
Volume 45
Issue 2 *Dickinson Law Review - Volume 45,*
1940-1941

1-1-1941

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Recommended Citation

Gilbert Nurick, *Much Ado About Nothing - The Story of Administrative Chaos in Pennsylvania*, 45 DICK. L. REV. 85 (1941).

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Dickinson Law Review

VOL. XLV

JANUARY, 1941

NUMBER 2

MUCH ADO ABOUT SOMETHING

THE STORY OF ADMINISTRATIVE CHAOS IN PENNSYLVANIA

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Administrative tribunals are likely here to stay. Their tremendous growth in power and number, however, has raised a challenging problem. In Pennsylvania alone there are more than forty administrative officers and agencies exercising power of adjudication and decision over personal and property rights of a private nature as well as over valuable public privileges. Administrative agencies have been dubbed by some as "midget courts" and have been severely condemned as a spurious outgrowth — an illegal and unwanted fourth branch of government.¹ Many profound students, however, regard the growth of the administrative process as a wholesome and necessary development and many of these urge that the scope of judicial review of administrative determinations be strictly limited. They argue that our judicial system is neither flexible enough nor properly qualified to cope with many of the problems of our modern society.² This philosophy has apparently been adopted by the United States Supreme Court in its latest utterance on this problem,^{2a} wherein the Court, speaking through Mr. Justice Frankfurter, stated:

"A much deeper issue, however, is here involved. This was not a mandate from court to court but from a court to an administrative agency. What is in issue is not the relationship of federal courts inter se—a relationship defined largely by the courts themselves—but the due observance by courts of the distribution of authority made by Congress as between its power to regulate commerce and the re-

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¹See HEWART, *The New Despotism* (1929) and Vanderbilt, *United We Stand* (1938) 63 A. B. A. REP. 698, 705 *et seq.* For a good historical discussion, see MATTLAND, *THE CONSTITUTIONAL HISTORY OF ENGLAND* (1911) pp. 415-418.

²See LANDIS, *THE ADMINISTRATIVE PROCESS* (1938).

^{2a}F.C.C. v. Pottsville Broadcasting Co., 309 U.S. 134 (1932).

viewing power which it has conferred upon the courts under Article III of the Constitution, U. S. C. A. A review by a federal court of the action of a lower court is only one phase of a single unified process. But to the extent that a federal court is authorized to review an administrative act, there is super-imposed upon the enforcement of legislative policy through administrative control a different process from that out of which the administrative action under review ensued. The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Congressional power, exercised through a delegated agency, can be controlled within the limited scope of 'judicial power' conferred by Congress under the Constitution.

"Courts, like other organisms, represent an interplay of form and function. The history of Anglo-American courts and the more or less narrowly defined range of their staple business have determined the basic characteristics of trial procedure, the rules of evidence, and the general principles of appellate review. Modern administrative tribunals are the outgrowth of conditions far different from those. To a large degree they have been a response to the felt need of governmental supervision over economic enterprise—a supervision which could effectively be exercised neither directly through self-executing legislation nor by the judicial process. That this movement was natural and its extension inevitable, was a quarter century ago the opinion of eminent spokesmen of the law. Perhaps the most striking characteristic of this movement has been the investiture of administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims—modes whereby interested litigants define the scope of the inquiry and determine the data on which the judicial judgment is ultimately based. Administrative agencies have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services. These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts. Thus, this Court has recognized that bodies like the Interstate Commerce Commission, into whose mould Congress has cast more recent administrative agencies, 'should not be

too narrowly constrained by technical rules as to the admissibility of proof,' *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, 24 S. Ct. 563, 568, 569, 48 L. Ed. 860, should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties. Compare *New England Divisions Case*, 261 U. S. 184, 43 S. Ct. 270, 67 L. Ed. 605. To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play. They require that interested parties be afforded an opportunity for hearing and that judgment must express a reasoned conclusion. But to assimilate the relation of these administrative bodies and the courts to the relationship between lower and upper courts is to disregard the origin and purposes of the movement for administrative regulation and at the same time to disregard the traditional scope, however far-reaching, of the judicial process. Unless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine."

