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ILLINOIS ADMINISTRATIVE LAW

*John H. Doeringer**

Illinois has more than 130 administrative agencies, and a welter of rules, regulations, statutes and court decisions govern their operation. The author suggests that certain recent advancements have ameliorated the staggering complexity of Illinois administrative law, but that other developments have aggravated the confusion. The author analyzes proposed legislation, now under consideration, which is aimed at clarifying the procedural confusion of agency business, and he critiques recent Illinois Supreme Court rulings concerning standing for agency review and the quantum of proof required in board hearings. Finally, the author explores areas which may require further resolution—including two conflicting appellate court holdings regarding agency penalty power, and appellate decisions dealing with a board's evidentiary findings.

INTRODUCTION

ADMINISTRATIVE law concerns the powers and processes employed by agencies of government as they affect the rights and interests of private individuals or corporations, on the one hand, and the health, safety and general welfare of the public on the other. Even when agencies engage in rights adjustment between two private parties, such as in a workman's compensation hearing, there is an underlying concern for the interests of the general public. Licensing, zoning, civil service, pollution control, and public utilities regulation all indicate the pervasive influence of administrative law at the state level. Much of administrative law focuses on the legislation which controls the quality of the proceedings before governmental bodies. A second focus of administrative law is on the courts, where the decisions of agencies are tested on appeal by aggrieved parties. The third, and least observable, focus of administrative law is on the actual operation of the administrative bodies themselves.

Of these three foci, only the first two readily lend themselves to comment, since, in Illinois, legislative acts and court decisions are the only regularly reported aspects of the administrative process.

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Hence, this article will report on these two areas of the law of administrative agencies.

ILLINOIS STATUTES AND PENDING LEGISLATION

Illinois presently has two general statutes dealing with administrative law: the Administrative Review Act¹ and an act establishing rules and regulations of state agencies.² In addition to these statutes of general applicability, the administrative lawyer must consult the statutes governing the specific subject matter under consideration to determine which agencies, if any, have jurisdiction and what, if any, procedures for dealing with the appropriate agency are specified within the statute.

The Administrative Review Act provides for review of final administrative orders by the circuit courts, a process initiated by the filing of a complaint and the issuance of a summons to the agency responsible for the final order. The type of judicial review intended by the Act is limited to a review of the record with appeal to the appellate court and ultimately to the supreme court.³

The Administrative Review Act is not applicable to an agency's proceedings unless the legislation establishing the agency adopts it by specific reference as the method for review. One hundred seventy-five paragraphs in the 1971 Illinois Revised Statutes adopt the Administrative Review Act, but at least twenty-three areas of administrative law do not expressly incorporate the Administrative Review Act. Although substantially greater uniformity in the law would result from including most of these twenty-three administrative agencies within the provisions of the Act, there are no bills presently pending in the legislature to accomplish this objective.⁴

Another major gap in the Illinois administrative law framework is the absence of uniformity in the fashion in which agencies conduct their business and the lack of a uniform method by which interested parties may determine what are the appropriate procedures for

1. ILL. REV. STAT. ch. 110, §§ 264-279 (1971).

2. ILL. REV. STAT. ch. 127, §§ 263-268.1 (1971) (establishes filing procedure for rules adopted by administrative agencies and the form which rules shall take).

3. ILL. REV. STAT. ch. 110, §§ 272, 276 (1971).

4. Fins, *Need for Uniformity in Judicial Review of Administrative Decisions*, 61 ILL.B.J. 366 (1973) (The author suggests that orders of the Illinois Commerce Commission, the Illinois Industrial Commission, and decisions of electoral boards ought to be excluded from review under the Administrative Review Act).

each agency.⁵ On the federal level, the Administrative Procedure Act⁶ accomplishes these objectives.

The Seventy-Eighth Illinois General Assembly has before it two bills, which taken together, establish a state Administrative Procedure Act.⁷ This state procedural plan would be similar to the Administrative Review Act insofar as it would not be effective until incorporated by reference in the laws creating each administrative agency.⁸ The plan would:

1. Require each agency to adopt and publish highly specific rules and procedures for conduct of its business so as to have them available to the public on request.
2. Establish a carefully detailed procedure for rule-making requiring notice to concerned parties of proposed rules; publication of proposed actions; opportunity for concerned parties to make their views known orally or in writing; publication and filing with the Secretary of State of all adopted rules ten days before the effective date of the rule; and use in only very limited instances of emergency rule-making power where time does not permit notice, publication, and hearings.
3. Require that each agency compile, publish and index all of its existing rules at least once every two years.
4. Provide a procedure by which a party may petition for the adoption of a rule.
5. Institute a procedure by which a party may petition to contest a finding or rule of an agency.
6. Clarify the type of evidence which an agency may consider in its deliberations, allowing for the admission of all evidence "of a type commonly relied upon by reasonably prudent men in the conduct of their affairs" (even if not admissible under the rules of evidence in a court of law) and also allowing for official notice of facts particularly within the agency's expertise pro-

5. Freehling, *Administrative Procedure Legislation in Illinois*, 57 ILL. B.J. 364 (1968).

6. 5 U.S.C. §§ 500 *et seq.* (1970).

