ADMINISTRATIVE LAW

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INTRODUCTION

Administrative Law Year 1971-72 was significant for a number of reasons. The most thoroughgoing reorganization of the executive branch of the state since 1931 was enacted by the 1972 session of the General Assembly; the number of state agencies was drastically reduced from three hundred to twenty-five. A so-called "Sunshine Bill" was passed which opens up heretofore secret administrative deliberations to the public eye; but, whether this public exposure of quasi-judicial deliberations, for example, will harm or help the administrative process is an open question. A number of new agencies were created, such as the Judicial Qualifications Commission, and significant new authority was granted to existing agencies, *e.g.*, the authority granted the Georgia Public Service Commission to allocate scarce gas and electricity among competing users. The inherent bias on the part of administrative board members who regulate their own profession or occupational groups was re-examined by the federal courts, and important distinctions were drawn between legislative or rule-making powers and quasi-judicial functions. Finally, the expanding right to an administrative hearing prior to adverse state action was given broader application in Georgia.

The following discussion under specific topics was necessarily designed to touch only the highlights of developments in administrative law affecting this state for the year 1971-72. The busy practitioner's time is limited, and it is hoped that the following digest discussion will helpfully indicate what should be considered, rather than what conclusions should be drawn.

RULE-MAKING

On December 18, 1968, the Commissioner of Agriculture issued a directive stating, in part, as follows:

> Because of the continued outbreaks of hog cholera in Georgia, under the authority granted by Georgia Laws, (H.B. 598, 1953) to the Georgia Commissioner of Agriculture, the payment of indemnity for animals ordered destroyed because of hog cholera, or other infectious or

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> contagious diseases, owned by individuals, partners, corporations, or municipalities who are feeding garbage will no longer be authorized, effective this date.[1]

A partnership operating a hog farm sought a declaratory judgment under Ga. Code Ann. § 3A-111 against the Commissioner as to the validity of this notice. The trial judge ruled the notice invalid, and on appeal, the question arose as to whether the suit was an action which could be maintained against the state, as well as whether the notice was valid.

The petitioning hog farmers argued that they had the right to sue under section 11 of the Georgia Administrative Procedure Act [APA]. The Commissioner countered with the argument that section 11 applied only to attacks on a "rule" as defined by section 2(f)(9), which excludes "[r]ules relating to loans, grants and benefits by the State or of an agency;"[2] that since the moratorium on payments "related to" a "benefit" it was not a "rule" within the scope of the APA, and thus was not subject to challenge under the declaratory judgment provisions of the APA. Thus, the court of appeals was called upon to distinguish between a "benefit" and an "indemnity." It was held that since the Commissioner was not required by law to make compensation for herds of swine destroyed by cholera, any discretionary payment would be a "benefit." Further, a directive ordering the termination of such benefits was within the exception to the definition of a "rule" under the APA. Consequently, there could be no declaratory judgment jurisdiction as to the validity of such a directive under section 11.[3]

However, the court of appeals went beyond this holding and conceded that even if the Commissioner's directive was a "rule" under the APA, the hog farmers could not prevail. It was argued that the Commissioner had failed to make the necessary findings of fact required by the authorizing statute.[4] The court indicated that the directive was probably well founded in fact, but accorded the same presumption of correctness to the Commissioner's findings as appellate courts have traditionally accorded to trial courts. It was reasoned as follows:

> In good conscience, a higher or greater burden in this respect may not be placed upon the lay administrator of a governmental agency than is placed on the judges of our superior courts, all of whom are trained and experienced in the law, and who are skilled in the prepara-

1. Irvin v. Woodliff, 125 Ga. App. 214, 215, 186 S.E.2d 792 (1971).
2. GA. CODE ANN. § 3A-102(f) (9) (Supp. 1971).
3. 125 Ga. App. at 216-18, 186 S.E.2d at 795-96.
4. GA. CODE ANN. § 62-1719 (Rev. 1966).

> tion of orders, rules and judgments. In *Schaefer v. Clark*, 112 Ga. App. 806 (146 S.E.2d 318) the question at issue was whether the State Personnel Board could amend an order discharging an employee by making more specific the ground upon which the discharge was based. Holding that it could be done, this court asserted [p. 808]: "A ruling to the contrary would have the effect of exacting much higher and stricter standards in pleadings before administrative bodies than is the case in the superior and other trial courts of this State, wherein the right of amendment has been said to be 'as broad as the plan of salvation.' . . . How much greater application this has to the proceedings in an administrative agency, operated by laymen, than to courts where the practitioners are skilled in the law and the niceties of its requirements."[5]

The court of appeals added that not only is it to be presumed that the Commissioner followed a proper procedure in making findings, but that the findings are supported by evidence which he is authorized to consider in the administrative process.[6]

