Washington Legislation—1957; Administrative Law

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WASHINGTON LEGISLATION—1957

The following articles, the work of the faculty of the School of Law, constitute the first academic comment on the laws of 1957. For obvious reasons, these articles are not represented to the reader as a complete survey of the legislative session. Rather, they are merely a compilation of comments on Acts which the writers have found to be important, timely, or merely interesting.

ADMINISTRATIVE LAW

Amendments Cause Veto of Model State Administrative Procedure Act Legislation. The most significant event in the Administrative Law field during the 1957 legislative session was not the enactment of a law, but the veto of a bill which, because of amendments made during the course of its passage, departed from the form in which it had obtained the approval of the Legislative Council. In its original form, the bill, S.B. 180, incorporated the substance of the first seven sections of the Model State Administrative Procedure Act.\(^1\) It provided for notice of proposed regulation-making with opportunity for interested persons to submit views,\(^2\) the filing of regulations with the secretary of state prior to their becoming effective, and the publication of the regulations in a current, indexed form, revised at least every

\(^1\) The Model State Administrative Procedure Act was approved by the National Conference of Commissioners on Uniform State Law in 1946. For discussions of its provisions see the symposium on the Model Act in 33 Iowa L. Rev. 193, et seq. (1948). See also Schwartz, The Model State Administrative Procedure Act—Analysis and Critique, 7 Rutgers L. Rev. 431 (1953).

\(^2\) Regulations were defined by Section 2 of the bill to include every rule, regulation, standard, or other requirement of general application and future effect adopted by an agency to implement or interpret the law enforced or administered by it. Excepted from the definition were advisory opinions, regulations concerning only internal management, and decisions in contested cases determining the rights of named parties.
two years. Other sections provided for obtaining advisory opinions and binding declaratory rulings from administrative agencies. A provision for judicial review of regulations by way of a declaratory judgment proceeding was also included.

Unfortunately, during its legislative consideration the bill was amended so as to require personal notification to interested persons prior to the making or repeal of any regulation. This confusion of the regulation-making function with the adjudicatory function would unduly burden the administrative process and was one of the reasons for the veto of the bill as finally passed. The making of regulations is comparable to the legislative process in which notice and a limited form of hearing may be desirable but are not constitutionally necessary. The adjudication of individual cases and claims is comparable to the judicial process, and in those cases a requirement of personal notice is obviously appropriate.

While the bill in its original form failed to include all the provisions of the Model Act, and hence was considerably less than the required full treatment of administrative law problems in Washington, it provided a desirable beginning and followed the path of reform laid down by the legislatures of other states. At the present time there is no single source of information in Washington concerning administrative rules and regulations. Some agencies have made copies of their rules

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3 The bill provided for publication by the secretary of state. Perhaps in this state provision for publication by the Code Reviser would be more appropriate, making it possible to utilize an existing skilled staff. Provision might also have been included to ensure that judicial notice would be taken of regulations so published.

Since agency decisions in contested cases determining the rights of named parties were excepted from the definition of regulations, that important part of administrative law which is developed in case by case adjudication would remain unpublished.

4 Another reason advanced for the veto was that its provision for declaratory judgments would have been applicable to regulations of the Liquor Board, and thus would have caused extended litigation and unduly hampered administration of the liquor laws. This view that those who engage in the alcoholic beverage trade have no claim to procedural fairness is, of course, supported by decisions holding that the business is one with such potential evil consequences that it is subject to regulation without limitations of procedural due process. Cf, State ex rel Puyallup v. Superior Court, 50 Wash. 650, 97 Pac. 778 (1908); State ex rel Aberdeen v. Superior Court, 44 Wash. 526, 87 Pac. 818 (1906). On the other hand, the vesting of autocratic and authoritarian control in any government agency must give pause to one committed to the proposition that judicial review plays an important part in maintaining our democracy.

5 Bi-Metallic Investment Company v. State Board of Equalization, 239 U.S. 441 (1915); Senior Citizens League, Inc. v. Dept. of Social Security, 38 Wn.2d 142, 228 P.2d 478 (1951).

