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THE SCOPE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN WASHINGTON

CORNELIUS J. PECK

The scope of judicial review of administrative action in the state of Washington is a subject to be approached with caution. The number and variety of statutory review provisions make the possibility of summarizing the law and drawing valid and useful conclusions seem near to impossible. Though some cases quite clearly discuss the factors which affect the scope or intensity of judicial review of particular types of administrative action, other cases in which such analysis is much needed fail to mention or discuss the problem. One is led to wonder whether the law is truly to be found in those cases which deal with the problem or in those cases which ignore it. Nevertheless, taking a broad view, it seems possible to make certain general observations. And those general observations lead to the conclusion that existing Washington law on the subject does not depart materially from the administrative law principles developed in many other states. Moreover, one is led to conclude that it would be possible to adopt a uniform system of review and eliminate much confusion and uncertainty without causing any major revision in the relationship between the courts and the administrative agencies.

THE STATUTORY REVIEW PROVISIONS

The number and variety of review provisions found in Washington statutes are staggering. On the simple matter of where review should be sought or what courts have jurisdiction to review administrative action there are at least eight different formulations. Review at the seat of the state government by the superior court of Thurston County appears to be a favorite with legislative draftsmen. But any idea

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1 This is the case in the important areas involving action of the Director of Licenses in revoking, suspending, or refusing to renew or issue a license, RCW 43.24.120, and action of the Tax Commission in denying petitions for refunds, RCW 82.32.180. It also is true in a number of specific licensing statutes. RCW 18.32.270 (dentistry); RCW 18.72.280 (medicine and surgery); RCW 18.78.140 (practical nurses); RCW 18.88.250 (registered nurses); RCW 43.74.065 (basic science law certificates); RCW 88.16.100 (pilots on Puget Sound). A similar provision has been made in a number of statutes affecting government employees. RCW 41.32.610 (teachers' retirement); RCW 41.40.420 (state employees' retirement); RCW 43.43.100 (state patrol). Like provision has been made with respect to some regulatory agencies. RCW 43.52.430 (State Power Commission); RCW 45.04.110 (Insurance Commissioner); RCW 70.79.360 (Board of Boiler Rules); RCW 80.04.120 and RCW 81.04.170 (Public Service Commission); RCW 30.04.040 (State Supervisor of Banks); RCW 31.04.050 and RCW 31.04.190 (State Supervisor of Banks—miscellaneous loan agencies); RCW 33.04.060 (State Supervisor of Banks—Savings and Loan Associations).
that this provision is made to ensure expertness or familiarity with administrative law problems on the part of the judiciary in that county seems to be dispelled by the number of provisions for review elsewhere under statutes in which the need for providing a local forum for review seems no greater. Thus other provisions are made for review by “any Superior Court,” by “the Superior Court of the Complainant’s residence,” by “the Superior Court wherein the principal place of business is located,” by “the Superior Court wherein the controversy arose,” by “the Superior Court where the injury took place,” and by “the Superior Court where the land is located.” Other provisions contain an indefinite reference to review “in any competent court.”

Scope of Review. More pertinent is the variation in the statutory formulations of the scope of judicial review to be given administrative action. One frequent standard is the provision that the review proceeding be “de novo,” to which various and sometimes contradictory phrases are attached. For example, in workmen’s compensation cases, the hearing in the superior court is “de novo” but the court may receive only evidence offered before the board and the findings and decision of the board are treated as “prima facie correct.” Review proceedings are tried “de novo” and “as in a civil action” for cases involving revocation of the license of a pilot on Puget Sound.

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2 For example, there appears to be no reason why review of the decisions of the Washington State Medical Disciplinary Board may be reviewed in either the superior court of Thurston County or the superior court of the county in which the appellant resides, RCW 18.72.280; while review of the refusal, revocation, or suspension of licenses of dentists may be had only in Thurston County, RCW 18.32.270.

3 RCW 14.04.320 (Aeronautics Commission); RCW 15.04.050 (Director of the Department of Agriculture); RCW 18.83.160 (certified psychologists); RCW 18.92.210 (veterinarians).

4 RCW 18.04.320 (accountants); RCW 18.42.110 (engineers and land surveyors); RCW 18.72.280 (Medical Disciplinary Board); RCW 49.60.270 (Discrimination in Employment Tribunal); RCW 50.32.120 (unemployment compensation); RCW 51.52.110 (industrial insurance appeals); RCW 74.08.080 (old age assistance).

5 RCW 18.85.271 (real estate brokers); RCW 49.60.270 (Discrimination in Employment Tribunal); cf. RCW 31.12.060 (Credit Unions).

6 RCW 28.88.040 (school officers and school boards).

7 RCW 51.52.110 (industrial insurance appeals); cf. RCW 49.60.270 (Discrimination in Employment Tribunal).

8 RCW 89.08.330 (soil conservation); cf. RCW 14.12.200 (airport zoning); RCW 77.28.120 (game farmers); RCW 90.04.050 (water rights); RCW 90.48.130 (water pollution control); cf. RCW 79.08.030 (public lands).

9 Cf. RCW 43.21.210 (Department of Conservation and Development); RCW 43.22.320 (Department of Labor and Industry).

10 RCW 17.04.230 (Weed Control Districts); RCW 18.83.160 (certified psychologists); RCW 18.92.210 (veterinarians); RCW 28.38.070 (school officers and school boards); RCW 31.04.190 (miscellaneous loan agencies); RCW 82.32.180 (Tax Commission).

