

# Washington Law Review

---

Volume 33  
Number 1 *Symposium on Washington  
Administrative Law*

---

3-1-1958

## Effect of Adoption of the Model State Administrative Procedure Act on Existing Administrative Procedures in Washington

John J. O'Connell

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Administrative Law Commons](#)

---

### Recommended Citation

John J. O'Connell, *Effect of Adoption of the Model State Administrative Procedure Act on Existing Administrative Procedures in Washington*, 33 Wash. L. Rev. & St. B.J. 17 (1958).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol33/iss1/4>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

# EFFECT OF ADOPTION OF THE MODEL STATE ADMINISTRATIVE PROCEDURE ACT ON EXISTING ADMINISTRATIVE PROCEDURES IN WASHINGTON

JOHN J. O'CONNELL, ATTORNEY GENERAL  
STATE OF WASHINGTON\*

There has developed as a natural incident to the state's growth and the ever increasing responsibility of state government to its citizens a large body of law which thirty years ago was virtually unknown. This development arose from the consistent need for a more facile and efficient method of disposing of the problems inherent in the complex relationship between the state and the various activities of its citizens.

From the invention of the administrative process to the present, its evolution has been piecemeal and stopgap. As particular immediate problems have arisen, separate and distinct agencies and administrative procedures have been created to meet them, with little consideration being given to a comprehensive and co-ordinated program.

The absence of uniformity and co-ordination is perhaps best illustrated by reference to those agencies performing an administrative function without substantial legislative direction, such as the Tax Commission, and those agencies which operate under relatively rigid controls, such as the Department of Employment Security. This lack of uniformity has resulted in confusion of the public and members of the bar practicing before administrative agencies.

Legal standards for the exercise of administrative powers have also developed slowly and according to current needs. It is to the development of this body of law that this article is devoted. Consistent with this aim we have sought to restrict this discussion to the proposed Model State Administrative Procedure Act and its effect on the various administrative processes currently in effect in Washington.

Because of limited space, this discussion will be restricted to an examination of agencies which are representative of the many varied and separate administrative procedures in the state. Included is an appendix listing additional state agencies, the basis for their procedures and other data.

## EFFECT OF ADOPTION OF THE MODEL STATE ADMINISTRATIVE PROCEDURE ACT IN WASHINGTON

The discussion to follow will show the variance in existing procedures for the initiation and disposition of administrative proceedings among

---

\* This article was prepared by staff members of the Office of the Attorney General, under the direction of Mr. John J. O'Connell, Attorney General, and Mr. John W. Riley, Chief Assistant Attorney General.

various boards, commissions and agencies in the state of Washington. In the appendix to this article is contained, in summary only, an amalgam of data concerning other state agencies.

Some of the significant problems raised by the proposed Model Act are: Would its adoption effectively reduce the wide variance of existing procedures and eliminate confusion in the state of Washington? Would its adoption effectively provide any "assurance of fundamental fairness in administrative hearings? Would its adoption effectively give "assurance of proper scope of judicial review of administrative orders to guarantee correction of administrative errors?"

It is to be noted that most of the major principles contained in the Model Act are desirable. In essence they are:

1. Every agency to have and publish essential procedural rules.
2. Administrative rules so promulgated after notice and hearing to be subject to declaratory judgments.
3. The use of liberal rules of evidence as established by section 9 of the Model Act.
4. Uniform method of appeal as provided by section 12.

A study conducted by the Attorney General's staff included detailed discussions with administrators who are directly affected by the various procedures. These administrators indicated a great reluctance to adopt the Model Act in its present form. Uniformly, the view of persons directly affected by the proposal is that although the major changes sought to be accomplished are most desirable, the Act would fail to achieve the uniformity of the fundamental rules of administrative procedure that is most sorely needed. As indicated by the appendix, every agency in the state government has a different statute with respect to the conduct of hearings, rendition of orders and method of appeal. To summarize the variances and comparative efforts of the Model Act upon the entire framework of administrative procedure within the government of the state would, therefore, be a monumental and prohibitive task. It is hoped, however, that the following summary will provide some help to the reader in making his own decision as to what course of action should be adopted.

