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# Administrative Law and Procedure

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# Survey of Ohio Law—1960

## ADMINISTRATIVE LAW AND PROCEDURE

### AGENCY JURISDICTION

A number of jurisdictional problems concerning agency hearings and proceedings were before the courts during 1960.

The failure to raise the constitutional validity of a statute before the Board of Tax Appeals created a situation which caused the supreme court[1] to reaffirm the rule that an administrative agency has no jurisdiction to determine the constitutional validity of a statute. This rule is predicated upon a prior decision of the supreme court[2] which stated that it is the duty of an administrative agency to proceed under and in accordance with the terms and provisions of a statute with the assumption of its constitutionality. The constitutionality of a statute is a question for the courts and not for a board or commission.[3]

*State ex rel. City of Dayton v. Kenealy*[4] considered the jurisdiction of the Public Utilities Commission to hear a rate complaint and appeal. The city of Dayton had by ordinance established gas rates, requiring the utility to file a written acceptance which would constitute a contract, but providing that each provision was independent of every other provision. The utility rejected the ordinance rates, and filed an appeal to the Public Utilities Commission. The city contended that the rejection of the ordinance rates made the ordinance void, and that there was nothing for the Commission to consider. The supreme court, in denying a writ of prohibition against the commission, held that the ordinance was valid and that it gave rise to a rate dispute within the jurisdiction of the Commission.

A court of appeals decision[5] passed upon the jurisdiction of the State Medical Board to hear a petition for reinstatement of a license after an order revoking the license has become final. The appellant's license to practice "hydrotherapy" had been revoked by the State Board in 1942. It then denied his application for reinstatement of his certificate in 1957 and that action was affirmed on appeal to the court of common pleas.

1. S. S. Kresge Co. v. Bowers, 170 Ohio St. 405, 166 N.E.2d 139 (1960). See also discussion in *Constitutional Law* section, p. 469 *infra.*

2. East Ohio Gas Co. v. Public Utilities Comm'n, 137 Ohio St. 225, 238-39, 28 N.E.2d 599, 600 (1940).

3. The issue of statutory constitutionality cannot be decided by an administrative agency, and therefore it is not necessary to present that issue to the agency in laying a proper foundation for appellate review.

4. 170 Ohio St. 320, 164 N.E.2d 400 (1960).

5. Application of Welsh, 111 Ohio App. 79, 165 N.E.2d 658 (1960).

The court of appeals affirmed the order because of the lack of jurisdiction of the Ohio State Medical Board to consider appellant's application. The court reasoned that the authority of the medical board is completely circumscribed by statute, and that the applicable statutes[6] do not empower it to reinstate,[7] but only to suspend or revoke a license based on the grounds set out in the statutes and rules properly adopted by the board.

A board of county commissioners has legislative authority[8] to adopt regulations relative to construction in the unincorporated area of a county only with respect to the safety, health, and sanitary conditions of the buildings. The Commissioners of Mahoning County had adopted a new Building Code of Unincorporated Areas of Mahoning County. This Code required a person to obtain a license prior to the installation of warm air heating equipment in the area. One Dardas applied for a license, and it was denied. He then brought an action for an injunction in the court of common pleas where the judge held that there was no power to provide for the licensing of heating contractors. The court of appeals affirmed.[9] It adopted a rule of strict construction of the powers of the board. It is a quasi-corporation of strictly limited powers — limited to those powers granted by statute — and such powers are purely administrative, and not legislative. The court of appeals relied heavily upon a supreme court decision concerning analogous powers of a county board of health.[10] It also rejected the contention that an estoppel to question the validity of the licensing measure arose from the application for the license.

When an agency does have apparent jurisdiction under its statute, it is entitled to proceed without interference from the courts. In denying a writ of prohibition against the State Board of Examiners of Architects acting on a certificate revocation proceeding, the court of appeals[11] indicated that the writ could not be used to restrain action where a tribunal

6. OHIO REV. CODE §§ 4731.20, .22.

7. This was the second application for reinstatement. The first application occurred sometime after the 1942 revocation. It was denied, and the petitioner invoked the original jurisdiction of the Ohio Supreme Court, asking the issuance of a writ of mandamus ordering a restoration of his license. The writ was denied. Counsel for petitioner argued that the board had an implied or cognate power of restitution. The court did not pass upon this argument since it held that the writ could not command the performance of an act which is not especially enjoined by law upon the board. State *ex rel.* Welsh v. Medical Board, 145 Ohio St. 74, 60 N.E.2d 620 (1945).

