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ADMINISTRATIVE AGENCIES, THEIR STATUS AND POWERS

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INTRODUCTION

During the hearings before the joint legislative committee in 1942 on the proposed revised Constitution the estimate of the number of state administrative agencies was generally placed at "ninety odd". This estimate is high if we regard administrative agencies as only those instrumentalities with power to determine by rules, regulations or decisions the rights and obligations of private individuals. Nevertheless, Fitzgerald's Legislative Manual for the State of New Jersey (1947 edition), at pages 498-551, lists some ninety duly constituted departments, bureaus, commissions, boards and administrative officials, including not only such highly integrated and far-reaching agencies as the Department of Taxation and Finance, the Department of Alcoholic Beverage Control and the Board of Public Utility Commissioners, but also the more narrowly confined and lesser known agencies, such as the Board of State Canvassers, the State Capitol Building Commission and the Board of Embalmers and Funeral Directors. Government operation through the "ninety odd" agencies has been

a matter of gradual growth without any set plan or program. The absence of any relationship between the functioning of one agency and that of another has marked this development. To set forth the role of the State Constitution in the development of the law of administrative action is the purpose of this monograph.

I Establishment of Administrative Agencies.

Our form of government, both federal and state, is based upon the fundamental concept of the separation of powers. Article III of our State Constitution provides that "The powers of the government shall be divided into three distinct departments - the Legislative, Executive and Judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided." Generally speaking, it is the duty of the legislative department to make laws, of the executive to enforce them, and of the judiciary to apply them to particular sets of facts, and each of the three branches can exercise its own power only. Article IV, Section I of our State Constitution provides that "the legislative power shall be vested

in a Senate and General Assembly." It was early declared by our courts that the Legislature may neither abdicate, nor transfer, nor delegate to others its function to make our laws. An exception to this was the practice of committing to municipal organizations of the State local legislative power, based upon the fact that it has always been recognized as a legitimate part of the legislative function to enable the people to exercise local self government and the police powers incident thereto.

Although the Legislature cannot delegate to others its power to make laws, our courts have sanctioned laws which delegate the power to determine a fact, or a state of things upon which the particular law makes its own action depend. It is the determination as to whether or not those facts exist that comprises the function of law enforcement that is delegated to an administrative agency. It is only necessary that the statute under which the agency operates shall establish a sufficient basic standard, that is, to use the language of our highest state court, "a definite and certain policy and rule of action for the guidance of the agency created to administer the law." State Board of Milk Control v. Newark Milk Co. 118 N. J. Eq. 504, 522. In other words, the Legis-

lature by statute prescribes a policy to be pursued and the general means of its accomplishment. Thus, although rate-making is a legislative province, power has been constitutionally afforded to the Milk Control Board to establish minimum prices and to regulate the milk industry throughout the State, under a legislative direction to prevent "unfair, unjust, destructive and demoralizing practices which are likely to result in the undermining of health regulations and standards and the demoralization of agricultural interests in this State engaged in the production of milk." R. S. App. A:8-10. Typical of a statement of legislative policy in the delegation of administrative power was that contained in a statute directing the Commissioner of Banking and Insurance "to compute the value of policies and bonds according to such recognized standard of valuation as he might deem best for the security of the business and the safety of the persons insured." (See Iowa Life Insurance Co. v. Eastern Mutual Life Insurance Co., 64 N. J. L. 340, 347). The Commissioner of Alcoholic Beverage Control is guided by the legislative pronouncement that the statute shall be "administered in such manner as to promote temperance and eliminate the racketeer and bootlegger." R. S. 33:1-3. Some

statutes set forth very carefully detailed standards which embody a definite and certain policy, such as the statute creating planning boards for municipalities (R. S. 40:55-1); whereas other statutes, granting wide powers including regulatory powers over rates, set forth very general standards, such as the Public Utilities Act under which the board is guided by little more than the standard of "public convenience and necessity." See e.g. R. S. 48:11-1.

We see, then, that while the Legislature may not delegate its exclusive function to make the law, it may nevertheless prescribe a policy and implement that policy by delegating to some governmental instrumentality or agency or public official or group of officials the power to effectuate the legislative policy by making findings of fact, rules, regulations and orders within the defined standards and policies prescribed. It is pursuant to such authority that the multitude of governmental duties which could not possibly be performed by the Legislature itself has been delegated to administrative agencies. The agencies so created, whatever they are called, and whatever their composition, merely constitute the governmental mechanism by which a legislative policy is implemented.