The validity of a county ordinance adopted pursuant to the "Home Rule for Counties Amendment"[7] was affirmed in *Forbes v. Lovett*.[8] In this case, Chatham County had enacted an ordinance establishing the "Chatham County Civil Service System" which was contrary to a previous 1969 local act of the General Assembly.[9] The supreme court confirmed that the home rule constitutional amendment gives counties the right to repeal local legislation by ordinance "relating to its property, affairs and local government."[10]

RIGHT TO PRIOR HEARING

In 1970, the United States Supreme Court held in *Goldberg v. Kelly*[11] that welfare recipients were entitled to a factual hearing prior to a state's termination of benefits. In 1971, this principle of procedural due process was applied to other "important interests" of Georgia citizens which were threatened by state action.

Bell v. Burson.[12] Under Georgia's Motor Vehicle and Safety Responsibility Statute, an uninsured motorist's vehicle registration and drivers

5. 125 Ga. App. at 219, 186 S.E.2d at 796.
6. *Id.* at 220, 186 S.E.2d at 796.
7. GA. CODE ANN. § 2-8402 (Supp. I, 1971).
8. 227 Ga. 772, 183 S.E.2d 371 (1971).
9. Ga. Laws, 1969, p. 2985.
10. GA. CODE ANN. § 2-8402 (Supp. I, 1971).
11. 397 U.S. 254 (1970); *cf.*, Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).
12. 402 U.S. 535 (1971).

license are subject to suspension if he is involved in an accident and fails to post security to cover the amount of potential damage claimed by the injured parties.[13] The petitioner in *Bell* was involved in an accident causing injury, but did not post security for damages claimed to be suffered. At the administrative hearing before the Department of Public Safety, he offered to prove lack of liability, but such offer was refused, and he was given thirty days to post security or have his license and registration suspended. This administrative decision was upheld by the Georgia Court of Appeals[14] and the Georgia Supreme Court denied certiorari.

On writ of certiorari to the United States Supreme Court, it was held that before the State of Georgia could suspend petitioner Bell's license and registration, procedural due process required that a determination be made as to whether there was a "reasonable possibility" of a judgment being rendered against the petitioner as a result of an accident, since liability played a crucial role in the state's scheme for motor vehicle safety and responsibility.[15] The Supreme Court noted that the right to drive was an "important interest" requiring due process protection under the fourteenth amendment.[16]

Davis v. Caldwell.[17] Plaintiff Davis, recipient of workmen's compensation, became injured on the job and entered into an agreement with her employer for workmen's compensation periodic payments. The employer ceased paying benefits on grounds that there had been a "change of condition" as to Mrs. Davis' injury, thus enabling her to work. Under Ga. Code Ann. §§ 114-703, 709 (Rev. 1956) and rule 17 of the Board of Workmen's Compensation, the employer was permitted to terminate benefits for a suspected change of condition pending a hearing before the Workmen's Compensation Board. This action, authorized by statute, was challenged by plaintiff Davis on behalf of herself and a class of persons similarly situated in a three-judge court action.

The district court held that a continuation of payments was a protected interest and that there was sufficient state action over employer payments under the workmen's compensation scheme of laws; furthermore, that under *Goldberg v. Kelly*,[18] *Sniadach v. Family Finance*

13. GA. CODE ANN. §§ 92A-605, -615.1 (Rev. 1972).
14. 121 Ga. App. 418, 174 S.E.2d 235 (1970).
15. 402 U.S. at 540.
16. *Id.* at 539.
17. 53 F.R.D. 373 (N.D. Ga. 1971).
18. 397 U.S. 254 (1970).

Corp.,[19] *Bell v. Burson*,[20] and others, the State of Georgia did not have such an over-riding interest as to justify a unilateral termination of benefits without a prior hearing. The district court used a "balancing test," finding that "[t]he balance tips heavily toward requiring continuation [of payments] until a hearing is held, particularly in light of the fact that all possible means to speed up the hearing lie peculiarly within the control of the state."[21]

Davis v. Weir.[22] Under section 33-130 of the 1965 Code of Ordinances of the City of Atlanta, the city water works manager could terminate water service to any premises upon failure of the owner to pay a water bill, and until all arrearages were fully paid. Here the aggrieved party was a tenant of a premises where the landlord had failed or refused to pay a previous water bill. Note that there was lack of "privity" between the claimant and the government, since it was the landlord rather than the tenant who refused to pay the water bill.