Sections 2 through 5 of the Model Act, dealing with the adoption, filing and publication of agency rules, uniformly present conflicts with existing procedures in effect in this state. The immediate problems posed by the adoption of these provisions concern the mechanical labor of abandoning current practices and complying with the new ones, rather than the merits of the provisions as such. Compliance

with these sections would necessitate the herculean task of compilation and publication, after notice of hearing, of each of *more than sixty different sets of administrative rules of procedure*, not to mention the forms, instructions and descriptive statements of procedures, which, under the provisions of the Model Act, must be filed with the Secretary of State.

The difficulty for counsel presented by the variety of procedures in current use would be alleviated, however, by the availability of published rules of procedure. In this respect, sections 2 through 5 of the Act suggest a useful device.

The heart and soul of the Model Act lies in sections 6 through 12, and it might be well to examine their prospective effects separately.

Section 6, providing for declaratory judgments on the constitutional validity of rules and the authority of the agency to promulgate particular rules, is redundant when considered with section 12, which provides for appeals from administrative decisions. Certainly, the power of the courts to determine constitutional questions and to decide whether an agency has exceeded the scope of its statutory authority is not limited to actions for declaratory judgments. Such questions may be raised on appeal. By incorporating this section providing for declaratory judgments, the Model Act not only duplicates the provisions of section 12, but places an undue burden upon state agencies by requiring them to defend such actions. Such a proposition is expensive at best. It would seem that uniformity is not so desirable that undue burdens and expenses should be imposed upon agencies to dispose of questions which may be more adequately answered on appeal from an administrative order or decision.

This provision is also inconsistent with the intent of section 7. Under section 7 an agency may upon petition give any interested person an administrative determination of the effect of rules and regulations, by way of a declaratory ruling. This should be entirely adequate, since a right of appeal from an adverse ruling is provided. It appears unreasonable to give an agency the power to interpret its own rules for the benefit of a party who might be injured by their application and then nullify it by permitting this same party to abandon this remedy and seek redress in the courts by filing an action for a declaratory judgment.

Administrative agencies dispose of thousands of actual controversies annually. If, then, every rule and regulation may be dragged before the courts under section 6, proceedings would be interminably

mired and the very purpose of administrative agencies, i.e., to attain some degree of dispatch in administering the law, could become a nullity.

Section 8, providing for notice and an opportunity for a hearing in contested cases, does not eliminate variances in procedures, but goes far to accomplish the purpose of the act to achieve the "assurance of fundamental fairness in administrative hearings." Again, however, by the language "each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases" the law neatly sidesteps the fundamental problem of establishing uniformity at the administrative level. As far as it goes, however, this section leaves little to be desired, with the possible exception of too little emphasis on informal proceedings.

Sections 9 and 12 would provide a desirable uniformity regarding the admissibility of evidence and the method of judicial review. However, they would have little effect on present practices in the vast majority of state agencies. As a matter of course, any evidence of probative value is admissible at the administrative level. Minor variances in present procedure would result from the adoption of sections 9(2) and 9(4). Section 9(2) provides that all evidence, including records and documents, shall be made a part of the record in the case, and that the agency's determination shall be based solely on matters contained in the record. Presently the usual practice is to take notice of documents on file by stipulation of the parties. This does not require the documents on file to become a physical part of the record. Section 9(4) varies from standard procedure by requiring that the hearing board give notice to the parties that it is taking cognizance of facts within its particular sphere, and by providing that an interested party may contest the facts so officially noticed. While this represents a variance, the rule is salutary and in accordance with good procedure.

