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A FAIR TRIAL BEFORE QUASI-JUDICIAL TRIBUNALS AS REQUIRED BY DUE PROCESS

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Prior to 1215, the people of England enjoyed certain legal rights, privileges, and immunities that had been developed by custom, practice, and tradition which had been granted from time to time and withheld and abused from time to time by the sovereign and the barons in the Feudal State then existing.

A system of common law, decisions pronounced by the kings and barons, magistrates, and perhaps other public authorities, had been developed. The kings had encroached upon the rights of the people, and even invaded the rights of the feudal barons. How much of what we call today "due process of law" then prevailed in England, is conjectural.

So in 1215, the barons, supported by the common people to some extent, forced upon King John the so-called Magna Carta or Great Charter. Among its provisions were the following:

(29) "No free man shall be taken, or imprisoned, or disseised, or outlawed or in any way destroyed, nor will we go upon him, nor will we send upon him, except by the legal judgment of his peers or by the law of the land."

(39) "To no one will we sell, deny, or delay the right of justice."

(40) "All persons are to be free to come and go in time of peace, except outlaws and prisoners."

Other provisions restrained the powers, and the abuses of those powers, of the crown, the courts, and the local sheriffs, constables, and other minor officers. Under the charter the barons were to choose 25 of their number to be guardians (and enforcers) of the charter, and on the death of any one of the 25, the survivors chose the successor.

King John died in 1216. With his death the need for further opposition to royal authority was temporarily obviated, for the so-called moderate party took control of affairs in the name of the new young King Henry. The Charter was reissued (amended) in 1216, in 1217, and in 1225. One of the original four copies of the Charter, the "Lincoln Charter," was reproduced in the Statutes of the Realm in 1810.[1]

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[1] Enc. Brit., Vol. 14, 14th ed. (1929), pages 630-634; McKechnie, Magna Carta, Glasgow (1905).

Our early English colonists imported with them to this country the so-called then English Law of the Land or Common Law and the principal elements of Magna Carta. The United States Constitution retained for the American people the common law of England (as it existed in 1791) excepting as the same was modified by constitutional provisions or congressional enactments. The Wisconsin Constitution retains the common law.[2]

This paper will deal with "Due Process of Law" under the United States and Wisconsin Constitutions, and some federal and more state statutes.

The Fifth Amendment to the United States Constitution provides:

> "***; nor shall any person *** *be deprived of life,* liberty, or property, without due process of law; ***"

The Fifth Amendment is a limitation on the power of the congress. It is not a limitation on the powers of the states.[3]

Section one of the Fourteenth Amendment provides:

> "***; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws."

This provision is a limitation on the power of the states. The two amendments on due process are identical and should receive the same construction, and the United States Supreme Court holds that "its construction governs when in conflict with State Court construction." It has been held also that the Fourteenth Amendment makes the first ten Amendments — the Bill of Rights — binding on all the States.

The Fourteenth Amendment was ratified by the required three-fourths of the state legislatures by 1868. Wisconsin ratified it in 1867. As a matter of interest, New Jersey and Ohio in 1868 withdrew their ratifications; Georgia, North Carolina, Texas, and Virginia first rejected the amendment and later ratified it; Kentucky, Deleware, and Maryland rejected the amendment in 1867, and so far as I am aware, these states never ratified it.

The first sentence and the first clause of the second sentence of the Fourteenth Amendment (neither quoted) deal with "citizens"; the remaineder with reference to "due process" applies to persons, which includes natural persons and corporations. Thus corporations are entitled to "due process."[4]

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[2] Wis. Const., Art. XIV, Sec. 13.
[3] McFaddin v. Evans-Snider-Buel Company, 185 U. S. 505, 46 L. ed. 1012 (1902); State v. Lloyd, 152 Wis. 24, 139 N. W. 514 (1913).
[4] State ex rel Borden Co. v. Dammann, 198 Wis. 265, 224 N. W. 139 (1929); New York Fire Dept. v. Stanton, 51 N. Y. S. 242 (1898).

Section ten of Article one of the United States Constitution provides in part:

> "*** No state shall *** pass any *** law impairing the obligation of contracts, ***."