The district court held that under the principles established by *Goldberg*, *Sniadach*, and *Bell*,[23] water is "an absolute necessity of life," and since the government has undertaken to provide such service, a recipient has a sufficient "entitlement" or "important interest" in its continuation so as to require prior notice before termination of water service. No factual hearing is required as to who is responsible for payment, but the tenant-recipient must be given an opportunity to pay the bill prior to termination of service.[24]

APPLICATION OF APA

Under the Georgia Public Assistance Act of 1965,[25] a recipient of public assistance who is aggrieved by action or inaction of the Department of Family and Children Services is entitled to a hearing. It is further provided in this Act that:

> Such hearing shall be conducted in accordance with the rules and regulations prescribed by the Director of the Department of Family and Children Services. The decision of the Director . . . on any appeal shall be final.[26]

19. 395 U.S. 337 (1969).
20. 402 U.S. 535 (1971).
21. 53 F.R.D. at 378.
22. 328 F. Supp. 317 (N.D. Ga. 1971).
23. *See* notes 18-20 *supra*.
24. 328 F. Supp. at 322-23.
25. GA. CODE ANN. ch. 99-29 (Rev. 1968).
26. GA. CODE ANN. § 99-2911 (Rev. 1968).

On the basis of this statutory language, the Department of Family and Children Services had conducted hearings according to its own rules of procedure with no right of appeal (other than certiorari or action in equity) to the superior courts.

The Atlanta Legal Aid Society filed a petition for judicial review from an adverse decision of the Department of Family and Children Services in the Superior Court of Fulton County, claiming that jurisdiction was conferred under section 20 of the APA.[27] The Department filed a motion to dismiss, claiming that Section 20 of the APA was in irreconcilable conflict with the above-quoted provisions of the Georgia Public Assistance Act of 1965, in that the latter Act precluded any further appeal from the decision of the Director. It was argued that the Georgia Public Assistance Act was enacted later in time than the APA, and consequently, was the "last expression" of the General Assembly on the subject.[28] The Fulton County Superior Court overruled the Department's motion to dismiss and concluded that the Department of Family and Children Services was subject to the Georgia APA on appeal from an administrative "final decision." The superior court first found that the Department was an "agency" within the definition of Ga. Code Ann. § 3A-102(a) (Supp. 1971), not specifically exempt under the exceptions therein contained. The court read the language, "the decision of the Director shall be final," in the Georgia Public Assistance Act as consistent with the concept of finality as a prerequisite to judicial review under the APA. In other words, the Georgia Public Assistance Act imparts to the Department's decisions that degree of finality which is required to make them reviewable under the APA.

The Fulton County Superior Court also denied the Department's second line of defense based on the doctrine of "sovereign immunity." It was held that the APA and other like review procedures are exceptions to the general doctrine of sovereign immunity, and that these statutory procedures specifically allow the courts of the state to review decisions of state agencies.

Since the *Anthony* decision in the Superior Court of Fulton County was not appealed, it was apparently accepted by the Division of Family and Children Services as being the final pronouncement on the applicability of the APA to its administrative hearings.

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27. Anthony v. State Department of Family and Children Services, U.S.D.C., C. A. No. B-57177 (N.D. Ga. 1972).

28. In Imlay Township Primary School Dist. No. 5 v. State Bd. of Education, 359 Mich. 478, 102 N.W.2d 720 (1970), the Michigan Supreme Court had before it a situation which was identical to the *Anthony* case. The Michigan court found that there was an irreconcilable conflict between the provisions of the state APA and later special agency legislation as to judicial review.

ADMINISTRATIVE AGENCY BIAS

On September 3, 1971, a three-judge United States district court in Alabama decided a case which may well become a landmark of administrative agency law.[29] Several Alabama optometrists were charged by the president of the Alabama Optometric Association with having violated several sections of the Alabama Optometry Law in a proceeding to be decided by the State Board of Optometry. The optometrists were subject to a suspension or revocation of their licenses to practice optometry within the State of Alabama. The optometrists argued that suspension of their licenses under these circumstances would deprive them of their property without due process of law. It was specifically contended that since the individual members of the Alabama State Board of Optometry were substantially the same individuals who executed the charges, conviction of the offenses charged and suspension of licenses were but predetermined formalities with no element of a fair trial. It was further argued that the Alabama State Board was illegally constituted in that only about one-half of the practicing optometrists in the state could participate in the government of their profession. The optometrists also attacked the statutes under which the Board was proceeding as unconstitutional, in that there was no procedure for superseding the suspension of licenses pending court review.

The three-judge court held that the issue of bias of the Alabama Board was not whether the members were actually biased, but whether in the natural course of events, there was an indication of possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him. It was noted that a basic element of justice in America is that the court must avoid not only evil, but the appearance thereof. There was evidence that those who were to judge the matters of suspension of licenses had indicated a preconceived opinion. Moreover, if the licenses were suspended, those deciding the charges would share in the business revenue of the optometrists whose licenses were suspended. On the basis of this evidence, the district court found that the statute placed the fate of the practicing optometrists in the hands of persons who had apparent personal interests in the matter in controversy. This, held the court, invades the very core of due process of law.