7. H.B. 138, 78th Ill. Gen. Assembly (1973); H.B. 139, 78th Ill. Gen. Assembly (1973) (H.B. 139 is a companion to H.B. 138, amending Rules and Regulations of State Agencies to prevent overlap with the state Administrative Procedure Act; see ILL. REV. STAT. ch. 127, §§ 263-268.1 (1971)).

8. H.B. 138, § 12(a), 78th Ill. Gen. Assembly (1973).

vided that each contesting party is afforded an opportunity to rebut those facts.

7. Place substantial limitations on *ex parte* proceedings and orders.
8. Protect certain procedural due process rights of licensees and parties affected by decisions relating to regulated industries—for example, a licensee who made timely application for renewal of a license would be protected against expiration until the agency either granted or denied the renewal.

The Administrative Procedure Act will be considered in the 1974 session of the Seventy-Eighth General Assembly. The number of articles in recent legal publications regarding the problem and the general support the legislation has received from the organized bar testify to the need for such legislation.⁹ The Administrative Procedure Act will complement the Administrative Review Act by contributing to a substantially higher quality of agency proceeding and by insuring the production of a better record for judicial review.

MANIFEST WEIGHT OF THE EVIDENCE

A number of recent Illinois rulings have focused upon the question of whether the manifest weight of the evidence supports the administrative agency's decision. As a general matter, the Illinois courts of review regularly hold it to be the agency's function to resolve evidentiary conflicts and determine the credibility of witnesses. Normally, the agency's decisions on these issues will not be overturned unless they are against the "manifest weight of the evidence" as presented in the record. The recent cases of *Brown v. Industrial Commission*¹⁰ and *Hartwell v. Industrial Commission*¹¹ best exemplify the Illinois review standard in operation.

In *Brown*, plaintiff, a handtruck loader, filed a claim against his employer under the Workman's Compensation Act,¹² based on his

9. See H. FINS, ILLINOIS ADMINISTRATIVE PROCEDURE vii-viii (1942); Freehling, *Administrative Procedure Legislation in Illinois*, 57 ILL. B.J. 364 (1968); NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING IN ITS SEVENTIETH YEAR 81, 84, 87, 199-223 (1961); Hunt, *Administrative Procedure—An Additional Plea*, 57 ILL. B.J. 644 (1969); Comment, *Administrative Procedure Legislation Among the States*, 49 CORNELL L.Q. 634 (1964).

10. 51 Ill. 2d 291, 281 N.E.2d 673 (1973).

11. 51 Ill. 2d 562, 283 N.E.2d 870 (1972).

12. ILL. REV. STAT. ch. 48, §§ 138 *et seq.* (1971).

hospitalization for a wrist pain. Brown's family doctor testified at the arbitration hearing and opined that there could indeed be a causal connection between the plaintiff's work and the injured wrist. However, an orthopedic surgeon, who had also treated Brown, related that the wrist pain, in his opinion, was most probably caused by an old elbow injury which he had discovered during his examination of the plaintiff. On this basis, the arbitrator held that Brown had not proved the necessary causal connection between his work and the injury, and denied the claim for compensation. The supreme court affirmed the arbitrator's decision, since a mere inferential showing of plaintiff's contention was not sufficient to establish that the decision was against the manifest weight of the evidence.¹³

However, Illinois courts do not use the manifest weight standard to merely rubber-stamp agency rulings, as the *Hartwell* case so well evidences. Here, plaintiff William Hartwell challenged before the supreme court an Industrial Commission ruling that he did not lose his eyesight as a result of an industrial accident and was therefore not entitled to compensation.

Hartwell, a beef lugger, was struck in the eye by a piece of metal as he was loading meat, and subsequently lost the use of the eye due to the development of a cataract. Two eye specialists at the hearing testified that the cataract was non-traumatic and did not result from Hartwell's accident, while two opposing specialists declared the accident directly caused the cataract. If the court had simply applied the *Brown* standard for conflicting expert testimony, the agency ruling would have been upheld, since there was substantial evidence to support the decision. There was no real conflict in the expert testimony—the two doctors seeing no causal connection between the vision loss and the accident never considered that previous to the mishap Hartwell could see and after it he could not. Hence, “[t]he only testimony which took cognizance of this fact established a causal relationship between the disability and the employment,”¹⁴

13. 51 Ill. 2d at 295, 281 N.E.2d at 676.

