
29. 219 Ga. 756, 135 S.E.2d 869 (1964).
30. Conley v. Brophy, 207 Ga. 30, 33, 60 S.E.2d 122, 124 (1950).
31. 220 Ga. 249, 138 S.E.2d 362 (1964).

liquors at retail and containing the requirement that the licenses be annual with fees thereon paid in advance. However, the court considered the city ordinance which required retail liquor stores to pay $1,000, plus one per cent of the previous year's gross sales in excess of $100,000, for an annual license to be a valid license fee payable in advance as authorized by statute. In deciding a third count which sought to invalidate an agreement between the city and a particular liquor retailer granting the latter exclusive right to sell liquor at the municipal airport in return for a percentage of the gross receipts, the court considered the arrangement invalid as beyond the city's charter power and contrary to public policy as it involved the city in the liquor business.

ADMINISTRATIVE PROCEDURE

NOTICE AND RIGHT TO BE HEARD

The Supreme Court was of the opinion[32] that a resolution of the county board of education which was passed pursuant to a statute authorizing the board to condemn realty for public school purposes, and which stated that it was necessary to acquire the condemnee's property for the purpose of constructing school buildings, was not sufficiently clear to put the condemnee on notice as to the purpose for which the property was required. The court cited its holding in *Atlanta Terra Cotta Co. v. Georgia Ry. & Elec. Co.*[33] to the effect that the requirements of notice are met by a condemnation petition which states the general purpose for which the land is required since "the law does not require needless particularity and detail."

Also of interest is a decision of the Supreme Court[34] handed down in a condemnation proceeding brought by the State Highway Department. It stated that the exercise of the right of eminent domain is a legislative function and the General Assembly may by law both prescribe the procedure for taking property for public uses and confer on administrative agencies this power to condemn property for public use. Neither notice nor opportunity to be heard is a prerequisite to the exercise of the power of eminent domain, provided that the owner has an opportunity, in the course of the condemnation proceedings, to be heard and to offer evidence as to the value of the land taken. The statute in this instance[35] provides that the declaration of taking may be vacated and set aside within a specified time by any person owning or having an interest in the property for either fraud, bad faith, or any abuse or misuse of the powers conferred upon the agency.

32. Sheppard v. DeKalb County Bd. of Educ., 220 Ga. 219, 138 S.E.2d 271 (1964).
33. 132 Ga. 537, 542, 64 S.E. 563 (1909).
34. State Highway Dept. v. Smith, 219 Ga. 800, 163 S.E.2d 334 (1964).
35. GA. LAWS, 1961, p. 517.

In *Employers Ins. Co. v. Wright,*[36] the Court of Appeals held that a prior judgment of the superior court, which directed that the case be remanded and that a finding by a deputy director be made the findings of the Board of Workmen's Compensation subject only to any change occurring since evidence was closed, did not require the Board to hold a hearing on possible changes in conditions unless one of the parties applied for it.

A statute which provided for notice and hearing before the removal and discharge of any city employee in classified service formed the basis for an action for damages by a police chief against his city manager alleging discharge without notice and hearing. The Court of Appeals held[37] that one formerly actively employed in classified service but who was subsequently promoted to the head of a department thereby lost his active status as an employee in classified service. In the absence of other statutory provisions preserving such status, such an employee can be discharged without notice and hearing.

A city zoning ordinance failed to provide notice of hearing to owners of affected property. It thereby contravened the requirements of the due process clause of the CONSTITUTION OF GEORGIA and was unconstitutional and void.[38]

OBSERVANCE OF STANDARDS

An interesting case involved the distinction between the exercise of legislative discretion in the adoption of standards and the determination whether the standards laid down have been met. In a proceeding for review of the denial of a special-use permit to construct a church in a residential area, the city alleged that action of an aldermanic committee, and subsequently the board of aldermen as a whole in affirming the committee action denying the permit, was an exercise of "legislative discretion" which cannot be controlled. The Court of Appeals[39] declared that a city government may exercise a "legislative discretion" in the adoption of standards in zoning ordinances, but the determination whether these standards have been met by the zoning authority is a judicial function, and in so doing it must exercise a "legal discretion." The court held that, as the applicants had met all objective standards laid down in the zoning ordinance pertaining to such special permits, denial of the application was both arbitrary and unreasonable.

36. 110 Ga. App. 773, 140 S.E.2d 51 (1964).
37. Barnes v. Mendosa, 110 Ga. App. 464, 138 S.E.2d 914 (1964).
38. In Bell v. Studdard, 220 Ga. 756, 141 S.E.2d 536 (1965).
39. Rogers v. Mayor & Alderman, 114 Ga. App. 114, 137 S.E.2d 668 (1964).