Some extremists even contend that the courts should have no jurisdiction whatever over matters decided by administrative tribunals. The philosophy upon which this viewpoint is predicated was recently discussed by Professor John Dickinson in an address delivered to the Institute on Administrative Law and Procedure of the American Bar Association. Mr. Dickinson referred to this new and radical concept as follows:

"In the first place, a view is beginning to crystallize, largely among government officials and those more immediately associated with them, to the effect that administrative action in the field of private conduct, and more particularly business and economic conduct, is not, as has hitherto been generally supposed, for the purpose of policing and regulating such conduct so as to make it conform to a standard of legislative requirements, but, on the contrary, is for the purpose of superimposing governmental management over, and in substitution for, private management. On this view, the guiding consideration of administrative action is not to secure, through the flexibility incidental to such action, more effective conformity by individuals to lines of conduct prescribed by the legislature, but is instead the far broader one of making the individuals who are subject to the regulation do from time to time whatever the administrative body regards as conducive to the proper management of their affairs. Clearly, if such a view is taken, most of the thinking which has hitherto been applied to the scope of administrative action and the relation of that

action to its statutory basis becomes irrelevant. A far broader field of discretion opens up before the administrative agency than would be permissible if its functions were regarded as confined within the four corners of particular legislative mandates, no matter how vaguely stated. Clearly, for example, if a body empowered to regulate rates conceives its mandate as not merely to establish rates which are fair as between the utility and its patrons, but rates which in its managerial judgment will accomplish some result that for the time being it regards as for the good of the industry, the type of considerations which it will then be entitled, and indeed required, to apply include little or nothing that can properly be passed upon by a court whose function is to delimit spheres of competing interests in accordance with principles of justice and fair play between man and man.

"Associated with this new conception of administrative power, and closely related to it, is a novel and interesting conception of the relation of the administrative agency to the statute from which it derives its authority. The hitherto accepted view upon which all the decisional law has been based is that a statute, no matter how broadly and vaguely expressed, does not merely carve out a field of action for the administrative agency and prescribe a direction or directions for its activity, but also sets an end-limit to those activities beyond which they may not lawfully go. To adhere to the figure, the agency is circumscribed on all sides by a boundary of law, and the courts, in the exercise of their power of review, have the function of defining these boundaries and restraining the agency within them. The newer theory is a different one. To change the figure, it views the statute as an open-end instrument which brings the agency into existence, projects it in a certain direction, and then authorizes it to go as far in that direction as it pleases in its own unfettered discretion. Obviously, if this view is taken there is again little if any function left for judicial review. The only limitation upon the administrative authority is the supposed purpose of the statute, which is so broadly conceived as to lay no basis for judicial reasoning, and to convert all issues into issues of policy which are clearly more proper for decision by the administrative agency itself or by the legislature than by the courts.

"So far these views have attained no wide acceptance either in the profession or among the public generally, which hardly knows of their existence, but they are already widespread among governmental administrators themselves. Their adoption would render the discussion of judicial review simply irrelevant; but it would at the same time render irrelevant and obsolete, at least in the field of govern-

mental action, most if not all of what has hitherto been understood as law."

There is a more conservative group in which the writer claims membership. We do not think that the answer lies in "viewing with alarm" or in exalting the administrative trend as a deserved rebuke to our established judicial system or in confining the scope of judicial review within too rigid bounds. Rather, we recognize that our complicated society and the vexing problems of our economy require a new governmental approach, and the administrative process with adequate judicial review is the best solution thus far suggested.

Administrative agencies, however, have been created to meet specific problems without regard to their respective places in our administrative panorama. Since this article is confined to the situation in Pennsylvania, no analysis will be made here of the confusion existing in the federal branch of administrative procedure, or of the investigations, reports and discussions which preceded the introduction of the Walter-Logan bill in Congress, or of current developments in the federal sphere.

In Pennsylvania over forty separate agencies or officers are operating under different statutes prescribing wide differences and variations in procedure without any logical basis for distinction in most cases. Many agencies have promulgated regulations concerning their own practice without regard to uniformity of design and, in some cases, with little regard for the law. The resulting confusion has been little short of chaotic. As one disturbed student of the general problem observed, the present situation is a "bedlam of confusion which we dignify with the label of administrative law."⁸

Specific examples will illustrate the point. If the license or registration of an accountant,⁴ investment banker,⁵ airport operator,⁶ architect,⁷ physician,⁸ barber,⁹ optometrist,¹⁰ osteopath¹¹ or pharmacist¹² is revoked or suspended by the

³Louis G. Caldwell, REPORT OF COMMITTEE ON ADMINISTRATIVE LAW (1935) 60 A. B. A. REP. 136, 142.

