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Ralph M. Wade

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NOTES

DEVELOPMENT OF THE ADMINISTRATIVE PROCESS IN WYOMING (A Historical Sketch)

Nearly everyone is aware of the wide variety of social and economic problems that arise in modern society. While in the past the less numerous and less complex problems of this nature were disposed of by the courts or by traditional executive officers, today to an increasing extent specialization and expertness not previously available is required for their solution. Many of the recent problems have arisen from technological developments; others have come from the cumulative impact of industrialization, urbanization and economic dependency. Regardless of the problem's source, administrative agencies have been created to deal with many of them. In fact, today when a problem of this nature arises there is a tendency to create an agency to solve it.¹

For example, in recent years women are engaging in gainful employment outside of the home in ever increasing numbers. If there are minor children some provision must be made for their care and supervision during

1. Stason, *The Law of Administrative Tribunals*, pp. 4-7 (1947).

the working day. To meet this problem the Wyoming State Legislature established a child-care licensing agency to secure some administrative control over personnel engaged in such work.²

The most common type of administrative agency created by the Wyoming Legislature has been a multi-headed board or commission whose members are appointed by the governor with the approval of the state senate for staggered terms of years. A number of agencies are, however, composed of ex officio personnel, usually the Governor, State Auditor, State Treasurer and Superintendent of Public Instruction. This type of agency is usually given both administrative rule-making and adjudication powers. In some instances like powers have been given to individual state officers such as the Secretary of State. Primary emphasis in this paper will be devoted to the multi-headed administrative agency.

While the need for administrative agencies in Wyoming to deal with complex economic and social problems reached fruition in the twentieth century its roots may be traced back into territorial days. In view of the importance of water to even a relatively simple society it is not surprising that an early example is to be found in a territorial legislative act authorizing county commissioners to appoint three water commissioners and empowering them with the right to apportion justly and equitably an amount of water to the different localities “. . . as they may in their judgment think best for the interest of all persons concerned.”³ In making apportionments factual data usually had to be secured and administrative hearings held to determine equitable rights.

Other administrative agencies of the territorial period included the Commissioners of Pharmacy who were empowered to make by-laws and other necessary regulations for members of the profession,⁴ and the Board of Trustees of the University who were to prescribe courses of study, and make all by-laws and rules necessary and proper to effectuate the powers conferred by law upon them.⁵

The framers of the state constitution were aware of the functions and value of administrative agencies and accordingly made provision for some in the document itself. To illustrate, the constitution provides:

The construction, care and preservation of all public buildings of this state not under the control of the board or officers of public institutions by authority of law shall be entrusted to such officers or boards, and under such regulations as shall be prescribed by law.⁶

Because of the scarcity of water in the state the constitution provides for its control by a board of experts in the following language:

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2. Wyo. Sess. Laws, 1961, ch. 135.
 3. Wyo. Comp. Laws, ch. 65, § 4 (1876).
 4. R.S. Wyo., ch. 2, § 1934 (1887).
 5. Wyo. Sess. Laws, 1886, ch. 37, § 42.
 6. Wyo. Const., art. 7, § 22.

There shall be constituted a board of control, to be composed of the state engineer, and the superintendents of the water divisions; which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the state and their appropriation, distribution, and diversion, and of the various officers connected therewith. Its decisions to be subject to review by courts of the state.⁷

The constitution also provides for a Board of Land Commissioners to have direction, control, leasing and disposal of lands granted to the state or which may be granted to it in the future.⁸ Examples of other administrative agencies directly provided for in the constitution are the Board of Trustees of the State University;⁹ the State Board of Charities and Reforms¹⁰ and the State Board of Equalization.¹¹

ADMINISTRATIVE AGENCIES NOT SPECIFICALLY
PROVIDED FOR IN THE CONSTITUTION

The most numerous type of administrative agency created by the state legislature is the licensing agency. Starting with the Board of Medical Examiners and the Board of Law Examiners in 1899 and ending with the Insurance Agent Examiners, the Board of Physical Therapy, and the Child-care Licensing Agency established by the Thirty-sixth State Legislature in 1961, almost every session has contributed its output to such agencies. The table below is illustrative of this action.