6 Legislation requiring the filing and publication of administrative rules and regulations has now been enacted in about eighteen states. The Model Act itself has been enacted only in the three states of Michigan, Missouri, and Wisconsin, and these statutes contain numerous variations and additional matter. Comprehensive legislation has also been enacted in California, Illinois, Massachusetts, Ohio, Pennsylvania, North Dakota, and Virginia. See the Commissioners' Prefatory Note to the Model State Administrative Procedure Act, 9A U.L.A.
and regulations freely available, but other agencies have failed to do so. Practitioners are thus frequently unable to exercise an informed judgment in advising clients and must be satisfied with repeating orally stated interpretations of regulations given by a subordinate in an agency—if they are fortunate enough to obtain such a statement. Moreover, if the matter is one in which litigation appears possible, the prevailing situation is one in which the total body of regulatory law is known only to one party, and that party frequently has the power of changing it without notice to his adversary.

It seems clear that at some time in the near future it will be necessary to adopt some sort of remedial legislation if the law is to be known to those governed and our democratic principles of government thus maintained. In the meantime, the uncertainty, confusion, and variations in the procedures of various administrative agencies continue, perplexing the lawyer, burdening the citizens, and possibly depleting the public treasury through the enforcement problems thus caused.

Cornelius J. Peck

Commercial Automobile Drivers' Training Schools. Chapter 87 of the session laws provides for the licensing and regulation of commercial automobile drivers' training schools and of instructors therein. Application for a license to operate a school is to be filed with the state director of licenses with a fee of $100. If the application is approved, there is then an annual fee of $25 for the initial license and each subsequent renewal.

The reason for the present comment is to be found in section six. That section authorizes the director to suspend, revoke or refuse to renew a license upon any of four grounds. Three of these are conviction of crime, false statements in connection with an application for a license or renewal thereof, and fraudulent practices in relation to the business conducted under the license. The fourth is, "where the licensee has failed to comply with any of the provisions of this act or any of the rules and regulations of the director made pursuant thereto."

One is left wondering to what extent the director is authorized to make rules and regulations. This seemingly is undefined in the act, except perhaps by a provision in section two that "an application for license under this section shall be filed with the director and shall contain such information as he shall prescribe."

Is the director authorized to make rules and regulations other than
those relating to information in the application? If so, by what authority?

Amendment seven of the state constitution provides that, "The legislative authority of the state of Washington shall be vested in the legislature. . . ." This does not prohibit the legislature from delegating administrative power if the legislature defines (a) what is to be done, (b) the instrumentality which is to accomplish it, and (c) the scope of the instrumentality's authority in so doing, by prescribing reasonable administrative standards.²

Are there adequate standards in the act in relation to the director's promulgation of rules and regulations for which he may suspend, revoke, or refuse to renew a license? If so, where and what are they? If not, is there an unlawful delegation of legislative power?

The problem is made more obvious in view of section five which sets out the circumstances in which the director may deny the original application for a license. Section five says nothing about denial of the original application upon the basis that the applicant has failed to comply with any rules and regulations of the director.

Should the question arise, it is, of course, possible, and perhaps likely, that the court will find standards, but one wishes that the legislature had been more clear to avoid what may prove to be an invitation to litigation.

PHILIP A. TRAUTMAN

ATTORNEY AND CLIENT

Bar Association Fees. RCW 2.48.130, covering the membership fees of active members of the Washington State Bar Association, was amended to permit the Board of Governors of the bar association to establish the amount of the annual membership dues to be effective each year. The new law provides that written notice of any proposed increase shall be sent to active members not less than sixty days prior to the effective date of such increase. An effort to subject the proposed increase to membership vote failed to get legislative approval. The Board of Governors was also given power to establish a reduced fee for active members who have been members of this or any other bar for a total elapsed time of less than five years. Under the old law membership dues of active bar members were set at $15.00 per year, except for those with less than five years experience, in which case the fee was $10.00.

GEORGE NEFF STEVENS