⁴Board of Examiners of Accountants, 1899, P.L. 21, sec. 3, 63 P.S. sec. 7.

⁵Pennsylvania Securities Commission, 1921, P.L. 374, sec. 3 as amended 1933, P.L. 788, sec. 3, 7 P.S. sec. 783.

⁶Department of Revenue, 1933, P.L. 1001, sec. 501, 2 P.S. sec. 1474.

⁷State Board of Examiners of Architects, 1919, P.L. 933, sec. 11 as amended 1939, P.L. 1188, sec. 2, 63 P.S. sec. 26.

⁸State Board of Medical Education and Licensure, 1911, P.L. 639, sec. 12 as amended 1935, P.L. 1329, sec. 4, 63 P.S. sec. 410.

⁹Department of Public Instruction, 1931, P.L. 589, sec. 9 as amended 1937, P.L. 1689, sec. 5, 63 P.S. sec. 559.

¹⁰State Board of Optometrical Examiners, 1917, P.L. 21, sec. 9 as amended 1937, P.L. 795, sec. 4, 63 P.S. sec. 237.

¹¹State Board of Osteopathic Examiners, 1909, P.L. 46, sec. 14 as amended 1937, P.L. 1649, sec. 5, 63 P.S. sec. 271.

¹²Pennsylvania Board of Pharmacy, 1917, P.L. 208, sec. 6 as amended 1921, P.L. 613, 63 P.S. sec. 318.

officer or agency regulating his particular profession or occupation, there is no right of direct appeal to the courts. On the other hand, if a pawnbroker,¹³ real estate agent,¹⁴ beautician,¹⁵ insurance agent,¹⁶ milk dealer,¹⁷ dealer in securities,¹⁸ nurse,¹⁹ undertaker,²⁰ teacher,²¹ dentist,²² or engineer²³ is similarly aggrieved, he has a right of direct appeal.

If the Department of Agriculture revokes a registration under the Carbonated Beverage Act²⁴ or revokes a cold storage warehouse license,²⁵ ice cream plant license,²⁶ a license as a dealer or broker in domestic animals²⁷ or a license under the Farm Standards Act²⁸ or the Plant Pest Act,²⁹ the aggrieved person has no right of direct appeal. If, however, the same department should take similar action with regard to a license to operate a bakery³⁰ or a license as a dealer in farm produce,³¹ a direct appeal is authorized.

If the Department of Welfare should revoke a license to operate a maternity home or hospital³² or a private hospital or private nursing home,³³ no direct appeal is available. If, however, the same department should take similar action with reference to licenses of institutions for the care of mental patients,³⁴ an appeal is authorized in certain cases.

If the Insurance Commissioner should revoke or suspend a certificate of authority for underwriters,³⁵ no appeal is provided. If, however, the same official

¹³Department of Banking, 1937, P.L. 200, sec. 8, 63 P.S. sec. 281-8.

¹⁴Department of Public Instruction, 1929, P.L. 1216, secs. 2 and 10 as amended 1937, P.L. 2811, sec. 4, 63 P.S. secs. 432, 440.

¹⁵Department of Public Instruction, 1933, P.L. 242, secs. 1 and 15, 63 P.S. secs. 507, 521.

¹⁶Insurance Commissioner, 1921, P.L. 789, sec. 1 and sec. 603 as amended 1933, P.L. 616, and sec. 639 as amended 1931, P.L. 616; and 1921, P.L. 276, sec. 6 as amended 1931, P.L. 605, sec. 7, 40 P.S. secs. 1, 233, 279, and 306.

¹⁷Milk Control Commission, 1937, P.L. 417, secs. 901 and 406, 31 P.S. secs. 700j-901, 700j-406.

¹⁸Pennsylvania Securities Commission, 1939, P.L. 748, sec. 18, 70 P.S. sec. 48.

¹⁹State Board of Examiners for Registration of Nurses, 1909, P.L. 321 as amended 1935, P.L. 93, sec. 6, 63 P.S. sec. 210.

²⁰State Board of Undertakers, 1931, P.L. 485, sec. 10 as amended 1935, P.L. 1324, 63 P.S. sec. 478j.

²¹State Council of Education, 1931, P.L. 210, secs. 1 and 4, 24 P.S. secs. 1224, 1227.

²²State Dental Council and Examining Board, 1933, P.L. 216, sec. 5 as amended 1937, P.L. 554, 63 P.S. sec. 124.