14. 51 Ill. 2d at 566, 283 N.E.2d at 872. There have also been other recent decisions in which the courts have determined that the agency findings were against the manifest weight of the evidence. See *Smith v. O'Keefe*, 9 Ill. App. 3d 814, 293 N.E.2d 142 (1973) (Board of Fire and Police Commissioner's finding that a fireman was guilty of leaving the scene of a fire without permission, thereby justifying his dismissal); *Fomey v. Civil Service Comm'n*, 10 Ill. App. 3d 80, 293 N.E.2d 450 (1973) (Civil Service Commission's decree that the appellant's

dictating a reversal of the agency finding as contrary to the manifest weight of the evidence.

While *Brown* and *Hartwell* represent generally accepted principles of appellate review which Illinois courts adhere to in cases raising the manifest weight issue, it should be noted that those principles are applied to a very broad range of substantive law problems. Substantive law questions raised in the administrative process during the past year included issues of employment compensation, employees' rights, licensing and zoning appeals.¹⁵

ADMINISTRATIVE PENALTY POWER

Several cases in the Illinois appellate courts dealt with the power of the legislature to vest an administrative agency with fine-levying authority. Although these cases all focused on the penalty power delegated to the Pollution Control Board, the ultimate reconciliation of the contradictory results may be expected to have broader implications for other legislative attempts to put teeth into social legislation.¹⁶ At the base of these decisions lies the question: does

geographical transfer was in good faith and in the best interest of the department); *Deckstader v. Hartnett*, 8 Ill. App. 3d 26, 288 N.E.2d 720 (1972) (Zoning Administrator's ruling that appellant's use of his property did not constitute a legal non-conforming use); *McIntyre v. Pollution Control Bd.*, 8 Ill. App. 3d 1026, 291 N.E.2d 253 (1972) (Pollution Control Board's decision that the accused intended and did cause fires to be used for the purpose of disposing of refuse in the operation of an auto salvage business).

15. Numerous cases decided this year have upheld the agency's findings as not against the manifest weight of the evidence. Some of these cases are: *Peterson v. Bd. of Trustees of Fireman's Pension Fund*, 54 Ill. 2d 260, 296 N.E.2d 721 (1973) (Firemen's Pension Fund Board's finding that despite injury appellant was still able to perform duties as fireman); *Wexler v. Indus. Comm'n*, 52 Ill. 2d 506, 288 N.E.2d 420 (1972) (Industrial Commission's finding that decedent's death arose out of his employment); *Metro. Sanitary Dist. v. Huston*, 9 Ill. App. 3d 855, 293 N.E.2d 425 (1973) (Sanitary District's Civil Service Board's ruling that an employee failed to conduct fair and impartial civil service examinations); *Jackson v. Ill. Liquor Control Comm'n*, 10 Ill. App. 3d 496, 295 N.E.2d 536 (1973) (Illinois Liquor Control Commission's order to revoke the appellant's liquor license on the ground that he permitted the premises to be used for gambling); *Moriarity v. Police Bd.*, 7 Ill. App. 3d 978, 289 N.E.2d 32 (1972) (Police Board's decision that an off duty policeman was driving while intoxicated and as a result negligently caused an auto accident, thereby justifying his dismissal from the force); *Brown v. Bd. of Review*, 8 Ill. App. 3d 18, 289 N.E.2d 75 (1972) (Board of Review finding that plaintiff was not entitled to unemployment compensation since she had not actively sought new employment); *Seipel v. State Employee's Retirement Sys.*, 8 Ill. App. 3d 182, 289 N.E.2d 288 (1972) (State Employee's Retirement System finding that decedent had not effectively nominated a death-bed beneficiary).

16. See, e.g., ILL. REV. STAT. ch. 48, § 59.2 (1972) (Recent amendments to the Health and Safety Act give the Director of Labor or his representative authority to

a statutory grant of penalty power to an administrative agency offend article VI, section 1 of the 1970 Illinois Constitution insofar as it constitutes an impermissible delegation of judicial authority,¹⁷ or article II section 1 insofar as such a delegation violates the separation of powers doctrine?¹⁸

The cases suggest that a concern for procedural due process underpins the delegation question. Does the delegation of judicial or quasi-judicial power result in a denial of the right to trial by jury, in the elimination of the presumption of innocence afforded a defendant in a criminal trial, and in a reduction of the state's burden to prove guilt beyond a reasonable doubt? Such issues were thrown into sharp focus in several noteworthy Illinois cases.