8. OHIO REV. CODE §§ 307.37-.40.

9. Dardas v. Board of County Comm'rs, 168 N.E.2d 164 (Ohio Ct. App. 1959).

10. See Wetterer v. Board of Health, 167 Ohio St. 127, 146 N.E.2d 846 (1957). The supreme court reversed a lower court decision which had determined that the county board of health had implied power to license plumbers, holding that such a board has neither express nor implied powers under its authorizing statutes to enact rules and regulations to provide for the licensing of plumbers within the general health district.

11. State *ex rel.* Burchard v. Board of Examiners of Architects, 110 Ohio App. 286, 163 N.E.2d 391 (1959).

has jurisdiction of the subject matter and of the person, nor to prevent a tribunal from deciding the issue erroneously.

The effect of an appeal on an agency's continuing jurisdiction will depend on the agency's basic statute. Under its statute the Industrial Commission is enjoined to make payments on an award even though an appeal may be pending, and it is specifically stated that an appeal shall not stay the payment.[12] The court of appeals granted a writ of mandamus on application of a compensation complainant who had been successful before the Commission, and its board of review. Under this statute the appeal did not take the entire case out of the jurisdiction of the Commission, and it continued to have the power to complete the award by determining the amount and by ordering payment.[13]

## VALIDITY OF REGULATIONS

The Revised Code provisions[14] regulating Driver Training Schools authorize the Director of Highway Safety to adopt and prescribe such regulations concerning the administration and enforcement of the statute as are necessary to protect the public. The Code[15] also authorizes the director to call upon the state superintendent of public instruction for assistance in developing and formulating the regulations. The director meticulously followed the provisions of the Ohio Administrative Procedure Act[16] in the issuance of his rules and definitions applicable to Driver Training Schools. The State Highway Patrol played an important part in the preparation of the rules. Several interested parties challenged the validity of some of the rules so issued. Specific grounds of attack included a charge that there was a delegation of legislative power to the director and also that he made an unauthorized subdelegation to the state highway patrol. The court[17] upheld the regulations indicating that there was a valid delegation of administrative power to the Director, and further, that the utilization of the technical advice of the state highway patrol in the preparation of the regulations was not a subdelegation at all.

In *Schlenker v. Board of Health*,[18] a declaratory-judgment-plaintiff challenged the validity of a pasteurization regulation of the county board.

12. OHIO REV. CODE §§ 4123.513, .515.

13. State *ex rel.* Hatfield v. Industrial Comm'n, 165 N.E.2d 211 (Ohio Ct. App. 1960). See also discussion in *Workmen's Compensation* section, p. 595 *infra.*

14. OHIO REV. CODE § 4508.01-.07.

15. OHIO REV. CODE § 4508.02(B).

16. OHIO REV. CODE § 4508.02 subjects the director to the provisions of §§ 119.01-.13 in his promulgation of regulations.

17. *In re* Adoption of Rules and Regulations Relative to Driver Training Schools, 165 N.E.2d 834 (Ohio C.P. 1958). See also discussion in *Constitutional Law* section, p. 472 *infra.*

18. 171 Ohio St. 23, 167 N.E.2d 920 (1960).

This was a board of health of a general health district which has statutory authority[19] to make such orders and regulations as are necessary for its own government, for the public health, and for the prevention or restriction of disease. The supreme court affirmed a judgment holding the regulation to be valid. It stated that the regulation represented a proper exercise of the police power of the board of health.

The constitutionality of an Ohio Turnpike Commission rule establishing a maximum speed limit of sixty-five miles per hour came under attack in a municipal court decision which held the rule unconstitutional. The rule was promulgated under the Code authority[20] to enact rules and regulations which it deems advisable for the control and regulation of traffic on any turnpike project for the maintenance and preservation of good order within the property under its control. There was a specific exception of these rules and regulations from the general statutes dealing with speed and other traffic matters. The court of appeals[21] reversed the trial court while upholding the validity of the rules and regulations as coming clearly under the police power of the state.