11 RCW 51.52.115.

12 RCW 88.16.100.
They are "de novo" and "as an ordinary civil action" in cases involving revocation of a pharmacist's license.\textsuperscript{13} Appeals from orders of the Water Pollution Control Commission, however, are heard "de novo as a cause in equity."\textsuperscript{14} Other variations of the "de novo" formula include "de novo . . . without a jury"\textsuperscript{15} and "de novo" following "the practice in the trial of appeals from justice courts."\textsuperscript{16}

This welter of provisions relating to de novo review is only a warning of what is to be discovered in other statutory provisions. Provision that the appeal be "heard as a case in equity" is fairly common.\textsuperscript{17} Likewise common is the provision that the appeal shall be heard as appeals from justice courts.\textsuperscript{18} With naive confidence in the certainty of the law, other provisions have been made for review "as in other civil actions,"\textsuperscript{19} "at law,"\textsuperscript{20} or "subject to the review of the orders of other administrative bodies of the state."\textsuperscript{21} Review of rulings of the Director of the Department of Agriculture under the Agricultural Enabling Act proceeds under the provisions governing certiorari proceedings with power on the part of the court to determine whether the ruling is "in accordance with law."\textsuperscript{22}

Other statutory provisions direct that particular review proceedings be conducted "in a summary manner"\textsuperscript{23} or be "informal and summary."\textsuperscript{24} One provision directs the court "to give a full hearing"\textsuperscript{25} while others preserve "full opportunity to be heard upon the issues of law."\textsuperscript{26}

As mentioned above, in the de novo review of orders of the Board of Industrial Insurance Appeals the court is precluded from consideration of evidence "other than, or in addition to, that offered before the board or included in the record filed by the board in the superior
Upon appeals from orders of the Washington State Power Commission, "[t]he appeal shall be heard and decided by the court upon the record before the commission or director...." Upon appeal from orders revoking the licenses of real estate brokers the court's determination "shall be based solely on the transcript of the record [compiled before the Director of Licenses]." Other provisions limit the range of review to "the evidence adduced at the hearing before the director.

**Finality of Fact Findings.** Respect for the inventive quality of the human mind grows with contemplation of the different ways in which the degree of finality and validity of administrative fact findings has been stated. Thus, it is provided that "[t]he findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive." A different statutory formulation uses the test of "the preponderance of the evidence" while still another requires "a fair preponderance," and another makes the findings "conclusive if supported by evidence." Fact findings of the State Director of Public Assistance are conclusive unless the evidence in the record preponderates against them. Findings of the Washington Public Service Commission are subjected to the test of "reasonableness and lawfulness." Like some other administrative findings, they have "prima facie" validity.

While this summary of the variations and inconsistencies of statutory provisions concerning judicial review is lengthy, it is far from complete. Many other formulations may have been overlooked because of the difficulties and inadequacy of indices. Also unac-

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27 RCW 51.52.115.
28 RCW 43.52.430.
29 RCW 18.85.290.
30 RCW 18.32.270 (dentistry). Cf. RCW 18.78.140 (practical nurses); RCW 41.40.420 (state employees' retirement); RCW 50.32.120 (unemployment compensation); RCW 70.41.140 (Hospital Licensing Act).
31 RCW 14.12.200 (airport zoning). Cf. RCW 49.60.260, providing, "The findings of the hearing tribunal as to the facts, if supported by substantial and competent evidence shall be conclusive." (emphasis provided).
32 RCW 18.72.300 (Medical Disciplinary Board).
33 RCW 18.85.290 (real estate brokers).
34 RCW 89.08.330 (soil conservation).
35 RCW 74.08.080.
36 RCW 80.04.170. Cf. also RCW 18.78.150 (practical nurses); RCW 30.04.040 (banks and trust companies); RCW 43.43.100 (Washington State Patrol).
37 RCW 80.04.430 and RCW 81.04.430. Cf. RCW 50.32.120 (unemployment compensation); RCW 51.52.115 (industrial insurance appeals); RCW 50.04.060 (water rights).
38 In this respect, it may be hoped that if the compilation of these statutory vagaries does not stir interest in providing a uniform statutory formula, it will at least serve as an index to comparable statutory review provisions and thus furnish the bar with another tool for discovery of precedent.
counted for are the inconsistencies which exist through the failure of the legislature to make any provision regarding judicial review in some statutes. For such an example of the patchwork nature of the existing system, one may note that express provisions can be found concerning the judicial review of action of the Supervisor of Banks with respect to banks and trust companies, savings and loan associations, industrial loan companies, small loan companies and credit unions. But, apparently, no review provision exists with respect to crop credit associations or mutual savings banks. Instead, with respect to mutual savings banks, provision has been made purportedly making final an administrative determination by a specially constituted board of appeal.

Effect of Statutory Variations. Given this tremendous variation in statutory language and the legal profession's ability to seize upon the particular form of words used in any statute as being of controlling significance, one would expect to find the reports full of cases distinguishing other cases on the basis of the particular statutory language involved. Perhaps the challenge in this field has been too great. In any event, very few cases make any such distinctions. On the contrary, to a very considerable extent the law and the cases developed with respect to one administrative agency are cited as precedents and authorities with respect to other agencies.

In part this may be due to the fact that administrative action is frequently reviewed in a common law proceeding based upon one of the extraordinary writs rather than through the particular review procedure established by statute. For example, one may find a considerable number of cases citing authorities involving different administrative agencies because of the common element that each case was a mandamus action. However, other cases which have become lead-

80 RCW 30.04.040 and RCW 30.08.040.
40 RCW 33.08.070 and RCW 33.04.060.
41 RCW 31.04.050 and RCW 33.04.190.
42 RCW 31.08.260.
43 RCW 31.12.060.
44 RCW 32.08.050.
45 Manlowe Transfer & Distributing Co. v. Department of Public Service, 18 Wn.2d 754, at 757, 140 P.2d 287 (1943), a case involving orders of the Department of Public Service respecting transportation rates, the court distinguished cases arising under the unemployment compensation act as being "...somewhat dependent upon the express wording of that statute." In In re St. Paul & Tacoma Lumber Co., 7 Wn.2d 580, at 593, 110 P.2d 877 (1941), a case arising under the unemployment compensation act, the court attributed to the legislature an intent to restrict the review under that act because of the differences in the language of the review provision of that statute and the review provision of the workmen's compensation act.
40 State ex rel. Brown v. Board of Dental Examiners, 38 Wash. 325, 80 Pac. 544 (1905), involving the licensing of dentists, has served as an authority in mandamus
ing precedents in the administrative law field have no such common procedural element, but they are frequently cited in cases arising under different statutes and involving different administrative agencies. Thus, one case in the workmen's compensation field\textsuperscript{47} has become a leading case on the meaning of the phrase "arbitrary and capricious" and it has been cited as a controlling precedent in cases involving the State Department of Health,\textsuperscript{48} the Department of Social Security,\textsuperscript{49} the Department of Public Welfare,\textsuperscript{50} the Department of Unemployment Compensation,\textsuperscript{51} the Washington Toll Bridge Authority,\textsuperscript{52} and the State Highway Committee.\textsuperscript{53} In another case, after citing and discussing a number of leading cases, the court noted, "These cases arose under different statutes, and involved different administrative departments, but the underlying principles are identical with those in the cases at bar."\textsuperscript{54} In short, the effect of the statutory variations has been minimized or partially avoided because of the common law technique—or habit—of reasoning from precedents and by analogy.