*Ford v. Environmental Protection Agency*¹⁹

Appearing before the Third District Appellate Court, petitioner C.M. Ford sought review of a Pollution Control Board order issued under section 1031 of the Environmental Control Act,²⁰ which required conformity with certain Environmental Protection Agency standards and which allowed the Board to assess a civil penalty for violations existing to date. The court answered each of the appellant's objections to the fine and held, *inter alia*, that:

1. The statutory grant of penalty powers to the Pollution Control Board is not an unconstitutional delegation of judicial power, nor does it violate the separation of powers provisions.
2. Although administrative agencies have no inherent judicial power, the legislature, by express statutory grant, may confer upon an agency or officer the authority to levy fines and penalties, which are civil in nature and not criminal.

levy fines of under \$1,000 for non-serious violations, \$1,000 for serious violations, and up to \$10,000 for wilful or repeated violations of the standards or rules promulgated by the department. The statute is analogous to the Environmental Protection Act in that it provides for both civil and criminal liability); ILL. REV. STAT. ch. 48, §§ 851-861 (1971) (The Fair Employment Practices Act authorizes the hearing officer, subject to review by the full commission and the court, to ". . . take such further affirmative or other actions with respect to the complainant as will eliminate the effect of the practice originally complained of. . . ." This section of the Act has generally been construed by the Commission to include an award of damages).

17. ILL. CONST. art. VI, § 1 provides that: "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."

18. ILL. CONST. art. II, § 1 states: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

19. 9 Ill. App. 3d 711, 292 N.E.2d 540 (1973).

20. ILL. REV. STAT. ch. 111½, § 1031 (1971). Section 1041 of this Act provides for judicial review subject to the Administrative Review Act except that review is by the appellate court.

3. Article I, section 13 of the Constitution of 1970, which guarantees the right to a jury trial, is not offended by a civil proceeding before an agency.²¹
4. Appellant's argument concerning the agency's burden of proof is meritless, as the agency by statute need only make out a prima facie case that appellant violated the regulations, and such a showing shifts the burden to the violator who then must demonstrate the reasonableness of his conduct. And, since burden and presumption go to the rules of evidence established by law, the legislature has power to shift the burden to the accused in certain circumstances.²²

The court's reasoning concerning the delegation question rested on an analogy to licensing and state taxation cases,²³ in which it quoted a precedential holding from *Department of Finance v. Gandolfi*:

An administrative officer empowered to issue and revoke licenses to engage in business or profession necessarily exercises quasi judicial powers in determining whether a license should be issued or revoked, but such exercise of power is incidental to the duty of administering the law and does not constitute the exercise of judicial power within the prohibitions of the constitution.²⁴

The court furthermore anticipated arguments that the ministerial act of revoking a license or imposing a mathematically computed penalty along a statutory formula could be distinguished from the discretionary setting of a penalty or fine for a law violation or a rule infraction. Such a distinction was without significance since

in terms of severity . . . a monetary penalty is insignificant when it is considered that the revocation of a license . . . may result in the destruction of a valuable business, or in depriving a licensee of his ordinary means of livelihood. . . .²⁵

In short, the *Ford* court held that penalty power must be a mere incident to the administration of law; that penalties do not necessarily imply the existence of judicial power or impermissible dele-

21. ILL. CONST. art. I, § 13 states: "The right of trial by jury as heretofore enjoyed shall remain inviolate." The court reasoned that the right to a jury trial attaches *only* to those actions which at common law required a jury and that such a civil proceeding was unknown at common law. 9 Ill. App. 3d at 719, 292 N.E.2d at 545.

22. 9 Ill. App. 3d at 720-21, 292 N.E.2d at 546-47; *accord*, *People v. Beck*, 305 Ill. 593, 137 N.E. 454 (1932).

23. *Cermak Club, Inc. v. Ill. Liquor Comm'n*, 30 Ill. 2d 90, 195 N.E.2d 178 (1963); *Gadlin v. Auditor of Pub. Accounts*, 414 Ill. 89, 110 N.E.2d 234 (1953); *Dep't of Finance v. Gandolfi*, 375 Ill. 237, 30 N.E.2d 737 (1940).

24. 375 Ill. 237, 240, 30 N.E.2d 737, 739 (1940), as quoted in 9 Ill. App. 3d at 717, 292 N.E.2d at 544.

25. 9 Ill. App. 3d at 718, 292 N.E.2d at 545.

gation; and that the right to jury trial and the normal procedural rights of a criminal defendant do not attach in proceedings which are essentially civil in nature and hitherto unknown at common law.

*Bath, Inc. v. Pollution Control Board*²⁶ concurred with the reasoning in *Ford* and answered negatively the question of whether an administrative agency must prove intent or scienter, rationalizing that even in criminal cases intent is not an element of a regulatory offense.²⁷

In a related case, the Citizens Utilities Company challenged the Pollution Control Board's authority to levy a monetary penalty as a condition attached to a variance. Unlike *Ford* and *Bath*, where as part of a final order a fine was imposed after a determination that a violation occurred, the Pollution Control Board attempted to merge the penalty power granted in one section of the act with the power to grant variances found in a different section.²⁸ Judge Siedenfeld sustained, in dicta, the *Ford* doctrine on delegation of penalty power, but cited *Gandolfi* for the proposition that an agency's penalty powers must be created by a clear, explicit expression of legislative intent, and never by construction. Siedenfeld further held that the statutory language establishing the variance procedure for the Pollution Control Board was not such an express delegation, and hence, the Board's action was *ultra vires*.²⁹

