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ADMINISTRATIVE LAW

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This study, like the one undertaken for the annual survey appearing in the Fall, 1950 issue of the *Mercer Law Review,* is a report and an analysis of the legislative and judicial development in the field of administrative law during the calendar period, June 1, 1950 to June 1, 1951.

At the outset it should be indicated that this report does not purport to cover all that has happened in the field of administrative law in Georgia during the year. It should be emphasized that this is a report on the legislative and judicial development of a particular subject and does not attempt to discuss the specific rules, regulations or orders which may have been issued by a great variety of administrative agencies during the current year. This point is emphasized because the discussion in this article does not proceed on exactly the same lines as a most important recent study in the field of administrative law might indicate. The learned author of a new book[1] on administrative law, in describing this field of law uses the following language: "Administrative law consists of constitutional law, statutory law, common law and agency-made law; the great bulk of it is created by courts in the process of constitutional and statutory interpretation." Because of the overlapping in the various fields of law which are given treatment in this annual survey, administrative law as it pertains primarily to constitutional law will be discussed elsewhere. Agency-made law will not be discussed except as it appears in the course of the discussion of specific litigated matters, which have come before the courts, that is, the appellate courts, during the reporting period.

In order that this study may fit into the pattern used by this same writer in discussing administrative law development for the last issue of the *Mercer Law Review,* namely, Fall 1950, which surveyed the Georgia law, it seems desirable to follow the same subdivisional analysis which was followed in the previous study. This analysis is as follows:

1. The attitude of legislature and court toward administrative finality.
2. Delegation of initial power to administrative agencies.
3. Notice and hearing.
4. Pleading.

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1. DAVIS, ADMINISTRATIVE LAW (1951).

5. Investigative powers, including the subpoena powers.
6. Hearing procedures.
7. Evidence.
8. Decision process, including rules as to responsibility for decisions and the necessity of findings to support such decisions.
9. Rule-making, both as to power, including legislative reservation of power of disapproval, and the necessity for publication.
10. Judicial review of administrative action.

ADMINISTRATIVE FINALITY

Some of the very important administrative agencies in the State of Georgia, such as the Public Service Commission are not expressly subject to judicial review by statute, and it is, therefore, primarily a question of the attitude of the Georgia court toward administrative finality, as to how far the courts will, by the use of ordinary remedial procedures, proceed to an examination of administrative action in such situations. An important decision of the Supreme Court of Georgia relative to this attitude is the case of *Conley v. Brophy*.[2] The substantive facts of this case arose from a contest to determine the proper directors of a a local school board. The Georgia Code[3] constitutes the county board of education a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school laws. Code Section 32-414 further provides the State Board of Education with appellate jurisdiction in all school matters which may be appealed from any county or city board of education and makes its decisions final and conclusive. In *Conley v. Brophy*[4] the Supreme Court stated that this statutory method of review was not intended to take away from the courts the power to inquire into the right to hold public office. It sustained the jurisdiction of the trial court in entertaining a quo warranto proceeding in an effort to have a judicial settlement of the dispute.

The Supreme Court's opinion contained the following significant paragraph which is quoted because of its expressive language: "We are not unmindful of the modern tendency to clothe boards and bureaus composed of men not trained in the law with judicial functions. This tendency we consider dangerous, and for this reason, the statutes will be strictly construed. We do not believe that the above cited provision of the school law is intended to, or has effect of, taking from the courts of this State the power to inquire into the right to hold public office and to confer this important power upon the school boards, composed of men not required to be trained lawyers. We therefore hold that the superior court did have the right and duty to try and determine the quo warranto proceeding in the instant case."

Thus the Supreme Court carries on in supporting the strong position

2. 207 Ga. 30, 60 S.E.2d 122 (1950).
3. GA. CODE ANN. §§ 32-414, 32-910 (Supp. 1947).
4. Note 2 *supra*.

it had taken in a relatively recent case.[5] The statement of the court was so important in that particular case that it seems desirable to quote from a portion of that opinion. The court stated in part as follows: "Unless the State provides access for review by a judicial tribunal, regulatory orders of a public service commission fixing rates would be unconstitutional. Therefore we hold that the ground of demurrer that plaintiff had an adequate remedy at law, either by the writ of certiorari, or by asserting the invalidity of the orders upon any future action to enforce the penalties prescribed by law for a violation of the Commission's order, was properly overruled."[6]