The multiplicity of standards of review which might otherwise have been expected to result from the heterogeneous statutory treatment of judicial review has also been minimized because of limitations, inherent and self-imposed, as well as constitutional, on the judicial process itself. Because these limitations restrict its adaptability, the judicial process has not formulated or applied a separate standard for each statutory statement. Thus, one might expect a wide range in the difference between review of action of an administrative agency subjected by statute to "de novo" review and the review of action for which statutes have apparently provided less intensive review. In

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  \item \textsuperscript{47} Sweitzer v. Industrial Commission, 116 Wash. 398, 199 Pac. 724 (1921).
  \item \textsuperscript{48} Whatcom County v. Langlie, 40 Wn.2d 855, at 865, 246 P.2d 836 (1952).
  \item \textsuperscript{49} Robinson v. Olzendam, 33 Wn.2d 30, at 37, 227 P.2d 732 (1951); Morgan v. Department of Social Security, 14 Wn.2d 156, at 184, 127 P.2d 686 (1942).
  \item \textsuperscript{50} Straub v. Department of Public Welfare, 31 Wn.2d 707, at 723, 198 P.2d 817 (1948).
  \item \textsuperscript{51} In re Emp. Buffelen Lumber & Mfg. Co., 32 Wn.2d 205, at 208, 210 P.2d 194 (1948); In re Polson Lumber & Shingle Co., 19 Wn.2d 467, at 478, 143 P.2d 316 (1943); In re St. Paul & Tacoma Lumber Co., 7 Wn.2d 580, at 593, 110 P.2d 877 (1941).
  \item \textsuperscript{52} State ex rel. Washington Toll Bridge Authority v. Yelle, 197 Wash. 110, at 123, 84 P.2d 688 (1938).
  \item \textsuperscript{53} State ex rel. Hartley v. Clausen, 150 Wash. 20, at 28, 272 Pac. 22 (1928).
  \item \textsuperscript{54} Morgan v. Dept. of Social Security, 14 Wn.2d 156, at 184, 127 P.2d 686 (1942).
\end{itemize}
fact, however, that range of difference has been considerably nar-
rowed by the constitutional doctrine prohibiting the delegation to
the judiciary of non-judicial functions. De novo review cannot be
so intensive as to constitute an unconstitutional delegation of non-
judicial functions. And it has been further narrowed by the judi-
cially developed doctrine that a trial "de novo" is not a completely
new trial. As the court has said, "a trial de novo does mean, and is
generally understood to mean, a trial anew; but it means anew, of
course, only as to the questions in issue." And, as the discussion fol-
lowing will indicate, a number of other doctrines of judicial self-
restraint have had the effect of further limiting the scope of judicial
review "de novo."

CONSTITUTIONAL BOUNDARIES OF JUDICIAL REVIEW

Constitutional principles play an important part in setting the
boundaries and defining the content or intensity of judicial review of
administrative action. This should cause no surprise, since the
federal and state constitutions are the fundamental documents defin-
ing the relationship between government and the people as well as
between the branches of government. The judiciary is usually moved
to review administrative action at the insistence of persons who believe
they are being subjected to improper and unconstitutional govern-
mental action; when the judiciary does act in such cases one of the
major problems is that of retaining the proper constitutional rela-
tionship between the judiciary and the other branches of government.
Hence it is that constitutional principles are frequently called into
operation.

No Constitutional Protection. At the one extreme in Washington
are those businesses and vocations which, because of their potential
ever consequences, are said to operate under conditions determined
wholly within the discretion of the administrative authorities and

56 In re Littlefield, 61 Wash. 150, at 153, 112 Pac. 234 (1910); State ex rel. Cohn v.
Superior Court, 11 Wn.2d 167, at 171, 118 P.2d 783 (1941). See Household Finance
Corp. v. State, 40 Wn.2d 451, at 457, 244 P.2d 260 (1952). Cf. also In re St. Paul &
Tacoma Lumber Co., 7 Wn.2d 880, at 890, 110 P.2d 877 (1941), which arose under a
statute providing that appeals "...shall be heard as a case in equity and upon such
appeal only such issues of law or fact may be raised as were properly included in his applica-
tion before the appeal tribunal." The court said, "...we are constrained to hold that
the administrative determination of the facts is conclusive on the court unless it be
wholly without evidential support or wholly dependent upon a question of law, or
clearly arbitrary or capricious." The court was aided in reaching this conclusion by
the provision that the appeal proceedings were to be "informal and summary" as well
as by comparison of the scope of the usual appeal in equity. But the case is another
reminder that statutory language, which at first might be taken to reopen the entire
case on appeal, may be construed to permit a much narrower review.
without the protection that is afforded through judicial review. Included in this category of businesses and vocations are public dance halls, the pawnbroking business, public pool halls, and the business of selling liquor. While it may be difficult to distinguish, on the grounds of potential evil consequences, between an improperly-run meat market or drug store and improperly-run dance halls or pool halls, the distinction nevertheless exists. And, it is a distinction which must be reckoned with by those in the unprotected businesses who deal with administrative agencies and their personnel. Moreover, in language that was broader than the facts of the case demanded, the court once indicated that the public interest in preserving health subjected all persons to an exercise of the police power by public health officers without the protection of judicial review. Of course, these cases do not hold that the power to review administrative action in these areas cannot be given to the courts; they hold only that there is no constitutional requirement that such review be provided.

The Constitutional Fact Doctrine. At the other extreme in Washington there is authority that the power of the courts to review administrative action on certain constitutional questions cannot be impaired or limited by statute, but that the parties affected are entitled to an independent judicial review of the constitutional questions presented. Such questions are to be decided by the courts after consideration of both the facts and the law, free from any limitations which a statute may have attempted to impose by giving binding effect to administrative findings and conclusions. The case establishing this proposition is a rate-making case which rests squarely upon the constitutional fact doctrine of the Ben Avon and St.

