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Administrative Law

Introduction. Chapter 365 regulates administrative adjudication and judicial review thereof. This act completes the establishment of uniform methods for administrative action.[1] The acts of 1945 and 1947 are the state counterpart of the Federal Administrative Procedure Act;[2] however, the procedure prescribed is considerably different. Chapter 365 is confined to "administrative adjudication"[3] which is defined as the determination by an agency of issues applicable to particular persons.[4]

The act applies to "all agencies of the state of Indiana,"[5] except those specifically exempted. By one interpretation this would mean only those agencies whose jurisdiction is co-extensive with the state.[6] By a more enlarged interpretation it could mean those agencies that receive their authority under the laws of the state and perform some of the governmental functions of the state.[7] The latter interpretation has been applied in cases deciding whether a person is holding more than one lucrative office at the same time.[8] But if that interpretation is used, the act would drastically change the administration of county and other local government. It

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44. Curless v. Wilson, 180 Ind. 86, 102 N.E. 497 (1913); Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N.E. (2d) 399 (1940); Square D Co. v. O'Neal, 72 N.E. (2d) 654 (Ind. 1947).
1. An act of 1945, governs administrative "rule making." Ind. Acts 1945, c. 120, Ind. Stat. Ann. (Burns, Supp. 1945) §§60-1501 to 60-1511.
2. 46 Stat. 324, 951 (1946), 5 U.S.C.A. §§1001 to 1011 (Supp. 1946). For model state act see, (1944) Handbook, Nat'l Conf. Comm'r Uniform State Laws, p. 329.
3. See, Fuchs, "Procedure in Administrative Rule Making" (1938) 52 Harv. L. Rev. 259.
4. Ind. Acts 1947, c. 365, §2. Compare with the more limited definition in the Federal act. Because of this difference in definition, the Indiana act will have a much wider application than the provisions of the Federal act dealing with "administrative adjudication."
5. Ind. Acts 1947, c. 365, §1.
6. See Ramsay v. Van Meter, 300 Ill. 193, 200, 133 N.E. 193, 195 (1921); People v. Evans, 247 Ill. 47, 555, 93 N.E. 388, 391 (1910).
7. See Ex parte Preston, 72 Tex. Cr. 77, 161 S.W. 115, (1913).
8. Chambers v. State, 127 Ind. 365, 26 N.E. 893 (1891); Foltz v. Kerlin, 105 Ind. 221, 4 N.E. 439 (1886); see Ops. Att'y. Gen., Ind. (1943) p. 693.

is believed that this was not the legislative intent. Therefore, the phrase "agencies of the state" should be interpreted as meaning only those agencies whose jurisdiction is potentially co-extensive with the limits of the state.

State Colleges or Universities, the Industrial Board, the Alcoholic Beverage Commission, the Clemency Commission, the State Board of Tax Commissioners and the Public Service Commission are exempted from the requirements of the Act.[9]

Notice. Informal settlement of claims is encouraged,[10] nevertheless, if informal negotiations are not successful, any party may demand a formal hearing.[11] The act sets certain minimum standards for notice; however the details of form and manner may be determined by the particular agency.[12] The party against whom an order may be made is entitled to 5 days notice; it must be sufficient to advise the person of the issues;[13] and a copy or a statement of the substance of the complaint or charges must be included with the notice.[14] The last clause in section 5 permits the issuance of a temporary order in an emergency. The order may be issued without notice or hearing but will be effective only until notice and hearing can be made available.[15]

Hearing. The act specifically requires that a hearing must be made available before the issuance of a final order or determination.[16]

Prior to, and during the hearing, informal conferences may be held to facilitate the procedure of the hearing.[17] The officer presiding at a hearing is granted all of the usual powers to conduct an orderly hearing.[18] Parties to a hearing