²³State Registration Board of Professional Engineers, 1927, P.L. 820, sec. 13, 63 P.S. sec. 143.

²⁴1925, P.L. 730 as amended 1927, P.L. 851, 1931 P.L. 654, and 1937, P.L. 2140, 31 P.S. secs. 761 *et seq.*

²⁵1919, P.L. 670 as amended 1931, P.L. 134, 31 P.S. secs. 951 *et seq.*

²⁶1933 P.L. 1116 as amended 1937 P.L. 1672, 31 P.S. secs. 397 *et seq.*

²⁷1931, P.L. 650 as amended 1937, P.L. 628, 3 P.S. secs. 431 *et seq.*

²⁸1929, P.L. 144, sec. 3, 3 P.S. sec. 23.

²⁹1937, P.L. 318, 3 P.S. sec. 214-1 *et seq.*

³⁰1933, P.L. 912, secs. 1 and 4, 43 P.S. secs. 403, 406.

³¹1937, P.L. 901, secs. 1 and 11, 3 P.S. secs. 41a, 41k.

³²1929, P.L. 1561, sec. 9, 35 P.S. sec. 289.

³³1931, P.L. 510, sec. 1 as amended 1939, P.L. 438, and sec. 6, 35 P.S. secs. 424, 429.

³⁴1923, P.L. 998, secs. 1 and 201 as amended 1938, Sp. Sess., P.L. 63, 50 P.S. secs. 1, 21.

³⁵1921, P.L. 682, sec. 913, 40 P.S. sec. 943.

should revoke an agent's, broker's or adjuster's license,³⁶ or other types of certificates of authority,³⁷ an appeal is authorized.

If the Pennsylvania Securities Commission should refuse to issue a license or should revoke a license authorizing an investment business,³⁸ there is no direct appeal available. If the same commission should revoke a dealer's license or agent's license,³⁹ an appeal may be taken.

If the Department of Health should revoke or suspend a permit to operate a public bathing place,⁴⁰ there is no appeal. If the same department should take similar action with regard to a permit to sell milk or milk products,⁴¹ an appeal is available.

Many of the statutes are entirely silent on the procedure before the administrative tribunal. Others prescribe procedure in careful detail and in such instances, there are almost as many differences as there are statutes.

With regard to those administrative determinations from which a direct appeal to the courts is provided by statute, the various statutes are consistent only in their utter lack of uniformity. In many cases the time within which the appeal must be taken is not prescribed.⁴² In others, the appeal limitations are five days,⁴³ twenty days,⁴⁴ thirty days⁴⁵ and sixty days.⁴⁶ Some of the statutes provide for

³⁶1921, P.L. 789, sec. 1 and secs. 603 and 639 as amended 1931, P.L. 616 and 1921, P.L. 276, sec. 6 as amended 1931, P.L. 605, sec. 7, 40 P.S. secs. 1, 233, 279, and 306.

³⁷1921, P.L. 682, secs. 350 and 504 as amended 1931, P.L. 904, 40 P.S. secs. 475, 634; and 1935, P.L. 1092, secs. 1 and 27, 40 P.S. secs. 1051, 1077.

³⁸1921, P.L. 374, sec. 3 as amended 1933, P.L. 788, sec. 3, 7 P.S. sec. 783.

³⁹1939, P.L. 748, sec. 18, 70 P.S. sec. 48.

⁴⁰1931, P.L. 899, 35 P.S. secs. 672, 680b.

⁴¹1935, P.L. 589, secs. 1 and 2, 31 P.S. secs. 645, 647.

⁴²For example, appeals from action of Department of Agriculture suspending or revoking a baker's license (1933, P.L. 912, sec. 4, 43 P.S. sec. 406), appeals under Beauty Culture Act (1933, P.L. 242, secs. 1 and 15, 63 P.S. secs. 507, 521), appeals from Pennsylvania Labor Relations Board (1937, P.L. 1168, sec. 9 as amended 1939, P.L. 293, 43 P.S. sec. 211.9), from Pennsylvania State Board of Censors (1915, P.L. 534, sec. 26, 4 P.S. sec. 54), from Sanitary Water Board (1929, P.L. 177 sec. 2110 as amended 1937, P.L. 1865, 71 P.S. sec. 540), from State Registration Board for Professional Engineers (1927, P.L. 820, sec. 13, 63 P.S. sec. 143).

⁴³For example, appeals from Department of Health (1935, P.L. 589, secs. 1 and 3, 31 P.S. secs. 645, 647).