Section 10 outlines the procedure for cases in which a majority of the officials of the agency who are to render the final decision have not heard or read the evidence. The application of this section would create little difficulty in most agencies, but could raise a practical question among those bodies conducting a large volume of hearings. It is current practice, where trial examiners are used, such as in the Public Service Commission, to submit a final order to the commissioners for approval. Under section 10 only a proposed order could be submitted, and the commissioners would be required to read tran-

scripts from all proceedings. Volume, then, may be a considerable factor as a practical matter.

In view of the great volume of orders issued by many of the state agencies, the requirement of section 11 that every decision or order be accompanied by findings of fact and conclusions of law would greatly burden the departments and would undoubtedly slow down the time in which their orders could be issued. It might also require a significant increase in personnel. At the present time there is some general agitation among members of the bar to eliminate the necessity of presenting findings of fact and conclusions of law in lawsuits unless and until a notice of appeal has been filed. If that is the trend in superior court actions, it would seem unwise to require such a procedure of administrative agencies.

It is readily discernable that as procedures become more and more formal, the greater is the burden placed upon the agency. In most cases, a high degree of informality is a decided advantage to the administrator, and in practice has effectively eliminated onerous proceedings and appeals. In general, the types of procedure utilized by the Tax Commission, where no record is made and de novo appeal is available, is considered to be the least expensive and the most effective.

#### RECOMMENDATIONS OF THE ATTORNEY GENERAL

At the outset of the discussion of the Model State Administrative Procedure Act three questions were posed. The proposed Act supplies effective answers to two of them, in that it would, to some extent, provide "assurance of fundamental fairness in administrative hearings," and would give "assurance of proper scope of judicial review of administrative orders to guarantee correction of administrative errors." However, it is undoubtedly clear that the proposed Act would fall far short of what is needed to "reduce the wide variance of existing procedures and eliminate confusion in the state of Washington."

The principal source of difficulty in this state is not that the administrative processes of particular agencies are themselves confusing, but that there is absolutely no uniformity between the procedures of various agencies. The approach of the Model Act to this problem is at best backdoor. It is notable that throughout the Act the fundamental problem of lack of uniformity at the first level of administrative procedure is consistently ignored.

The Model Act seeks to gloss over the underlying chaos under the guise of uniformity. The chaos remains, and the fact that it would not be uniform would not conceal its existence. Standing alone, then, the proposed Act does not have the capacity to fulfill its destiny. The existing confusion inherent in the divergence of procedures among various agencies would still be present.

With the notable exceptions of sections 6 and 11, the administrative bodies of this state could learn to live with the Model Act, and, in reality, few changes would have to be wrought in their present practices. It is more than possible, however, that the Act in its practical application could precipitate a gross burden upon the administrators of most of the agencies presently conducting administrative proceedings on a large scale.

It would be recommended, were such an act to be adopted, that such agencies as the Washington State Liquor Control Board, the Washington State Board of Prison Terms and Paroles and certain divisions of the Department of Licenses be exempted from its application. In short, any agency performing functions going to the protection and preservation of public health, safety and morals should be excluded from the act, at least to the extent that their powers to act quickly and summarily would be curtailed.

In the opinion of the majority of individuals concerned with administrative proceedings in this state, the best approach to the problem would consist of legislative adoption of uniform basic rules of procedure for use by all state agencies. Supplemental rules necessary to the functions peculiar to individual agencies would at least be less voluminous and onerous in preparation, and the necessity of notice, arduous public hearings and publication of many different sets of rules would be resolved.

What the state of Washington really requires is an act establishing a single uniform procedure for administrative hearings to be applied equally to all its various boards, commissions and agencies. The right and method of appeal from the orders and decisions of such boards, commissions and agencies should similarly be made uniform. Such fundamental legislation would alleviate the pressures for the adoption of the Model Act, although the adoption of this Act as a companion to, but not in lieu of, a basic act would be commendable.