Examination of the statutes under which the state agencies function will disclose standards of varying degrees of definiteness. Only on rare occasions has the pattern set forth by the Legislature been found to be insufficient. A state aviation act passed in 1931 was found to contain no standard whatever for the regulation of aircraft or the licensing of aircraft or airmen and hence was held to be violative of the fundamental concept of delegation of power. See State v. Larson, 10 N. J. Mis. R. 384. Where a standard is fixed, however, it is necessary only that it be as definitely described as is "reasonably practicable" under the circumstances of the particular field being controlled. See Veix v. Seneca B. & L. Ass'n., 126 N. J. L. 314, 323.

It appears, then, that there exists permissible power in the Legislature to delegate legislative authority within the general limitation that it must lay down intelligible principles and standards to serve as a basis for additional administrative legislation in the form of rules and regulations to fill in the details of the statutes. No constitutional provision for administrative legislation, nor for the administrative determination of causes, has been deemed necessary.

The proposed revised Constitution submitted by the Commission on Revision of the New Jersey Constitution in 1942 contained in the article dealing with separation of powers, a new section the first portion of which was as follows: "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law.***" (proposed Article II, Section 3). At the proceedings before the Joint Committee of the New Jersey Legislature to ascertain the sentiment of the people concerning the Commission's revised Constitution, this language was characterized as a declaration of existing law established by the decisions of our courts. (Record of Proceedings, p. 96). Opposition to the section was based upon the contention that the section would allow the Legislature to set forth a "general" standard rather than a "definite and certain" standard which the decisions of our courts seem to require. (Record of Proceedings, p. 101). In the revised Constitution which was submitted to the people at the general election in 1944 no attempt was made to declare the principles of law under which administrative bodies may exercise powers delegated by the Legis-

lature. The language of the article setting forth the separation of powers doctrine was substantially the same as that contained in the present Constitution. (See Revised Constitution, 1944, Article II).

In the Model State Constitution prepared by the Committee on State Government of the National Municipal League (1946 revision), the section which sets forth the legislative power attempts to define the power to delegate functions to administrative bodies. Article III, section 300 of that document provides, "The legislative power shall be vested in a legislature, which may delegate to other public officers the power to supplement statutes by ordinances, general orders, rules, and regulations, provided a general standard or principle has been enacted to which such delegated legislation shall conform.***" This general grant of legislative power was incorporated in the 1946 edition of the model constitution in order, as the committee explained, to protect the legislature against possible unfavorable judicial decisions on questions involving delegation of legislative powers. This attempt to define the limits of the legislative power to delegate discretion to administrative bodies may, however, cast doubt upon the heretofore judicially declared doctrine which in its application has been

sufficiently flexible to enable the legislature to fix the extent and character of the functions of administrative bodies in accordance with the inherent necessities of the governmental coordination. The language used would, for example, give rise to arguments whether the right to "supplement" statutes includes the right to "interpret" statutes by public regulations, the latter being admittedly within the scope of the administrative process. See Hampton, Jr. & Co. v. United States, 276 U. S. 394, 406.

Of greater concern than the delineation of the power of the Legislature to create administrative agencies has been the lack of any constitutional restriction on the number of administrative departments which the Legislature may create pursuant to such power. Under the present Constitution it has become possible for the numerous presently existing autonomous and semi-autonomous instrumentalities of administrative government to be created without direct responsibility to the Executive or Legislature, except as they may be restrained by the appropriating power of the latter. With a view towards regrouping the state agencies into a much smaller number of major departments and making the Governor primarily responsible for their internal organization and for the

distribution of powers among them, the proposed 1942 Constitution made provision for the allocation of all executive and administrative offices, together with their powers, duties and functions, within nine major departments. It was intended that by combining administrative activities into nine departments there would be created a responsible and accountable corps of administrative officers to function as a gubernatorial cabinet. Thus Article IV, section III, paragraph 1 of the proposed 1942 Constitution provided: "There shall be nine administrative departments in the State government designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, which shall be under the supervision and control of the Governor, and a State Treasurer and a State Comptroller who shall be appointed by and be responsible to the Legislature. The Governor, shall, by executive order, from time to time allocate all executive and administrative offices, agencies and instrumentalities of the State government among and within the foregoing departments and offices."