DELEGATION OF INITIAL AUTHORITY

During the reporting period the Georgia Legislature in a number of instances expressly delegated authority to issue rules and regulations to several agencies in order to effectuate legislation enacted by it. Some of these are examples of adding additional authority to an existing agency, such as the State Highway Board; others involve delegation of this authority to newly created agencies, such as the State Board of Forestry. The 1951 session of the legislature enacted legislation vesting rule-making authority in the following administrative agencies and boards:

(1) State Highway Board,[7]

(2) State Board of Medical Examiners in the administration of the Physical Therapists Practice Act,[8]

(3) The Governor in the administration of the very important Civil Defense Act,[9]

(4) The Board of Trustees of the Employees Retirement System[10] to fix and determine by rules and regulations how much service in any year is equivalent to one year of service;

(5) The State Board of Examiners of Psychologists,[11]

(6) The State Board of Registration for Foresters,[12]

(7) The Director of the State Forestry Commission[13] to issue rules, orders and regulations concerning the firing of woods, land or marshes,

(8) The Agricultural Commodities Authority[14] to hold referenda and to issue trading orders and rules and regulations to effectuate the purpose of the Agricultural Commodities Authority Act, and

5. Georgia Public Service Comm'n v. Atlanta Gas Light Co., 205 Ga. 863, 55 S.E.2d 618 (1949).
6. *Id.* at 877, 55 S.E.2d at 627.
7. Ga. Laws 1951, p. 90 (Motor Vehicles—Excessive Loads Act).
8. Ga. Laws 1951, p. 175 (Physical Therapists Practice Act).
9. Ga. Laws 1951, p. 224, §§ 6(b) and 7 (Civil Defense Act).
10. Ga. Laws 1951, p. 394, amending Employees' Retirement System Act. See Ga. Laws 1949, p. 138; Ga. Laws 1950, p. 416.
11. Ga. Laws 1951, p. 408 (Psychologists—Licenses Act).
12. Ga. Laws 1951, p. 581 (Foresters—State Board of Registration Act).
13. Ga. Laws 1951, p. 167 (Firing of Woods Act).
14. Ga. Laws 1951, p. 717 (Agricultural Commodities Act).

(9) The Georgia Commission on Alcoholism[15] in the administration of the new act to recognize alcoholism as an illness and a public helath problem.

ADMINISTRATIVE FINALITY

In *Georgia Public Service Comm'n v. Smith Transfer Co.*,[16] the Supreme Court reviewed the action of the Public Service Commission in revoking in practical effect a class B. Certificate of Convenience and Necessity in the process of interpreting the certificate. The certificate in question had been issued, granting to the motor carrier the right to transport for hire, highway materials between all points in Georgia, but over no fixed routes. The Commission determined that this authorization did not include the right to transport asphalt. The Supreme Court stated that

> . . . the Commission is without authority, under the guise of interpreting its certificate to hold that the carrier does not have the right under such certificate to transport asphalt in bulk in special tank equipment and to order it to cease doing so. The ruling of the Commission to this effect was without legal justification and was arbitrary, capricious and an abuse of discretion, where it was not made to appear that the holder of the certificate has wilfully violated or refused to observe any of the lawful and reasonable orders, rules or regulations prescribed by the Commission, or any of the provisions of the Motor Common Carrier Act or any other law of the State regulating or taxing motor vehicles, or that the holder of the certificate did not furnish adequate service or that the continuance of the certificate in its original form is incompatible with the public interest as provided by Code Section 68-607.

This statement by the court is significant in that it requires that the action of the Public Service Commission must be undertaken in accordance with the provisions of the Code and the exercise of its discretion in this respect must be without arbitrariness or capriciousness. The existence of either arbitrary or capricious qualities in the action taken is deemed to be an abuse of discretion.