The problem of alleged bias in the promulgation of rules, as opposed to their application in quasi-judicial proceedings, was confronted by the

29. Berryhill v. Gibson, 331 F. Supp. 122 (M.D. Ala. 1971), *appeal docketed*, 40 U.S.L.W. 3250 (Nov. 12, 1971).

United States District Court for the Northern District of Georgia in *Wall v. American Optometric Association*.[30] This case presented the question of whether a member of a state administrative agency could, consistently with federal due process standards, consider and vote upon proposed rules which would directly affect his own pecuniary interest.

Basically, the dispute was between two classes of optometrists who disagreed as to what conduct was ethical or professional for a member of their profession. The State Board members proposed rules which would have discouraged or prohibited the linking of the practice of optometry with a commercial establishment. The rules proposed were vigorously opposed by a group of optometrists whose practice was commercially oriented. These protesting optometrists charged that since the proposed rules would tend to put them out of business, the State Board members stood to that extent to directly benefit, and therefore, they were being denied due process of law.

The district court of three judges held that where, as here, an administrative agency or board is acting in a *legislative*, as opposed to acting in a judicial or quasi-judicial capacity, the federal due process requirement of an impartial tribunal is inapplicable. Thus, a rule that is otherwise lawful is not rendered unlawful because of the motivations of the members of the administrative body in making the rule.[31]

The district court forewarned however, that the Georgia State Optometry Board exercised two kinds of functions, legislative or rule-making and quasi-judicial; and, when the Board initiates judicial or quasi-judicial proceedings, *e.g.*, a license revocation proceeding, it is bound essentially by the same due process requirements controlling adjudications as the courts. Among these requirements is that the tribunal be impartial and disinterested.[32]

APPEAL FROM AGENCY DECISIONS

Where the procedures for appeal from an agency decision are specifically provided by statute, they must be meticulously followed, as the Georgia Supreme Court emphasized in the three following 1971 decisions.

In *Edwards v. Department of Public Safety*,[33] the court of appeals

30. U.S.D.C., C.A. No. 16414 (N.D. Ga. 1972).

31. *Id.* The district court cited in support of this principle, United States v. O'Brien, 391 U.S. 367, 383 (1967); Arizona v. California, 283 U.S. 423, 454 (1931); McCray v. United States, 195 U.S. 27, 56 (1903).

32. U.S.D.C., C.A. No. 16414 (N.D. Ga. 1972). *See also*, Mack v. Florida Bd. of Dental Examiners, 296 F. Supp. 1259 (1969), *rev'd in part*, 430 F.2d 862 (1970).

33. 123 Ga. App. 438, 181 S.E.2d 289 (1971).

examined the procedures for appealing an order of the Director of the Department of Public Safety revoking a drivers license.[34] Under the Motor Vehicle Safety Responsibility Act, an appeal from the Director's order must be initiated by first filing a notice with the Director, as in the manner of appeals from the court of ordinary.[35] The court of appeals held that an attempt to appeal such an order to the superior court without prior notice is subject to dismissal as an appeal. However, the superior court may treat the aborted appeal as a petition in equity "to set aside the judgment of the Director," *e.g.*, if the drivers license hearing proceeding was tainted by fraud, etc.[36]

In *Department of Public Safety v. Dobson*,[37] there was another failure to properly initiate an appeal from an order of the Director of the Department of Public Safety, this time because the record failed to show that a notice was filed with the director within four days of the decision complained of. The aggrieved party in this case did attempt to give notice to the Director by serving him with a copy of his pleading and rule nisi as filed in the superior court. The court of appeals held that the superior court did not acquire jurisdiction because of the aggrieved party's failure to follow the statutory procedure. The court did, however, offer guidelines as to the proper procedure to be followed in such an appeal:

> As an example of the operation of this procedure in actual practice, let us assume a case where a hearing officer holds a hearing in Lowndes County and thereafter renders a decision which the Lowndes County resident feels is erroneous and desires reviewed. Under the above statute it would be sufficient to give the notice to the hearing officer at the place the hearing was held within four (4) days of the decision complained of (four days being the time within which appeals must be entered under court of ordinary practice—see in this connection *Burson v. Foster*, 123 Ga. App. 168 (179 S.E. 2d 679)) and then send a copy of same to the Director of the Department of Public Safety by registered mail. Such action, together with a petition filed in superior court (similar in form to the one in this case) with rule nisi, would initiate a review proceeding.[38]

In a third decision by the Georgia Supreme Court involving the De-

34. GA. CODE ANN. § 92A-602 (Rev. 1972).

35. GA. CODE ANN. ch. 6-2 (Rev. 1964); *but note* that this procedure was substantially amended by Ga. Laws, 1972, pp. 738, 741.