The revised New York State Constitution of 1938 (Article V, section 2) had made provision for eighteen departments in the state government, which by amendment

in 1943 was increased to nineteen by the addition of a department of commerce. The New York Constitution, however, also contains a provision (Article V, section 3) allowing the legislature to create "temporary commissions" for special purposes. The limitation of the number of administrative departments, as suggested by the New York Constitution, was incorporated into the Model State Constitution in the following language in the article dealing with the Executive. (Article V, Section 507): "There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify, or diminish the powers and functions of such departments, offices, or agencies. All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise."

The effort in the proposed Constitution of 1944 to simplify and facilitate executive control of administrative bodies was made in Article IV, Section III, where the number of "Principal Departments" was fixed at not more than twenty, created by the Governor by executive order, and among which were to be allocated by the Governor all the executive and administrative agencies.

Under the present Constitution the Legislature's power to create agencies, derived from the power to delegate fact finding functions to administrative bodies, carried with it the power to constitute such agency in any manner that it deems appropriate. Thus, the Legislature can determine the nature of the agency, whether a commissioner, commission, board, or the like, and can similarly determine the mode of appointment. We find, therefore, a multiplicity of heterogeneous departments. Because the subject is dealt with in the monograph dealing with the Executive Article we here simply point out that the 1942 proposed Constitution in Article IV, Section III, paragraph 4 provided that the heads of all administrative departments shall comprise a single executive, unless otherwise provided by the Legislature, and that all such department heads and the members of all boards, councils and commissions, except the State Comptroller and the State

Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate. The 1944 proposed Constitution likewise made the Governor the appointing authority. (Article IV, Section III). A model provision vesting the appointive power in the governor may be found in Article V, Section 507 of the Model State Constitution.

II Powers of Administrative Agencies

Most of the administrative agencies exercise powers that are deemed to be an admixture of law-making, law-enforcement and law-interpretation, the concentration of powers being called the "administrative process". An outstanding example of the concentration of such powers in one agency may be found in the Department of Alcoholic Beverage Control. The Commissioner is authorized to promulgate rules and regulations governing the conduct of licensees. In doing so he is in reality exercising a legislative function. When he institutes prosecutions for violations of the statute and regulations he acts much in the manner of the executive; and when he makes adjudications in original proceedings against licensees and violators of the statute as well as in appellate

proceedings from determinations made by subordinate agencies, he acts much in the fashion of a court.

Other important agencies which have a multitude of powers and the duty of constant supervision are the Board of Public Utility Commissioners, the Department of Motor Vehicles, the Department of Banking and Insurance, the Department of Taxation and Finance and the Workmen's Compensation Bureau. It has been expressly held that the vesting of such combination of powers in one agency is not violative of the constitutional doctrine of separation of powers. State Board of Milk Control v. Newark Milk Company, 118 N. J. Eq. 504. In an apparent exercise of such powers agencies have, however, on occasion exceeded their functions and encroached upon the province of the constitutional executive, legislative or judicial departments. Thus, an agency cannot in the exercise of its power to regulate and control, undertake to repeal a municipal ordinance. Phillipsburg v. Burnett, 125 N. J. L. 157. And while a board of adjustment may grant variances to promote statutory policy, it cannot alter districts demarcated by zoning ordinances. Brandon v. Montclair, 124 N. J. L. 135, aff'd. 125 N. J. L. 367. It is the doctrine of separation of powers which provides a guarantee against such arbitrary encroachment upon undelegated functions of

the several branches of government. Examination of the legislative standard or criterion and the terms of the particular statute under which the agency operates will indicate whether or not arbitrary power has been conferred and is being exercised.

The power to promulgate rules and regulations is one of the so-called quasi-legislative functions delegated to administrative agencies. Such rules and regulations have the force and effect of law. Cino v. Driscoll, 130 N. J. L. 535, 540. The delegation of such power may be broad and the administrative body may be vested with wide discretion in the exercise of the power. For example, the power of the Commissioner of Alcoholic Beverage Control to promulgate rules and regulations includes the power to fix prices by regulation. Gaine v. Barnett, 122 N. J. L. 39, aff'd. 123 N. J. L. 317.