9. Many actions peculiar to these agencies are specifically excluded from the act. Ind. Acts 1947, c. 365 §2.
10. Id. §4.
11. Id. §5.
12. Ibid.
13. Id. §6. There must be such notice as will enable the party to formulate a defense. Abrams v. Doherty, 60 Cal. App. 297, 212 Pac. 942 (1922). However where the action charged is peculiarly within the knowledge of the accused, the notice required is only such that the person charged will have an opportunity for hearing and defense. Matter of Meehan, 1 S.E.C. 238 (1935).
14. Ind. Acts 1947, c. 365 §6.
15. Id. §5. The act of 1945 on "rule making" contains no provision for the issuance of a regulation in an emergency. Ind. Acts, 1945, c. 120, Ind. Stat. Ann. (Burns, Supp. 1945) §§60-1501 to 60-1511.
16. Ind. Acts 1947, c. 5.
17. Id. §§4, 7.
18. Id. §7.

have the right to be represented by counsel,[19] to submit evidence, and to cross-examine witnesses. The presiding officer is not bound by the technical rules of evidence, and he can reasonably limit cross-examination or admission of evidence.[20]

If the parties in interest fail to appear at a hearing, the right to a hearing is waived and an order may be issued.[21] Similarly, where a directory or prohibitory order cannot be issued,[22] the agency may notify all persons who will be affected that certain determinations have been recommended and will be made, unless objections are filed by a given date.[23] If no objections are filed, the agency may enter the determination without notice or hearing. If objections are filed, a hearing must be held.

"An agency may issue subpoenas upon its own motion and shall issue subpoenas to any party on request."[24] The agency possesses no discretion to deny a request for a subpoena. The apparent severity of this mandate is avoided, as the subpoenas are enforced by the Attorney General on relation of the agency in a Circuit Court. In that action, the prospective witness has an opportunity to show cause why he should not testify or produce the evidence. Evidence made confidential by law is not subject to subpoena.

The hearing may be conducted by the agency or a member thereof, or the statute under which the agency operates may authorize an agent or representative to conduct the hearing. If the hearing is conducted by other than the agency, the hearing officer must make a recommended order or determination. This recommendation, together with a transcript of the record, must be filed with the agency and notice given to all parties. Interested and affected parties may object to the recommendation within 10 days. A hearing on the record is then held at which the agency may, (a) receive additional evidence; (b) refer it back to the examiner for additional evidence; or, (c) adopt, reject, or modify the recommendation. If there are no objections, the agency may adopt the recommendation without further hearing; or, it

19. Id. §22.
20. Id. §8.
21. Id. §23.
22. Id. §16.
23. The date set must not be less than 15 days from the date of notification. Id. §25.
24. Id. §21.

may refuse to adopt the recommendation, and after notifying the parties, proceed as if objections had been filed.[25] A hearing officer cannot, without notifying all parties, consult with anyone on any of the facts in issue.[26]

Orders and Determinations. Only the ultimate authority of the agency may render final orders or determinations;[27] and notice of that final action must be given to all parties.[28]

The agency must make an informal finding of fact which may be by direct statement, or by reference to the particular charges.[29] The findings and orders must be supported by substantial evidence.[30] A final decision should be reached by a consideration of the evidence, a basic finding of fact, a finding of ultimate fact derived from the basic facts and a decision reached by the application of the law pertinent to the situation.[31]

The order is effective upon entry in the permanent records of the agency. The statutes governing a particular agency may provide that, if a petition for judicial review is filed, there shall be an automatic stay of the agency's order.[32] When not specifically prohibited, the reviewing court may issue a stay order even though such order is not provided for by the particular statutes.[33]

Agencies may modify any order or determination within 15 days after the order becomes effective. The same rules apply to judicial review of the modified orders that apply to review of other orders.[34] Similar provisions apply to a petition to introduce newly discovered evidence. Any party aggrieved may file such petition within 15 days after the order.[35] Although the wording of the statute is somewhat ambiguous,

25. Id. §12.
26. Limitation on consultation not applicable if hearing pertains to the issuance of licenses, concerns rates, facilities, or practices of public utilities and carriers, or is conducted by the agency or a member thereof. Id. §20.
27. Id. §11.
28. Id. §12.
29. Id. §10.
30. Id. §8. See note 42 infra.
31. See Saginaw Broadcasting Co. v. F.C.C., 96 F. (2d) 554, 559 (App. D.C., 1938).
32. Ind. Acts 1947, c. 365, §13.
33. Id. §17.
34. Id. §26.
35. Id. §15.

it is believed that merely filing the petition extends the time for judicial review.