68 Asakura v. Seattle, 122 Wash. 81, 210 Pac. 30 (1922).
69 State ex rel. Sayles v. Superior Court, 120 Wash. 183, 206 Pac. 966 (1922).
70 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).
73 State ex rel. McBride v. Superior Court, 103 Wash. 409, 174 Pac. 973 (1917). If the decision is limited to that necessary upon the facts, no serious problems arise. Since all questions of procedure were waived, 103 Wash. at 412, the novelty disappears from the issuance of a writ of prohibition by the Supreme Court to prevent further proceedings on a writ of habeas corpus in the superior court. All that needed to be held was that it was within the power of the legislature to make the determination of a fact of infection with syphilis by a properly constituted health officer final and not subject to retrial on the basis of additional expert testimony. But the opinion contains much broader language, based to a considerable extent upon the failure to differentiate between the role of a court in reviewing a regulation of general applicability and adjudication of an individual case.
Joseph Stock Yards cases. Whether or not the Washington case has shared the gradual death attributed to the federal cases on which it was based cannot be said. Nor can it be said whether Washington follows the ailing if not deceased companion doctrine of Crowell v. Benson, which requires not only independent determination but also judicial or court room trial of those facts deemed to be jurisdictional in a constitutional sense. One case arising under the unemployment compensation act holds that the existence of the employer-employee relationship is not a jurisdictional fact concerning which the parties are entitled to introduce evidence upon review by the superior court. Instead, it is a question to be decided within the statutory jurisdiction of the administrative agency and upon the record compiled before that agency. Other cases have involved questions said by the court to be jurisdictional, but likewise considered by the court as questions to be determined in the first instance by the administrative agency.

Procedural Due Process. Of course, the record upon which the agency action is based is more frequently compiled before the administrative agency than in the later court review proceedings. In such cases, if the findings of the administrative agency are to be given any degree of finality, constitutional principles are again called into operation to ensure that in the administrative hearing procedural fairness and due process of law were given to the parties affected.

In this area, the Washington court has followed the traditional distinction made between issuance of regulations of general applicability and the adjudication of individual cases. The constitution of the state, like the federal constitution, does not require that hearings be held before regulations of general applicability are issued. Of course, the statute conferring authority upon an administrative agency to make regulations of general applicability may require the agency to hold hearings before taking action. In such a case the hear-

[References and notes are omitted for brevity.]
ing held must be adequate and fair, though not necessarily the kind of hearing which would be required for the purpose of adjudicating individual cases.\textsuperscript{72}

While many cases fail to distinguish properly between the making of regulations of general applicability and the adjudication of individual cases, the distinction has been observed in a few cases,\textsuperscript{73} and greater concern has been shown for ensuring procedural fairness in the cases of adjudication or the setting of rates for individual companies.\textsuperscript{74} Thus, the admission of evidence in a rate-making proceeding under circumstances which made it practically impossible for the company to meet it by introduction of other evidence was held to be a denial of due process of law, requiring reversal of the agency's action.\textsuperscript{75} And at an earlier date the sufficiency of the evidence to support findings in a rate-making case was held, at a federal level, to raise a question of due process of law.\textsuperscript{76}

Judicial review thus ensures that, entirely aside from the substance of the findings made and the action taken, adjudicatory proceedings will be conducted in such a way as to afford constitutional due process.

\textit{Limits on Delegation.} As noted above, another boundary of judicial review has been marked out by constitutional principles. The doctrine of the separation of powers prohibits the legislature from providing for a review which is too intensive—a review which in fact would constitute the delegation of non-judicial functions to the judiciary. Thus, in the leading case on the point,\textsuperscript{77} it was held that a constitutionally created court could not be given the authority to reverse the decision of the supervisor of banking and grant a small loan company

\textsuperscript{72} State ex rel. York v. B. of C. Commissioners, 28 Wn.2d 891, at 915-916, 184 P.2d 577 (1947).
\textsuperscript{73} See Floyd v. Dept. of Labor and Industries, 44 Wn.2d 560, at 569-571, 269 P.2d 563 (1954), for a forthright discussion of the different types of functions performed by administrative agencies.
\textsuperscript{74} Manlove Transfer & Distributing Company v. Department of Public Service, 18 Wn.2d 754, at 758, 140 P.2d 287 (1943); But cf. Karlén v. Dept. Labor & Ind., 41 Wn.2d 301, at 304, 249 P.2d 364 (1952).
\textsuperscript{75} State ex rel. Puget Sound Navigation Co. v. Department of Transportation, 33 Wn.2d 448, 206 P.2d 456 (1949).
\textsuperscript{76} Northern P. R. Co. v. Department of Public Works, 268 U.S. 39 (1925), reversing 125 Wash. 584, 217 Pac. 507.
\textsuperscript{77} Household Finance Corporation v. State, 40 Wn.2d 451, 244 P.2d 260 (1952). But cf. Floyd v. Dept. of Labor & Ind., 44 Wn.2d 560, 269 P.2d 563 (1954), distinguishing the Household Finance case and holding that the courts may be given power to review de novo the determinations of the Department of Labor & Industries because its functions were judicial in character and of the kind which could have been given in the first instance to the courts. Cf. also Keller v. Potomac Electric Power Co., 261 U.S. 428 (1923); Federal Radio Commission v. General Electric Company, 281 U.S. 464 (1930); Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266 (1933); for federal development of this limitation on judicial review.
license on the basis of a judgment or discretion substituted for that of the supervisor. On the other side of the problem of maintaining the separation of powers, there arises the question of the delegation of judicial powers to administrative agencies. Though there are other solutions to the problem, the usual formula is that while questions of fact may be given to administrative agencies, questions of law must be reserved for the courts. It is this formula that will now be considered.

**THE LAW-FACT DISTINCTION**

A considerable number of Washington cases accept the law-fact distinction as the appropriate division of authority and responsibility between the courts and the administrative agencies. While in important cases there has been a break-through that has permitted a more intelligent appraisal of the relationship of the courts and the agencies, more of the cases proceed on the assumption that problems of review of administrative action may be neatly divided into those involving questions of fact and those involving questions of law. In most cases the distinction is workable, and the harm that has resulted from a failure to take a more discriminating approach to the problem has probably been minimal. Nevertheless, those cases in which due deference to the administrative view has not been given are cases demonstrating that understanding in this area may bring improvement.