⁴⁴For example, appeals from Milk Control Commission (1937, P.L. 417, sec. 901, 31 P.S. secs. 700j-901 *et seq.*, 31 P.S. sec. 700j-406), Pennsylvania Liquor Control Board (1933 Sp. Sess., P.L. 15, sec. 404 as amended 1937, P.L. 1762, 47 P.S. sec. 744-404), Workmen's Compensation Board (1915, P.L. 736, sec. 427 as amended 1937, P.L. 520, 77 P.S. secs. 872, 873).

⁴⁵For example, appeals from Auditor General's appraisal of inheritance tax (1919, P.L. 521, sec. 13 as amended 1935, P.L. 1028, 72 P.S. sec. 2327), from refusal or revocation by Department of Agriculture of license as dealer in farm produce (1937, P.L. 901, secs. 1 and 11, 3 P.S. secs. 41a, 41k), from Department of Banking under Small Loan Act (1915, P.L. 1012, sec. 1(a) as amended 1937, P.L. 989, 7 P.S. sec. 752, and under Consumer Discount Act, (1937, P.L. 262, sec. 12, 7 P.S. sec. 761-12), and under Private Bank License Act (1933, P.L. 624, sec. 1303, 7 P.S. sec. 819-1303), and under Pawnbroker's License Act (1937, P.L. 200, sec. 8, 63 P.S. sec. 281-8), from order of Department of Internal Affairs approving or disapproving municipal indebtedness (1929, P.L. 516, sec. 1, 53 P.S. sec. 1960), from order of Department of Labor and Industry under Minimum Wage Act (1937, P.L. 917, secs. 2 and 12, 43 P.S. secs. 331b, 331L), from order of Department of Revenue suspending or revoking operator's license or learner's permit

supersedeas on appeal;⁴⁷ most of them are utterly silent on this point while others expressly provide that the appeal shall not act as a supersedeas.⁴⁸ Some statutes provide for the filing of security on the appeal⁴⁹ but most of the existing laws either overlooked or ignored this phase of appeal procedure. Some of the acts describe the procedure on appeal in great detail. A large number of them, however, provide no light on this point.

The scope of review on appeal is variously stated without sound basis for distinction. Some appeals are limited to questions of law.⁵⁰ In others, the facts may be challenged and reviewed.⁵¹ On some appeals the case is heard solely upon

(1929, P.L. 905, sec. 616 as amended 1939, P.L. 1135, sec. 10, 75 P.S. sec. 193), from order of Insurance Commissioner revoking agent's, broker's, or adjuster's license or decision affecting fraternal benefit societies (1921, P.L. 789, secs. 1, 603, 639 as amended 1931, P.L. 616, 40 P.S. secs. 1, 233, 279, and 1921, P.L. 276, sec. 6 as amended 1931, P.L. 605, sec. 7, 40 P.S. sec. 306; and 1935, P.L. 1092, secs. 1 and 27, 40 P.S. secs. 1051, 1077), from order of Pennsylvania Game Commission revoking license (1937, P.L. 1225, sec. 315 (6), 34 P.S. sec. 1311. 315), from order of Pennsylvania Public Utility Commission (1937, P.L. 1053, sec. 1101, 66 P.S. sec. 1431), from order of Pennsylvania Securities Commission (1939 P.L. 748, sec. 18, 70 P.S. sec. 48), from order of State Board of Examiners for Registration of Nurses (1909, P.L. 321 as amended 1935, P.L. 93, sec. 6, 63 P.S. sec. 210), order of State Board of Housing (1937 P.L. 1705, secs. 1 and 20, 35 P.S. secs. 1501, 1520), order of State Board of Undertakers (1931, P.L. 485, sec. 10 as amended 1935, P.L. 1324, 63 P.S. sec. 478j), order of State Council of Education (1931, P.L. 210, secs. 1 and 4, 24 P.S. secs. 1224, 1227), order of State Dental Council and Examining Board (1933, P.L. 216, sec. 5 as amended 1937, P.L. 554, 63 P.S. sec. 124), order of Unemployment Compensation Board of Review (1936 Second Ex. Sess., P. L. (1937) 2897 as amended 1937, P.L. 658, sec. 3, 43 P.S. secs. 821 *et seq.*).