In *State v. Schafer*,[17] the Court of Appeals considered the question of the validity of rules and regulations of the State Revenue Commissioner in the administration of the laws relative to selling intoxicating liquors in dry counties. The court pointed out that the Commissioner does not have inherent rule-making powers and he can only lawfully act as directed by statute in the issuance of his rules and regulations. Furthermore, the Revenue Commissioner can only property promulgate rules or regulations for the enforcement and administration of the law which are issued under authority of the act and "in accordance with the provisions" thereof. Applying this standard to the action taken by the Revenue Commissioner, the court construed the rule-making power of the Commissioner to relate to procedural and administrative matters connected with the act and its administration. Since the rule in question involved more than that, an attempt of the Commissioner to make unlawful and to penalize an act which was not made wrongful or unlawful by the act itself, the Commissioner exceeded his authority and the action of the private individual taken contrary

15. Ga. Laws, 1951, p. 806 (Georgia Commission on Alcoholism Act).
16. 207 Ga., 658, 63 S.E.2d 653 (1951).
17. 82 Ga. App. 753, 62 S.E.2d 446 (1950).

to the rule was, therefore, not subject to prosecution as a criminal act.[18]

The Court of Appeals, in *Columbus Wine Co. v. Sheffield,*[19] took a similar view. In the course of the opinion in that case the court made an important statement concerning judicial notice of the rules or regulations of administrative agencies. There seemed to have been some question as to whether there was actually a rule or regulation of the Revenue Commissioner concerning the controversy in question. One of the parties had charged that there had been a delivery of liquor in violation of a regulation of the Revenue Commissioner, and it, therefore, concluded that the sale in question was, as a matter of law, illegal and against public policy. To this the Court of Appeals replied: "No such rule or regulation of the Revenue Commissoner was introduced in evidence and this court will not take judicial cognizance of rules and regulations of the Revenue Commissioner." If this view is correct, it is incumbent upon the person who seeks to take advantage or rely upon a rule or regulation of an administrative agency to be sure that the specific rule or regulation has been pleaded or introduced in evidence as the exigencies of the circumstances may require.

Delegation of Initial Authority

Two decisions of the Georgia Court of Appeals reiterate the judicial policy of the courts of this state in declaring that no administrative officer has quasi-legislative power to create what in effect are criminal penalties, by the issuance of rules and regulations which are in excess of his authority. These decisions are *State v. Schafer*[20] and *Columbus Wine Co. v. Sheffield,*[21] both *supra.*

Notice and Hearing

The legislature enacted no general statute dealing with the fundamentals of administrative procedure during the last session; therefore, it is still necessary in Georgia to determine the requirements of administrative procedure on an agency-by-agency basis, or from the court decisions relative to administrative practice in general, or in reference to a specific agency.

While repetition of statutes at this point is unnecessary, it is well to point out that some statutes creating new agencies do have a well worked out procedure for notice and hearing. An example of that is the procedure worked out in Section 19 of the Act creating the State Board of Registration for Foresters.[22] This section provides that charges which may result in the revocation or the denial of the reissuance of licenses to foresters shall be in writing and sworn to by the person making them. The statute requires that all charges, unless dismissed by the board as trivial, shall be heard by the board within three months after the day on which they

18. This decision followed very closely the recent Supreme Court decision in Glustrom v. State, 206 Ga. 734, 58 S.E.2d 534 (1950), which is a leading case delineating the powers of the Revenue Commissioner to issue rules and regulations for the administration of the revenue law.
19. 83 Ga. App. 593, 64 S.E.2d 356 (1951).
20. 82 Ga. App. 753, 64 S.E.2d 446 (1950).
21. 83 Ga. App. 593, 64 S.E.2d 356 (1951).
22. Ga. Laws 1951, p. 581.

have been preferred. The board fixes the time and place of the hearing and a copy of the charges, and a notice of the time and place of the hearing are personally served on the registrant, or mailed to him at his last known address. At this hearing the accused registrant has the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and produce evidence and witnesses in his own defense. The registrant is also protected by a requirement in this statute that at least three out of five members of the board must vote in favor of the guilt of the accused and in favor of revoking the license.

There were no court decisions during the period under review relative to the matter of notice and hearing in administrative procedure.

PLEADING

Procedures for invoking the jurisdiction of administrative agencies and for presenting matters to such bodies formally are usually governed by rules of procedure established by each separate agency, though in some cases a general or special statute may govern certain aspects of administrative procedures. A good example of this type of statute is that enacted in 1951 governing the procedure in a forester's license revocation proceeding.[23] There were no decisions on this problem of administrative procedure during the reporting period.[24]

INVESTIGATIVE POWERS AND HEARING PROCEDURES

Over the long period of administrative law development in Georgia, the legislature has often been very careful to provide for some form of hearing procedure in the basic statutes controlling the administrative agencies. It would be inaccurate to say that such hearing procedures are contained in every statute, because some administrative agencies are of such a character that there is no necessity for safeguarding the right to a hearing by specific legislative enactment.