36. 123 Ga. App. at 439, 181 S.E.2d at 290.

37. 123 Ga. App. 826, 182 S.E.2d 496 (1971).

38. *Id.* at 827, 182 S.E.2d at 498.

partment of Public Safety, the APA came into focus.[39] By dicta [the complaint was dismissed against the Director and his assistant for lack of proper venue], the supreme court held that a litigant can have no standing to attack the "Implied Consent" law[40] until all administrative remedies are exhausted under section 20 of the APA.[41] The court noted that in appeals from decisions under the "Implied Consent" law, a petition for review under the APA is the exclusive statutory remedy and that "[s]uch an appeal would afford as full and complete a remedy as a complaint in equity."[42] It was mentioned that "[e]very defense available may be made on such an appeal . . . [and] where no effort is made to exhaust available administrative remedies, if adequate, equity will not intervene. [Citations omitted.]"[43]

When no statutory appeal is provided for an agency's decision, however, and its procedures have been followed to final order, the courts will "conclude" that all administrative remedies have been exhausted and take jurisdiction in equity. In *Georgia Public Service Commission v. General Telephone*,[44] the Commission entered an order establishing the maximum rates which could be charged by General Telephone Company. In hearings before the Commission evidence was received only for a "test year" ending December 31, 1968. When a rate order was entered by the Commission, the General Telephone Company presented a motion for rehearing to the Commission as required by its rules. Upon denial of the motion, it then filed a petition in the Superior Court of Fulton County to enjoin the Commission from enforcing its rate order, claiming daily confiscation of its property without adequate compensation. The superior court accepted jurisdiction of the complaint and received evidence of the telephone utilities' financial position which had not been presented to the Commission. The Commission took exception to this by arguing that even though a proceeding in equity is de novo as to the question of confiscation, still, the court should require evidence bearing on rates to first be presented to the Commission which has "exclusive" jurisdiction over utility rate making in Georgia.[45] The supreme court, however, rejected this argument of the Commission and held that in such an equitable proceeding, "the trial court is authorized

39. Burson v. Faith, 227 Ga. 526, 181 S.E.2d 827 (1971).
40. GA. CODE ANN. § 68-1625.1 (Supp. 1971).
41. GA. CODE ANN. § 3A-120 (Supp. 1971).
42. 227 Ga. at 530, 181 S.E.2d at 830.
43. *Id.*
44. 227 Ga. 727, 182 S.E.2d 793 (1971).
45. *See* Southern Bell Tel. & Tel. Co. v. Georgia Pub. Ser. Comm., 203 Ga. 832, 869, 49 S.E.2d 38, 61 (1948).

to consider all evidence bearing on the question."[46] There was a strong dissent by Justice Felton to the effect that "[t]he law never intended for such cases as this to get to a court of equity until the commission has had a full opportunity to hear the facts, or to refuse to do so on motion."[47]

Apparently, the only way to restrict the reviewing court to the record is to provide for appeal from the agency decision by statute, as was done in the case of appeals from decisions of the Georgia Fire Safety Commissioner by Ga. Laws, 1972, p. 894 (effective July 1, 1972). Under this new law, all such appeals are to be taken to the Superior court within thirty days from the final agency decision under the APA. Under former law, such appeals were taken de novo.[48]

Frequently, an attempt to challenge an agency decision on appeal runs head on into the doctrine of sovereign immunity.[49] This doctrine is inapplicable if there is a statutory procedure provided for review, but it may bar the action if no specific remedy is available. In *Crowder v. Department of State Parks*,[50] the complainant sought compensation from the state for injuries sustained by a patron of one of the parks owned and operated by the state. A claim was filed with the Claims Advisory Board of the General Assembly, but no relief was granted. When the superior court likewise refused relief, citing the sovereign immunity doctrine, an appeal was taken to the Georgia Court of Appeals.[51] The court of appeals held that it lacked the power to abolish the doctrine of sovereign immunity, but, the Georgia Supreme Court sent quivers through state government when it granted certiorari.

On review, the supreme court by a bare majority left the doctrine intact, citing a plethora of previous decisions.[52] The majority noted that the doctrine had been a legacy of the common law of England in 1776, and if it is to be abrogated, it is a matter of public policy which addresses itself to the legislature rather than the judicial branch of state government.