*Legislative and Adjudicative Facts.* The Washington cases draw no distinction between the validity and finality to be accorded to legislative-type findings, which provide the basis for a rule or regulation of general applicability, and adjudicative-type findings, which provide the basis for disposition of individual cases. Nor do they distinguish between the findings in licensing cases, rate-making cases, and other cases. In part this may be due to the fact that the statutory review provisions were, in most cases, drawn with a broad brush that left no such fine lines. But since the court has recognized that the same constitutional procedural requirements do not attach to the rule or regulation making process as apply to cases of adjudication, it

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78 State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, at 210-211, 117 Pac. 1101 (1911).
79 See e.g. RCW 80.04.430 and RCW 81.04.430, giving the same prima facie validity to findings of the Public Service Commission with respect to both its orders and rules. See also RCW 50.32.150 providing that the "decision" of the Commissioner of Unemployment Compensation shall be prima facie correct, making no distinction between the adjudicatory portion of his decisions and that portion which he may base upon regulations enacted by him pursuant to delegated authority.
80 See footnote 71, supra.
seems that the distinction must be recognized even if it has not yet been verbalized. In the area of regulation and rule-making there is no constitutional requirement that the agency make its determination entirely upon the evidence compiled in a record and after hearing. Unless such a record and hearing are required by statute, the problem of review of the factual basis for agency regulations must of necessity be considerably different from that faced where the question is whether the evidence compiled in an adjudicatory proceeding provides a basis for that kind of agency action. Though debate goes on as to the preferable solution, it seems almost inevitable that, unless the statute provides a different formula, review of the factual basis for rules and regulations of general applicability must take on the aspects of the review of the factual basis for legislation enacted by the legislature. Similarly, review of fact findings in cases of adjudication must take on aspects of the review of fact findings by lower courts or juries.

The traditional view that questions of fact are questions for the administrative agency, while questions of law are questions for the court, has been stated frequently. The court has recognized that "it is often very difficult to determine the dividing line between questions of fact and questions of law." It has also recognized that the inquiry into the same matter may present either a question of fact or a question of law. And, of course, whether there is a sufficient evidentiary basis for the factual findings made by the agency is a question of law.

The Finality Accorded Fact Findings. The question of the sufficiency of the evidentiary basis for findings of fact is a question of the

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82 State ex rel. Pac. Tel. & Tel. v. Dept. of Public Service, 19 Wn.2d 200, at 215, 142 P.2d 498 (1943); State ex rel. Am. Telechron Co. v. Baker, 164 Wash. 483, at 495-496, 2 P.2d 1099 (1931); State ex rel. G. N. R. Co. v. Public Service Commission, 81 Wash. 275, at 277-278, 142 Pac. 684 (1914); State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51 (1930). But see In re Littlefield, 61 Wash. 150, 112 Pac. 234 (1910), where the court insisted that it was competent to pass upon the professional qualifications of applicants to practice medicine.

83 State ex rel. Pac. Tel. & Tel. v. Dept. of Public Service, 19 Wn.2d 200, at 214, 142 P.2d 498 (1943).


finality to be given administrative fact findings. Familiar rules have been developed for determining the finality to be accorded findings made by a jury or by a trial judge, or even the findings upon which the legislature bases legislation. But, perhaps because of the many statutory variations, there appears to be no uniform or even common statement of the degree of finality to be given administrative fact findings. Two early cases appeared to give complete finality to administratively-found facts, but their effect was limited by subsequent treatment of similar questions as questions of law.

There are a number of statutory provisions making the findings or even the decisions of certain administrative agencies prima facie correct. In practice the provisions seem to have had little effect. Thus it has been said that if the findings of the agency are not based upon the evidence, the presumption of their correctness does not remedy the deficiency or absence of evidence to sustain them. Another case states that the meaning of the declaration that the decision is prima facie correct means that if the evidence is evenly balanced, the finding on that issue must stand. Still another statement is that in addition to the strength given the findings by the statutory provision, there must also be substantial evidence to sustain the findings. The statutory provision has been said to place the burden upon the party attacking the decision, but that burden appears to be no greater than it would have been in the absence of such a provision. It thus appears that the "prima facie" statutory formula has provided little more than a buttressing argument for a court which has decided to approve the administrative findings after giving them the same review it would have given in absence of the provision.

In some cases it seems that the test of whether the record supports the factual findings is whether the agency acted arbitrarily or capri-

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86 State ex rel. Megler v. Forrest, 13 Wash. 268, 43 Pac. 51 (1895); State ex rel. Smith v. Forrest, 8 Wash. 610, 36 Pac. 686, 1120 (1894).
87 Williams Fishing Co. v. Savidge, 155 Wash. 443, 284 Pac. 744 (1930); Poison Logging Co. v. Martin, 195 Wash. 178, 80 P.2d 547 (1938).
88 See footnote 37, supra.
ciously in making the findings. Such a test is comparable to the test used in determining the constitutional validity of legislation, and would seem to be an appropriate test for these cases involving the validity of regulations. Frequently the cases in which it is used are cases of adjudication, but involve the matter of judicial deference to policy judgments of the administrative agencies rather than a mere review of fact findings. They may also be the product of the mandamus action in which the review is sought or they may involve a lack of subsidiary findings to support the agency action.

The findings of the public service commission are, by statute, said to be prima facie correct. However, as indicated above, this provision has little practical effect upon the review of orders of the commission, and its fact findings are instead "given the same weight accorded to any impartial tribunal, and may not be overturned unless the clear weight of the evidence is against its conclusions, or unless it has mistaken the law applicable to the matter adjudicated, or, as sometimes expressed, unless the findings show evidence of arbitrariness and disregard of the material rights of the parties to the controversy." And, "[i]f the clear weight of the evidence is against the finding of the department, it will be set aside by the reviewing court, even though supported by substantial evidence." If the procedure followed by the administrative agency in its hearings is unfair to the parties, this will deprive the findings of finality or validity. Thus, if the agency considers matters outside the record in a rate-making case, and thus uses secret evidence, its findings will not be respected, nor will its order be enforced. The validity of findings may also be affected by consideration of improper matters, though

97 RCW 81.04.430.
matters known to the parties involved. And, of major importance is the apparent adoption by the Washington court of the residuum rule, which requires that agency findings be based at least in part upon evidence which would have been admissible in a court proceeding. Stated otherwise, the findings may not be based exclusively on evidence which would not have been so admissible.