*City of Waukegan v. Environmental Protection Agency*³⁰

Waukegan expressly disapproved of *Ford*—Judge Guild of the Second District Appellate Court held the grant of penalty power to the Pollution Control Board violated the prohibition on delegation of judicial authority. Distinguishing the tax and license cases cited in *Ford*, *Waukegan* saw the process of assessing variable monetary fines (such as hearing evidence, determining guilt, and fixing appropriate sanctions) so highly discretionary as to be judicial rather than quasi-judicial, and distinctly separate from imposing tax pen-

26. 10 Ill. App. 3d 507, 294 N.E.2d 778 (1973).

27. See also *City of Monmouth v. Environmental Protection Agency*, 10 Ill. App. 3d 823, 295 N.E.2d 136 (1973), which agrees with *Ford*.

28. ILL. REV. STAT. ch. 111½, §§ 1035-1038 (1971).

29. *Citizens Utilities Co. v. Ill. Pollution Control Bd.*, 9 Ill. App. 3d 158, 289 N.E.2d 642 (1972).

30. 11 Ill. App. 3d 189, 296 N.E.2d 102 (1973).

alties or revoking licenses. This distinction between ministerial acts and discretionary acts was seen as the crucial factor in determining whether the agency's power was judicial, and, therefore, unconstitutional.³¹

The *Waukegan* opinion drew a vigorous dissent from Judge Siedenfeld,³² who wrote the majority opinion in *Citizens Utility Co.* Judge Siedenfeld opined that although the discretionary-ministerial dichotomy is one consideration, it should not be dispositive of the entire constitutional question; common sense would seem to allow an agency to impose a variable penalty based on the infraction's severity rather than limit the administrator to the all-or-nothing sanction of license revocation. Furthermore, since pollution control is a serious problem which requires a streamlined procedure to compel compliance—a procedure which courts by their nature cannot afford—the problem lends itself to solution by an agency which can develop the required special knowledge necessary for intelligent decisions. Judge Siedenfeld argued that clear limitations are placed on the Board's powers to guard against abuse of discretion: (1) the amount of the fine is limited; (2) standards are provided to guide the board in enforcement proceedings; (3) a hearing replete with procedural safeguards is required; (4) the investigatory and prosecutorial functions are segregated from the adjudicating functions within the Environmental Protection Agency; and (5) the circuit court may reverse the Board's findings for abuse of discretion.³³

Considering the impact of *Ford* and *Waukegan*, the issue of the constitutionality of legislative delegation of penalty powers to administrative agencies will probably require a supreme court determination. Whatever the decision, it is sure to have ramifications on the legislature's efforts to adopt other forms of social legislation—an impact reaching far beyond the question of the Environmental Protection Agency's penalty powers.

31. *Id.* at 104-06, 296 N.E.2d at 191-94.

32. 11 Ill. App. 3d 196-202, 296 N.E.2d 108-12.

33. See Davis, *A New Approach to Delegation*, 36 U. CHI. L. REV. 713 (1969) (The author suggests that the whole concept of delegation is a dead letter insofar as it operates to check abusive exercise of power by administrative agencies. What he suggests, strongly supports Judge Siedenfeld's position that the real focus of the court's attention should be on the degree to which an agency observes procedural standards which guarantee fundamental fairness and which act as a check against arbitrary or capricious exercises of power).

STANDING FOR JUDICIAL REVIEW

As a general proposition, a party is without standing to secure judicial review of an administrative order unless he can demonstrate that he is personally aggrieved, or that he has sustained an injury-in-fact to a particular right of his own as a result of the administrative action.³⁴ Recent cases before the Illinois Supreme Court were concerned with standing issues involved in inter-agency reviews and appeals by aggrieved non-parties of record.

*Department of Registration & Education v. Aman*³⁵

How is the general touchstone for standing, formulated largely in terms of a personal perspective, applied when one state agency seeks review of the actions of another agency?

In *Aman*, the defendant-appellant had been discharged from his position of professional license investigator by the Department of Registration and Education with the approval of the Department of Personnel, and he requested a hearing before the Civil Service Commission. The Commission ordered Aman reinstated; thereupon the Registration Department filed under the Administrative Review Act³⁶ for review of the Commission's decision. The circuit court dismissed the department's complaint, but the Fourth District Appellate Court reversed and held that this inter-agency judicial review was justified.³⁷

The appellate court reasoned that the "personally aggrieved" test may be appropriate for individuals but was unsuited for administrative agencies—obviously a board would have difficulty showing a "threat to a particular right of [its] own as distinguished from [its] public interest." Instead, the standing issue regarding administrative agencies depends upon some "interest" or "duty" prescribed by statute, and if such "interest" or "duty" exists, one government board

34. See *Barlow v. Collins*, 397 U.S. 159, 172 (1970); Administrative Procedure Act, 5 U.S.C. § 702 (1970); F. COOPER, STATE ADMINISTRATIVE LAW 541 (1965); K. DAVIS, ADMINISTRATIVE LAW TREATISE § 22.18 (1958).