## PROCEEDINGS BEFORE THE AGENCY

The Director of the Department of Liquor Control is required by the regulations of the Board to set out in the notice of rejection of an application his reasons for rejection and in addition shall "refer to the law or rule directly involved." The denial by the director in the principal case[22] did not give adequate reasons nor refer to the law or rule directly involved. The court of appeals held that adherence to the board's rule is mandatory. The failure to observe this requirement, among other reasons, caused the court to affirm a decision of the court of common pleas reversing the Board's order denying the renewal application.

An appeal from a Board of Liquor Control order revoking the permit of a private club raises the interesting question of whether a hearing prior to revocation is essential when a responsible officer of the club admitted sales to a nonmember and also after hours sales. The court of appeals affirmed[23] the order of the court of common pleas which had affirmed the Board's order. When the operative facts are admitted, there is no reason for a hearing. Another decision describes the consequences of a

19. OHIO REV. CODE §§ 3709.01, .22.

20. OHIO REV. CODE § 5537.16.

21. State v. Cunningham, 168 N.E.2d 552 (Ohio Ct. App. 1960). See also discussion in *Constitutional Law* section, p. 472 *infra* and in *Criminal Law and Procedure* section, pp. 489-90 *infra.*

22. Metro Tavern, Inc. v. Board of Liquor Control, 168 N.E.2d 323 (Ohio Ct. App. 1960).

23. Mahoning County Citizen's Club v. Board of Liquor Control, 110 Ohio App. 549, 170 N.E.2d 84 (1959). Since the licensee had had a long history of violations, the court also concluded that the Board did not abuse its discretion in revoking the permit.

plea of "guilty" upon the ability of the licensee to challenge the penalty imposed by the Board for the violation.[24] "The guilty plea" precludes any finding that there was no substantial, reliable or probative evidence to support the Board's finding, and under the circumstances the board has the sole power of determining the penalty.[25] The appellate court cannot inquire into the issue of abuse of discretion.

An interesting common pleas decision involved the practice of law before the Bureau of Workmen's Compensation.[26] The court expressed the view that one who for a fee, advises others as to their legal rights, the method of enforcing the rights, the forum to be selected, and the practice to be followed for the enforcement of these rights is engaged in the practice of law. Specifically a person who appears before authorized industrial commission personnel, prepares notices of appeal from their rulings, and advises claimants as to their rights, in a representative capacity in adversary proceedings where controversial questions are raised, is engaged in the practice of law. The court considered the practice of some large employers in maintaining an audit and claims procedure which seeks to verify the cost of the Workmen's Compensation Act as they do other costs of business. It concluded that an employer or a service organization which confines itself to the furnishing of facts from the records relative to rates and classifications, without concern for their legal effect, does not engage in the practice of law.[27] The court suggested that neither the administrative agency nor the legislature could define the practice of law, asserting that it is solely within the power of the courts to say what actions and conduct constitute the practice of law.[28]

### Evidence Under the Ohio Administrative Procedure Act

A tavern operator was cited for having violated the statute[29] prohibiting sales of liquor to an intoxicated person. The Board of Liquor Control

24. Tarpoff v. Board of Liquor Control, 110 Ohio App. 290, 169 N.E.2d 19 (1960).

25. The court relied upon the supreme court's decision in Henry's Cafe, Inc. v. Board of Liquor Control, 170 Ohio St. 233, 163 N.E.2d 678 (1959) which held that the court of common pleas had no power when its jurisdiction is derived from an appeal under the Ohio Administrative Procedure Act to modify an order on the ground that the agency abused its discretion. Under Ohio Rev. Code § 119.12 its power to modify is limited to the ground set forth therein — only upon a finding that the order is not supported by reliable, probative, and substantial evidence.

26. McMillen v. McCahan, 167 N.E.2d 541 (Ohio C.P. 1960). Defendant McCahan was enjoined from the practice of law. See also discussion in *Attorneys at Law* section, p. 453 *infra* and in *Workmen's Compensation* section, p. 594 *infra.*

27. It pointed out that an actuary or an employee of a service organization who undertakes to give advice on legal rights, who prepares papers, and otherwise acts in a representative capacity before the administrator, deputy administrator, or the industrial commission, or any referees on behalf of a claimant, enters into the realm of the practice of law.

28. The court relied heavily upon the supreme court decision of Cuyahoga Abstract Title & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934) wherein the opinion discusses the practice of law in some detail.