**Deference Accorded Legal Conclusions.** In accordance with the law-fact distinction, questions of law are reserved for the court and are reviewed by it in the exercise of its independent judgment. Thus the court will reverse agency action which it finds to be based upon an erroneous construction of the law. Moreover, because the court exercises an independent judgment on the law, it in fact shows little or no deference to the administrative view of the law as stated in interpretative regulations. A familiar statement is, "Such regulations are valid only as subordinate to a legislative policy and when found to be within the framework of such policy. They may not extend a statute or modify its provisions."

**Inadequacies of the Law-Fact Distinction.** The law-fact distinction provides a workable basis for division of authority between the administrative agencies and the courts with respect to a large part of judicial review of administrative action. However, numerous difficulties may be encountered with a number of cases, as consideration of those arising under the unemployment compensation act will indicate. In a recent case the majority of the court apparently treated as

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106 RCW 50.01.010 et seq. The provision of the act relating to appeals gives impetus to the attempt to categorize issues as being of law or fact. It provides, "The proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of law shall be had before judgment is pronounced." RCW 50.32.100.
a question of law the question of what constituted suitable work for a person with the claimant’s training and qualifications, and affirmed the judgment of the superior court which had reversed the commissioner’s determination on this matter.107

Another case108 treated as a question of law that of whether claimant was unemployed voluntarily when his employer’s plant was shut down for a vacation period pursuant to a collective bargaining agreement. In other cases the court has considered as questions of law, sometimes without so labeling them, the questions of whether the claimants were “available for work” and “actively seeking work”;109 whether particular individuals were in the “employment” of another;110 whether the claimants were “participating in . . . or directly interested in the labor dispute which caused the work stoppage”;111 and whether any part of the net earnings of a hospital inured to the benefit of any private individual.112 But other cases have treated the question of whether certain individuals were in the “employment” of others more as factual questions—at least factual questions in the sense of limiting review to determination of whether the evidence in the record would sustain factual conclusions stated in the statutory language.113 Similar treatment was once given to the question of whether employees were participating in or directly interested in the labor dispute which caused the stoppage of work.114 And in the most recent case115 arising under the Act the court frankly acknowledged, as it had at an earlier date, that the definition of “labor dispute” was a matter which should be left largely to be determined by the commissioner. But in the same decision the court based its conclusion that the Seattle waterfront was a single establishment within the meaning of the act on the independent appraisal and findings made by the trial court, without mentioning the findings or conclusions of the commissioner.

Of course these cases can be—in fact many were—forced into the

111 Wicklund v. Commissioner, 18 Wn.2d 206, 138 P.2d 876 (1943); In re St. Paul & Tacoma Lumber Co., 7 Wn.2d 580, 110 P.2d 877 (1941).
112 Virginia Mason Hospital Ass’n v. Larson, 9 Wn.2d 284, 114 P.2d 976 (1941).
114 In re Polson Lbr. & Shingle Mills, 19 Wn.2d 467, 143 P.2d 316 (1943).
115 Ackerlund v. State etc. Dept., 49 Wn.2d 292, 300 P.2d 1019 (1956); noted 32 Wash. L. Rev. 104.
categories of cases involving questions of fact or questions of law. Indeed, some of the issues in them naturally fell into one category or the other. But blunt instruments are being used if the delicate relationship between the judiciary and the administrative agency in all problems presented must be dissected and analyzed with only these tools. Particularly is this true with a statute like the unemployment compensation act, which, as Judge Finley noted in a dissent, gives to the commissioner broad authority and discretion. Use of the law-fact distinction puts the court in the position of formulating policy and drawing the lines of distinction in an area in which judges have no great experience and in which the legislature apparently desired that one who had accumulated such experience be vested with considerable discretionary authority. And, as Professor Wollett has indicated in his article on the workmen's compensation act, similar difficulties have been encountered there because of a rigid adherence to the law-fact distinction.

**Review of Policy Judgment**

Those cases in which the law-fact distinction proves to be an unsatisfactory formula for judicial review are usually cases in which the courts are required to pass upon an administrative policy judgment. They involve the question of when judicial judgment should be substituted for administrative judgment. This does not mean that the cases are limited to those involving rules or regulations of general applicability in which one expects to find administrative policy formulated, because, as lawyers are well aware, policy is frequently formulated on an *ad hoc*, or case by case, method. In these cases it may be as difficult to separate law from fact in the making of the particular policy judgment as it is to separate law from fact in the making of the particular policy judgment as it is to separate law from fact in the determination of what constitutes the particular standard of reasonable care in an ordinary negligence action. In the latter case, the practical answer of the law has been to give both questions to the jury; in the administrative law field for similar reasons certain problems involving both legal and factual questions must be given to the administrative agency. And with some of the problems, because of the specialized nature of the question, because of the expertness of the agency personnel, and because their experience with similar problems better equips them to solve the problem, there may be good

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reason for giving an even wider range of operation to the administrative agency than, by comparison, is given to a jury. This may be true even though the policy is formulated in a regulation as a statement of general applicability, similar to a rule of law. The question may nevertheless not be one which is best treated as a question of law to be determined by the judiciary in the exercise of an independent policy judgment.

Comparative Qualifications. In a number of cases the Washington court has recognized, upon an appraisal of the comparative qualifications of the judiciary and the administrative agency, that the question involved is one which should be left to the determination of the administrative agency within broad limits. Frequently, as in mandamus actions, the freedom of the agency to make and develop its policy judgments is spoken of in terms of discretion. In many other cases and under many other statutes the same freedom has been given through incorporation of the definition of “arbitrary and capricious” action first given in Sweitzer v. Industrial Ins. Comm. The court there held that the commissioners’ refusal to reopen the case was not arbitrary or capricious, saying,

... this is not arbitrary or capricious action. These terms, when used in this connection, must mean willful and unreasoning action, action without consideration and in disregard of the facts and circumstances of the case. Action is not arbitrary or capricious when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached.