Certain other functions delegated to agencies are considered quasi-judicial in nature. Thus, when the Director of Milk Control upon his own motion, or upon application of interested parties, holds hearings concerning the propriety of a minimum rate to be established, the hearings are much like those in a court proceeding. Parties present testimony through witnesses, they cross-examine witnesses and submit

briefs. Likewise, proceedings in various agencies to revoke licenses, or to review the grant or refusal of licenses by subordinate issuing authorities, or to determine whether an individual is entitled to compensation or unemployment insurance benefits, are all procedures which are usually considered to be in the exercise of a quasi-judicial power.

Are the agencies in the exercise of such powers guided solely by what is contained in the statutes under which the agencies are constituted, or are there constitutional guarantees that control the exercise of such powers? The concept of due process requires, in general, that at some stage of the administrative determination there be an opportunity to be heard. Although the State Constitution contains no express due process provision, such a clause is nevertheless implied from the State Constitution and treated as analogous to the due process clause in the fourteenth amendment to the Federal Constitution. State Board of Milk Control v. Newark Milk Company, 118 N. J. Eq. 504, 518. Notice and hearing are required where there is an administrative determination, quasi-judicial in nature, affecting property rights. Sears v. Atlantic City, 73 N. J. L. 710; Erie Railroad v. Paterson, 79 N. J. L. 512. And this is true also in

the case of a determination which affects a privilege rather than a property right. Garford Trucking, Inc. v. Hoffman, 114 N. J. L. 522. Where a statute in authorizing a quasi-judicial proceeding is silent upon the question of notice and opportunity to be heard the statute is generally construed by implication to prescribe reasonable notice and hearing in advance of determination. Wilson v. Karle, 42 N. J. L. 612, 613; Township of Kearny v. Ballantine, 54 N. J. L. 194. But notice and hearing are not prerequisite for the adoption of regulations in the absence of a provision therefor in the statute. It has been held that a judicial review of such administrative proceedings, on notice, satisfies the demand of the due process clause. State Board of Milk Control v. Newark Milk Co., supra.

Due process requires conformity with certain procedural principles. In quasi-judicial proceedings the agency's action must not be based upon undisclosed evidence or information outside the record. For example, a board which makes an inspection and renders its decision without disclosing its findings deprives the parties in interest of a fair hearing. A referee in a compensation case cannot base his findings upon personal research into medical authorities and treatises. While an agency may refer matters to a "hearer" for the purpose of compiling the record, the evidence must

be appraised and the determination made by the agency itself. By statute a County Board of Tax Appeals may refer to one or more of its members the duty of taking testimony in a matter pending before the board (R. S. 54:3-20.1) but the record must show that such member made a report to the board and that the determination was actually made by the board. It is not necessary for all of the members of the Board of Public Utility Commissioners (R. S. 48:2-32) to hear the witnesses as long as the determination is that of the board. The Civil Service Commission may act as a body or through a single member (R. S. 11:1-16) but the order must be that of the entire commission. The duty to make an independent determination entails study of evidence and briefs and is not satisfied by the reading and adoption of a report of the "law committee" of the agency.

The due process doctrine, therefore, guarantees the basic right to notice and opportunity to be heard in quasi-judicial proceedings. Since, however, due process does not afford a hearing prior to the promulgation of rules and regulations in the exercise of the quasi-legislative power, suggestions for constitutional provisions relating thereto have been forthcoming.

The 1942 proposed revised Constitution provided as follows (Article IV, Section III, Par. 9): "No rule or regulation made by any executive or administrative agency of the State government except such as relates to the organization or internal management of an executive or administrative agency of the State government shall be effective until it is filed with the Secretary of State. The Legislature shall provide by law for the speedy publication of such rules and regulations." This paragraph complemented Article II, par. 3 which provided: "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character." This clause was designed, according to the Commission on Revision, to guarantee "first, that the public business handled by administrative agencies will be subject to uniform published procedures barring secret and irregular transactions, and secondly, that all citizens shall receive fair and uniform treatment

from such agencies." Similar purposes motived Congress to enact in 1946 a far-reaching statute called the Administrative Procedure Act (5 U. S. C. A. §1001), which established, for federal agencies, standards for administrative procedures, laid down essential rules as to hearings and the introduction of evidence, and provided clearly as to court review of agency orders and decisions. This statute was, of course, enacted by the federal legislature without constitutional dictate and, while many of the provisions are yet untried, it is felt that the distinct separation of prosecuting and judicial functions in agency practice, the significant requirements for handling applications for licenses and methods of doing business, and the statements of policy and other data, constitute a clear guide to the fundamental rights of all persons whose affairs are affected by or who must deal with federal agencies. The 1942 proposed revision not only purported to direct the enactment of a state statute with similar purposes but it made express provision for filing and publishing rules and regulations. Opposition to the latter provision was based upon the argument that it failed to provide for an opportunity to be heard before the promulgation of rules and regulations. Obviously, however, the organic law of the