29. Ohio Rev. Code § 4301.22(B).

held a hearing, found that the charge was supported by evidence and his license was suspended for fourteen days. The common pleas court held on appeal that it was necessary to prove intent, and reversed in part because of a failure to establish that element. The court of appeals was of a contrary opinion,[30] holding that the statute does not require proof of intent, indicating that the statute is an absolute prohibition and ignorance of the purchaser's intoxicated condition cannot be shown in defense.[31]

In passing upon an application for the renewal of a permit, the Director of Liquor Control resorted to police department records to secure information concerning the manner in which the applicant had conducted his business. The court of common pleas affirmed an administrative denial of the permit renewal, and on the appeal to the court of appeals the applicant contended that the decision was erroneous, in part, because the Director considered inadmissible and incompetent evidence in reaching his decision. In affirming the order, the court of appeals[32] declared that the Director is not bound by the common-law rules of evidence in carrying out his investigations in considering an application for either a permit or a renewal.

Despite the decision in *Corwin v. Board of Liquor Control*,[33] the problem of what is "reliable, probative, and substantial evidence" to support a denial of a permit when the permittee's business establishment is within five hundred feet of a church remains a problem. In a case decided six days after the *Corwin* case, the Franklin County Common Pleas Court affirmed a denial order which was based on evidence that religious faiths did not approve of the use of intoxicants, and other evidence that indicated that a problem of safety might exist should a permit be granted. The court felt that the evidence was not a mere "naked objection," and that the additional matter about safety was sufficient to bring the evidence in support of the order within the category of reliable, probative and substantial evidence.[34]

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30. Glen's Grill No. 3, Inc. v. Board of Liquor Control, 110 Ohio App. 509, 166 N.E.2d 399 (1959).

31. The court felt bound on the matter of scienter by the supreme court's decision in State v. Morello, 169 Ohio St. 213, 158 N.E.2d 525 (1959).

32. Milenkovich v. Department of Liquor Control, 110 Ohio App. 121, 168 N.E.2d 903 (1959).

33. 170 Ohio St. 304, 164 N.E.2d 412 (1960), holding that a naked objection, by the authorities in control of a church, school, library or playground within 500 feet of a proposed permit premises, to the issuance of a permit did not alone constitute reliable, probative, or substantial evidence to support the denial of a permit. See Culp, *Administrative Law and Procedure, Survey of Ohio Law — 1959*, 11 WEST. RES. L. REV. 342 (1960).

34. Stager v. Board of Liquor Control, 169 N.E.2d 222 (Ohio C.P. 1960). In this case representatives of four churches appeared before the Board. Two of them presented "naked objections," but others objected that congregation members would be in the immediate vicinity of persons indulging excessively in alcoholic beverages, that issuance of more permits would not benefit the community, and that there were sufficient establishments already.

## JUDICIAL REVIEW UNDER SPECIFIC STATUTES

The Revised Code[35] directs the method of appeal from the decisions of boards of county commissioners under their regulation of construction in unincorporated areas. An applicant who had requested and been denied a license required by a construction regulation, brought an action for injunction in the court of common pleas challenging the power of the Board to issue a license. The Board attempted to challenge the jurisdiction of a court of equity to hear the complaint because the applicant had not first exhausted his statutory remedy by appeal from the Board. The court of appeals[36] rejected this ground of error, indicating that the action was not started to overthrow, or appeal from, any order of the Board. Since it is a direct attack on the power of the Board to issue the license, it is not an appeal, and the doctrine of the exhaustion of administrative remedies did not apply.

A common pleas decision considered the proper method of reviewing a decision of a county zoning board of appeals in denying a petition for a variance in a zoning provision because of hardship. The statute at the present time does not provide for an appeal.[37] The trial court held that the zoning board of appeals acts in a judicial capacity, and, as such, its rulings concerning zoning are considered final orders which are appealable to the common pleas court.[38]

In *Kloker v. Morr*[39] a residence owner had appealed from a refusal of the Hamilton County Rural Zoning Commission to grant his request for a change of zone through the hierarchy of administrative bodies to the county commissioners without success, and then appealed to the court of common pleas. That court held that it had no jurisdiction to hear the appeal. The court of appeals pointed out that the appellant had two statutory bases for his appeal. These were the special statute[40] granting an appeal to a person aggrieved by the decision of the board of county commissioners in any case, and the general statute[41] which provides for appeals from decisions of any agency of any political subdivision,

35. OHIO REV. CODE § 307.37.

36. Dardas v. Board of County Comm'rs, 168 N.E.2d 164 (Ohio Ct. App. 1959).

37. OHIO REV. CODE § 303.14, .15. Former Ohio Gen. Code § 3180-14 provided an appeal. It was when the statute was in this form that Ohio State Students Trailer Park Cooperative v. County of Franklin, 68 Ohio L. Abs. 569 (Ct. App. 1953), was decided.