COMPARATIVE STUDY OF EXISTING ADMINISTRATIVE  
PROCEDURES BEFORE SELECTED AGENCIES

To demonstrate the variance between procedures utilized in the conduct of hearings and the method of appeals, existing procedures of the following agencies have been selected for summarization: Division of Banking, Tax Commission, Pollution Control Commission, Liquor Control Board and the Employment Security Department. All of these agencies conduct a large number of hearings annually (see appendix) and, since they illustrate the extremes of administrative procedures, were felt to be ideal examples.

**Division of Banking.**

This division is now incorporated into the relatively new Department of General Administration. Within the department, in addition to the Division of Banking, is the Division of Savings & Loans. Each is under a separate supervisor, and the two represent the only divisions of the Department of General Administration that exercise extensive administrative powers and functions. For the purposes of this discussion, however, our attention will be concentrated upon the Division of Banking, and the substantially similar functions and procedures of the Division of Savings & Loans will be omitted.

The supervisor of banking is empowered by statute to pass upon applications for charters for (a) commercial banks, (b) industrial loan companies, (c) small loan companies, and (d) mutual savings banks. In some respects the procedures required by statute as regards all of these financial institutions are similar, but, by and large, each is ruled by a separate and distinct administrative process.

It is significant to note that the Division of Banking is not required to adopt or promulgate rules and regulations prescribing its own procedures. Standards guiding the conduct of the supervisor in dealing with these four types of institutions are set out by statute, but the supervisor is vested with almost unlimited discretion. As regards commercial banks and trust companies,<sup>1</sup> and industrial loan companies,<sup>2</sup> the standards are couched in nearly identical terms. Stated generally, it is incumbent upon the supervisor to determine three things from the best source of information and such investigation as he deems necessary: (1) whether the proposed bank will be honestly and efficiently conducted in accordance with the law; (2) whether the location proposed affords a reasonable promise of adequate support; and (3)

<sup>1</sup> RCW 30.08.030.

<sup>2</sup> RCW 31.04.050.



whether the bank is being formed for a legitimate purpose. Mutual savings banks<sup>3</sup> and small loan companies<sup>4</sup> have yet another condition attached in that the supervisor may also consider and determine whether the public convenience and advantage will be promoted by incorporation of the bank or loan company.

On the administrative level, the most significant variance appears in the obligation of the supervisor to accompany his "approval" or "refusal" of articles of incorporation with findings of fact and a formal order. When dealing with commercial banks and mutual savings banks, no findings or formal orders are required in any case. When dealing with industrial loan companies, findings are required on matters coming before the supervisor *after* such companies have been incorporated, but not where there is a refusal by the supervisor to grant a charter in the first instance. Where licenses of small loan companies are in issue, the supervisor is required to file findings of fact with the Division of Banking of the Department of Finance, Budget and Business.<sup>5</sup>

The applicable code provisions distinguish between the original grant of the privilege of doing business and the problems which may arise after a financial institution has assumed the privilege. In the former case, the legislature has vested the supervisor with wide discretion, while more care is taken where rights and privileges have been previously granted and the supervisor is performing his duty to enforce the provisions of the law. However, there seems to be no particular justification for distinguishing between various types of financial institutions in the requirement of findings of fact and the entry of a formal order. The fact that differences exist in the character of the business sought to be conducted would not appear to be a sufficient basis for procedural distinctions. While uniformity is desirable in this area, any defects are largely rectified by the appeal provisions under which trials *de novo* are granted where there is no record taken of proceedings before the administrative body.

Procedures on appeal are also widely varied. Commercial banks, upon refusal of their articles of incorporation, have a right of appeal within ten days to the superior court of Thurston County, the trial in that court being *de novo*.<sup>6</sup> Industrial loan companies follow the same procedure where there is a refusal to grant a charter,<sup>7</sup> but the scope of review is limited to the record below where the appeal is taken from

<sup>3</sup> RCW 32.08.040.

<sup>4</sup> RCW 31.08.050.

<sup>5</sup> *Ibid.*

<sup>6</sup> RCW 30.08.040.

