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Reviewability of Administrative Action in Wyoming

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"The major problems of judicial review of administrative action are whether, when, for whom, how and how much judicial review."[1] This article will be confined to the whether, when and how aspects of judicial review of administrative action.

Several states have adopted the Model State Administrative Procedure Act which will be discussed so far as is pertinent to the scope of this article.

Whether or not administrative action is reviewable may or may not depend upon whether there is a statute which grants the right to have judicial review.

As Davis points out in his treatise on administrative law, there seems to be a common law of judicial review of administrative action in the federal courts. Davis says that in the absence of legislative guidance either through statute or legislative history, the courts must decide as a matter of common law whether or not particular administrative action should be reviewable. Davis goes on to say, "The decisions (federal) of the past two or three decades fit reasonably well the idea of a presumption of reviewability that may be rebutted by an affirmative indication of legislative intent in favor of unreviewability, or by some special reason for unreviewability growing out of the subject matter or the circumstances."[2]

In the state courts the prevailing view seems to be that appeals to the courts from the action of administrative officers or boards exist only under statutory authority and unless a statute provides for an appeal, the courts are without jurisdiction to entertain them.[3] However, there are a number of cases which hold that there is an inherent right of appeal from administrative action especially where individual constitutional rights are violated.[4]

In a recent decision, the Supreme Court of Wyoming, in reviewing the report of a court appointed appraiser in a pipeline right of way condemnation proceeding, said that, "The inherent constitutional powers of the court are such that they have a right of review in all proceedings of

1. Davis, Administrative Law Text, 498.
2. Davis, Administrative Law Treatise, p. 30, § 28.07, vol. 4.
3. City of Milwaukee v. Public Service Commission, 11 Wis.2d 111, 104 N.W.2d 167 (1960); From v. Sutton, 156 Neb. 411, 56 N.W.2d 441 (1953); In re Bell's petition, 396 Pa. 592, 152 A.2d 731 (19593; Kansas City v. Jones and Laughlin Steel Corp., 187 Kan. 701, 360 P.2d 29 (1961); Lindblom v. Board of Tax Appeals, 151 Ohio St. 250, 85 N.E.2d 376 (1949); Minnis v. Hamilton County Board of Appeals, 89 Ohio App. 289, 101 N.E.2d 388 (1951); Opinion of the Justices, 96 N.H. 513, 68 A.2d 859 (1949); Roberts v. Watts, Ky. 258 S.W.2d 513 (1953); Taggarder et al. v. Montoya, 58 N.M. 18, 212 P.2d 1049 (1949); Young v. Tyman, 148 Conn. 456, 122 A.2d 190 (1961).
4. Brashears v. Lindenbaum, 198 Md. 619, 56 A.2d 847 (1948); Brazosport Savings and Loan Association v. American Savings and Loan Association, Tex. 342 S.W.2d 747 (1961); City of Amarillo v. Hancock, 150 Tex. 231, 239 S.W.2d 788 (1951); Kentucky Alcoholic Beverage Control Board v. Jacobs, Ky., 269 S.W.2d 189 (1954); Public Service Commission v. City of Indianopolis, 235 Ind. 70, 131 N.E.2d 308 (1956); Richardson v. Beattie, 98 N.H. 71, 85 A.2d 122 (1953).

this nature. Irrespective of statutory authority therefor, it has been generally held that the court to which the report is submitted has power to review said report and to entertain exceptions thereto."

The case would seem to suggest that the right of review may be available even in the absence of statutory authorization. However, it should be emphasized that the court was considering the decision of a court appointed appraiser and the decision although administrative in nature was not that of typical administrative agency. Thus, the right of review of which the Supreme Court speaks may well be limited in scope to the particular situation which they were considering. Later in the same decision, the court distinguished between the right of courts to review decisions of lesser tribunals to ascertain the regularity of their proceedings and an appeal and said that, "such an appeal ordinarily can exist only by virtue of a statute."[5] The significance of this distinction is not clear since the court has not specified from the standpoint of scope or review the extent to which a "review differs from an "appeal." Since this Note was written the Wyoming Supreme Court has stated (but by way of dictum) that ". . . there is substantial precedent for the view that courts have inherent authority to review the actions of administrative officials or agencies where their actions are arbitrary, fraudulent, collusive, or otherwise illegal. . . ."[5a]

There is also a hint of a common law or constitutional right to judicial review in *Farm Investment Corporation v. Carpenter, in* which the court said, "Although in the statutory proceedings for the determination of water rights, the courts obtain jurisdiction only by way of appeal from the decisions of the board of control, all the ordinary remedies known to the law, pertinent to the use and appropriation of water are open to all interested in such rights, equally with all other persons in respect to any kind of right or property. . . ."[6]