Name	Date of Establishment	Number of Members
Board of Medical Examiners	1899	5
Board of Law Examiners	1899	5
Board of Dental Examiners	1905	3
Board of Accountancy	1911	5
Board of Embalming	1913	3
Board of Veterinary Examiners	1915	3
Board of Education	1919	7
Coal Mining Examining Board	1925	3
Board of Examining Engineers	1925	5
Boxing Commissioner	1927	1
Board of Chiropractic Examiners	1929	3
Real Estate Board	1929	4
Board of Barber Examiners	1931	3
Board of Cosmetology and Hair Dressing	1937	3
Board of Registration of Chiropody	1937	3
Board of Examiners of Optometry	1939	3
Collection Agency Board	1945	3
Board of Pharmacy	1949	3
Board of Architects	1951	3
Weather Modification Board	1951	3
Board of Nursing	1955	3
Insurance Agent's Examiners	1961	5
Board of Physical Therapy	1961	3
Child-care Licensing Agency	1961	5

7. Wyo. Const., art. 8, § 2.

8. Wyo. Const., art. 7, § 13.

9. Wyo. Const., art. 8, § 17.

10. Wyo. Const., art. 7, § 18.

11. Wyo. Const., art. 15, §§ 9, 10.

While the above list of licensing agencies is not intended to be complete it is sufficient to illustrate the development of this type of agency. Even among the licensing agencies, however, a difference in basic function should be recognized. There are those created primarily to enable the professions such as medicine, law, dentistry, and nursing to police themselves and those agencies that use the licensing function to protect the public against abuses that do not arise primarily from the lack of professional competency. In the latter group among others are to be found the Coal Mine Examining Board, the Boxing Commissioner, Collection Agency Board, Insurance Agent's Examiners and the Child-care Licensing Agency.

Running through the statutes creating the many agencies is a pattern of uniformity not only in regard to the number of personnel on the board but also with respect to the rule-making powers conferred. Those agencies concerned primarily with professional competence are, however, invariably manned with established members of the particular profession, while the personnel of the others may have been selected to secure political, geographical and occupational representation or a combination of such factors.

In all instances the licensee is required to meet certain prescribed standards of proficiency before being granted the license. Furthermore, a formal hearing is required before a license is revoked. Should the licensee be aggrieved by the agency's action he has the right to have his case reviewed by the district court.

Although the statutes creating the licensing agencies specifically provide for revocation hearings they are infrequently held. In general these agencies have not adopted rules governing rule-making or administrative adjudication. Most problems it seems are settled in an informal manner by letter writing and/or personal interviews in the office of the agency. The reason for this may be attributed at least in part to the infrequency of agency meetings and the absence of experienced staff personnel.¹²

AGENCIES OTHER THAN LICENSING

The legislature has from time to time established administrative agencies to deal with problems otherwise than by means of licensing. Because of their number only typical examples concerned with the several areas of state administration will be considered.

Natural Resources

Two of the constitutionally created agencies referred to previously, play significant roles in the regulation and development of state water and land resources. One of these, the Board of Control—Irrigation and Water Rights, has rendered outstanding service to the state and its people. The state constitution provides that all water of natural streams and lakes

12. Questionnaires submitted to Wyo. Admin. Agencies (1961).

within the state is property of the state; that priority of appropriation for beneficial use establishes a right which may be denied only in the public interest.¹³

Broad discretionary powers are granted to this agency, for those who serve on the board are experts in their field and as such are qualified to draft and enforce regulations and adjudicate priorities. One of the board's chief functions is acting in a quasi-judicial capacity in determining water rights and priorities. In so doing most controversies are settled without appeal to the courts of the state.¹⁴

The other agency falling in this category is the Board of Land Commissioners. It has direction, control, leasing, care and disposal powers for ". . . all lands heretofore or hereafter granted or acquired by the state for the support of public schools or for any other purpose whatsoever subject to the limitations set forth in the constitution."¹⁵

The Board has rule-making power and in December of 1925 adopted a set of rules of practice governing contests before it.¹⁶ Among its many activities are the appraisal and classification of lands for the purpose of determining the minimum and maximum agricultural and grazing rental and also the sale value.¹⁷

