

Volume 4 | Issue 3

1953

Administrative Procedure

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Recommended Citation

Franklin C. Latcham, *Administrative Procedure*, 4 Cas. W. Res. L. Rev. 197 (1953)

Available at: <http://scholarlycommons.law.case.edu/caselrev/vol4/iss3/5>

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Survey of Ohio Law—1952

ADMINISTRATIVE PROCEDURE

The most significant developments in administrative procedure in Ohio during the period covered by this survey have been in the field of liquor regulation. The courts have extensively discussed the regulations issued by the Department of Liquor Control limiting the issuance of permits for the sale of alcoholic beverages. Regulations 64 and 70¹ state in part: (1) that the number of permits outstanding must be limited to the number of permits issued as of April 11, 1949, in each designated political subdivision; (2) that during the effective period of the regulation no applications for a broad class permits shall be accepted even for filing; and (3) that the only permits which could be issued under the regulation are renewals of present permits, certain other renewals and the transfer of a permit from one location to another or from one person to another with the consent of the Department.

Parts (1) and (3) of the above summarization of areas of the regulations were upheld by the courts. Part (1) was affirmed by several courts of appeals,² and not raised as an issue in the supreme court,³ despite the fact that the approach of the regulation is a fairly arbitrary one. Although the decision of the Ohio courts seems correct, courts of other states have gone both ways on this question.⁴ Several courts of appeals had found part (3) of the above summarization invalid as not being within the spirit of the Liquor Control Act because it unfairly discriminated in favor of present permit holders.⁵ The supreme court disagreed, however, in a *per curiam* opinion.⁶

Part (2) of the above summarization of the regulations, wherein the Department of Liquor Control refused to accept even for filing an application for a permit to sell alcoholic beverages, was held invalid by the supreme

¹ Regulation 70 of the Department of Liquor Control which became effective April 11, 1949, was superseded, strangely enough, by Regulation 64 which became effective June 24, 1950.

² See *Mandalla v. Board of Liquor Control*, 102 N.E.2d 266 (Ohio App. 1951) and the court of appeals opinion mentioned in *Board of Liquor Control v. Tsantles*, 156 Ohio St. 512, 103 N.E.2d 749 (1952).

³ *Board of Liquor Control v. Tsantles*, 156 Ohio St. 512, 103 N.E.2d 749 (1952).

⁴ *Accord*, *Stracquandano v. Department of Health of New York*, 285 N.Y. 93, 32 N.E.2d 806 (1941). *Contra*: *Whitney v. Watson*, 85 N.H. 238, 157 Atl. 78 (1931).

⁵ Cases cited note 2 *supra*.

⁶ Case cited note 3 *supra*.

court as being contrary to Section 6064-16 of the Ohio General Code.⁷ Apparently the court believed the Legislature intended the Department to consider separately each application for a permit even though under the Department's valid regulations no new permit may be issued.

In another case of interest, *Detelich v. Department of Liquor Control*,⁸ a court of appeals, in a rather technical opinion, emphasized the requirement of Section 154-73 of the Ohio General Code (Ohio Administrative Procedure Act) that notice of appeal must be filed with the agency. The court held that the Department of Liquor Control and the Board of Liquor Control were separate agencies within the meaning of Section 154-62 of the Ohio General Code, and, therefore, filing notice with the Department when notice should have been filed with the Board did not satisfy the statutory requirement. The court in *Board of Liquor Control v. Tancer*⁹ also underscored the former rule under the Administrative Procedure Act that the courts, on appeal, could not weigh the evidence in the record independently. This rule was apparently changed by a 1951 legislative amendment to the Act re-wording Section 154-73 of the Ohio General Code.¹⁰ Under the amended Section it appears that the court, on appeal, can weigh the evidence independently, but it will probably require judicial construction of the Section before the rule will definitely be established.¹¹ A second rather technical opinion was *Goldman v. Harrison*.¹² In that case the supreme court dismissed a cross-appeal from the Board of Tax Appeals which was not filed within 30 days after the Board's decision, as provided in Section 5611-2 of the Ohio General Code, although it was filed within 20 days after the notice of appeal was filed. The court considered itself precluded from relying upon Rule II, Section 1 (C), which permits cross-appeals to be filed within 20 days after notice of appeal filed, and was of the opinion that Sec-

⁷ State *ex rel.* Mandalla v. Bryant, 156 Ohio St. 396, 102 N.E.2d 711 (1951); Board of Liquor Control v. Tsantles, 156 Ohio St. 512, 103 N.E.2d 749 (1952). In Mandalla v. Board of Liquor Control, 102 N.E.2d 266 (Ohio App. 1951), the court had held that an aggrieved party could not contest the Department's refusal to accept an application for filing through an appeal to the Board of Liquor Control and then to the courts, but that he might bring a mandamus action. Mandamus was used in State *ex rel.* Mandalla v. Bryant, *supra*.

⁸ 107 N.E.2d 415 (Ohio App. 1950).

⁹ 107 N.E.2d 532 (Ohio App. 1951), *rehearing denied*, March 24, 1952, *appeal dismissed*, 158 Ohio St. 138, 107 N.E.2d 127 (1952).

¹⁰ 124 OHIO LAWS 202, effective August 28, 1951.

¹¹ See Note, *State Administrative Procedure—Scope of Judicial Review*, 4 WEST. RES. L. REV. 45 (1952). See also Barn Cafe & Restaurant v. Board of Liquor Control, 107 N.E.2d 631 (Ohio App. 1952) permitting the Department of Liquor Control to appeal from a judgment of the court of common pleas which had reversed an order by the Board of Liquor Control.

¹² 156 Ohio St. 403, 102 N.E.2d 848 (1951) See also Goldman v. L.B. Harrison, 158 Ohio St. 181, 107 N.E.2d 530 (1952) discussed under the TAXATION heading.