38. Kanter v. Board of Zoning Appeals, 167 N.E.2d 678 (Ohio C.P. 1960). The court does not cite any judicial or statutory authority for this position. Conceivably, it may have been relying on OHIO REV. CODE § 2305.01, establishing the civil jurisdiction of the common pleas court. With equal propriety it could have relied on OHIO REV. CODE § 2506.01 (Supp. 1960). Since its basis of reversal was an abuse of discretion, the appeal could have been predicated on either statute.

39. 165 N.E.2d 469 (Ohio Ct. App. 1959).

40. OHIO REV. CODE § 307.56.

41. OHIO REV. CODE § 2506.01 (Supp. 1960).

as a remedy in addition to any other appeal provided by law. Since the only issue before the court was that of jurisdiction, there was no discussion of which of these sections would actually support the appeal.

Another court of appeal's decision indicates that the general statute which now provides for a review of administrative orders in the common pleas court,[42] contemplates a trial on the transcript of the administrative action as in the case of a civil action, with power in the court to affirm, reverse, vacate, or modify the order.[43]

Two decisions illustrate that an observance of the time limits fixed for pre-appeal acts required in perfecting the appeals is necessary for the court to exercise jurisdiction. This is true of both the thirty day period for filing an application for rehearing before the Public Utilities Commission as a basis for an appeal[44] and of the ten day period in which to give the Board of Review of the Bureau of Unemployment Compensation notice of intent to appeal.[45]

In *Connor v. Board of Review*[46] the common pleas court reversed the Board of Review on the ground that the findings of the Board were unlawful, unreasonable, arbitrary, against the manifest weight of the evidence and contrary to law. This was a blanket statement of all of the reasons for which the common pleas court may reverse, vacate, or modify the decision of the agency and render judgment. Otherwise it must affirm the agency's decision.[47] The court of appeals upon examining the whole record found that there was abundant evidence to support the administrative decision. The lower court therefore was in error in disturbing the agency's decision. If there is abundant evidence in the record, the decision is not against the manifest weight of the evidence. *Hall v. Tichenour*[48] emphasizes the necessity of exhausting administrative remedies before appealing from the decisions of the Board of Review of the Bureau of Unemployment Compensation. It stresses the fact that the statute[49] only permits an appeal from a decision on rehearing. The common pleas court has no jurisdiction to entertain an attempted appeal from the original decision of the Board.

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42. *Ibid.*

43. Vlad v. Board of Zoning, 164 N.E.2d 797 (Ohio Ct. App. 1960).

44. Specialized Transp., Inc. v. Public Utilities Comm'n, 170 Ohio St. 539, 166 N.E.2d 753 (1960), construing OHIO REV. CODE § 4903.10.

45. Smith v. Bureau of Unemployment Compensation, 164 N.E.2d 599 (Ohio C.P. 1959), construing OHIO REV. CODE § 4141.28 (Supp. 1960).

46. 168 N.E.2d 591 (Ohio Ct. App. 1960). See also discussion in *Social Security and Public Welfare* section, p. 556 *infra.*

47. OHIO REV. CODE § 4141.28.

48. 110 Ohio App. 480, 170 N.E.2d 480 (1960). See also discussion in *Social Security and Public Welfare* section, p. 556 *infra.*

49. OHIO REV. CODE § 4141.28.

## REVIEW BY MANDAMUS

As indicated in previous survey articles,[50] the writ of mandamus is not a particularly useful procedural method for securing judicial review of administrative decisions, but it has had considerable success in the area of zoning board decisions. Two cases involving administrative zoning decisions in nonconforming use situations, illustrate the value of judicial review by mandamus rather than by the statutory appeal. *State v. Bumgarner*[51] involved an unusually large nonconforming use relative to a forty-seven acre tract of land. The owner wanted to build on this property without conforming to setback lines prescribed in the zoning resolution. His application was denied. Instead of going by appeal to the common pleas court he filed a mandamus petition in the court of appeals. The court ordered the issuance of a building permit indicating that the availability of an inadequate legal remedy should not prevent the issuance of the writ. The other original action in the court of appeals[52] involved an abuse of discretion by a city council in rejecting an application for a nonconforming use. In this case the relator had exhausted all administrative remedies under the city ordinances, and it appeared that he had a clear legal right to the change in classification of his land. The court issued the writ to compel the granting of a permit to construct.