⁴⁶For example, appeals from action of Board of Finance and Revenue on petitions for review (1929, P.L. 343, sec. 1104, 72 P.S. sec. 1104), appeals from action of Department of Revenue upon petitions for reassessment of personal property tax (1935, P.L. 414, secs. 2 and 8 as amended 1939, P.L. 76, 72 P.S. secs. 3243, 3250-1).

⁴⁷For example, appeal is a supersedeas in appeals from decisions of Insurance Commissioner affecting fraternal benefit societies (1935, P.L. 1092, secs. 1 and 27, 40 P.S. secs. 1051, 1077), from actions of Pennsylvania Liquor Control Board regarding licenses (unless court determines otherwise) (1933, Sp. Sess. P.L. 15, sec. 404 as amended 1937, P.L. 1762, 47 P.S. sec. 744-404). Court is expressly authorized to grant supersedeas in appeals from Milk Control Commission (1937, P.L. 417, sec. 406, 31 P.S. sec. 700j-406), from Pennsylvania Labor Relations Board (1937, P.L. 1168, sec. 9 as amended 1939, P.L. 293, 43 P.S. sec. 211.9), from Pennsylvania Public Utility Commission (1937, P.L. 1053, 66 P.S. sec. 1431), from State Dental Council and Examining Board (1933, P.L. 216, sec. 5 as amended 1937, P.L. 554, 63 P.S. sec. 124).

⁴⁸Appeals from Department of Agriculture under baker regulatory law (1933, P.L. 912, secs. 1 and 4, 43 P.S. secs. 403, 406), and from refusal or revocation of farm produce dealer's license (1937, P.L. 901, secs. 1 and 11, 3 P.S. secs. 41a, 41k), from Sanitary Water Board (1929, P.L. 177, sec. 2110 as amended 1937, P.L. 1865, 71 P.S. sec. 540), from State Council of Education (1931, P.L. 210, secs. 1 and 4, 24 P.S. secs. 1224, 1227), from Unemployment Compensation Board of Review (1936 Second Ex. Sess., P.L. (1937) 2897 as amended 1937, P.L. 658, sec. 3, 43 P.S. secs. 821 *et seq.*).

⁴⁹Appeals from Auditor General (1919, P.L. 521, sec. 13 as amended 1935, P.L. 1028 and sec. 27 as amended 1931, P.L. 689, sec. 2, 72 P.S. secs. 2327, 1202a), from Board of Finance and Revenue (1929, P.L. 343, sec. 1104, 72 P.S. sec. 1104), from Milk Control Commission (1937, P.L. 417, secs. 901 and 406, 31 P.S. secs. 700j-901, 700j-406).

⁵⁰For example, appeals from Department of Labor and Industry under Minimum Wage Act (1937, P.L. 917, secs. 2 and 12, 43 P.S. secs. 331b, 331L).

⁵¹See examples cited in subsequent notes.

the record certified.⁵² In others, the hearing is *de novo*⁵³ while in many cases the statutes fail to state on what basis the appeal must be considered by the court. Some statutes provide that the findings of fact by the agency are conclusive if supported by evidence.⁵⁴ Others prescribe that the findings shall have the same weight as findings of a referee under the Act of May 14, 1874.⁵⁵ Most do not furnish any indication as to the weight to be accorded to the findings of the administrative agency.

In some instances the statutes expressly provide for the right of further appeal from the order of the court to which the appeal was originally taken.⁵⁶ Others prescribe that the action of the court shall be final,⁵⁷ while in most instances the statutes are mute on this point.

⁵²For example, appeals from Department of Labor and Industry under Minimum Wage Act (1937, P.L. 917, secs. 2 and 12, 43 P.S. secs. 331b, 331L), from order of Insurance Commissioner affecting fraternal benefit societies (1935, P.L. 1092, secs. 1 and 27, 40 P.S. secs. 1051, 1077), from special orders of Milk Control Commission (1937, P.L. 417, secs. 901 *et seq.* and 406, 31 P.S. secs. 700j-901 *et seq.*, 700j-406), from Pennsylvania Labor Relations Board (1937, P.L. 1168, sec. 9 as amended 1939, P.L. 293, 43 P.S. sec. 211.9), from Pennsylvania Public Utility Commission (1937, P.L. 1053, secs. 1107 *et seq.*, 66 P.S. sec. 1437), from Pennsylvania Securities Commission (1939, P.L. sec. 748, sec. 18, 70 P.S. sec. 48), from State Board of Undertakers (1931, P.L. 485, sec. 10 as amended 1935, P.L. 554, 63 P.S. 478j), from State Council of Education (1931, P.L. 210, secs. 1 and 4, 24 P.S. secs. 1224, 1227), from Workmen's Compensation Board (1915, P.L. 736, sec. 427 as amended 1939, P.L. 520, 77 P.S. secs. 872 *et seq.*).