In many instances in Wyoming there are statutes which authorize and provide procedure for judicial review of administrative action by appeal to the district courts. This seems to be especially true in those instances where the agency action could substantially affect the personal or property rights of an individual such as in the granting of a license or in the leasing of state land. However, a substantial number of the statutes are silent concerning judicial review of the agency's action and since the Supreme Courts seems to have recognized that the right of appeal exists only by virtue of statutory authorization,[7] some other procedure will have to be utilized to obtain judicial review of the agency's action in these instances. Statutory provisions relating to review of administrative action in Wyoming are summerized in Appendix A.

5. *Colorado Interstate Gas Co. v. Uinta Development Co.*, Wyo., 364 P.2d 655, 657 (1961).
5a. Brinegar v. Clark, 371 P.2d 62, 66 (Wyo. 1962).
6. Farm Investment Corporation v. Carpenter, 9 Wyo., 110, 61 Pac. 258, 259 (1900).
7. Colorado Interstate Gas Co. v. Uinta Development Co., Wyo., 364 P.2d 555 (1961).

Depending upon the type of administrative action, judicial, legislative or ministerial, an aggrieved party may be able to avail himself of one of the common law or extraordinary writs to obtain judicial review.

Where the agency action is judicial or quasi-judicial in nature the aggrived party may be able to obtain review through the use of the writ of certiorari. However, since the use of the writ of certiorari is confined to the review of judicial or quasi-judicial action it will be of no use if the agency's action is not judicial or quasi-judicial.[8] Further, the statutes expressly providing for judicial review generally relate to the type of action characterized as quasi-judicial. (See Appendix A).

Davis at page 435 of his casebook states that "What is judicial or not is uncertain and wavering. . . ." He goes on to cite what he terms a frequently used test that if the officers acting are invested by the legislature with the power to decide on the property rights of others they act judicially in making their decision.[9]

The Supreme Court of Wyoming in *Call v. Town of Afton* stated, "Where an inferior court is not a court of record or does not preceed according to the course of common law, the proper remedy is by certiorari." The court went on to add that the writ will not issue as a substitute for an appeal saying, "The writ will not ordinarily issue in those cases where there is a plain, speedy and adequate remedy by appeal."[10] In the light of this holding it would appear that the writ of certiorari may be of only limited value in challenging administrative action as in most instances where an agency is vested with the power to determine property rights of individuals there is a statute which authorizes an appeal to the district courts. However, in *State v. Dahlem* the court in holding that the writ of quo warranto was not the proper procedure to obtain review of the Governor's action in removing the sheriff of Park County said. "The writ of certiorari may be used in the proper case in this state," and further stated, "Evidence taken before the Governor or other officer attempting to remove an official should be reviewable by certiorari. . . ."[11]

Another method of obtaining review of judicial or quasi-judicial administrative action may be provided by Rule 72 of the Wyoming Rules of Civil Procedure which provides:

> 72 (b) A judgment rendered or final order made by a justice of the peace, or any other tribunal, board or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated or modified by the district court."
>
> 72 (a) Defines a final order as, "an order affecting a substantial right in an action when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding or upon a summary

8. Davis, Administrative Law Text, 444.
9. Davis, supra note 1, at 435.
10. 73 Wyo. 271, 278 P.2d 270, 273 (1954).
11. 37 Wyo. 498, 263 Pac. 708, 709 (1928).

application in an action after judgment, is a final order which may be vacated, modified or reversed. . . .

These two provisions read together would seem to authorize an appeal from administrative action whenever the agency in the exercise of judicial functions renders a final order which affects the substantive rights of a party to the action.

In *Hoffmeister v. McIntosh,* the Supreme Court in determining whether Rules 72 (e), 73, 74 and 75 governed an appeal from a Board of County Commissioners said, "It might be argued that a strict interpretation of Rule 1 thereof (Wyoming Rules of Civil Procedure) contemplates the procedures established to apply only in courts of record, but all rules must be construed together and perhaps . . . Rule 72 (e) does apply."[12] It is interesting to note that in this case there were specific statutory provisions aside from the Rules which prescribed the procedure for appeals. It would seem that if Rule 72 was applicable in this instance it would be of even greater applicability in those instances in which the statutes are silent concerning appeal.