35. 53 Ill. 2d 522, 292 N.E.2d 897 (1973).

36. ILL. REV. STAT. ch. 110, §§ 264 *et seq.* (1971).

37. 3 Ill. App. 3d 784, 790, 279 N.E.2d 114, 118 (1972). See Nagan, *Administrative Law 1971-72 Survey of Illinois Law*, 22 DEPAUL L. REV. 96, 111-14 (1972) for a comprehensive discussion of the appellate court decision.

has standing to "litigate the action of another agency of the same government."³⁸

The supreme court affirmed, but asserted that the "great diversity in the statutory provisions creating or conferring power upon administrative agencies"³⁹ precluded the universal application of any simplistic black-letter test for standing; rather, the supreme court issued a new formula to determine whether an administrative agency had standing to appeal the decision of another agency:

[I]n each instance the question must be determined by the pertinent statutory provisions, the relationship which the agencies bear to each other, and the nature of the controversy out of which the administrative decision arises.⁴⁰

This new standing test would allow constitutionally sanctioned inter-agency review.⁴¹

Applying the formula, the court assessed the statutory provisions for judicial review in the Personnel Code⁴² and the scope of the Administrative Review Act.⁴³ Regarding the agencies' relationship to each other, an examination of the Personnel Code indicates the legislature intended the Civil Service Commission to be an

independent agency empowered to decide matters within the scope of its statutory power, independent of, and adversely to, the Department of Personnel and every state agency whose employees are subject to the Personnel Code.⁴⁴

38. 3 Ill. App. 3d at 786, 279 N.E.2d at 115-16.

39. See Freehling, *Administrative Procedure Legislation in Illinois*, 57 ILL. B.J. 364 (1969), which maintains that there are more than 130 administrative agencies and a labyrinth of rules and regulations governing their operation.

40. 53 Ill. 2d at 525, 292 N.E.2d at 898.

41. "[T]here is no constitutional principle which prevents a governmental agency from seeking administrative review of the decision of another agency." 53 Ill. 2d at 524, 292 N.E.2d at 898.

42. ILL. REV. STAT. ch. 127, § 63b111a (1971): "All final administrative decisions of the Civil Service Commission hereunder shall be subject to judicial review pursuant to the provisions of the 'Administrative Review Act' . . ."

43. ILL. REV. STAT. ch. 110, § 265 (1971): "This Act shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating . . . such agency . . . adopts the provisions of this Act;" ILL. REV. STAT. ch. 10½, § 119 (1971): "A person affected by a final administrative decision of the Department may seek review only under the Administrative Review Act. . . ." ILL. REV. STAT. ch. 108½ § 18-164 (1971): "The provisions of the 'Administrative Review Act' . . . shall apply to and govern all proceedings for the final judicial review of final administrative decisions. . . ."

44. ILL. REV. STAT. ch. 127, § 63b107c (1971) allows for the gubernatorial appointment of a Civil Service Commission; section 63b108 provides for the sub-

Since the record presented a legitimate "controversy between plaintiff and defendant" concerning a "final decision of an independent administrative agency," the Department of Registration & Education was held to have standing to seek judicial review.⁴⁵

Answered indirectly in the supreme court's decision is the appellate dissent of Judge Craven, who failed to find any statutory scheme authorizing "a state agency to appeal an order of the Commission," and absent a specific legislative mandate to that effect, Judge Craven would not allow a complaining agency standing.⁴⁶ The supreme court, however, pointed to at least three statutes, which, taken conjunctively would seem to indicate a sufficient legislative design.⁴⁷ Furthermore, it may be argued that due to the paucity of relevant legislation, administrative law necessarily depends upon case law for direction, rather than upon purely statutory schemes.⁴⁸

*Lake County Contractors Association v. Pollution Control Board*⁴⁹

Section 1041 of the Environmental Protection Act allows "any party adversely affected by a final order" of the Pollution Control Board to seek judicial review of the Board's decision.⁵⁰ Does "party" mean that any "person" injured by an administrative action has standing to challenge the action, or does it mean that only a "party of record" may secure a review?

The question arose from a 1971 Board ruling that the North Shore Sanitary District could not permit any further sewer connection ad-

mitting of proposed Department of Personnel rules to the commission, and the rules, unless disapproved, would have legal effects; section 63b110 gives the commission certain administrative power over the Director of Personnel and the workings of the department. See 53 Ill. 2d at 525, 292 N.E.2d at 898-99.