The Board has statutory authority to lease all state or school lands for oil and gas for a primary term of ten years and as long thereafter as oil and gas may be produced in paying quantities. It also makes mineral leases for terms not in excess of ten years with preferential right of renewal for succeeding periods of ten years each. Statutory provisions cover the disposition of royalties received from such leases.¹⁸

Parties aggrieved by a decision of the Board rendered in any contest proceedings before it may appeal to the district court of the county in which the land in controversy is situated.¹⁹

Among the agencies not specifically provided for in the constitution that have been established by statute to administer other natural resources are: The Oil and Gas Conservation Commission (1951);²⁰ the Natural Resource Board (1951);²¹ the Game and Fish Commission (1939)²² and the Weather Modification Board (1951).²³ The latter was mentioned above in connection with its licensing activities.

13. Wyo. Const., art. 8.

14. Martz, *Cases on Natural Resources*, p. 282 (1951); *Farm Investment Co. v. Carpenter*, 9 Wyo. 110, 61 Pac. 258 (1900).

15. Wyo. Stat. §§ 34-14 to 34 (1957).

16. Rules of the Board of Land Commissioners.

17. Wyo. Stat. §§ 36-18, 36-19 (1957).

18. Wyo. Stat. §§ 36-74, 36-78 (1957).

19. Wyo. Stat. § 36-27 (1957).

20. Wyo. Stat. § 30-216 (1957).

21. Wyo. Stat. § 9-145 (1957).

22. Wyo. Stat. §§ 23-8, 23-9 (1957).

23. Wyo. Stat. § 9-268 (1957).

The Oil and Gas Conservation Commission has rule-making power and the power to conduct investigations and hearings. It has adopted rules and regulations relative to the drilling of oil and gas wells. The procedure followed for hearings is rather informal although the statutes do authorize a formal approach.²⁴

The Natural Resource Board does not have statutory rule-making power nor does it hold hearings, consequently it has adopted no formalized rules for such procedure. Its main purpose is policy making and programming to conserve and develop the state's natural resources.²⁵

One of Wyoming's most important natural resources from an economic point of view is its game, fish and wildlife. In 1939 the legislature created the Game and Fish Commission and declared that all wildlife is the property of the state. The act's purpose is to provide an adequate and flexible system of control, propagation, management, protection and regulation of this resource. The Commission has extensive rule-making powers and is charged with such responsibilities as licensing hunters and fisherman, setting the open seasons for various game animals, fish and birds, prescribing the bag and creel limits and other administrative problems with which the legislature has neither the time nor the competence or expertness to deal. State statutes set the overall policy but the Commission is charged with the responsibility of filling in the details and thus providing the necessary flexibility.²⁶

The Weather Modification Board has statutory power to grant permits to persons desiring to engage in weather modification experiments, such permits to be revocable by the State Engineer upon recommendation of the Board in accordance with procedures which the Board shall establish.²⁷ The agency's major functions are to collect data and award permits to qualified parties for experiments in weather control.

Regulation of Business

Undoubtedly the agency having the greatest administrative load in the area of business regulation is the Public Service Commission whose members also constitute the State Board of Equalization. While the latter Board was provided for in the state constitution²⁸ it was not until 1935 that the former was created.²⁹ The Public Service Commission is vested with the general power to regulate and supervise every public utility within the state exclusive of those that operate in interstate commerce and those owned and operated by a Wyoming municipality. If the municipal owned public utility provides service beyond the corporate limits it is not excepted from Commission regulation.³⁰ While the legislature has

24. Wyo. Stat. §§ 30-224, 30-225 (1957).

25. Wyo. Stat. §§ 9-145 to 9-160 (1957).

Questionnaires submitted to Wyo. Admin. Agencies (1961).

26. Wyo. Stat. §§ 23-2, 23-8 (1957).

27. Wyo. Stat. § 9-70 (1957).

28. See note 11, *supra*.

29. Wyo. Sess. Laws, 1935, ch. 93, § 1.

30. Wyo. Sess. Laws, 1961, ch. 88.

not defined a public utility, it is understood to include gas, electric, water, telephone, steam, pipeline, rail and other common carriers operating wholly within the state.³¹

The Commission may from time to time make, publish and amend rules for the order and regulation of all proceedings and investigations before it. It has the power to grant or deny franchises to applicants proposing to operate a public utility within the state. Hearings may be held to determine the adequacy and reasonableness of rates and the Commission may fix and order a change in any rate found unjust or unreasonable. All orders of the Commission must be in writing and in cases of importance may be accompanied by an opinion setting forth, in brief, the facts on which the order is based. A party in interest aggrieved by the agency's order may appeal to the district court of Laramie County.³² Rate cases and those involving the extension, contraction or discontinuance of service are frequently before the Commission.