Mandamus is the proper remedy for controlling ministerial acts, for requiring the exercise of discretion and for preventing the abuses of discretion, but not for controlling the manner in which discretion is exercised.[13]

In *State v. State Board of Land Commissioners* the court said, "The general rule is that a judicial discretion vested in a board will not be controlled by mandamus."[14]

The two main problems regarding mandamus are: (1) "the difficulty of determining what acts are ministerial and what are discretionary," and 2) "the difficulty of drawing a line between substitution of judicial judgment and the correction of an administrative absuse of discretion. . . ."[15] However, in a very recent case the Wyoming Supreme Court, although preserving one of the traditional rationalizations ("a clear legal right") for mandamus applied this remedy in a manner suggesting that it may become the utility remedy for obtaining judicial review in Wyoming.[15a]

The Supreme Court of Wyoming is among those courts which adhere to the view that mandamus should be denied in those instances where there is another adequate method of review available. In *State ex rel. Walls v. State Board of Land Commissioners* the court said, "A writ of

12. Wyo., 361 P.2d 678, 680 (1961).
13. Davis, supra note 1, at 435. Appel v. State, 9 Wyo. 187, 61 Pac. 1015 (1900); State ex rel. Murphy v. District Court of Second Judicial District, 38 Wyo. 382, 267 Pac. 424 (1928); State ex rel. Marsh v. State Board of Land Commissioners, 7 Wyo. 478, 53 Pac. 292 (1898).
14. State ex rel. Marsh v. State Board of Land Commissioners, 7 Wyo. 478, 53 Pac. 292, 295 (1898).
15. Davis, Administrative Law Treatise, vol. 3, § 23.10, p. 338.
15a. Board of County Commissioners of Fremont County v. State ex rel. Miller, ... Wyo. —, 369 P.2d 537 (1962).

mandamus must not be issued in a case where there is a plain and adequate remedy in the ordinary course of law," that, ". . . mandamus cannot be resorted to as a substitute for an appeal . . . is a well settled principle which should not be disregarded without good reason."[16]

Section 1-880, Wyoming Statutes (1957) states that, "the writ (of mandamus) must not be issued in a case where there is a plain adequate remedy in the ordinary course of law."

An interesting Wyoming case in *State v. Hull* which was a mandamus proceeding by a property owner to compel the city manager and city engineer of Laramie to issue a permit for the construction of a warehouse in a residential zone. The court, although paying homage to the traditional principle that where there is a statutory method of appeal it should be followed, allowed the petitioner to obtain review by the writ of mandamus, although there was a statute which provided for an appeal to the district court. The court intimated that the preferred or better method of review would be by appeal by said that "the procedure followed was not inappropriate to the end sought."[17]

Davis points out that the writ of mandamus may not be the only approach to mandatory relief. "Another approach is through the mandatory injunction which has its own independent origin in equity. An equity court traditionally has power to issue both prohibitory injunctions and mandatory injunctions. A court which has jurisdiction to issue an injunction is not limited to issuing an injunction which is prohibtory in form or substance. An equity court has the power to grant the relief it finds to be appropriate and practical in the circumstances."[18]

Although the writ of mandamus has not been used to any great extent in Wyoming, the Supreme Court does not seem to be hostile to its use and it may be of some possible value in obtaining judicial review in those instances in which the administrative action is ministeral in nature or a "clear legal right" can be asserted.[18a]

The writ of prohibition lies to prevent an exercise of judicial or quasi-judicial power in excess of jurisdiction. The Supreme Court of Wyoming limits the use of the writ to, ". . . the prevention of the exercise by an inferior court of jurisdiction with which it has not been vested and the writ issues in such cases only when the party seeking it is without other adequate means of redress for the wrong about to be inflicted, i tis granted to prevent action and not to undo that which has already been done."[19]

Davis points out that, "the very essence of the writ of prohibition is to violate the modern doctrine requiring exhaustion of admisintrative

16. 36 Wyo. 302, 254 Pac. 491, 493 (1927).
17. 65 Wyo. 251, 199 P.2d 832 (1948).
18. Davis, supra note 12, at 338 and 339.
18a. Board of County Commissioners of Fremont County v. State ex rel. Miller, — Wyo. —, 369 P.2d 537 (1962).
19. State ex rel. Richmond v. District Court of Second Judicial District, 45 Wyo. 29, 14 P.2d 673, 678 (1932).

remedies . . . for the purpose of prohibition is to prevent administrative action before it is taken."[20]

Davis states that, "When an agency acts legislatively, certiorari and prohibition are unavailable whenever the convenitional theory is followed, for the action is not judicial, and mandamus is unavailable because the action is not ministerial; this means an injunction is probably the appropriate means of challenging the agency's action unless a statutory remedy is provided. Injunctions have otfen been successfully used in the state courts, but the area where they can be used is restricted and the hazards of losing a case on account of wrong choice of remedy seem to be ever present."[21]

Although the injunction has not been used to any great extent to challenge administrative action in Wyoming, it is interesting to note that its use has been confined to challenging action which is legislative in nature.