The legislature has been most careful to specify some hearing procedure whenever it endows an administrative agency with authority to revoke or suspend licenses. There are several instances of this requirement for hearing in licensing activity in the legislative acts of the 1951 legislative session. Section 10 of the act regulating the practice of physical therapy[25] requires due notice of hearing to the applicant or registrant, as the case may be,

23. *Id.* at 588.
24. The absence of any case in this field is not highly significant, as Professor Davis has stated in his recent important work, DAVIS, *op. cit. supra* note 1, at 278. "The most important characteristic of pleadings in the administrative process is their unimportance and experience shows that unimportance of pleadings is a virtue. In the judicial system the long term movement has been from the common law system of pleadings to formulate issues to the early code ideal of stating all material facts to the view now prevailing in the federal courts that their notice is the objective." The author continues as follows: "The key to pleading in the administrative process is adequate opportunity to prepare. When an original notice or pleading is inadequate, it is normally supplemented by informal communication, by formal amendment, by a bill of particulars, by pre-hearing conferences or by ample continuances at the hearing, and the question on review is not the adequacy of the original notice or pleading, but is the fairness of the whole procedure."
25. Ga. Laws 1951, p. 175.

prior to the refusal of an applicant on his application for a license, and also prior to the refusal to renew the registration of any registered "physical therapist."

The newly created Board of Examiners of Psychologists is required to give notice and hold hearings prior to the suspension or revocation of, or the refusal to issue or renew any license, for any of the specific reasons set forth in the statute, thus limiting the active discretion of the board to the statutory grounds for refusal, suspension or revocation.[26]

The act[27] describing the jurisdiction of the State Board of Vocational Education is distinguished by the very general requirements to be accorded to any individual applying for or receiving vocational education, the act using the language, "a hearing in accordance with the regulations adopted and promulgated by the State Board on that subject."

The act creating the State Board of Registration for Foresters is most elaborate in its detailed provisions for notice and hearing.[28] And finally the statute creating the Georgia Commission on Alcoholism[29] provides for notice and hearing before a court from the very start whenever the activities of that commission with reference to an alleged alcoholic are involved.

The Civil Defense Act[30] delegating the most sweeping administrative powers in the Governor in the interest of civil defense vests authority in the Governor for making surveys and investigations in obtaining information, except as to subversive activities, and authorizes him to compel by subpoena the attendance of witnesses, production of books, papers, records and documents of both individuals and corporate personalities, and all officials and agencies of the state, county and city are required to cooperate with the Governor in his making the designated investigations and surveys. This subpoena power is certainly directed at the obtaining of information for administrative rule making. A somewhat similar power is vested in the Agricultural Commodities Authority,[31] where the authority is empowered to enter upon the premises of any producer, ginner or warehouseman, dealer or handler to examine papers, records or memoranda bearing on such matters. On the other hand, an example of the authorization of subpoena power in an adjudicatory hearing is afforded by the provisions of the act controlling the licensing power of the Board of Examiners of Psychologists,[32] which authorizes the board to procure by its subpoenas the attendance of witnesses and the production of relevant books and papers.

There were no court decisions during the period under review considering the hearing procedures and investigative powers of Georgia administrative agencies.

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26. Ga. Laws 1951, p. 408, § 12.
27. Ga. Laws 1951, p. 516, § 13.
28. Ga. Laws 1951, p. 581, § 19.
29. Ga. Laws 1951, p. 806, § 10.
30. Ga. Laws 1951, p. 224, § 12.
31. Ga. Laws 1951, p. 717, § 11.
32. Ga. Laws 1951, p. 408, § 12.