In a number of cases the court has refused to substitute its judgment for that of an administrative agency, even though it recognized that other views not only were possible but might have seemed more desirable. In such cases the view adopted by the agency need not be the one which the court would adopt if the matter were one to be decided by it as a matter of first impression. Thus, recognizing that accounting and statistical skills were required and that the legislature intended the agency to utilize administrative expertness in these

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119 116 Wash. 398, at 401, 199 Pac. 724 (1921). See the cases cited in footnotes 48 to 53, supra, for instances in which this definition has been used under other statutes.
matters, the court has refused to substitute its judgment for that of the Department of Social Security on the matter of what deductions should be made for resources owned by recipients of old age and survivor's assistance benefits.120 Noting that it might not agree with the supervisor of banking, the court nevertheless affirmed his denial of small loan company licenses because of the supervisor's opinion that the increased competition in the communities would be detrimental.121 In another case the court said that mere disagreement with the action of the supervisor of forestry in classifying certain lands as "forest lands" for the purpose of a special tax was not a basis for setting aside his determination unless that determination was arbitrary and capricious within the meaning given those words in the Sweitzer case.122 Recently the court has refused for similar reasons to overturn administrative action transferring valuable property from one school district to another.123 Whether transportation facilities in a given area are adequate to meet traffic demands can be determined only by a survey of the conditions as they exist, and the court has called this "purely an administrative function."124 Likewise, it has recognized that technical expertness as well as familiarity with the economics of the industry are necessary to evaluation of a system of charges for local telephone service based on the length of time of the calls.125 Technical expertness and familiarity with details of railroad operations are necessary to determination of whether a grade crossing should be closed,126 or whether an additional stop should be added to a train schedule127 and the court has refused to set aside agency determinations in these matters upon determining that an honest judgment had been exercised. Determination of the extent and kind of approaches necessary to serve a bridge is a matter requiring considerable knowledge of traffic demands, flow, and patterns, and the court refused to reverse the Toll Bridge Authority's decision that an extensive system of approaches was necessary even

127 Department of Transportation v. Snohomish County, 35 Wn.2d 247, 212 P.2d 829 (1949).
128 State ex rel. G.N.R. Co. v. Public Serv. Comm., 81 Wash. 275, at 278, 142 Pac. 684 (1914).
though the court made no independent determination that this solution was correct.\textsuperscript{128}

Another line of Washington cases has apparently recognized the superiority of the administrative agencies for solution of particular questions by holding that the initial determination of such questions must be made by the agency and not by the court.\textsuperscript{129} Though recognition of the primary jurisdiction of an administrative agency does not inevitably lead to a refusal of the judiciary's opportunity to exercise independent judgment on the matter, it certainly is a step in that direction. However, in a number of cases in which there was no conflict in the evidence, the court has assumed that facts may be found initially by the judiciary and has not considered whether administrative expertise and familiarity with certain types of problems might lead to different results.\textsuperscript{130}

\textit{Substituted Judgment.} In a number of cases the court has seen fit, for a variety of reasons, to substitute its judgment for that of the administrative agency. No subsequent case appears to exhibit the unshakeable confidence shown by the court when it undertook to review on the facts the qualifications of an applicant for a license to practice medicine.\textsuperscript{131} Perhaps it was the unexpressed assumption that there could be no expert judgment on the matter that led the court to overturn a determination of the commissioner of unemployment compensation and hold that an applicant was not eligible for benefits because he had refused "suitable work."\textsuperscript{132} However, what constitutes "suitable work" for an individual with certain training, qualifications, and abilities would seem to be a matter of expert judgment. At least there are many persons in the personnel field, making wage and salary classifications and preparing job descriptions and analyses, who have been given such work in the belief that specialized training and experience have made them better able to discharge those functions. Their continued employment suggests that belief in their expertise has passed the test of economics if not the law.

\textsuperscript{128} State ex rel. Wash. Toll Bridge Authority v. Yelle, 197 Wash. 110, 84 P.2d 688 (1938).
\textsuperscript{130} Manlove Tr. & Dist. Co. v. D.P.S., 18 Wn.2d 754, 140 P.2d 287 (1943); In re Foy, 1 Wn.2d 317, 116 P.2d 545 (1941); Virginia Mason Hospital Ass'n v. Larson, 9 Wn.2d 284, 114 P.2d 976 (1941).
\textsuperscript{131} In re Littlefield, 61 Wash. 150, at 152, 112 Pac. 234 (1910).
\textsuperscript{132} In re Anderson, 39 Wn.2d 356, 235 P.2d 303 (1951).
In a case involving the interpretation of the words "partially processed" and "pre-cooled" in a truck tariff issued by the director of transportation, the court recognized that this was an area in which the administrative judgment was supported by experience and expertness, but reversed the director's order because it displayed a disregard for the material rights of the parties. Perhaps this latter determination—that there had been a disregard for the material rights of the parties—was made because the court focused its attention upon the interests of the shipper and the truck line, which were both satisfied with the lower rate charged, and overlooked the public interest, apparent to the director, in preventing deviations from tariff rates or transportation at low rates which bring about ruinous competition.

Suspicions about the integrity of the administrative process and the objectivity of a union-dominated board may have led to rejection of what would otherwise seem to have been a reasonable administrative view that the efficiency of the pilotage service on Puget Sound required limitation of the number licensed to practice that trade. The result can be explained on the basis of statutory construction, as the court made an alternative suggestion that if the legislature had intended to permit the board to limit the number of licensed pilots it would have said so expressly.

Whenever a case appears to turn on matters of statutory construction, the administrative view will not have the same stature it enjoys in other contexts, because the court, quite naturally, believes that it is more expert and capable in this area than the administrative agencies. As mentioned above, while deference to the administrative view stated in interpretative regulations is sometimes expressed, it is seldom given controlling effect. If the problem is one susceptible of treatment as a problem of statutory construction, the court is likely to exercise an independent judgment. However, there is a danger in so treating cases, because the experience of the agency in working with the problem assigned to it by the legislature may have given significance to statutory language not immediately apparent in the context of the particular litigation, though obvious to those working with the problem administratively or to those who had investigated the

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125 198 Wash. at 703.
problem in the preparation and drafting of a statute.\textsuperscript{137} In such a case, of course, the administrative agency concerned should point out in more detail than appears in most briefs just what part of the experience and expertness leads to deference to their administrative view of the matter. This will require some relaxation of the view that resort to matters outside the record is prohibited as the use of secret evidence.\textsuperscript{138}