The Supreme Court has allowed its use to restrain a city from enforcing a zoning ordinance[22] and has intimated that it would be proper method of preventing the collection of taxes[23] and to prevent the erroneous evaluation of land for tax purposes.[24] So, it would appear that the writ of injunction may be an appropriate means of challenging rule making or legislative functions of Administrative agencies in Wyoming.

Wyoming has adopted the Uniform Declaratory Judgment Acts which would seem at first blush to make a declaratory judgment the proper procedure for obtaining judicial review in almost any case. Section 1-1031, Wyoming Statutes, 1957, states that, "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. . . ." However, Section 1-1056 states, "The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree if rendered would not terminate the uncertainty or controversy given rise to the proceeding." And, the Supreme Court of Wyoming in *Anderson v. Wyoming Development Co.* stated, "It may be fairly said to be a uniform rule of construction in these statutes that proceedings for declaratory judgment will not be entertained where another equally serviceable remedy has been provided for the character of the case in hand."[25] However, this decision appears to be superseded by Rule 57 of the Rules of Civil Procedure which provides ". . . the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. . . ."

20. Davis, Administrative Law Cases, 436.
21. Davis, supra note 1, at 447.
22. Weber v. City of Cheyenne, 55 Wyo. 702, 97 P.2d 607 (1940).
23. Board of Commissioners of Albany County v. Featherstone, 26 Wyo. 1, 174 Pac. 192 (1918).
24. Bunten v. Rock Springs Grazing Association, 29 Wyo 461. 215, Pac. 244 (1923).
25. 60 Wyo. 471, 154 P.2d 318, 348 (1954).

Davis suggests that the states should give the Uniform Declaratory Judgments Act a literal construction and follow the lead of the federal courts allowing the declaratory judgment to be a general utility remedy for judicial review especially in those instances in which the statutes are silent concering appeal.[26]

The Revised Model State Administrative Procedure Act would seem to make administrative action involving adjudication or rule making subject to the judicial review. Section 15 of the Model Act provides: "Any person aggrieved by a final decision in a contested case is entitled to a judicial review. . . ." A "contested case" is defined as encompassing the area generally referred to as administrative adjudication. Section 7 of the Model Act makes provision for still another method for challenging administrative regulations: "The validity or applicability of any rule may be determined in an action for declaratory judgment . . . when it is alleged that the rule, or its threatened application, interferes with or impairs . . . the legal rights or privileges of the plaintiff. . . ."

WHEN IS ADMINISTRATIVE ACTION RIPE FOR REVIEW?

"The basic principle of ripeness is that judicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote."[27] The underlying theory is that courts will not render advisory opinions and unless the case presents an actual case and controversy between adverse parties, a justiciable controversy, the court will not entertain it.

The Supreme Court of Wyoming seems to have recognized the traditional ripeness doctrine in *Walls v. State Board of Land Commissioners.* In considering the question of whether there was an appealable controversy the court said, "The refusal of the board to hear realtors' evidence may have been error, but it did not prevent the proceeding from being a contest. Two parties were applying for a lease of the same land. That amounted to a contest and if the board's decision was wrong, it should be set right by reversal on appeal."[28] In *North Laramie Land Co. v. Hoffman* the Court said, "If it be made to appear to an appellate court that the questions involved are no longer of any practical importance to the parties, the case will not be reviewed on the merits. . . ."[29] The Supreme Court has, however, considered a moot case where, in the words of the court, ". . . the principles involved were of sufficient interest and importance to merit full discussion."[30]

1) Davis suggests that, "An issue is normally ripe for judicial determination when interests of the plaintiff are in fact subjected to or imminently threatened with substantial injury."[31]

26. Davis, supra note 18, at 437.
27. Davis, supra note 1, at 372.
28. 30 Wyo. 302, 254 Pac. 491 (1927).
29. 28 Wyo. 183, 201 Pac. 1022 (1921).
30. Eastwood v. Wyoming Highway Department, 76 Wyo. 247, 301 P.2d 818 (1956).
31. Davis, supra note 1, at 394.

2) Section 15 of the Revised Model State Administrative Procedure Act provides, "Any person aggrieved by a final decision in a contested case is entitled to judicial review under this Act."

WHAT ARE THE MECHANICS FOR OBTAINING REVIEW?