Enforcement. An agency may enforce its orders by petitioning for prohibitory or mandatory injunction.[36] The wording of the statute is permissive; therefore, enforcement by injunction is not exclusive, but is supplemental to any other means of enforcement provided for by the statute under which the agency operates.

Judicial Review. "Any party or person aggrieved" is entitled to judicial review. There are five specific grounds for which review may be sought, and it is believed that these grounds are intended to be exclusive.[37]

Within 15 days after an order or determination is rendered, the person seeking judicial review must file a petition to review with the circuit or superior court of the county where the petitioner resides or where the order is to be enforced. The court in which the first petition is filed has exclusive jurisdiction of the review of the administrative proceedings and all parties to the hearing must be made parties to the petition. Notice of a petition to review must be served on the agency and the Attorney General. A transcript of the record must be filed with the clerk of the circuit court within 15 days after the petition is filed.[38] The review is on the record,[39] which after being certified by the hearing authority, is prima facie evidence of the facts contained therein.[40]

Section 15 provides that newly discovered evidence may be presented to the agency. This is the only provision relating to such evidence. It should be noted that the wording used can be interpreted to limit this section to parties to the hearing.[41] Thus, persons not parties may be permitted to present newly discovered evidence only in an action to review the order (provided they have standing to maintain

36. Id. §27.
37. (1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or (2) Contrary to constitutional right, power, privilege or immunity; or (3) In excess of statutory jurisdiction, authority or limitations, or short of statutory right; or (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence. Id. §14.
38. Ibid.
39. Id. §18.
40. Id. §9.
41. Id. §15.

such action), or in an enforcement action where the validity of the order is challenged.

The "rule of substantial evidence" applies to the court's review of the facts.[42] If the court finds the order or determination is objectionable for any of the five grounds for which judicial review may be had,[43] it may remand the case for further proceedings or compel the action unlawfully withheld. In a review proceeding, the court is required to make written findings of fact. Apparently, if the case arose in an enforcement action, the court would not be bound by this act and would follow the previous law.[44]

The petition for review must be filed within 15 days after the order or "all rights of judicial review and all recourse to the courts shall terminate."[45] The last quoted words raise a serious constitutional question. The legislature can regulate how the courts may take jurisdiction; however, it cannot take away that jurisdiction.[46] If the courts interpret the words "party or person aggrieved" to mean only those who have had notice of the order or determination, the limitation of 15 days placed on the petition to review should be considered reasonable.[47] Thus, only parties to the hearing would be bound by the 15 days limitation. Persons, other than parties, who were adversely affected by an order would not be bound by the 15 day limitation on judicial review, and could challenge the validity of the action if they had sufficient interest.[48] In addition, *any person* against

42. Id. §18. Keeling v. Board of Zoning Appeals, 69 N.E. (2d) 613, (Ind. 1946); Byers v. School City of Evansville, 219 Ind. 288, 37 N.E. (2d) 934 (1941); Warren v. Ind. Telephone Co., 217 Ind. 93, 26 N.E. (2d) 399 (1939); see Coleman v. City of Gary, 220 Ind. 446, 460, 44 N.E. (2d) 101, 108 (1942). For discussion of substantial evidence in Federal cases see, (1939) 15 Ind. L. J. 228.

43. Ind. Acts, 1947, c. 365, §18; see note 38 supra.

44. Albert v. Milk Control Board, 210 Ind. 283, 200 N.E. 688 (1936); Wallace v. Feehan, 206 Ind. 522, 190 N.E. 438 (1933) (suummary enforcement); action to enjoin enforcement of penalties dismissed, Vandalia R.R. v. R.R. Comm., 182 Ind. 382, 101 N.E. (1914), aff'd. 242 U.S. 255 (1916).

45. Ind. Acts 1947, c. 365, §18.

46. Warren v. Ind. Telephone Co., 217 Ind. 93, 26 N.E. (2d) 399 (1939); see Square D Co. v. O'Neal, 72 N.E. (2d) 654, 657 (Ind. 1947). But cf. Yakus v. U.S., 321 U.S. 414 (1943); Bowles v. Willingham, 321 U.S. 503 (1943).