The State Board of Equalization's duties include the establishing a valuation each year for the assessment of livestock and various commodities and to notify the several county boards of equalization of the rates so fixed before the day set for the beginning of county assessments. It also has the duty of assessing the property of common carriers and other utilities operating within the state and apportioning such assessed valuation to the counties in which the property is located. It furthermore equalizes the valuation of all property in the several counties for the state revenue. The Board has statutory rule-making and hearing powers necessary to the performance of its duties. Hearings relative to protests of evaluation assessments are not uncommon. Any person, firm or corporation aggrieved by the Board's assessments may appeal to the district court of the county where the property is situated.³³

The Wyoming Liquor Commission established in 1935 is another agency administering an important phase of business, namely the wholesaling of liquor within the state. It has the statutory power to make the rules and regulations deemed necessary to discharge its duties. At its discretion it may, after a hearing, with reasonable written notice to a retailer, refuse to sell intoxicating beverages to him for such period of time as it sees fit. The retailer so affected may appeal to the district court of the county in which he is licensed.³⁴ To date the Commission has not adopted any formal rules of practice for its hearings.

In an action brought by a distillery against the Wyoming Liquor Commission the state supreme court held that the Commission could not be sued in its own name for breach of contract; that it was an agency of

31. Trachsel and Wade, *Government and Administration of Wyoming*, p. 282 (1953).

32. Wyo. Stat. §30-45 (1957).

33. Wyo. Stat. § 39-26 (1957).

34. Wyo. Stat. §§ 12-38 to 12-46 (1957).

the state performing governmental functions and hence as exempt from suit as the state itself.³⁵

Another Wyoming state administrative agency of a type common to most states is the *office of Blue Sky Commissioner* created in 1919. The Secretary of State, who is ex officio the Commissioner, is directed to examine the statement and documents filed by a corporation desiring to issue securities and if deemed advisable make a detailed inspection and examination of the applicant or the guarantor of the proposed issue. If the Commissioner should find the promoter's literature or advertising misleading and calculated to deceive the investor, or that any papers or documents filed with him are inaccurate or untrue he must make a written statement of such findings and immediately send a copy thereof to the promoter and all agents selling the securities. If no misstatement is found and the promoter is of good moral character with no intent to defraud, the Commissioner will issue a permit for the sale of the securities.³⁶

The agency has never adopted rules relative to procedures for rule-making or administrative adjudication. Investigations by the agency have, in the past, consisted of letters of inquiry and personal interviews held in the office of the Commissioner. The mere suggestion of a public hearing has usually caused the parties involved to voluntarily withdraw their application to sell the security.³⁷

Other administrative agencies exercising important powers and duties in the area of business regulation to protect the public interest are the Insurance Commissioner, the Insurance Agent's Examining Board and the Bank Examiner.

A department under the State Board of Equalization and within the revenue department is especially charged with executing the laws relative to the insurance and surety business. The chief officer of the department is known as the Insurance Commissioner. He is authorized to examine into the conditions and affairs of any insurance company and to grant or revoke certificates authorizing the company to do business within the state. Duties of the Commissioner and requirements to be met by insurance companies are set forth extensively in the state statutes.³⁸

The Wyoming State Board of Insurance Agent Examiners created by the State Legislature in 1961 is empowered to make rules and regulations relative to licensing insurance agents and also to conduct hearings relative to revocation of such licenses. A licensee aggrieved by the Board's ruling may appeal to district court in accordance with statutory provisions governing such action.³⁹

35. *Harrison v. Wyoming Liquor Comm.*, 63 Wyo. 13, 177 P.2d 397 (1946).