EVIDENCE

In many states the exclusionary rules of evidence are discarded, not only in determining what evidence shall be omitted, but also in determining the *quantum* of evidence necessary to support a finding by an administrative agency. This attitude toward such exclusionary rules in practice before administrative agencies has resulted in the steadily diminishing importance of the technical rules of evidence in the administrative process. The attention of the agencies is directed to the probative weight of such evidence and not to the matters of admission or exclusion.[33]

The unimportance of evidentiary rules in practice before administrative agencies in Georgia is perhaps indicated by the lack of any reference to any evidentiary problem in most of the actions of the legislature during the 1951 session. There is only one slight reference to the subject of evidence,[34] and this reference dealt with the right to produce evidence and the time at which new evidence may be presented and has nothing to do with the rules or admission or even the probative weight which may be given to evidence. As in the preceding reporting period, the judicial decisions relative to evidence before administrative agencies primarily concern themselves with proceedings before the State Board of Workmen's Compensation. During this reporting period the major activity of the courts in dealing with the great number of cases on the subject of evidence growing out of the activities of the State Board of Workmen's Compensation involved a consideration of the quality of the evidence necessary to support the findings of the State Board.

There is no single term used by the Georgia courts to describe the *quantum* of evidence necessary to sustain the findings of the board. During the reporting period the court sustained the action of a director wherever they found that there was "sufficient evidence" authorizing the director to reach the factual conclusions being questioned.[35] A term more frequently used is that of "competent evidence."[36]

In *Maryland Casualty Co. v. Dixon*,[37] the court used the phraseology "supported by some evidence" in sustaining the findings of fact of the director, and affirming the judge of the superior court who in turn affirmed the order of the board allowing compensation to the plaintiff.

The Court of Appeals in several cases reiterated its familiar previous holding that the findings of a director, or the directors, of the State Board

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33. DAVIS, *op. cit. supra* note 1, at 447-448.

34. Ga. Laws 1951, p. 581, § 19.

35. Royal Indemnity Co. v. Bannister, 82 Ga. App. 845, 62 S.E.2d 765 (1950).

36. This phraseology was used to describe the evidence sustaining the final judgment of the board in the following cases: Sinyard v. Stokes, 82 Ga. App. 454, 61 S.E.2d 504 (1950); St. Paul-Mercury Indemnity Co. v. Alexander, 84 Ga. App. 207, 65 S.E.2d 694 (1951); Atlantic Co. v. Taylor, 82 Ga. App. 360, 61 S.E.2d 200 (1950); Shealy v. Benton, 82 Ga. App. 514, 61 S.E.2d 582 (1950); Georgia Ins. Service v. Lord, 83 Ga. App. 28, 62 S.E.2d 402 (1950); American Mut. Liability Ins. Co. v. Duncan, 83 Ga. App. 863, 65 S.E.2d 59 (1951).

37. 83 Ga. App. 172, 63 S.E.2d 272 (1951). Also see Fulton Bag & Cotton Mills v. Dean, 82 Ga. App. 494, 61 S.E.2d 584 (1950).

of Workmen's Compensation are conclusive on issues of fact if there is the requisite evidence to sustain such findings.[38]

Decision Process

During the reporting period there were no legislative statements and no court decisions which dealt directly with the details of the decision process or with the matter of the necessity of findings in support of the orders issued by the administrative agencies.

The statute governing the activities of the State Board of Registration for Foresters[39] does make an effort to insure that the decision of the board will represent the majority opinion of the board. Under Section 3 of this act, the board is composed of five appointed officials, and Section 19 requires that at least three members of the board vote in favor of finding the accused guilty on a license revocation hearing. Significantly there is no similar requirement of concurrence in a license granting procedure. This difference is another indication of the greater protection given to the person who is charged with a violation which subjects him to possible revocation of his license.

Rule Making

While the legislative authorization of rule-making has been discussed under a previous subtitle,[40] attention should be directed again to the provisions of the amended Milk Control Act which, under certain circumstances, renders the rule-making authority of the State Milk Control Board subject to the referendum authority of certain classes of persons affected by the proposed administrative rule.[41]

The Georgia courts continued their policy of strict construction of the rule-making authority of administrative agencies. In *State v. Schafer*[42] the court indicated that the State Revenue Commissioner had no inherent legislative power and that he can only lawfully act as directed by the statute and subservient to the terms of the statute in issuance of his rules and regulations.

Judicial Review of Administrative Action

Since we have no general administrative procedure act in Georgia, judicial review of administrative agency action still depends upon the statutes governing the specific agency or upon judicial review provided by court decision in the absence of statutory prescription.