<sup>7</sup> RCW 31.04.050.

an order other than one involving approval of articles of incorporation.<sup>8</sup> The statute dealing with small loan companies contains a provision that the trial in superior court shall be *de novo*,<sup>9</sup> but this provision has been held unconstitutional insofar as it permits the introduction of new evidence on the trial court level.<sup>10</sup> The time limit for appeals also varies from commercial banks and industrial loan companies, in that small loan companies have thirty days to perfect their appeal, and the former types of institutions have but ten.

The method of appeal provided for mutual savings banks does not follow the pattern of any of the above described procedures. The statute provides that where the supervisor has refused to approve articles of incorporation for such an institution, the bank has thirty days to serve notice of appeal. The appeal is not to the superior court, but to a board composed of the Governor, the Attorney General and the Supervisor of Banking. The action of this board is declared to be final by statute.<sup>11</sup>

Although the issue on appeal is generally the classic one of "abuse of discretion" or "arbitrary or capricious action," the example clearly demonstrates the need for new legislation to provide a fair and expeditious adversary hearing with fixed and determinable rules of procedure, as well as fair and reasonable provisions for appeal. The Model State Administrative Procedure Act, by itself, would not fulfill the need completely. It must be conceded that adoption of the Model Act would establish the necessity for a hearing and the promulgation and publication of rules and regulations. However, the appeal rules may be corrected only by specific legislation which goes to the source of the problem and creates uniformity in the methods of perfecting an appeal.

### **Tax Commission.**

This example demonstrates the employment of statutes which do provide for a rudimentary method of administrative procedure, although no fixed rules of procedure are established or printed. The two different methods of appeal prescribed by statute are seldom employed because in practice the exceedingly informal "hearings" have, in general, resulted in field settlement of a large number of controversies.

The Tax Commission's responsibilities involve three broad categories:

<sup>8</sup> RCW 31.04.190.

<sup>9</sup> RCW 31.08.260.

<sup>10</sup> *Household Finance Corp. v. State*, 40 Wn.2d 451, 244 P.2d 260 (1952).

<sup>11</sup> RCW 32.08.050.

ries: excise taxes; inheritance taxes and escheats; and property taxes. *Excise Taxes.* Hearings, initiated by petition, are conducted by the commission concerning correction of assessments and refunds of taxes paid.<sup>12</sup> No particular form has been prescribed for such petitions. The hearings, which usually take the form of a conference between the taxpayer, his attorney and the commission, are informal, without established rules of procedure. No record is made of the proceedings. This system, where feasible, represents the epitome of administrative procedures. The informal type "hearings" permit discussion between the interested parties regarding the obligations of the taxpayer. This is substantially the same procedure followed by the Internal Revenue Service and has been, in large measure, successful. In this somewhat specialized field, hearings may be informal and, in effect, nothing more than negotiation, but the fact that no record is taken and a settlement is effected does not make the proceeding any less a hearing. Such is recognized administrative procedure and certainly no objection can be raised against an amicable settlement at the administrative level, although the hearing strikes more of negotiation.

Pursuant to statute<sup>13</sup> a taxpayer may appeal to the Thurston County superior court from the commission's decision within thirty days of the date of order. Such "appeal" is actually a trial de novo, and is initiated in the same manner as any civil action.

*Inheritance Taxes and Escheats.* There are no statutory provisions for commission hearings with respect to inheritance tax controversies. As a practice, disagreements between the taxpayers and the commission are discussed informally either with the commissioners or officers of the Inheritance Tax Division. In those cases in which settlement cannot be established in this manner, the issues are resolved by order of the probate court in which the estate is being administered.

*Property Taxes.* With regard to property taxes, the commission acts as an appellate tribunal.<sup>14</sup> Hearings involve appeals from the decisions of county boards of equalization relating to valuations made by county assessors as equalized by the county board, as well as appeals by persons considering themselves aggrieved by any taxing district levy.