The mechanics for review vary according to the procedure by which administrative action is sought to be challenged.

In those instances in which the statutes authorize an appeal to the district court, the various mechanical steps are set out in the statutes. An illustrative provision would be Sections 36-28 to 36-30, Wyoming Statutes, which deal with appeals from the decisions of the Board of Land Commissioners.

Section 36-28 provides, in essence, that the party appealing shall within thirty days after the decision of the board file an intention to appeal with the Commissioner of Public Lands and in the district court to which the appeal is being taken, and within fifteen days after filing of notices enter into an undertaking of not less than $500 to be given to the appellees. Section 36-29 provides that upon notice of the intention to appeal having been filed with the Commissioner of Public Lands he shall transmit to the Clerk of the Court a certified copy of all papers and documents in evidence together with a transcript of all orders and journal entries and a certified copy of the decision appealed form. Section 36-30 provides that upon approval of the bond, the Clerk of the District Court shall issue a notice to the Commissioner of Public Lands and the appellees that the appeal has been perfected.

The above provision has been cited only for the purposes of illustration and it should be emphasized that there is considerable lack of uniformity as to procedures for obtaining review from the various administrative agencies and as previously noted a complete lack of procedure in many instances. For these reasons a study has been made of the existing procedures for review from the various administrative agencies and is set out in Appendix A.

The mechanics for review set out in the Revised Model Administrative Procedure Act are similar in a general way to the mechanics for review of several of the Wyoming Statutes which deal with appeals from administrative action. The Model Act Provisions are set out in detail in Appendix B.

If review of administrative action is sought through the use of the extraordinary writs, injunction or declaratory judgment, the mechanics for obtaining this type of relief are set forth in the various statutes which deal with each of these remedies. In most instances, the proper procedure seems to be a petition or an application to the district courts or the Supreme Court, except that a writ of prohibition can only be granted by the Supreme Court.

Rule 57 of the Wyoming Rules of Civil Procedure states, "The procedure for obtaining a declaratory judgment shall be in accordance with these rules. . . ."

WHAT CONSTITUTES THE RECORD ON REVIEW?

The various statutes setting for the procedures for review of administrative action usually stipulate that review will be either by appeal or trial de novo in the district court.

Rule 75 of the Wyoming Rules of Civil Procedure states in essence that the record on appeal consists of whatever portion of the record, proceedings and evidence the parties may deem essential to rely upon except that the court has power to correct or modify the record.

In *Hoffmmeister v. McIntosh* the Supreme Court said, ". . . that where the controlling statute provides for an appeal the trial in the district court will be confined to a review of the record and not a trial de novo." However, the court went on to say, "If on appeal from an inferior tribunal, the minutes are incomplete, they are subject to supplementation by competent evidence which would show actual occurrences before the agency."[32]

When the statutes provide that review in the district court shall be by trial de novo, the court is not confined to a review of the record. In *Rayburne v. Queen,* the Supreme Court in determining what is meant by a trial de novo said, "The findings of the board (Board of Land Commissioners), if supported by substantial evidence, should be approved by the court on the trial de novo, and we think that such substantial evidence may consist of competent testimony either (a) taken before the board and properly preserved or (b) adduced in the trial court as in the trial of a civil action."[33]

If review is sought and obtained through one of the extraordinary writs, injunction or declaratory judgment, the proceeding would be more in the nature of a trial de novo rather than an appeal and the court would not be confined to a review of the record. In fact, both Section 1-1059 (Uniform Declaratory Judgments Act) and Section 1-888 (dealing with mandamus) provide, in essence, that issues of fact raised by the pleadings must be tried in the same manner as in civil actions.

On several occasions the Supreme Court has criticized various agencies, particularly the Board of Land Commissioners and the Public Service Commission, for keeping inadequate records of their proceedings.[34] Exemplary of this would be this language from *Rayburne v. Queen*:

> If the board (Board of Land Commissioners) is to be accorded the full discretion to which we think it is entitled, the district

32. Wyo. 364 P.2d 823 (1961).
33. 78 Wyo. 359, 326 P.2d 1108, 1109 (1958).
34. Howard v. Lindmier, 67 Wyo. 78, 214 P.2d 737 (1950); McDermott v. Hudson, Wyo. 348 P.2d 73 (1960); Svilar Light and Power, Inc. v. Riverton Valley Electric Association, Inc., Wyo. 335 P.2d 52 (1960).