Three justices (Nichols, Felton and Hawes, JJ.) strongly dissented from the majority opinion and would apparently have declared the doctrine as having been waived by the numerous special acts of the General Assembly granting gratuities to persons injured because of torts of state

46. 227 Ga. at 728, 182 S.E.2d at 795.
47. *Id.* at 730, 182 S.E.2d at 796.
48. Ga. Laws, 1959, p. 50.
49. *See* Irvin v. Woodliff, 125 Ga. App. at 216, 186 S.E.2d at 793.
50. 228 Ga. 436, 185 S.E.2d 908 (1971).
51. Crowder v. Dep't of State Parks, 123 Ga. App. 793, 182 S.E.2d 512 (1971).
52. 228 Ga. at 439, 185 S.E.2d at 910.

employees acting within the scope of their employment. Justice Nichols raised a difficult issue when he perceptively noted that "[s]ince the State is without authority to grant gratuities (Art. VII, Sec. I, Par. II of the Constitution, Code Ann. § 2-5402), the effect of such payments, if legal, must be something else."[53]

It may be that the Georgia Supreme Court as now constituted with two new Justices (Jordan and Gunter) would view the issue differently if raised again. The "full bench" rule could have apparently been avoided by voiding the doctrine on due process or equal protection grounds, as suggested by Justice Felton in his dissent.[54]

The question of whether a state administrative agency is "an aggrieved party," with the right of appeal to the appellate courts under section 21 of the APA, came up in *Georgia State Board of Pharmacy v. Bennett*.[55] Here, the State Board of Pharmacy revoked a pharmacist's license to practice after finding that he had violated certain state drug laws. The pharmacist filed a petition for review under section 20 of the APA in the Superior Court of DeKalb County, which reversed the Pharmacy Board's order of revocation. The Board appealed the judgment to the court of appeals. When the question was raised, by motion to dismiss, of the Board's authority to take the appeal, the court held that a state agency can be "an aggrieved party" by reversal of its decision in the superior courts with full authority to appeal to the appellate courts.

MISCELLANEOUS

1. *Undated Resignations.* Joseph G. Maddox was appointed to the State Board of Pardons and Paroles on March 7, 1968, to fill an unexpired term.[56] On April 10, 1969, he was reappointed for a full seven-year term by the then Governor, Lester G. Maddox. On April 8 or 9, 1969, prior to being sworn in, he had signed an undated resignation, required by Governor Maddox. Later, on January 6, 1971, he received a telegram from Governor Maddox, as follows: "Please be informed that your resignation previously tendered to me is hereby accepted instanter."[57] Subsequently thereafter, member Maddox discovered that the locks on his door had been changed and was told by the chairman of the Pardons

53. *Id.* at 442, 185 S.E.2d at 912.
54. *Id.* at 446, 185 S.E.2d at 914.
55. 126 Ga. App. 307, 190 S.E.2d 788 (1972).
56. Partain v. Maddox, 227 Ga. 623, 182 S.E.2d 450 (1971).
57. *Id.* at 629, 182 S.E.2d at 453.

and Paroles Board that he could not occupy the office. On January 14, 1971, Governor Jimmy Carter issued an executive order stating essentially that the April 10, 1969, appointment was based on a secret, illegal agreement and was void; and, that member Maddox had tendered a resignation which had been accepted and that the office was therefore vacant. Another executive order made a new appointment as of January 1, 1971, to succeed member Maddox for the remaining term of five years.[58]

Member Maddox brought an action in equity to restrain the chairman of the Paroles Board from interfering with his right to exercise his office.[59] Defenses were filed, alleging that there was an adequate remedy at law (quo warranto); that member Maddox had unclean hands; that his resignation was effective; and that, notwithstanding, member Maddox had abandoned his office. The trial court held that the purported resignation was valid, but that there was a jury question as to whether member Maddox had subsequently withdrawn his resignation.[60]

On appeal by both parties, the Georgia Supreme Court held: (1) that the resignation was void as being in violation of constitutional provision, Art. V, Sec. I, Par. XII, providing that appointments are for a term of seven years; and that the Governor could not by an undated resignation convert this seven-year term into "service at pleasure"; (2) a resignation of public office, to be effective, must be made with intention of relinquishing the office accompanied by the act of relinquishment, and that this was not this case; (3) citing *Marbury v. Madison*, the court held that once an appointment is made for a specific number of years, it is irreversible by the executive, and without an explicit showing of abandonment or other specific ground for removal, the office remains filled; and (4) the evidence did not show that there was a vacancy by abandonment.[61]

2. *Delegation of Administrative Functions.* The question was asked of the Attorney General as to whether the Georgia Public Service Commission could delegate its authority to withdraw a statutory suspension of rates to its transportation staff. The Attorney General concluded that administrative officials may not surrender their discretionary powers or delegate their authority which under law may be exercised only by them, citing 73 C.J.S. *Public Administrative Bodies and Procedures*, § 57, *Levine v. Perry*, and *Horton v. State*.[62] It was noted that the transporta-

58. *Id.* at 626, 182 S.E.2d at 452.
59. *Id.* at 624, 182 S.E.2d at 451.
60. *Id.* at 630, 182 S.E.2d at 454.
61. *Id.* at 635-36, 182 S.E.2d at 457-58.
62. 1972 OPS. ATTY. GEN. p.____.

tion staff might consider and make recommendations, but the final decision must be made by the Public Service Commission.