While some of our older statutes and many of our new statutes relating to administrative agencies contain no specific provisions for judicial review of the action taken by the specific agencies in question, there is a healthy

38. General Acc. Fire & Life Assur. Corp. v. Rhodes, 83 Ga. App. 837, 65 S.E.2d 254 (1951); Atlantic Co. v. Taylor, 82 Ga. App. 360, 61 S.E.2d 200 (1950); Georgia Ins. Service v. Lord, 83 Ga. App. 28, 62 S.E.2d 402 (1950); Shealy v. Benton, 82 Ga. App. 514, 61 S.E.2d 582 (1950); Redd v. United States Cas. Co., 83 Ga. App. 838, 65 S.E.2d 255 (1951).
39. Ga. Laws 1951, p. 581.
40. See subtitle, Delegation of Initial Authority, *supra*.
41. Ga. Laws 1951, p. 47, § 2.
42. 82 Ga. App. 753, 62 S.E.2d 446 (1950).

tendency to include in statutes creating new administrative agencies express provisions for judicial review. Of the several statutes already cited relative to administrative agencies passed by the last legislative session, three make specific provision for some review of the administrative action taken by appeal or otherwise to the courts. Thus a person whose license has been revoked or suspended by the Board of Examiners of Psychologists has a statutory right to appeal to the Fulton Superior Court for a trial *de novo*.[43]

An aggrieved person whose license has been revoked by the State Board of Registration for Foresters is entitled to have a review of the proceedings with reference to such revocation of his license by any court of competent jurisdiction.[44] The only record to be considered on this appeal is the record made before the board. No new evidence may be presented to the court and if new evidence is to be utilized, it must be presented to the board before it may be used in the court proceedings. This type of review is very different from that immediately above mentioned in connection with the action of the State Board of Examiners of Psychologists and indicates a legislative intent to grant a much more restricted type of review.

These two legislative acts present a strong argument for the need of a uniform act dealing with judicial review of administrative agencies; considering the two classes of individuals who are involved by these separate acts, there seems no adequate explanation for the differing method of judicial review provided, except that of the different understanding and experience of the authors of the bills in question.

The Georgia Commission on Alcoholism is not an administrative agency with authority to enforce its own rules and regulations. Under the act[45] creating this agency the county ordinary is the court which must commit an alleged alcoholic to the commission before it acquires jurisdiction. The act provides a specific judicial review from decisions committing the persons to the custody of the commission.

This act is also significant since a judge of any court of Georgia, having jurisdiction of misdemeanor cases, may upon a finding that a person is guilty of violation of the law, which violation is a misdemeanor resulting from the person's chronic and habitual use of alcohol, may remand any person over eighteen years of age to the commission for care and treatment for a period of not more than ninety days, in lieu of the imposition of the sentence provided by law and provided that the executive director of the commission will receive the person as a patient. A specific appeal from the order of the court in such cases may be taken in the same manner as is provided for other appeals from the judgments of that court.

Section 12 of this act authorizes the use of the writ of habeas corpus by persons committed to the custody of the commission as a method for review of the legality of the detention, obtaining a discharge and securing a hearing on the issue of the safety of release at the time that the writ is returnable. While no express provision for judicial review of the order of the court of record on its hearing relative to such a writ of habeas corpus is set forth in the act, it is obvious that the general rules governing

43. Ga. Laws 1951, p. 408, § 13.
44. Ga. Laws 1951, p. 581, § 19.
45. Ga. Laws 1951, p. 806.

appeals from decisions of our courts on the granting or denial of writs of habeas corpus are applicable to such writs obtained pursuant to the provisions of Section 12, discussed above.

The absence of statutory provisions for judicial review will, however not preclude judicial review by any available methods. The Supreme Court reaffirmed its position, taken in *Georgia Public Service Comm'n v. Atlanta Gas Light Co.*,[46] during the present reporting period. In a case involving the Georgia Public Service Commission,[47] the court unanimously held that the trial court properly exercised jurisdiction through injunctive proceedings to test validity of the ruling of the Commission, which materially modified the language of a Certificate of Convenience and Necessity previously issued by it, under the guise of interpreting this certificate.