45. 53 Ill. 2d at 525, 292 N.E.2d at 899.

46. Dep't of Registration and Educ. v. Aman, 3 Ill. App. 3d 784, 790, 279 N.E.2d 114, 119, citing Davis, *Standing of a Public Official to Challenge Agency Decisions*, 16 Ad. L. Rev. 163 (1963).

47. See note 43, *supra*. The cited passages seem to say that agencies, such as the Civil Service Commission, which adopt the ARA shall have the Review Act as the only vehicle for the appeal of administrative decisions.

48. At least one authority indicates that the scarcity of comprehensive administrative legislation (in procedural matters at any rate) compels "decisional law and perhaps treatises and journal articles" to serve as the primary source of guidance. Freehling, *Administrative Procedure Legislation in Illinois*, 57 ILL. B.J. 364, 365 (1969).

49. 54 Ill. 2d 16, 294 N.E.2d 259 (1973).

50. ILL. REV. STAT. ch. 111½, § 1041 (1971).

ditions until certain environmental standards were met.⁵¹ The Lake County Contractors Association and the Lake County Home Builders Association were not parties of record and did not appear in any stage of the proceedings; nonetheless, the Associations, alleging financial hardship as a result of the decision, challenged the Board's order before the Second District Appellate Court.

Although the appellate majority denied the petitioners a review,⁵² Judge Moran delivered a strong dissent in support of the Associations. He found that four separate classes of persons are given the right of review under section 1041. Three of the categories, by their language apply to parties of record, while the fourth pertains to classes like the Association.⁵³ The fourth category, taken in tandem with the supreme court rule governing review of administrative orders, as well as the rule's historical development⁵⁴ and the cases construing it,⁵⁵ lead to the conclusion that "a person, not a party to the record, is entitled to appeal."⁵⁶

Taking the case before the supreme court, the Associations contended that the use of "party" in category four indicated a legisla-

51. The Board's ruling generated a welter of litigation; see *North Shore Sanitary Dist. v. Pollution Control Bd.*, 5 Ill. App. 3d 1050, 284 N.E.2d 376 (1972); *North Shore Sanitary Dist. v. Pollution Control Bd.*, 2 Ill. App. 3d 797, 277 N.E.2d 754 (1972).

52. *Lake County Contractors Ass'n v. Pollution Control Bd.*, 6 Ill. App. 3d 762, 286 N.E.2d 600 (1972).

53. ILL. REV. STAT. ch. 111½, § 1041 (1971): "[1] Any party to a Board hearing, [2] any person who filed a complaint on which hearing was denied, [3] any person who has been denied a variance or permit under this Act, and [4] any party adversely affected by a final order or determination of the Board may obtain judicial review. . . ."

54. ILL. REV. STAT. ch. 110A, § 335(h)(1) (1971) (Supreme Court Rule 335), provides that Supreme Court Rules 301-376 are applicable under this rule; ILL. REV. STAT. ch. 110A, § 301 (1971) (Supreme Court Rule 301) according to the committee comments, was designed to incorporate the last two sentences of section 74(1) of the Civil Practice Act, ILL. REV. STAT. ch. 110, § 74(1) (1971), which stipulated that the right of any person not a party to the record to review a judgment is preserved. Deploying this clever argument, Moran opined that the Associations had standing to seek review. See 6 Ill. App. 3d at 768-69, 286 N.E.2d at 604-05.

55. See *People ex rel. Yohnka v. Kennedy*, 367 Ill. 236, 238, 10 N.E.2d 806, 807 (1937), suggested that an injured person, not a party to the record, may be entitled to a review if his interest either appears in the record or can be alleged in the facts for which reversal is sought. See also *Vece v. DeBlase*, 31 Ill. 2d 542, 544-545, 202 N.E.2d 482 (1964); *Grennan v. Sheldon*, 401 Ill. 351, 82 N.E.2d 162 (1948).

56. 6 Ill. App. 3d at 768, 286 N.E.2d at 604.

tive intent to expand the range of persons qualifying for judicial review.⁵⁷ The court, however, reasoned that since the Environmental Protection Act incorporates the review provisions of the Administrative Review Act,⁵⁸ and since under that statute "judicial review of administrative decisions can be sought only by those who were parties to the . . . proceedings," the Associations were not entitled to appeal.⁵⁹

Clarifying the "person-party" controversy of section 1041, the court held that analysis of relevant case law and statutes⁶⁰ indicates that "party" means "party to the proceeding." If the Associations' definition prevailed, the fourth category would conflict with variance procedures which allow non-parties of record relief, as well as the orderly working of the Act.⁶¹ The contentions in Judge Moran's dissent were also answered: the supreme court rule cited does not provide for the Associations' allegations in the form for a review petition,⁶² and the Administrative Review Act does not allow "new or additional evidence" introduced on appeal.⁶³

Unanswered, however, was Judge Moran's retort to the argument of "interference with the orderly working of the act" on which the supreme court in part relied. Judge Moran contended:

57. 54 Ill. 2d at 19, 294 N.E.2d at 261. The Association argued a strict definition of "party" would make the contested category four superfluous, since anyone given standing in a strictly interpreted reading of category four would already have standing under category one.