Although there are no statutory provisions regulating such proceedings, the commission makes a practice of advising appellants generally of the procedure which they will observe at the hearing. Such advice takes the form of a "procedures brochure" which is a

<sup>12</sup> RCW 82.32.160-170.

<sup>13</sup> RCW 82.32.180.

<sup>14</sup> RCW 84.08.130-140.

mimeographed pamphlet explaining to the parties such things as burden of proof, presumptions, etc. This particular form has been in use by the commission for several years and is uniformly utilized. The adoption of the Model Act would have little effect upon its use, since the agencies are entitled to promulgate their own rules of procedure. This is substantially the effect of the procedures brochure, so little change would be wrought. Presumably, however, under the Model Act the commission would be required to file this brochure with the Secretary of State and give notice to "interested persons" whenever such rules came up for amendment. These would be in variance with existing requirements, but the effect on the commission would be nominal.

Essentially, as in other administrative proceedings, the hearings are conducted on an informal basis though the testimony presented is transcribed.

No subsequent appeal from the order of the commission is provided for, the taxpayer's remedy being to pay the taxes in question and sue for a refund in the superior court of the county in which the property is situated.

### **Pollution Control Commission.**

A study of this commission's activity is interesting because of its concern with a fresh, relatively undeveloped concept of governmental control which is becoming increasingly more essential to the development of the state's health and welfare.

The commission itself is an *ex officio* body which functions through a director appointed by the Governor and which is required to meet at least bimonthly. Its power extends to the promulgation of rules and regulations governing matters within its control.

Designated industries are required to secure a permit prior to discharging wastes into public waters.<sup>15</sup> The form of application for such permit is prescribed by rule,<sup>16</sup> and the director is authorized to establish and certify the conditions under which temporary permits are to be granted.<sup>17</sup>

The administrative procedure established for the regulation of the commission's business provides for an investigation of each application by a technical staff under the supervision of the director. In the event a temporary permit is to be issued, the director formally notifies the

---

<sup>15</sup> §2, Rules and Regulations, Pollution Control Commission.

<sup>16</sup> §3, Rules and Regulations, Pollution Control Commission.

<sup>17</sup> §4, Rules and Regulations, Pollution Control Commission.

applicant of the conditions attached, and such notice constitutes a commission order for purposes of appeal.<sup>18</sup> In order to effect an appeal, applications for a hearing must be filed within fifteen days of receipt of the director's order.<sup>19</sup>

At this point it should be noted that a distinction has been made between formal and informal hearings before the Pollution Control Commission. Since June 9, 1955, the effective date of chapter 71, Laws of 1955, which provides for formal appeals, there have been only two formal hearings conducted. The obvious reason for this is that the statute provides additionally that the applicant may, upon petition, be accorded a series of informal hearings in which he may offer justification for a request for either alleviation of the conditions imposed or an extension of time to comply with the conditions. No fixed procedure has been established for the conduct of these hearings, the applicant being permitted to make any showing that he may desire, with or without counsel.

Should the applicant object to the ruling of the director upon formal hearing, he may appeal to the superior court of the county in which the petitioner has its plant or some portion thereof. The order of the commission becomes final unless such appeal is filed within fifteen days of the issuance of the order.

Appeals to the superior court are tried de novo as a cause in equity.<sup>20</sup>

### **Liquor Control Board.**

The procedures of the Washington State Liquor Control Board demonstrate an agency with broad powers at the administrative level since it exercises a fundamental police power. The rules for procedures are well developed, are published and are available for distribution.

The statutes dealing with the Liquor Control Board do not require it to grant hearings respecting the issuance, denial, suspension or cancellation of permits or licenses. The powers of the board are summary in nature. As a matter of long-standing policy, however, these summary powers have been tempered, with the result that the board does not suspend a license unless the licensee has admitted the charges in writing and waived formal hearing, or else the board has sustained the charge after a formal hearing as provided in its regulations.