State should not purport to legislate with respect to the details of the practices and procedures of administrative agencies. The New York Constitution, as revised in 1938, merely provides for the filing and speedy publication of rules and regulations. (Article IV, section 8). In the face of the variety of authority, powers and duties of administrative agencies it would be manifestly unwise to proceed beyond that and generalize in the Constitution about the inner workings of agencies in the abstract.

III Judicial Review of Administrative Action

Nothing in the State Constitution suggests a right of appeal from determinations of administrative agencies. McGann v. La Brecque Co., 91 N. J. Eq. 307, 311. The statutes under which administrative agencies are established generally provide for review by the Supreme Court or, in a few instances, the Court of Common Pleas. While a statute may not in terms make any provision for a review of the proceedings of a particular administrative body, it does not follow that such proceedings are beyond investigation in the courts. The Supreme Court has common law jurisdiction to review by writ of certiorari the proceedings of all statutory tribunals. Public Service Co. v. Board of Public Utility Commissioners, 84 N. J. L. 463, aff'd. 87 N. J. L. 581. In

view of the fact that the Supreme Court is a constitutional court this jurisdiction cannot be impaired by the Legislature. Traphagen v. West Hoboken, 39 N. J. L. 232, aff'd. 40 N. J. L. 193. Issuance of the writ of certiorari, however, lies within the discretion of the court and where application for the writ is denied there is no further appeal. Daniel B. Frazier Co. v. Township of Long Branch, 110 N. J. L. 221.

At common law, generally, the court in reviewing proceedings of special statutory tribunals would review only questions of law and not determinations of facts. Freeholders of Union County v. Freeholders of Essex County, 43 N. J. L. 391. Since administrative agencies are created to determine matters of fact need was felt for a review of facts as well as law. The Legislature under its power reasonably to regulate the use of the writ of certiorari enacted section 11 of the Certiorari Act (now R. S. 2:81-8) which in broad terms provides for review of questions of fact and law on certiorari to review determinations of any statutory tribunal. The courts have consistently held that under that statutory provision the Supreme Court will review facts as well as law, but in application we find a considerable difference in the decisions with respect to the scope of such review. It has been

held that under this statute it is the duty of the Supreme Court to make an independent finding of facts and law. State of New Jersey v. State Board of Tax Appeals, 134 N. J. L. 34. In such event the Court must make specific findings on all the factual issues involved. Clifton v. State Board of Tax Appeals, 133 N. J. L. 379. If the opinion of the Supreme Court does not indicate that the court has determined disputed questions of fact the Court of Errors and Appeals will remand the case to the Supreme Court with instructions to weigh the evidence and render such decision as it thinks proper according to its view of the evidence. Gibbs v. State Board of Taxes, &c., 101 N. J. L. 371, 374; Rubeo v. Arthur McMullen Co., 117 N. J. L. 574, 577. The Court of Errors and Appeals may itself determine disputed questions of fact when the Supreme Court has failed to do so, but it will usually remand the case to the Supreme Court for its finding on the facts. Freudenreich v. Mayor, &c. Fairview, 114 N. J. L. 290, 294. In some cases, however, the Supreme Court has not undertaken to make independent findings of fact but has contented itself with examination of the record to ascertain whether there is evidence to sustain the finding of the statutory tribunal. Woodcliff Lake v. State Board of

Tax Appeals, 14 N. J. Mis. R. 132, aff'd. 117 N. J. L. 114. Where the Legislature in providing for the establishment of an administrative agency has declared that the findings of the administrative tribunal are to be conclusive, or where the legislation reveals a design to make the findings conclusive, the Supreme Court will not weigh the evidence and exercise its independent judgment upon the facts. National Dairy, &c. Co. v. Milk Control Board, 133 N. J. L. 491, 494. Any doubt as to the legislative purpose in this respect will be resolved in favor of allowing the court to weigh the evidence and resolve the issues of fact. Atlantic City, &c. Co. v. Board of Public Utility Commissioners, 128 N. J. L. 359, 364; aff'd. 129 N. J. L. 401. In general it may be said that in practice the Supreme Court does not upset an administrative determination of fact unless there is no substantial evidence to support it.