36. Wyo. Stat. §§ 12-38 to 12-46 (1957).

37. Questionnaires submitted to Wyo. Admin. Agencies (1961).

38. Wyo. Stat. § 26-1 (1957).

39. Wyo. Sess. Laws, 1961, ch. 234.

The State Examiner, one of Wyoming's constitutional officers, is ex officio the bank examiner in Wyoming. He is the sole judge as to whether or not a bank may be granted articles of incorporation and in arriving at the decision he investigates the character and responsibility of the applicants and the proposed capital structure.⁴⁰ Moreover, he is empowered to make such rules and regulations for the government of the banks under his supervision as may in his judgment seem wise and expedient providing they in no way conflict with provisions of the law applying to state banks.⁴¹

Regulation of Labor

The Employment Security Commission was created in 1937 for the purpose of achieving more social security for the worker in-so-far as it affords him and his family protection against the hazards of unemployment. The objective is achieved in part by setting up free public employment offices and also by a system of accumulation of funds during periods of employment to provide benefits for periods of unemployment. Such an arrangement tends to maintain purchasing power and limit the serious social consequences of poor relief.⁴²

The Commission has rule-making power and it has adopted rules governing procedures in their making. Rules are adopted only after notice and opportunity for a hearing with effective date at least ten days after publication and filing of copy with the Secretary of State. The agency also has extensive investigative and adjudicative powers. In a broad sense an investigation is held every time the agency determines an individual is an employee or an employer covered by the act. Hearings for adjudication may be initiated by private parties concerned or by the agency itself. They are public and all parties are permitted to be represented by counsel. Decisions are made by the Appeals Examiner but may be appealed to the Commission and from it to the District Court and from it to the State Supreme Court. To date only four cases, all involving employer appeals of the Commission's determination of tax liability, have been carried to the Supreme Court. About ten cases involving benefits paid or denied to claimants have been appealed to the District Court.⁴³

The Wyoming Commissioner of Labor has the duty to enforce all laws enacted by the state legislature relating to labor, hours of labor, and to the health, welfare, life and limb of the workers of the state. Furthermore, he has the responsibility to see that workers are protected in the collection of wages lawfully due them. The Commissioner has no expressed statutory power of rule-making but is given the power to examine witnesses and conduct hearings and appeals. Many of the hearings in practice are concerned with wage rates or claims for unpaid wages. The Commissioner

40. Wyo. Stat. § 13-44 (1957).

41. Wyo. Stat. § 9-101 (1957).

42. Wyo. Stat. § 27-22 (1957).

43. Wyo. Stat. § 27-33 (1957).

Questionnaires submitted to Wyo. Admin. Agencies (1961).

is empowered to hand down an order or decision in such cases from which an aggrieved party may appeal to the district court.⁴⁴

Still another agency concerned with labor is the Director of Workmen's Compensation. The duties of this officer are, however, largely ministerial. An injured workman covered by the act is compensated directly or if death results the benefits go to his heirs in accordance with a schedule fixed by law. If the injury or death is disputed, settlement is arrived at through the district court.⁴⁵

SUMMARY AND CONCLUSIONS

Wyoming has made use of administrative agencies from its inception as a territory but they did not come into widespread use until the 20th century. Perhaps the principal impelling motive for their increased use has been the extension of new or further refinements of service by the state to its citizens. There is much similarity among them in their organization and powers. In general they have rule-making power to implement in detail the general policy set forth by the state legislature. To date, however, most of them have not made rules or set up standardized procedures for rule-making nor has there been a uniform system for publicizing rules when made. Much the same may be said in regard to quasi judicial or hearing procedures of the agencies. While nearly all administrative agencies are empowered by the legislature to hold hearings on violations or rules, nevertheless there is no general uniformity or set procedures followed in such actions. If any one characteristic may be attributed to administrative procedure in Wyoming it may be said to be informal. Such an approach has been relatively workable and therefore acceptable in the past. It may, however, be concluded that as the state increases in population and industrialization the legislature will, in the not too distant future, be obliged to enact an administrative procedures act similar to such acts now in effect in a number of other states. In 1951 the legislature did pass an abbreviated act of this nature but it was vetoed by the governor. Undoubtedly its weaknesses warranted such action but even in failure the handwriting on the wall was visible.

RALPH M. WADE

44. Wyo. Stat. §§ 27-13, 27-18 (1957).

45. Wyo. Stat. §§ 9-82, 27-48 (1957).