The regulation describing the administrative hearing procedure

---

<sup>18</sup> RCW 90.48.210.

<sup>19</sup> RCW 90.48.130.

<sup>20</sup> *Ibid.*

calls for a written complaint containing all charges, to be signed by a board member. The board's case is presented by an assistant attorney general before an appointed trial examiner. It is prescribed that the hearing shall be conducted in the same manner, so far as it is practicable, as are superior court trials. There are provisions in this regulation for such matters as continuances, receiving of depositions, counsel for the licensee and the taking of testimony and evidence by a reporter. At the conclusion of the hearing the licensee may inform the examiner of his desire to be heard before the board.<sup>21</sup>

However, within this same regulation it is stated that nothing contained therein shall prevent the board from exercising the power given it by statute to summarily suspend or cancel any license.<sup>22</sup> Furthermore, the actions of the board as to permits or licenses, with or without hearing, are final and not subject to review or restraint by any court under the terms of a section of the original Liquor Act of 1933.<sup>23</sup> The granting of such broad, unrestrained power in the liquor board has been characterized as necessary and proper considering the nature of the problem.<sup>24</sup>

Unfortunately, the fact that the Liquor Control Board is exercising police powers, and that the distribution of alcoholic beverages is purely a matter of privilege and not of right, would not necessarily exclude the Liquor Control Board from the provisions of a general law regulating administrative processes. In order that its duties be effectuated, the summary powers of such a board should not be curtailed. In an area such as this, the consumption of time by declaratory judgments and writs of review in contested cases might well be fatal to the effective administration of the law. The value of uniformity as opposed to a reduction in the effectiveness of enforcing laws such as are under consideration here, are factors which must be carefully weighed.

#### **Employment Security Department.**

Another example from the spectrum of administrative procedures in use in Washington is the highly refined method of administrative procedure utilized by the Employment Security Department. A reasonable degree of formality coupled with readily available printed rules of procedure is a far cry from the Banking Division rules.

At the outset, the benefit claimant or the liable employer is served

---

<sup>21</sup> §114, Rules and Regulations, Liquor Control Board.

<sup>22</sup> See RCW 66.24.030.

<sup>23</sup> RCW 66.08.150.

<sup>24</sup> State ex rel. Thornbury v. Gregory, 191 Wash. 70, 70 P.2d 788 (1937).

with a benefit determination<sup>25</sup> or an assessment.<sup>26</sup> If no appeal is taken, the determination or assessment becomes final. If timely appeal is taken, the parties appear before the Appeal Tribunals, which are established within the department.<sup>27</sup> In this department there are six appeal examiners, each of whom is considered a separate appeal tribunal. At the present time none of the examiners are attorneys, but they are all veterans of many years experience in the department.

The hearings are informal and common law rules of evidence need not be observed, with the exception that the examiners may not base their decisions entirely on hearsay evidence. In this connection, see *Leggerini v. Dept. of Unemployment Compensation*,<sup>28</sup> wherein the Supreme Court stated that the decision of the commissioner must be based on "competent" evidence. The proceedings before the appeal tribunal must be recorded and the decision must be issued in writing.

The aggrieved party has a right to petition for review by the commissioner from the decision of the appeal tribunal.<sup>29</sup> The commissioner has the power to reverse, affirm, modify or remand. This decision becomes final within thirty days unless appealed to the superior court.<sup>30</sup>

The decision of the commissioner is subject to appeal to the superior court within thirty days from the date of issuance. When the appeal is perfected, the department appears and prepares the commissioner's record in the case, which includes the sworn testimony taken before the appeal tribunal and the various exhibits. No further evidence may be introduced at the superior court level. The matter is tried strictly on the record made below. The act provides that the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Thus we observe that the Employment Security Department is one of a few administrative agencies which is required by statute to follow certain procedures resulting in a degree of formality infrequently found among the administrative processes of the state of Washington.