While review by writ of certiorari is the most important means of judicial examination of administrative determinations, another mode of review is by writ of mandamus which issues out of the Supreme Court to compel an administrative official to perform a ministerial act when the facts are undisputed and the legal right of the litigant is clear. Cooper v. State

Board of Veterinary Medical Examiners, 114 N. J. L. 10; aff'd. 115 N. J. L. 115. This writ is also issued in the discretion of the Supreme Court. Sagarese v. Holland, 116 N. J. L. 137. Also, the Court of Chancery will issue injunctive relief when an administrative official is pursuing an unauthorized course of action, which threatens irreparable injury. Berdan v. Passaic Valley Sewerage Commission, 82 N. J. Eq. 235, aff'd. 83 N. J. Eq. 340.

Since the legislature may endow an administrative agency with power to make findings of fact that are conclusive, provided the exercise of such authority is controlled by requirements of procedural due process (National Dairy, &c., Co. v. Milk Control Board, 133 N. J. L. 491, 494), it will be seen that the scope of judicial review of facts may be limited to the question of whether there is any substantial evidence to support the findings. This has led to suggestions that a complete review on the facts be provided by some other method. In only a few instances, such as in the workmen's compensation practice, is an appeal de novo provided. A suggestion for the establishment of an independent administrative tribunal with jurisdiction to review action of all administrative agencies which exercise state-wide

jurisdiction has been urged. (See Jacobs and Davis, "A Report on the State Administrative Agency in New Jersey" (1938)). This was in line with the proposal of the Special Committee on Administrative Law of the American Bar Association. In that committee's 1936 report (61 A. B. A. Reports 720), it was recommended that there be a general "legislative" court to provide for a complete appeal on the facts of all quasi-judicial decisions. In its 1937 recommendations the committee abandoned the idea of a general court and suggested instead that there be set up in each department an appeal board to review quasi-judicial decisions made in the department. The recently enacted Administrative Procedure Act which supplied new clarity and needed emphasis on the subject of judicial review of the determinations of federal agencies, has, for the time being, silenced criticisms of the scope of judicial review of federal administrative action.

It will be noted that proposals have been for statutory rather than constitutional reform. There are many cases where an administrative review would be useful and appropriate. On the other hand there are cases, such as those involving quasi-legislative or summary action, or certain cases of action before

a board based upon a complete trial, where a review, in addition to the review provided by the courts, would be inappropriate. This problem, it has been urged, would be best dealt with by statute.

A constitutional guarantee of court review of facts as well as of law, thereby precluding statutory finality to facts as found by certain agencies, has been the most frequently provoked proposal to broaden judicial review of administrative agencies. In the New York Constitutional Convention of 1938, over the very strong protest of a distinguished minority, the following provision was proposed as Article VI, section 27: "Whoever is aggrieved by a decision, order or other determination made in the exercise of a judicial or quasi-judicial function by any administrative officer, board, commission, department, agency, tribunal or other body***shall be entitled to a judicial review thereof, upon both the law and the facts, in a proceeding in the supreme court, which, if it shall find any such decision, order or other determination to be contrary to the evidence, or not supported by the facts, may direct a reconsideration or a new hearing of the matter.***"

The New York voters singled out this provision for defeat. Recognizing that freedom should be left

to the Legislature and the courts to distinguish between agencies, types of actions and situations, the 1942 and the 1944 proposed revisions likewise did not undertake to freeze into the Constitution a general provision covering judicial review of facts. There should be ample room for necessary changes and full allowance for differing needs of different agencies.

CONCLUSION

Various states, particularly North Dakota, Wisconsin, North Carolina, Ohio and California, have enacted legislation to bring about organizational and procedural improvements in their administrative systems. The enactment of the federal Administrative Procedure Act has begun a movement in the states for remedial legislation in the field of administrative law, and it will undoubtedly be the forerunner of extensive studies of state administrative processes and legislation to effect fair administrative procedures, either for all or some of the state agencies. Study of the problems as they apply to each particular agency in the State is essential, and even the basic principles involving assurance of proper publicity for administrative rules that affect the public, guarantees of fundamental fairness in

administrative hearings and assurances of proper scope of judicial review of administrative errors, should be the subject of legislation upon the basis of extensive investigation and comprehensive reports on our state administrative agencies.

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