Under this contract clause the right contemplated "must be a vested right, and not merely an expectancy based on an anticipated continuance of an existing law." The state cannot, by virtue of this clause, divest itself by contract of the right to exert its governmental authority in matters which, from their very nature, are of grave concern for the preservation of society and the performance of essential governmental duties.[5]

The "obligation of contract" in this provision means the legal obligations of the parties to adhere to an agreement which, at the time of contracting, the law recognized and made enforceable, not including illegal contracts. The word "contract" is given its ordinary legal definition. As to impairment, the question is not one of degree, manner, or cause, but whether legislation encroaches in any respect on the obligations of a contract or dispenses with any part of its force. The value of the contract cannot be diminished by legislation. Frequently the remedy on contracts, where it affects substantial rights, is included in the guarantee, and the remedy cannot be altered or materially impaired by subsequent legislation. Legal, not moral, obligations are protected.[6]

This clause protects implied contracts as well as express contracts, but it is doubtful whether it applies to quasi contracts. The public welfare, even during periods of emergency and economic necessity, does not justify disregard of this provision.[7]

Much more might be said on the subject of impairment of contracts, but that constitutional provision is largely secondary in cases arising under the "due process" provisions applicable to quasi-judicial tribunals.

Neither the contract clause nor the "due process" clause of the Fifth and Fourteenth Amendments prohibits or narrows the proper exercise of the police power of the state and its local municipalities. The "contract clause" is primarily a restraint on legislative bodies.[8]

[5] Dodge v. Board of Education of Chicago, 302 U. S. 74, 82 L. ed. 57 (1937).
[6] Carder Realty Corp. v. State, 23 N. Y. S. 2d. 395 (1940); Auld v. Butcher, 2 Kan. 135 (1863); Cash Service Co. v. Ward, 118 W. Va. 703, 192 S. E. 344 (1937); Cleary v. Brolcaw, 224 Wis. 408, 272 N. W. 831 (1937).
[7] Stewart v. Jefferson Police Jury, 116 U. S. 135, 29 L. ed. 599 (1885); Cary Library v. Bliss, 151 Mass. 364, 25 N. E. 92, 7 L. R. A. 765 (1890); Anders v. Nicholson, 111 Fla. 849, 150 So. 639 (1933); Hoard v. Luther, 297 N. Y. S. 718 (1937); Brown v. Ferdon, 5 Cal. 2d. 226, 54 Pac. 2d. 712 (1936).
[8] In re Opinion of the Justices, 261 Mass. 556, 159 N. E. 55 (1927).

These provisions do not forbid the congress or the states from changing the rules of evidence, as they relate to remedy only. So likewise in respect to contracts and in other cases involving "due process", statutes of limitation are subject to legislative amendment.[9]

The Wisconsin Constitution, Section Twelve of Article One, prohibits the legislature from passing any law impairing the obligation of contracts, and by Section Eight of Article One "due process of law" is required in the apprehension and trial of persons for crime (as amended in 1870).

Co-equal with the federal and state constitutional provisions on impairment of contracts is the right of Congress under the Constitution.[10] "To establish *** uniform laws on the subject of bankruptcies throughout the United States;" by virtue of which contract obligations may be discharged in bankruptancy proceedings, and incidental to which is the right of the state, as conceded by federal statutes, to provide that debtors, in execution proceedings and in bankruptcy, are to have a reasonable amount of property exempt from seizure or sale to satisfy contract obligations.

Section Twenty of Article Eight, Wisconsin Constitution, provides:

> "Any suitor, or any court of this state, shall have the right to prosecute *or defend* his suit either in his own proper person, or by an attorney or agent of his choice."

"Due process" to some extent, and perhaps incidentally, relates to substantive rights, but its principal bearing is upon procedure, that is, the conduct of a hearing or trial in any tribunal, whether a court, quasi-judicial body, an administrative body, or a single public official, and is a restraint also upon the legislative bodies and upon executives and administrative officers in the performance of their duties, statutory or otherwise.