---

<sup>25</sup> RCW 50.20.180.

<sup>26</sup> RCW 50.32.030.

<sup>27</sup> RCW 50.32.010.

<sup>28</sup> 15 Wn.2d 618, 131 P.2d 729 (1942).

<sup>29</sup> RCW 50.32.070.

<sup>30</sup> RCW 50.32.090.

## APPENDIX

Agency	Provision for Hearings		Volume of Hearings		Method of Judicial Review
	Statutes (RCW)	Agency Regulations	Unrecorded	Recorded	
Tax Commission: Excise Tax Div.	82.32.160-.170	None	30		Thurston County superior court, de novo.
Inher. Tax. Div.	None	None	Unknown		Probate court where estate pending, de novo.
Prop. Tax Div.	84.08.130-.140	None		4	After tax payment, suit for refund in superior court of county wherein property is located.
Dept. of Public Assistance	74.08.070	Yes		140	Superior court of county of residence, on record.
Employment Security Dept.	50.32.010-.090	Yes		2699	Superior court, on the record.
Dept. of Gen. Adm.: Banking	None	None	100		After supervisor's refusal, to superior court of Thurston County, de novo. To special board in mutual savings cases.
Savings & Loans	None	None	15-20		Superior court of county wherein located, de novo.
State Employee's Retirement Board	41.40.412-.419	Yes		40	Thurston County superior court, de novo.
Supt. of Public Instruction	28.70.170, 28.88.030	None		6	Superior court of county wherein dispute arose, de novo.
Liquor Control Board	66.24.040	Yes		198	None as to permits or licenses; presumably to superior court as to other matters.
Pollution Control Comm.	90.48.130	None		400	Superior court of county wherein plant located, de novo.
Dept. of Highways: Limited Access Facilities	47.52.072-.074	Yes		8	Superior court of Thurston County, on the record.
Franchises on Highways	47.44.010-.020	Yes		99	None by statute.
Dept. of Agriculture	None	None		30-100	None generally provided by statute.
Public Service Comm.	80.04.020, .110-.120	Yes		900	Generally, superior court of Thurston County on the record.
Board of Volunteer Firemen	41.24.290	None		1	None by statute.
Dept. of Natural Resources	76.14.090, 76.40.124, 76.40.125, 76.40.127	None	Infrequent		Superior court of county wherein lands affected situated, de novo.
Commissioner of Public Lands	78.20.040, 78.20.070, 79.16.250	None	Infrequent		Superior court of county wherein lands affected situated, de novo.
Oil & Gas Conservation Committee	78.52.070, 78.52.220, 78.52.240, 78.52.380, 78.52.470	Yes	Infrequent		Superior court of Thurston County, on the record.
Board of Industrial Insurance Appeals	51.52.100	Yes		1200	Superior court of county wherein claimant resides or injury occurred, on the record.
Game Commission	77.28.120, 77.32.280	None		6-10	Superior court of county of residence, presumably on the record.



## NOTES ON APPENDIX

- (1) The statutes here set out are not necessarily the only authority for administrative hearings in each cited agency. Particularly, there has been no attempt to include provisions for rule-making, this discussion being limited to hearings for the determination of specific rights and interests.
- (2) Although regulations have never been adopted and promulgated, a number of agencies adhere to certain procedures as to which the parties are generally advised prior to the hearing.
- (3) The number of annual hearings given is only approximate in many cases, the exact number being unknown or varying from year to year.
- (4) A good many agencies known to conduct hearings of some sort are not included here due to the difficulty of obtaining information. Under the Department of Licenses alone, there are hearings conducted as to accountants, barbers, beauticians, chiropractors, dentists, drugless healers, embalmers, engineers, surveyors, maternity home operators, midwives, nursing home operators, optometrists, osteopaths, pharmacists, physicians, nurses, psychologists, realtors, veterinarians and others. In some cases the director of the department conducts such hearings, while in others a special board is responsible.