3. *Quorum.* In an opinion to the administrator of the Georgia Firemens Pension Fund, the Attorney General ruled that, in the absence of a statute to the contrary, the majority vote of all members of a state agency, as opposed to a majority present at a meeting, is necessary to authorize agency action.[63] The opinion relies upon Ga. Code Ann. § 102-102(5) (Rev. 1968) and *Aliotta v. Gilreath.*[64]

SIGNIFICANT NEW LEGISLATION

1. *Reorganization Acts of 1972.*[65] Completely reorganized the structure of the executive branch of state government by effecting the consolidation of previously independent agencies into unified departments with related functions; reduced the number of executive agencies to twenty-five which are reorganized for administrative purposes only; and stated the intent of the Reorganization Acts not to decrease, increase or change the statutory authority of any constituent agency. Effective April 6, 1972.

2. *Sunshine Law.*[66] Requires meetings and minutes of all state and local government agencies and other public bodies to be open to the public with limited exceptions; provides that a violation of this Act will void any administrative action and subjects the violators to misdemeanor charges. Effective July 1, 1972.

3. *Georgia Development Authority for Housing Finance Act.*[67] Creates the Georgia Development Authority for Housing Finance for the purpose of purchasing mortgages from lending institutions within the State of Georgia and reinvesting the proceeds in new residential mortgage loans for single and multipurpose family units and residential projects within the state; and provides for rule making powers as well as the authority to issue revenue bonds. Effective July 1, 1972.

4. *Public Service Commission—Procedure for Utility Rate Changes.*[68] Provides an entirely new procedure for changing rates, classifications or service of utilities subject to jurisdiction of the Public Service Commission. Now utilities and carriers must file an application thirty days prior to the intended action, unless the Commission has

63. 1972 OPS. ATTY. GEN. p. ——.
64. 226 Ga. 263, 174 S.E.2d 403 (1970).
65. Ga. Laws, 1972, pp. 1015, 1026, 1069, 1198, 1266.
66. Ga. Laws, 1972, p. 575.
67. Ga. Laws, 1972, p. 1168.
68. Ga. Laws, 1972, p. 137.

given previous approval; the Commission has authority to suspend the intended changes for five additional months pending a hearing or make any provisional order within the five months; if no final decision is taken within five months, the proposed changes may take effect under bond. Effective March 8, 1972.

5. *Public Service Commission—Authority to Allocate Gas and Electricity to Protect Public Health.*[69] Authorizes the Public Service Commission to allocate gas or electricity furnished by regulated utilities in such manner as it deems proper in order to protect the public interest; hearings are required prior to such action, except in a declared emergency. Effective March 27, 1972.

6. *Georgia Radio Utility Act.*[70] Repeals the existing laws governing jurisdiction by the Public Service Commission over radio common carrier systems (Ga. Laws, 1970, p. 104) and provides an entirely new regulatory scheme by giving jurisdiction to the Commission to grant certificates of public convenience and necessity to "radio utilities," as defined, and otherwise regulate such utilities. Effective March 27, 1972.

7. *Food and Drug Act.*[71] Comprehensively revises laws relating to registration and labeling of commercial feeds by authorizing the Commissioner of Agriculture to inspect, sample and analyze such feeds so as to detect adulteration or misbranding and condemn or confiscate those found to be adulterated or misbranded; requires registration of manufacturers and distributors; authorizes rules and regulations by the Agriculture Commissioner establishing standards for commercial feeds. Effective July 1, 1972.

8. *Disposition of Unclaimed Property Act.*[72] Defines what shall be considered to be "unclaimed property," such as bank accounts, insurance proceeds, etc. and provides that such unclaimed property shall be turned over to the State Revenue Commissioner, who, after opportunity for filing claims and hearings, is authorized to sell such property at public auction and remit the proceeds or other unclaimed moneys into the general funds of the state. Effective January 1, 1973.

9. *Georgia Pesticide Use and Application Act.*[73] Provides for the regulation and licensing of persons applying fungicides, herbicides, defoliants, dissiccants, and various pesticides in the state by the Commissioner of Agriculture; further provides for rule-making powers, hear-

69. Ga. Laws, 1972, p. 470.
70. Ga. Laws, 1972, p. 439.
71. Ga. Laws, 1972, p. 10.
72. Ga. Laws, 1972, p. 762.
73. Ga. Laws, 1972, p. 849.

ings and appeals. Effective January 1, 1973.