47. Wilmont v. City of South Bend, 221 Ind. 538, 48 N.E. (2d) 649 (1943).

48. That he has sustained or is in immediate danger of sustaining a direct injury as a result of an order is a showing of sufficient interest to enable a person to challenge the validity of an admin-

whom enforcement proceedings are brought would be entitled to question the validity of the order. If this interpretation is adopted, the act does not impinge upon constitutional rights by an undue legislative limitation of recourse to the courts.[49]

An appeal may be taken from the court's decision if notice of such appeal is filed within 15 days. Such appeal is governed by the rules applicable to civil causes of action.[50]

Licenses. The issuance and revocation of licenses[51] are subject to different treatment than other forms of administrative adjudication. The act does not apply to a hearing for the initial determination of a license application.[52] If an agent or a representative conducts the hearing, he is not bound by the provision preventing consultation on a fact in issue;[53] and unless appealed from within 15 days his determination is final. When an application is denied, the applicant is entitled to a hearing before the ultimate authority. The hearing on the denial is governed by the general provisions of the principal act, except that the applicant is the moving party and bears the onus of proof.[54]

Proceedings for the revocation of a license must be heard by a majority of the members of the agency.[55] The revocation is effective as of the date of the determination. No provision is made for a stay order and the license remains revoked until the revocation is set aside by a court on review.[56]

The agency may notify persons who will be affected that a certain action concerning a license has been recommended and will be taken unless objections are filed. If no objections are made, the agency may enter the determination without further notice and hearing.[57]

Collateral Matters. The following matters may be gov-

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istrative order. Terre Haute Gas Corp. v. Johnson, 221 Ind. 499, 45 N.E. (2d) 484, rehearing denied and order modified, 221 Ind. 516, 48 N.E. (2d) 455 (1943). For discussion of Federal holdings see, (1946) 46 Col. L. R. 630.

49. See note 48 supra.
50. Ind. Acts 1947, §18.
51. For definition of licenses, see last paragraph id. §2.
52. Id. §24.
53. Id. §20.
54. Id. §24.
55. Id. §11.
56. Id. §13.
57. Id. §24.

erned by the statutes relating to specific agencies, provided they are not in conflict with the uniform act: (a) the procedure that may be followed in an enforcement proceeding;[58] (b) whether hearings shall be conducted by the ultimate authority or a hearing officer;[59] (c) the entire procedure for the hearing on an initial determination of license applications;[60] (d) whether investigations or inspections may be made without notice;[61] (e) what constitutes an emergency;[62] (f) additional powers that may be granted to the hearing authority;[63] (g) whether the ultimate authority shall receive additional evidence or may refer the hearing back to a hearing officer;[64] (h) rules for practice or proceedings before the agency;[65] (i) whether stay orders shall be automatic or entirely prohibited;[66] (j) how strictly technical rules of evidence must be followed;[67] (k) any additional power to modify orders;[68] (l) whether a copy of a license revocation order shall be forwarded to the officer who issued the license;[69] (m) the details relating to the form and manner of notice.[70]

AGRICULTURE

Bang's Disease. Chapter 313 prohibits the disposal of cattle infected with Bang's Disease for any purpose other than immediate slaughter.[1]

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58. See note 36 supra.
59. Ind. Acts 1947, §12.
60. Id. §24.
61. Id. §5.
62. Ibid.
63. Id. §7.
64. Id. §12
65. Id. §29.
66. Id. §21.
67. Id. §8.
68. Id. §26.
69. Id. §28.
70. Id. §5.

1. The previous statute, of which instant act is amendatory, permitted the sale of cattle which had reacted positively to Bang's disease tests if the owner "made the fact clear to the prospective purchaser that the cattle are infected with such disease or diseases." Ind. Acts 1933, c. 246, §4, Ind. Stat. Ann. (Burns, 1933) §16-420. The disposal of the animal after slaughter is governed by the rules and regulations of the Indiana state live stock sanitary board, Ind. Stat. Ann. (Burns, Supp. 1945) §16-441. For similar legislation providing for administrative regulation of the disposal of cattle infected with Bang's disease see Ill. Rev. Stat.