## REVIEW BY DECLARATORY JUDGMENT ACTIONS

This remedy has been effective to determine the validity of zoning changes prior to the time that any use of affected property is contemplated. Where the evidence shows that a plaintiff's property has been substantially decreased in value by use restrictions, the property owner affected by the zoning ordinance or amendment may seek a declaration of rights and injunctive relief without waiting for any further impact on his property.[53] Since the declaratory judgment action is a comprehensive remedy, its use is not dependent upon the absence of any other remedy. Thus even though a mandamus action might be appropriate, the owner may use the more comprehensive declaratory judgment procedure at his option.[54]

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50. Culp, *Administrative Law and Procedure, Survey of Ohio Law — 1955*, 7 WEST. RES. L. REV. 221, 224 (1956); Culp, *Administrative Law and Procedure, Survey of Ohio Law — 1959*, 11 WEST. RES. L. REV. 329, 338 (1960).

51. 110 Ohio App. 173, 168 N.E.2d 901 (1959).

52. State v. Woodmansee, 169 N.E.2d 655 (Ohio Ct. App. 1960).

53. Curtiss v. City of Cleveland, 170 Ohio St. 127, 163 N.E.2d 682 (1959).

54. Shopping Centers of Greater Cincinnati, Inc. v. City of Cincinnati, 109 Ohio App. 189, 164 N.E.2d 593 (1959).

## Attacking the Legality or Reasonableness of a Rule Under the Ohio Administrative Procedure Act

The Administrative Procedure Act[55] provides a quick remedy for challenging the legality or reasonableness of an administrative rule or regulation. Any person adversely affected by the rule is required to file a notice of appeal within fifteen days of the order promulgating the rule, and before the effective date of the rule.

Does this time limitation apply to an attack on a rule which is being enforced against a party in a specific fact situation or circumstance? The act indicates that a judicial determination of legality, for example, does not preclude a person from challenging the legality of the rule in a specific situation in which the administrative agency is seeking to apply it. A court of appeals decision recognized the existence of this right in refusing to apply a rule of the State Racing Commission in a manner which would result in its invalidity.[56] To avoid rendering the rule invalid, the court decided that it should not be literally applied. A literal application would have required a license suspension which would have been an unreasonable, arbitrary, discriminatory, and confiscatory act.

## Appellate Practice Rulings Involving Judicial Review of Administrative Agencies

There continues to be some confusion concerning the time element in perfecting an appeal to the court of appeals from a common pleas court review of an administrative action. Individual agency statutes generally state that the appeal is governed by the law applicable to civil actions. The time fixed for perfecting appeals from the common pleas court to the court of appeals is that set out in the appellate practice act.[57] Both private parties[58] and the agencies[59] have failed to comply with this time limit, and in such cases the court of appeals is without jurisdiction to consider an appeal.

Under the Ohio Administrative Procedure Act[60] an appeal by the agency may be taken only on questions of law relating to constitutionality, and construction or interpretation of statutes and rules and regula-

55. Ohio Rev. Code § 119.11 (Supp. 1960).

56. *In re* Topper, 109 Ohio App. 289, 165 N.E.2d 19 (1959).

57. Ohio Rev. Code § 2505.07.

58. Seaway Taverns, Inc. v. Board of Liquor Control, 163 N.E.2d 186 (Ohio Ct. App. 1959). While this appeal is authorized by Ohio Rev. Code § 119.12 (Supp. 1960), it provides that the appeal shall proceed as in the case of civil actions under §§ 2505.01-.45, inclusive.

59. State v. Industrial Comm'n, 170 N.E.2d 278 (Ohio Ct. App. 1959). Under the Workmen's Compensation Act, Ohio Rev. Code § 4123.519, the appeal from the common pleas judgment is governed by the law applicable to the appeal of civil actions.

60. Ohio Rev. Code § 119.12 (Supp. 1960).