10. *Ground Water Use Act of 1972.*[74] Provides for the regulation of ground water in certain areas of the state by the Environmental Protection Division of the Department of Natural Resources; further provides for powers and duties of the Environmental Protection Division including the delineation and modification of "capacity use areas," the promulgation of regulations in the administration of the Act, procedures and hearings; also, provides for authorized use of ground water, with enforcement provisions granted to the Environmental Protection Division. Effective April 5, 1972.

11. *Solid Waste Management Act.*[75] Provides for the regulation of handling solid waste by the Division of Environmental Protection of the Department of Natural Resources; requires that municipalities and counties submit solid waste management plans by January 1, 1975, to the Division; and also provides for investigation and enforcement proceedings before the agency and imposition of civil penalties with appeals to the superior courts; hearings are conducted under the APA. Effective April 5, 1972.

12. *Judicial Qualifications Commission.*[76] If ratified, would be a constitutional commission composed of judges, lawyers and laymen with powers to investigate complaints by any citizen about any court or any judge in Georgia; its scope of investigation concerns willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance or any other conduct that brings the judicial office into disrepute; after a hearing, the Commission may recommend to the Georgia Supreme Court the removal, retirement or discipline of the offending justice or judge; formal discipline can only be imposed by the supreme court following a commission recommendation based on a full and fair hearing and after review of the record. To be submitted to the voters at the General Election on November 7,1972.

13. *Licensing of Ambulances.*[77] Amends Title 88 of the Georgia Health Code by providing for licensing and regulation of ambulances by the Division of Physical Health of the Department of Human Resources; sets up procedures and standards for licensing and provides for revocation proceedings; requires periodic reports and establishes means of enforcement and inspection. Effective January 1, 1973.

14. *Georgia Physical Therapy Act.*[78] Provides for a complete

74. Ga. Laws, 1972, p. 976.
75. Ga. Laws, 1972, p. 1002.
76. Ga. Laws, 1972, p. 1364.
77. Ga. Laws, 1972, p. 625.
78. Ga. Laws, 1972, p. 388.

scheme of licensing by an administrative board in the form of a "model" licensing act; and provides for conference meetings by telephone, statewide subpoena power, and injunctions for violation without a showing of no adequate remedy at law. Effective July 1, 1972.

15. *Biennial Issuance of Licenses by State Examining Boards.*[79] Authorizes the Joint Secretary, State Examining Boards, to provide for the biennial issuance of all licenses and certificates issued by State Examining Boards under Title 84 of the Georgia Code. Effective December 31, 1972.

16. *Drug Abuse Treatment and Education Act.*[80] Provides for the classification, evaluation and licensing of various programs designed for the treatment and therapeutic rehabilitiation of drug-dependent persons, such as "live-in" residential centers, crisis information centers and telephone "hot-lines"; also provides for confidential communications between drug-dependent persons and authorizes employees of programs licensed under the Act. Effective July 1, 1972.

17. *Interstate Compact on Juveniles Act.*[81] Provides for a "Compact Administrator" to make rules and regulations for the administration of the Interstate Compact on Juveniles which may be executed between the governor and other signatory states; also provides for the return of runaway juveniles, with appropriate procedures, and generally provides for the welfare and protection of juveniles and the public. Effective July 1, 1972.

18. *Regulation of Dental Hygienists.*[82] Provides that the Board of Dental Examiners may regulate by regulation those "acts, services, procedures and practices" which may be performed by dental hygienists and other dental assistants under the direct supervision of a licensed dentist. Effective April 3, 1972.

19. *Interstate Corrections Compact Act.*[83] Authorizes the Department of Offender Rehabilitation to enter into cooperative compacts with other states concerning the confinement, treatment, rehabilitation and extradition of various types of offenders. Effective July 1, 1972.

20. *Georgia Proprietary School Act.*[84] Provides for the regulation of proprietary schools, generally including all private vocational schools not tax supported, by requiring a certificate of approval for operation

79. Ga. Laws, 1972, p. 505.
80. Ga. Laws, 1972, p. 714.
81. Ga. Laws, 1972, p. 784.
82. Ga. Laws, 1972, pp. 843, 845.
83. Ga. Laws, 1972, p. 584.
84. Ga. Laws, 1972, p. 156.

of such school issued by the State Board of Education acting under advice of a "Proprietary School Advisory Commission"; also provides extensive rule-making and enforcement powers. Effective July 1, 1972, for purpose of appointment of the Advisory Commission and "making the necessary preparations to implement the provisions of the Act"; effective January 1, 1973, for all other purposes.