The federal and state statutes quite generally and in considerable detail prescribe jurisdiction, process, and practice *for courts.* "Due process" procedure, as it affects quasi-judicial bodies and public officers, is not generally in any detail prescribed by statutes. The constitutions do not define or prescribe the form of "due process." "Due process" as especially applicable to public authorities other than courts (but also in large measure as relating to courts) is prescribed by common law with comparatively few statutory provisions. "Due process" is secured by laws operating on all alike and not subjecting individuals to arbitrary exercise of powers of government, by the established principles of private right and justice. It is difficult to

[9] Tabor v. Ward, 83 N. Car. 291 (1880); Davis v. Supreme Lodge, 165 N. Y. 159, 58 N. E. 891 (1900); Worthen Company v. Kavanaugh, 295 U. S. 56, 79 L. ed. 1298, 97 A. L. R. 905 (1935).

[10] United States Constitution, Art. I, Sec. 8, Cl. 4.

define "due process" as applicable to all cases and situations, and the peculiar situations in a given case may alter the requirements.

The courts hesitate continually to formulate a standard definition of "due process." One of the widely accepted definitions in its procedural aspects is:[11]

> "Due process of law in its procedural aspect requires a notice and an opportunity to be heard in an orderly proceeding adapted to the nature of the case, in accord with established rules.

This definition includes the essential elements of (1) Notice; (2) Opportunity to be heard or defend; (3) A competent tribunal; (4) An orderly procedure adapted to the nature of the case, which is uniform and regular and in accordance with established rules which do not violate fundamental rights. These principles are not confined to court proceedings but extend to every proceeding which may deprive a person of life, liberty, or property, whether the procedure be judicial, administrative, or executive in its nature.

As applied to legislative power, "due process of law" requires definiteness, a reasonable relation to proper legislative purposes, absence of arbitrariness, and equal application to all persons similarly situated, including Indians, minors, incompetents, and friendly aliens.[12] Within these limitations, legislatures may enact an enforce laws and regulations to protect the public health and safety and to promote the general welfare of the people, bearing in mind that "all property is held under the implied obligation that the owner's use of it shall not be injurious to the community,"[13]

"Due process" issues are raised very frequently with reference to the actions of federal and state lay boards, commissions, or other administrative bodies, and in questions involving interstate Commerce statutes and regulations, taxation, assessment of property, acquisition of private property for public use, adoption of zoning ordinances, the issuance and revocation of occupational and business licenses, other federal, state and local governmental administration, and perhaps most frequently in connection with the discharge of public employes, such as teachers, policemen, firemen, and general city employes who have permanent tenure in their positions and can be discharged only for cause and after hearing before the proper tribunal, if hearing be demanded.

The remainder of this paper will deal for illustrative purposes with these quasi-judicial hearings before boards and commissions,

[11] 116 C. J. S. 1152-1155.
[12] 16 C. J. S. 1164.
[13] 16 C. J. S. 1156.

comprised primarily of laymen unacquainted with court practice and procedure.

Milwaukee public school teachers who have satisfactorily served a three-year probation period attain permanent tenure until they reach the age of 70; are subject to discharge only "for cause upon written charges, which shall after ten days' written notice" to the teacher, upon her request, be investigated; and the action and decision of the Board of School Directors is final.[14]

In a similar manner, Milwaukee Vocational School teachers acquire permanent tenure subject to discharge only "for cause" with the right of hearing on written charges and on notice before the Vocational Board.[15]

All firemen and policemen hold their employment at the pleasure (with limitations) of the respective chiefs, who alone can suspend them for 30 days or less, but cannot discharge them *except for cause and after trial* on a written complaint setting forth the reasons for discharge by the Board of Fire and Police Commissioners, if the discharged fireman or policeman appeals from dismissal by either chief to such Board, which, by a majority vote after the hearing, must determine whether under the *preponderance of the evidence the charges are sustained;* and the Board must make written findings and decision and file a transcript of the evidence. By a peculiar city charter provision, the discharged policeman or fireman may appeal to the Circuit Court for a review of his case by serving a mere notice, not a summons and complaint or petition; and in such review, the court, as in other discharge cases, is limited to a consideration of the jurisdictional questions, including the question as to whether there is sufficient credible preponderant evidence to sustain the charges. Another peculiar charter provision applicable to firemen and policement only is that they have no right of appeal to the Supreme Court, the Circuit Court judgment being final. This absence of further appeal is probably based on the necessity for community safety and the semi-military discipline applicable to members of both departments.[16]