> court at the trial de novo should have before it for consideration a true transcript of the evidence which was taken before the board, thus assuring all concerned that the same criteria was applicable in all determinations. The right of appeal authorized by the legislature could thus be most effectively expressed without disturbing the board's original authority. The testimony before the board in contested cases should be preserved verbatim and be available to the court in the trial de novo as one of the bases of its judgment.[35]

WHAT ARE THE REMEDIES ON REVIEW?

In appeal from an admisistrative proceeding the authorities agree that in the absence of a statutory provision allowing the courts to modify or alter the decision of the administrative agency, the courts are limited to either affirming or vacating the agency's decision or remanding it for proper proceeding. In *Colorado Interstate Gas Co. v. Uinta Development Co.* a court appointed appraiser had determined the compensation for land in a condemnation proceeding for a pipeline right of way. Considering the report of the appraiser, the court said, "In absence of statutory authority the court's power is limited to the right to confirm, set aside or remit the report of the appraiser."[36]

Perhaps such statutory authority is found in Rule 72 (b) of the Wyoming Rules of Civil Procedure which provides:

> A judgment rendered or a final order made by a justice of the peace or any other tribunal, board or officed, exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated or modified by the district court.

If judicial review is obtained by the use of an extraordinary writ, declaratory judgment or injunction, the remedy or relief will depend upon the writ which is used and the type of relief that is requested in the petition to the court.

Section 159 of the Revised Model Act states, "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. (The court may affirm the decision of the agency or remand for further proceedings, or it may reverse or modify the decision on the bases set forth in the Act."

CONCLUSION

In many instances administrative action is reviewable by appeal to the district court, but in other instances the statutes are silent concerning judicial review. In the event that there is no statutory provision which grants an appeal, some other method of challenging administration action must be resorted to.

The use of the extraordinary writs, declaratory judgment and injunc-

35. 78 Wyo. 359, 326 P.2d 1108 (1958).
36. Colorado Interstate Gas Co. v. Uinta Development Co., Wyo. 364 P.2d 655, 657 (1961).

tion in obtaining judicial review of, or challening, administrative action has been somewhat restricted by the Supreme Court of Wyoming's attitude that this type of relief will not be granted where another remedy is appropriate, or as a substitute for an appeal. Because of this attitude on the part of the Supreme Court, the hazard of losing a case because of an improper choice of remedy is ever present.

Some states have adopted the Model State Administrative Procedure Act in an effort to establish a uniform method of obtaining judicial review from administrative action. However, Davis says the Model Act is defective in two respects: "Because the Model Act applies only to state agencies and not to agencies of municaplities and other state subdivisions, the extraordinary remedies continue to cause trouble in a large portion of cases, and the Model Act fails to abolish the extraordinary remedies. Furthermore, the Model Act's system of reviewing rules by one method (declaratory judgment) and contested cases by another method is unnecessary and causes trouble."[37]

Davis advocates the complete annihilation of the extraordinary writs and the establishment of a single form of proceeding for all review of administrative action called a "petition for review."

Just how far Wyoming should go in reforming methods of judicial review as a difficult question. If a reform is desirable, perhaps Wyoming could adopte a form of the Model Act. If this is done, the draftsmen should be well aware of the criticism which has been leveled upon the Act by such authorities as Davis, and should consider carefully the experiences of those states which haev adotped the Act.

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37. Davis, supra note 18, at 440.

APPENDIX A

Chart of Statuory Procedures for Obtaining Judicial Review of Administrative Action in Wyoming.

Administrative Agency	Courts in which review may be obtained	Procedure for obtaining review
State Bd. of Accountancy	No provision for review	
Aeronautics Com.	No provision for review	
Board of Agriculture	No provision for review	
Wyoming Liquor Com.	No provision for review	
Board of Architects Section 33-31	In the district court in the county in which licensee or applicant has his residence.	Within 60 days after decision of the board, file in the office of the clerk of the district court a petition setting forth the facts of the refusal to issue a license or revocation of a license, the grounds, the defenses, together with a copy of the petition.
State Board of Barber Examiners	No provision for review	
Black Hills Joint Power Commission	No provision for review	
State Board of Control Section 41-25	Appeal to the district court in the county in which the point of diversion is proposed to be located.	Within 60 days of the determination, file in district court a notice in writing stating that the party or parties appeal to the district court. Then within six months after appeal is perfected, file with clerk of district court a certified transcript of the order, a copy of attendance with a petition setting out the cause of compalint of the party or parties appealing.
Boxing Commissioner	No provision for review	
Board of Registration in Chiropody	No provision for review	
Board of Land Com. Sections 36-27 and 36-28	Appeal to the district court within the county in which the land in controversy is situated.	Within 30 days after notice of decision, file with the Commissioner of Public Lands a notice in writing to the Board of Land Commissioners stating intention to appeal, and shall file like notice in the district court.
Board of Chiropratic Examiners, Sec. 33-144	Appeal to the district court of the county wherein his license to practice is of record.	Same as provided for in cases of appeals from a justice court to the district court.
Bd. of Public Utilities	No provision for review	
Fire Department Civil Service Commission	No provision for review	