⁵³For example, appeals from Board of Finance and Revenue (1929, P.L. 343, sec. 1104, 72 P.S. sec. 1104), from order of Department of Agriculture under baker regulatory act (1933, P.L. 912, secs. 1 and 4, 43 P.S. secs. 403, 406), from Department of Revenue revoking or suspending operator's license (1929, P.L. 905, sec. 616 as amended 1939, P.L. 1135, sec. 10, 75 P.S. sec. 193), from Pennsylvania Liquor Control Board Act (1933 Sp. Sess., P.L. 15 sec. 404 as amended 1937, P.L. 1762, 47 P.S. 744-404), from State Board of Examiners for Registration of Nurses (1909, P.L. 321 as amended 1935, P.L. 93, sec. 6, 63 P.S. sec. 210), from State Registration Board for Professional Engineers (1927, P.L. 820, sec. 13, 63 P.S. sec. 143).

⁵⁴For example, appeals from Pennsylvania Labor Relations Board—findings of fact conclusive if supported by "evidence" (1937, P.L. 1168, sec. 9 as amended 1939, P.L. 293, 43 P.S. sec. 211.9), same with regard to appeals from State Board of Housing (1937, P.L. 1705, secs. 1 and 20, 35 P.S. secs. 1501, 1520), from Unemployment Compensation Board of Review—same in the absence of fraud (1936 Second Ex. Sess., P.L. (1937) 2897 as amended 1937, P.L. 658, sec. 3, 43 P.S. sec. 821).

⁵⁵For example, appeals from Department of Public Instruction under Real Estate Broker's License Act (1929, P.L. 1216, secs. 2 and 10 as amended 1937, P.L. 2811, sec. 4, 63 P.S. secs. 432, 440), appeal from order of Pennsylvania Game Commission revoking license (1937, P.L. 1225, sec. 315(6), 34 P.S. sec. 1311.315), from State Dental Council and Examining Board (1933, P.L. 216, sec. 5 as amended 1937, P.L. 554, 63 P.S. sec. 124).

⁵⁶To Supreme or Superior Court as in other cases: appeals involving orders of Auditor General, Board of Finance and Revenue, Department of Agriculture (order involving dealer in farm produce), Department of Internal Affairs, all *supra*.

To SUPREME COURT: appeals involving orders of Department of Banking (rejection of application for private bank license), Insurance Commissioner (re fraternal benefit societies), Milk Control Commission (general orders), Pennsylvania Labor Relations Board, Pennsylvania Securities Commission, all *supra*.

To SUPERIOR COURT: appeals involving orders of Milk Control Commission (special orders), State Board of Housing, State Dental Council and Examining Board, Department of Public Instruction (under Beauty Culture Act), Workmen's Compensation Board, all *supra*.

⁵⁷Appeals involving orders of Department of Agriculture (under baker regulatory law), Pennsylvania Liquor Control Board, State Board of Examiners for Registration of Nurses, State Board of Undertakers, State Council of Education, State Registration Board for Professional Engineers, all *supra*.

These observations give some idea of the confusion which now prevails. A special committee on administrative law of the Pennsylvania Bar Association has been investigating this subject for two years. It filed a comprehensive report with the Association in 1939⁵⁸ in which the various administrative tribunals and officers were listed, the nature of their respective administrative determinations was indicated and the various types of orders were segregated as to those which are appealable and those which are not subject to direct appeal. The report contains a chart summarizing the statutory provisions with reference to the courts to which appeals must be taken, the time allowed for appeal, provisions for security and supersedeas, the proceedings on appeal and miscellaneous data. It also includes an exhaustive discussion of the available methods of judicial review where no direct appeal is provided.

The Bar Association Committee has been cooperating with the Joint State Government Commission⁵⁹ which has recently concluded a series of hearings to determine the present practice and procedure before the various agencies.⁶⁰ The

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⁵⁹See Act, June 26, 1939, P.L. 1084, 46 P.S. 65, as to its organization, powers and functions.