Other factors may lead to assertion of judicial superiority in dealing with a particular problem. There is general agreement with the concept that retroactive changes are unfair and should be avoided. Frequently the concept is one that may be enforced by the courts without approval or condemnation of the practice or policy either before or after the change.\textsuperscript{139} A statutory provision relating to remedies to be granted by a court upon application by an agency is one which the court might well construe independently to determine how the legislature intended it to use its powers, even though its construction conflicts with the administrative view of how the judicial powers should be used.\textsuperscript{140} The fact that courts have in other contexts developed the technique of piercing the corporate veil where form has been utilized to obscure the substance of transactions naturally leads to an assumption that the court is as capable as an administrative agency in determining whether the profits of a charitable corporation are in fact, if not in form, accruing to the benefit of a private individual.\textsuperscript{141}

There have been difficulties in this area of judicial review of policy judgments made by administrative agencies. But it is not so much that the courts have assumed and asserted a superiority in cases where they might better have let the administrative judgment stand, or that they have failed to exercise independent judgment in cases where they should have done so, that has caused the difficulties. It is instead

\textsuperscript{137} See note, 32 WASH. L. REV. 61 (1957).


\textsuperscript{139} Hansen Baking Co. v. City of Seattle, 48 Wn.2d 737, 296 P.2d 670 (1956).


\textsuperscript{141} Virginia Mason Hospital Ass'n v. Larson, 9 Wn.2d 284, 114 P.2d 976 (1941).
the lack of explicit and open evaluation of the comparative abilities of the courts and the agencies that has caused the difficulties. When the real reasons for the action taken lie unexpressed and hidden behind the law-fact distinction and words such as “discretion,” “arbitrary and capricious,” or “unreasonable,” a decision furnishes no guide for the future cases. Frank discussion and evaluation of the comparative abilities of courts and agencies would disturb an appearance of legal certainty and predictability while doing much to achieve both. Mistakes would still be made, and perfection would still go unattained. But, as with many things, the problem of dividing responsibility and authority could be better handled openly than by indirection.

**CONCLUSION**

One who has labored through this discussion of the scope of judicial review of administrative action in the state of Washington will probably agree that it is a subject to be approached with caution. He might add that it is also one to be approached by those with either a surplus or a near-to-inexhaustible supply of energy. But, if this author is correct, he will agree that while statutory formulations of principles seem endless, in the main Washington law on the subject does not depart materially from administrative law principles and practices developed in other states.

Here, as elsewhere, constitutional principles have shaped the major outlines of administrative law. The view that persons engaging in some activities are not entitled to any constitutional protections may be difficult to sustain as a broad proposition, but it certainly is not a view unique with Washington. The constitutional fact doctrine, setting a minimum limit on judicial review, was obviously based upon earlier federal cases. The distinction between rule or regulation making and adjudication has been observed here with respect to the constitutional requirement of a hearing, and, though there is still much to be desired, the court has undertaken to ensure that parties to administrative adjudication are afforded due process and fair hearings.

As in other states, the law-fact distinction has been accepted as the appropriate and usual line for dividing authority and responsibility between courts and agencies. But, as in other jurisdictions, consideration of the necessities of the situation has led to abandonment of the distinction for particular problems. The substituted tests have been whether the action was within the “discretionary” powers of the
agency, whether it was "unreasonable," or whether it was "arbitrary and capricious." Thus more freedom for exercise of policy judgment has been given administrative agencies than would be possible under the law-fact test.

Looking at the many and varied statutory review provisions of Washington law for the first time, one might be led to think that adoption of a uniform system of review, applicable to all administrative agencies, would constitute a major change and require a revision of the relationship between the courts and individual agencies. However, investigation of the cases decided under those many and varied provisions shows that there is a substantial degree of uniformity. That such uniformity exists is of major concern to one who undertakes to draft a single provision for review of all administrative action.

The Model State Administrative Procedure Act was intended only as a model—as something from which a legislature could begin to draft provisions appropriate to local conditions. Consideration of the review provisions of the Model Act leads to the conclusion that it provides a rather complete and detailed list of the conditions for affirmance and bases for reversal of administrative action developed by case law in Washington.

If the review provisions of the Model Act are subject to any criticism as a restatement of local law it is that they give less freedom to administrative agencies than the Washington court has given in those cases in which it has refused to substitute its judgment for that of the agency. The Model Act appears to accept the law-fact distinction as the universally satisfactory line for division of authority and responsibility. And, it literally subjects not only findings, but the inferences, conclusions, and the entire decisions of administrative agencies to the same gauntlet of tests. It thereby limits the effectiveness of the expertise and familiarity with specialized problems which administrative agencies may develop.

Of course, this pitfall might be avoided by a construction which limited the requirement of evidentiary record support to fact matters and, using the words of the Model Act, permitted administrative freedom as being within "the statutory authority or jurisdiction of the agency," provided that it was not "arbitrary or capricious." Such a construction gains support from consideration of section 9 of

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142 For a history of the Model Act, see Stason, The Model State Administrative Procedure Act, 33 Iowa L. Rev. 193 (1948). The article is one of a symposium devoted to consideration of the Model Act.
143 See sections 6, 12 of the Model Act, appendix.
the Model Act, which deals with rules of evidence and official notice. On the whole, it might be better to utilize the review provisions of the Federal Administrative Procedure Act,\textsuperscript{144} which permits a more narrowed review and thus allows greater freedom for agency action.\textsuperscript{148} In any event, a uniform provision, perhaps combining desirable features of both acts, could be adopted without causing any major readjustment of the relationship between the courts and the individual agencies. Such a provision is much needed to eliminate the confusion and uncertainty which now exists in the absence of a uniform statutory provision.

\textsuperscript{144} Section 10 of the Federal Administrative Procedure Act provides: "Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

* * *

(e) Scope of review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right; (4) without observance of the procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of section 7 and 8 or otherwise reviewed on the record of any agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

\textsuperscript{145} For comparisons of the judicial review provisions of the federal act and the Model Act, see Abel, \textit{The Double Standard in Administrative Procedure Legislation: Model Act and Federal Act}, 33 Iowa L. Rev. 228, at 245 et seq. (1948) ; Schwartz, \textit{The Model State Administrative Procedure Act—Analysis and Critique}, 7 Rutgers L. Rev. 431, at 455 et seq. (1953).