We may conclude that judicial review of administrative action will usually be available, even though there is no statutory provision for such review. It is impossible to enumerate all possible methods of review available, aside from specific statutory methods provided by law. The resourcefulness and ingenuity of counsel can be relied upon to find an available remedy.

There are a number of important decisions during the reporting period which illustrate the versatility of counsel in securing judicial review of administrative action. Since the article on this subject last year went into considerable detail in discussing the various methods which are usually available for reviewing administrative action, there will be no effort to repeat that general discussion in this issue.[48]

Examples of statutory method of review are numerous and will not be repeated in this particular section, since they have been discussed fully under the subtitle of Evidence previously.[49]

The Western Union Telegraph Company obtained judicial review of a rule of the Georgia Public Service Commission by raising a defense to a suit filed by the State of Georgia for a penalty assessed for the alleged failure to obey a rule of the Georgia Public Service Commission.[50] The Supreme Court in *Conley v. Brophy*[51] held that the writ of quo warranto was an appropriate means of inquiry into the right of a person to hold public office, even though the statute seemed to vest final authority over school matters in the State Board of Education. In *Georgia Public Service Commission v. Smith Transfer Co.*,[52] a case already discussed under other subtitles, the Supreme Court reviewed the action taken by the Public Service Commission through an appeal from the decision of the trial court which overruled general demurrers to a petition which sought to declare invalid and to enjoin the enforcement of the order and determination of the

46. 205 Ga. 863, 55 S.E.2d 618 (1949).
47. Georgia Public Service Comm'n v. Smith Transfer Co., 207 Ga. 658, 63 S.E.2d 653 (1951).
48. See Culp, *Administrative Law*, 2 MERCER L. REV. 1, 10 (1950).
49. Examples of statutory methods of review are numerous in the field of workmen's compensation. It is unnecessary to cite more than a couple of cases at this point. See Georgia Ins. Service v. Lord, 83 Ga. App. 28, 62 S.E.2d 402 (1950); Redd v. United States Cas. Co., 83 Ga. App. 838, 65 S.E.2d 255 (1951).
50. Western Union Tel. Co. v. State, 207 Ga. 675, 63 S.E.2d 878 (1951).
51. 207 Ga. 30, 60 S.E.2d 122 (1950).
52. 207 Ga. 658, 63 S.E.2d 653 (1951).

Commission and to restrain the Commission from requiring the petitioner to follow its interpretation of the Certificate of Convenience and Necessity previously issued to petitioner. In *Bender v. Anglin*,[53] the Supreme Court proceeded to review the right of retired members of the City of Atlanta Fire Department to a pension through the medium of a writ of mandamus filed in the Fulton Superior Court. The Court of Appeals reviewed an alleged rule of the State Revenue Commissioner in the course of an appeal from a proceeding instituted to condemn and sell a motor vehicle being used in alleged violation of the Revenue Commissioner's regulations.[54]

In *Columbus Wine Co. v. Sheffield*[55] we have an example of the use of a defensive plea in a private suit between two individuals to question the validity of an administrative regulation. This involved a suit by the Columbus Wine Company in attachment to recover the amount of a check which had been issued in payment for certain liquor, the payment of which had been stopped by the defendant. The defendant set up, among other things, that the liquor had been sold to be delivered to a place other than his place of business, which constituted a violation of the regulations of the State Revenue Commissioner adopted pursuant to Section 58-1036 of the Georgia Code. In immediate result,[56] the defendant was unsuccessful in his contention, but the decision suggests the possibility and feasibility of challenging the validity of an administrative order, rule or regulation whenever it is appropriate to do so, regardless of the type of action involved or the parties concerned in the litigation.

53. 207 Ga. 108, 60 S.E.2d 756 (1950).
54. State v. Schafer, 82 Ga. App. 753, 62 S.E.2d 446 (1950).
55. 83 Ga. App. 593, 64 S.E.2d 356 (1951).
56. In this case the defendant did not introduce any rule or regulation of the Revenue Commissioner in evidence and the court refused to take judicial notice or cognizance of the rules and regulations of the Revenue Commissioner. The court then proceeded to state that the Revenue Commissioner could not by regulation make penal and punish as for a misdemeanor something which was not made penal under the law itself, where the only authority given to the Commissioner to enforce the regulation was by suspension or cancellation of the license of the offending party or parties.