⁶⁰The Commission adhered to the following general outline in its investigation:

- I. Board, Commission or Agency Invited and Names of Representatives.
 - (a) Composition of Board, Commission or Agency.
- II. Statutes Establishing the Board, Commission or Agency.
- III. Discussion by a Representative of the Board, Commission or Agency concerning the Powers Granted and Duties Imposed by Statute and Rules and Regulations Adopted with reference to:
 - (a) Enforcement
 - (b) Investigation
 - (c) Filing of Complaints
 - (d) Hearings on Suspension, Revocation, and Refusal to Issue License or Register, (With or Without Hearing)
 - (1) Practice and Procedure
 - (2) Form of Notices, Time and Manner of Service
 - (3) Presentation of Evidence
 - (4) Stenographic Record of Proceedings
 - (5) Appearance by Parties in Interest (Applicant or Licensee, Complainant and Board)
 - (6) Variation in Proceedings on Hearings for Suspension, Revocation, Reinstatement, and Refusal to Register or Issue License
 - (e) Findings of the Board, Commission or Agency and Notice thereof to Parties
 - (f) Rehearings and Procedure
 - (g) Appeals from Suspension, Revocation, and Refusal to Issue License or Register
 - (a) Allowable
 - (b) To What Court—Direct or is Hearing Required
 - (c) Security and Supersedeas
 - (d) Proceedings on Appeal
 - (e) Further Appeals.
- IV. Criminal Prosecution and Penalties
- V. Proceedings to Enjoin Violations and Assessment of Costs.
- VI. Practicability of a Uniform Code of Practice and Procedure Before This Agency and Other Agencies.
- VII. Other Matters.

Commission will likely make recommendations in the near future for remedial legislation. It would appear that the present deplorable situation can be rectified only by a comprehensive statute or by a number of companion statutes dealing with the following subjects:

1. Granting a right of direct appeal from administrative orders affecting private rights where no such relief presently exists.

2. Prescribing certain general requirements as to practice and procedure before the tribunals. These provisions would relate to such matters as procedure in adopting rules and regulations, publication of rules and regulations (probably in an official journal similar to the Federal Register), pleadings, notice of hearings, conduct of hearings, prosecution and adjudication functions, executive consideration of the issues, findings and conclusions, etc. While absolute uniformity will likely be impossible, nevertheless a great degree of uniformity can be attained particularly if the tribunals are classified according to similarity of functions.

3. Providing that the procedure on appeal shall be in accordance with rules of procedure promulgated by the Pennsylvania Supreme Court. The Procedural Rules Committee will probably draft recommended rules of procedure applicable to such appeals as soon as the situation is clarified.

4. Describing the powers, duties and functions of the court on appeal and making provision for further appeal where deemed desirable. This will require decisions on a number of fundamental problems, such as the scope of judicial review over administrative determinations, the weight to be accorded to the findings of fact of the agency, the vexing issue of whether constitutional and jurisdictional facts should in all cases be determined *de novo* or whether they should be entitled to the same weight or presumptions as other administrative findings⁶¹ and the power of the judiciary to reverse or modify administrative orders.

Another development of interest is the fact that the National Conference of Commissioners on Uniform State Laws at its recent meeting at Philadelphia considered a report of a Special Committee on Uniform Act on Administrative Procedure which included a tentative draft of an act to be suggested for adoption by the various state legislatures. Although it is quite unlikely that a uniform act designed for all of the states would be readily adaptable to and adequate for the Pennsylvania situation, nevertheless the fact that the problem is being considered is significant.

Even if the situation regarding procedure before the administrative tribunals and on appeal is remedied, there will still remain the plague of unqualified personnel which no statute can cure. Honest, able and conscientious administrators

⁶¹On this point see *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51 (1936); *Crowell v. Benson*, 285 U.S. 22 (1932); *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287 (1920).

are valuable assets to government. They create a public confidence in the administrative process. Unfortunately, however, appointments are too frequently dictated entirely by political considerations. The result in many instances has been a degrading of the administrative process and the development of public distrust and antagonism. The litigants or other interested parties are led to rely on proper "contacts" and sometimes the county chairman supplants the attorney as the advocate. The appointing power therefore has a tremendous responsibility as well as a magnificent opportunity. Adherence to a policy of making nonpartisan and merit appointments would go far toward eliminating much of the existing resentment against some of the important agencies.

To the credit of Pennsylvania let it be said that we have examined the patient and have carefully noted his many symptoms. Diagnosis is now in process and from present indications a satisfactory remedy will likely be prescribed. Then the hope for complete recovery will lie in the will of the appointer and in the patient himself.

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