Administrative Agency	Courts in which review may be obtained	Procedure for obtaining review
Police Department Civil Service Com. Sec. 13-403	District Court in county in which city is situated.	File written notice of appeal with clerks of city and district court within 10 days after the decision of commission. At time of filing notice of appeal appellant shall execute bond ($200.00). Within 3 days after filing in district court, give written notice to commission thereof. Appeal shall be to supreme court from judgment of district court.
Coal Mining Examining Board of Wyoming	No provision for review	
Board of Cosmetology	No provision for review	
Bd. of Dental Examiners Section 33-207	District court in the county where the violation occurred.	Within 30 days of revocation, serve upon the secretary of the board written notice of appeal containing statement of grounds of appeal and file in the office of the clerk of the district court an appeal bond.
State Board of Education	No provision for review	
State Bd. of Embalming Section 33-241	Right of appeal to the district court of the county in which the licensee resides.	Anytime within 30 days after entry of order of Board. Service of notice in writting of intention to take apepal shall be sufficient notice to the adverse party. A transcript of pleadings shall be filed in the office of the clerk of the district court and shall complete the appeal.
Employment Security Commission	No provision for review	
Board of Examining Engineers, Sec. 33-364	Courts of the state	Appeal to the courts of the state within 60 days, in due process of law, upon revocation of certificate.
Farm Loan Board	No provision for review	
Bd. of Directors Flood Control District	No provision for review	
Game and Fish Com.	No provision for review	
State Board of Health Secton 35-15	Review in district court of county of residence.	Within 30 days after decision, file in district court an appropriate action requesting review.
State Board of Medical Examiners, Sec. 33-340	Appeal to the district court in the county where he lives or to the district court of Laramie County.	File with the board within 15 days a written notice of appeal. Perfect appeal by filing wihtin 15 days after the Board certifies and delivers to the district court the original statement of the nature of the offense charged and the defense, with the clerk of the district court and with the Board a copy of the notice of appeal and a petition stating the grounds for the appeal.
State Military Board	No provision for review	
Inspector of Mines	No provision for review	
Livestock and Sanitary Board	No provision for review	

Administrative Agency	Courts in which review may be obtained	Procedure for obtaining review
Natural Resources Bd.	No provision for review	
State Board of Nursing Section 33-288	Appeal to the district court of the county of residence.	File within 15 days after receipt of a copy of the decision, a notice of appeal with the clerk of the district court. Within 30 days after notice of appeal, appellant shall file with the clerk of the district court a petition setting forth the grounds of the appeal. A copy of the notice of appeal and of the petition shall be served upon the secretary-treasurer of the board.
Oil and Gas Commission Section 30-225	1. Civil action against the commission in the district court of Laramie County or in the district court of residence. 2. Appeal as provided by law with respect to appeals from decisions of the Board of Land Commissioners.	1. Bring civil action within 90 days after entry of any rule, regulation, or order. 2. Procedure according to the code of civil procedure as in other civil cases.
Land Settlement Board	No provision for review	
Board of Examiners in Optometry, Sec. 33-300	Appeal to the district court of judicial district of place of business or to district court of Laramie County.	File with Board within 10 days after the order, a written notice of appeal and a demand in writing for the originals or certified copies of papers offered in evidence at the hearing. Within 30 days, thereafter the Board shall certify and deliver to the court the original papers of certified copies thereof. The appellant shall have 5 days thereafter to perfect his appeal by filing with the clerk of court and with the Board a copy of the notice of appeal and a petition stating grounds for the appeal.
State Parks Commission	No provision for review	
Board of Pharmacy Section 33-311	In district court of county in which licensee was resident.	Writ of certorari or by appeal.
Predatory Animal Board	No provision for review	
State Commission of Prison Labor	No provision for review	
State Board of Equalization, Sec. 39-29	Appeal to the district court of the county wherein the propertty or some part thereof is situated.	Party or parties appealing shall, within 60 days after the decision of the Board, file a petition with the district court setting out the cause of complaint and a copy of the records of the Board plus copies of the assessment or assessments.