58. ILL. REV. STAT. ch. 111½, § 1041 (1971), states that a "petition for review" must be filed "pursuant to the provisions of the Administrative Review Act."

59. 54 Ill. 2d at 19, 294 N.E.2d at 261.

60. 54 Ill. 2d at 19, 294 N.E.2d at 261, *citing* 222 E. Chestnut Street Corp. v. Bd. of Appeals, 10 Ill. 2d 130, 132, 139 N.E.2d 221, 222 (1957), suggests that only "parties of record in the proceeding" had the right to review. Additionally, passages of the applicable statutes referring to "person" and "party" indicate the two are not synonymous, and that "party" means "party of record." ILL. REV. STAT. ch. 111½, § 1003 (1971) defines "person" as "any individual . . . or any other legal entity . . .," ILL. REV. STAT. ch. 111½, § 1032 (1971) says "any person may submit written statements to the Board," but "[a]ny party to a hearing" may be represented by counsel. The majority states "[t]here is no reason to believe [the legislature] was any less careful in its use of the word 'party' in the fourth category [of § 1041]."

61. 54 Ill. 2d at 19, 294 N.E.2d at 261, *citing* ILL. REV. STAT. ch. 111½, § 1035, 1036 (1971).

62. *See* ILL. REV. STAT. ch. 110A, § 335 (1971).

63. *See* ILL. REV. STAT. ch. 110, § 274 (1971); 54 Ill. 2d at 21, 294 N.E.2d at 262.

Under [the majority's] rationale we could also decide that a direct appeal to [the appellate court] as provided by the Act is not permissible 'because . . . it conflicts with existing provisions and interpretation of the Administrative Review Act.' See Ill. Rev. Stat. 1969, Ch. 110, Sec. 268 where it is provided that review of final administrative decision is vested in the Circuit Courts.⁶⁴

Consequently, the supreme court in *Aman* and *Lake County Contractors Association* may have illuminated some of the problems of standing in administrative law; yet, as Judge Moran's contentions evidence, standing in Illinois administrative law remains confusing and contradictory.

EVIDENTIARY FINDINGS

In two appeals from orders of the Illinois Commerce Commission, the oldest Illinois regulatory agency, important decisions were rendered regarding the extent to which an agency order must be substantiated by precise findings as to each evidentiary fact or claim.

In *Sunset Trails Water Co. v. Illinois Commerce Commission*,⁶⁵ the Commission was confronted with the question of which of two alternate proposals for a residential water system should be approved—one as a public enterprise and the other as a private venture. The Commission decided that a unified public water system would be most conducive to public convenience and necessity. Despite the detailed proof presented by the proponent of the privately owned system, the Commission's order was held sufficient, even in absence of precise findings as to every evidentiary claim raised by the plaintiff.⁶⁶

Subsequent to the *Sunset Trails* case, an analogous issue was raised in *Central Illinois Light Co. v. Commerce Commission*.⁶⁷ Forty-six railroads sought an increase in Illinois intrastate rates. Upon approval of the rate increases, several electrical utilities sought a rehearing which ultimately resulted in a reversal of the Commission's order.

The appellate court reinstated the order, holding that the degree of specificity of the Commission's order would affect the degree of

64. 6 Ill. App. 3d at 769,286 N.E.2d at 605.

65. 7 Ill. App. 3d 449, 287 N.E.2d 736 (1972).

66. *Id.* at 457, 287 N.E.2d at 741 (emphasis added).

67. 10 Ill. App. 3d 370, 294 N.E.2d 89 (1973).

accuracy required in the methods of accounting used by the applicant.⁶⁸ The court also noted that there are peculiar aspects of accounting for each type of regulated activity, and conceded that data substantiating the reasonableness of rate increases for three railroads could well be sufficiently representative of conditions among all the applicants as to preclude the necessity for further refinement of the evidence.⁶⁹

CONCLUSION

The many recent significant developments in Illinois administrative law—as seen in the courts, before the agencies themselves, and in the legislature—indicate the prolixity and complexity of the administrative law field. Old values were confirmed in areas of manifest weight; recent problems were solved regarding issues of standing; new problems were presented in the topic of administrative sanctions; and possible new solutions may be indicated in the form of proposed legislation. In any event, the impact of recent trends in the administrative law of Illinois is bound to be far-reaching and noteworthy.

68. *Id.* at 376, 294 N.E.2d at 94.

69. *Id.* at 377, 294 N.E.2d at 95.