JUDICIAL REVIEW

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Two Supreme Court decisions have applied the settled rule that no one is entitled to judicial review for a supposed or threatened injury resulting from an administrative rule or order until the prescribed administrative remedy has been exhausted. The first, *Otwell v. West*,[40] declared that where no effort is made to exhaust one's administrative remedies, or where an adequate remedy at law is available, equity will not intervene. The court held that the petitioner could not invoke the aid of equity to enjoin school officials from transferring him from a county school to a school in the city since he had failed to avail himself of the administrative remedies afforded by statute[41] or to seek the alternative legal remedy of certiorari. The second case arose on a petition for a writ of mandamus ordering the State Highway Department to restore the petitioner to her former position with the Department. The Superior Court sustained a demurrer to the petition, and its judgment was affirmed by the Supreme Court,[42] which held that the petition for mandamus was fatally defective where it showed that the administrative remedy available to the petitioner had not been exhausted. The petition did allege an appeal to the Merit System Council but was silent as to what judgment was rendered on appeal.

TIME FOR APPEAL

The doctrine of res judicata is applied by the courts to some administrative proceedings. The Court of Appeals has refused to set aside a workmen's compensation award based on stipulations, where the petition revealed no ground upon which to set aside the award after the normal time for appeal had passed. The court held that a petition seeking to set aside a workmen's compensation award filed fourteen months after it had become final and urging only grounds which might have been raised within thirty days by direct appeal was deficient on its face. When the time for appeal has passed, the award is res judicata.[43]

According to statute,[44] an appeal from the decision of the Atlanta-Fulton County Joint Board of Adjustment must be filed in the superior court within thirty days. This thirty days is to be computed from the date of the original decision by the board and not from the date of the decision by the board denying a rehearing on the original decision and/or overruling a mo-

40. 220 Ga. 95, 137 S.E.2d 291 (1964).
41. GA. LAWS, 1961, p. 39, GA. CODE ANN. §32-910 (1952 Rev.).
42. Gunther v. Gillis, 220 Ga. 634, 140 S.E.2d 851 (1965).
43. Lavender v. Zurich Ins. Co., 110 Ga. App. 196, 138 S.E.2d 118 (1964).
44. GA. LAWS, 1946, pp. 191, 198, GA. CODE ANN., §69-827 (1957 Rev.).

tion made in the appeal to set aside the original judgment on grounds of fraud.[45] The court concluded that the decision by the board on the motion for a rehearing and to set aside the original judgment was a complete nullity since the board was without jurisdiction to make such decision and could not furnish a time basis for an appeal.

An assessment may not be cancelled, and a new assessment issued after time for appeal has expired, solely for the purpose of extending the time for appeal. In *Undercofler v. VFW Post* 4625,[46] the Court of Appeals decided that since the sales-tax assessments made by the State Revenue Commissioner were cancelled solely to effect an extension of time in which the taxpayer might appeal, the delay was nugatory and did not extend the time for taking appeal. The court distinguished *Nikas v. Oxford*[47] in which there had been changes in the executive order regulating the suspension of licenses under the Alcoholic Beverage Act,. which changes were so material as to amount to a new determination. Nor was this a question concerning the period of a suspension of a license, which period rests within the discretion of the Commissioner.

METHOD OF JUDICIAL REVIEW—MANDAMUS

The courts of the state have often stated the rule that before mandamus will issue against a public officer, the law must not only authorize the act to be done, but must require its performance. In order that one may be entitled to the writ of mandamus, it must first appear that he has a clear right to have performed the particular act which he seeks to have enforced.

Invoking that rule, the Supreme Court of Georgia held in *City of College Park v. Hamilton*[48] that a landowner was not entitled to mandamus directing the city to reinstate a building and house-moving permit, where there was no showing of any statute, ordinance, or other authority authorizing the city to reinstate such permits, and no showing by the petitioner of any authority requiring such action. Under those circumstances, mandamus will not issue on the theory of estoppel. But if it appears from the petition that the applicant has a clear legal right to have performed the particular act which he seeks to have enforced, then he is entitled to a writ of mandamus.

In a mandamus proceeding to require the city of Marietta, its governing bodies, and its engineers to issue building permits, the Supreme Court observed[49] that the intention of a city to zone the owner's property for a different use from that which he intended to make of it, was not a valid

45. Stephens v. Atlanta-Fulton County Bd. of Adjustments, 110 Ga. App. 431, 138 S.E.2d 696 (1964).
46. 110 Ga. App. 711, 139 S.E.2d 776 (1964).
47. 103 Ga. App. 721, 120 S.E.2d 677 (1961).
48. 220 Ga. 629, 140 S.E.2d 878 (1965).
49. Howard Simpson Realty Co. v. City of Marietta, 220 Ga. 727, 141 S.E.2d 460 (1965).

reason for refusing to grant the building permits for which the owner had duly applied. In an action by a former teacher for mandamus to compel the county board of education to reinstate him, the Supreme Court held that mandamus would not lie against the county board since the teacher had applied to the State Board of Education which had effectively affirmed the county board's decision by declining the appeal on the ground that no tenure existed in the county, and the decision of the state board had never been set aside by appropriate proceedings.[50]

50. Maxey v. DeKalb County Bd. of Educ., 220 Ga. 158, 137 S.E.2d 657 (1964).