Administrative Agency	Courts in which review may be obtained	Procedure for obtaining review
State Director of Revenue	No provision for review	
Public Service Com. Section 37-45	Right to appeal to the district court of Laramie County.	Within 90 days after rendition of order of the Commission, file a petition of appeal with the clerk of the district court of Laramie County which shall state completely the grounds upon which the revewi is sought and shall be accompanied by a copy of the record.
Real Estate Board Section 33-52	Appeal to district court in county of residence of applicant or licensee or place of business.	Within 10 days after delivery of order, file with the Real Estate Commissioner written notice of appeal and a demand in writing for the original or certified copies of all papers on file with the Board affecting or relating to the hearing. Within 30 days thereafter, the Commissioner shall certify and deliver to the district court the original papers or copies thereof. Appellant shall have 5 days thereatfer to perfect his appeal by filing with clerk of district court and Commissioner, the copy of notice of appeal and a petition stating grounds for appeal.
Retirement Board Section 9-303	In district court in district in which the person lives.	Any person aggrieved, may within 30 days after mailing of decision to last known address, file an action in the court in the district in which the person lives.
Soil Conservation	No provision for review	
Board of State Supplies	No provision for review	
Agency for Surplus Property	No provision for review	
Board of Trustees, University of Wyoming	No provision for review	
Water Conservancy Dists. Board of Directors	No provision for review	
Board of Charities and Reforms	No provision for review	
Board of Pardons	No provision for review	
State Board of Veterinary Examiners, Sec. 33-379	Appeal to district court of county of residence.	Upon revocation of license, original holder may within 60 days file with clerk of district court a petition setting forth the facts of the revocation and grounds therefor, with defenses presented to the Board and a certified copy of the record.

Administrative Agency	Courts in which review may be obtained	Procedure for obtaining review
Collecting Agency Board Section 33-162	Review in the district court of Laramie County or county of principle place of business.	Substantially same as for Board of Equalization, on petition of licensee.
Insurance Commissioner Section 26-51	District court of county in which applicant has principle place of business.	Same as for State Board of Control.
Blue Sky Commissioner Section 17-106	Any court of competent jurisdiction.	Commence an action in any court of competent jurisdiction to vacate or set aside finding of secretary of state on ground it is unjust or unreasonable.
Zoning Commissions Section 15-626	1. To board of adjustment. 2. May be appealed from board of adjustment to district court.	1. To board of adjustment. Within a reasonable time as provided by rules of board by filing with the officer from whom appeal is taken and with Board of Adjustment, a notice of appeal specifying grounds thereof. 2. File written notice of appeal with the secretary of Board of Adjustment within 10 days after decision setting forth grounds thereof, and within 10 days after filing notice with secretary of board, file with clerk of district court a transcript of the order, record, etc.
Child Caring Agencies Section 14-46.11	Apepals from board of review to district court of county of residence or principle place of operation.	File within 15 days after receipt of copy of the decision, a notice of appeal with clerk of district court. Within 30 days after filing of notice of appeal, file with clerk of district court a petition setting forth the grounds of the appeal.
Commissioner of Labor Section 22-18	District court in county in which controversy arose.	Within 30 days after decision, file with the Commissioner, a notice in writing stating intention to appeal. At same time shall file a like notice in district court and give due notice of filing to opposite party.
State Board of Insurance Agents Examiners Section 26-67.9	District court in county in which licensee or applicant has his residence.	Within 60 days after decision rendered, file in office of clerk of court, a petition setting forth the facts of the refusal or revocation, the grounds therefor, the defenses presented, together with a copy of the petition.

APPENDIX B

PROVISIONS OF THE REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT PERTAINING TO JUDICIAL REVIEW

Section 7. *Declaratory Judgment on Validity of Rules.*

The validity or applicability of any rule may be determined in an action for declaratory judgment in the (District Court of . . . County), when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights of privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity of the rule in question. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency.

Section 15. *Judicial Review of Contested Cases.*

a) Any person aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This Section does not limit utilization of or the scope of judicial review available under other means of review, rderess, relief, or trial *de novo* provided by law. Any preliminary, procedural, or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in the (District Court of the ..... County) within (30) days after the service of the final decision of the agency or, if a rehearing is held, within (30) days after the decision thereon. Copies of the petition shall be served upon the agency and all other parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under a review. By stipulation of all parties to the review proceedings, the record may be shortened. Any part unreasonably refusing to stipulate to limit the record may be taxed by the court for additional costs. The costs may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that

there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the administrative findings, inference, conslusions, or decisions are:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the statutory authority or jurisdiction of the agency;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) arbitrary or capricious or charactreized by abuse of discretion or clearly unwarranted exercise of discretion.