Under similar statutes and charter provisions and City Service Commission rules, general employes of the City of Milwaukee, elected officials and a few other employes excepted, attain permanent tenure in their positions after satisfactorily serving a 6 months probation period, and cannot be removed, discharged or demoted, *except for just cause which shall not be political or religious.* City employes may appeal from the discharge by the appointing officer to the Commission, whose decision and findings in the absence of jurisdictional

[14] Wis. Stat., Sec. 38.24 (18).
[15] Wis. Stat., Sec. 41.15 (12).
[16] Milwaukee City Charter (1934), Secs. 29.09; 29.11; 29.14; 29.16; 29.19.

defects, are final. The appeal must be taken within 3 days after the discharge, and written notice of time and place of the hearing and the reasons for the discharge must be given. Demotion in rank or pay is uniformly held to be the equivalent of discharge for appeal purposes.[17]

Similar provisions are contained in the statutes with reference to the teachers and many civil service employes of the State of Wisconsin and the County of Milwaukee.

A lawyer participating in such discharge hearings, either in support of the discharge or in defense, must become familiar with the special statutory provisions applicable to the given case and the rules of the public body conducting the hearing as they relate to the requirements of "due process"; ascertain whether the power to discharge is a single officer or a public body; investigate the written charges or reasons for the discharge to ascertain whether they come expressly or impliedly within those only very generally prescribed in the statutes or charter; and he must investigate thoroughly the facts to ascertain whether any substantial cause for dismissal exists as distinguished from nominal. Both defending and prosecuting lawyers must determine whether the whole proceeding was instituted as a mere subterfuge on the part of the discharging officer for reasons of personal enmity or prejudice to remove a faithful public servant from his position.

The essential elements of "due process" are for the benefit of the discharged employe, not for the discharging officer or the tribunal. It is incumbent upon the public body hearing the proceeding to accord "due process" in all cases. Any applicable statute or rule that does not accord to the discharged employe the four essential elements of "due process" above enumerated would violate the constitutional guarantee and be ample cause for the vacating of any action of the body adverse to the accused.

Unless the statutes applicable provide to the contrary, in the conduct of the hearing the following requirements should be observed, and the following rights and privileges should be accorded to the employe:

(1) The hearing must be conducted by the full board or commission unless the statutes expressly authorizes a committee to act. The majority vote of the tribunal is decisive.

(2) Where a committee conducts the hearing, its findings and decisions must be reported, together with a full report of the proceedings, including transcript of testimony, to the full board or commission for its consideration and final action.

[17] Wis. Stat., Sec. 16.68.

(3) It is usually optional to have the testimony reported.

(4) The dischargee has a right to have his own reporter report the proceedings, at his own expense, even though the public body provides an official reporter.

(5) The hearing tribunal should have a clerk or secretary to keep appropriate minutes of its proceedings, unless minutes are kept by a reporter. Frequently both reporter and clerk are employed.

(6) The hearing must be open to the public, excepting only that the public may be temporarily excluded for good reasons in the discretion of the tribunal for part or all of the testimony of particular witnesses. The occasions justifying temporary closing of the hearing are few. The committee cannot of its own motion conduct a closed hearing, nor can it do so at the request of the dischargee except for compelling reasons.

(7) Adequate written notice of the time and place of the hearing must be given to the dischargee together with a copy of the charges; and a copy of the charges might well be furnished to each member of the tribunal so that they as laymen can conveniently refer to the charges as the evidence progresses and so that by reference to the charges the members of the tribunal can determine finally which charges are proved and which are not. The dischargee has a right to be heard upon the question as to whether the charges are sufficiently specific and clear, and on occasion may be entitled to a bill of particulars. The dischargee may file a written answer to the charges, but he cannot be compelled to do so unless the statute so requires. The dischargee may state on the record, without filing a written answer, whether he admits or denies any or all of the charges.

(8) The tribunal, except as restricted by statute, has broad power to determine its own manner of procedure. It is optional for the tribunal to request a city or county attorney to examine the witnesses in support of the charges and cross-examine the witnesses called in defense. The public atorney must demean himself in a quasi-judicial manner. The public body and the discharging authority have no power to engage a private attorney to prosecute the charges.

(9) It is proper that the discharging officer, even though not a lawyer, put in the evidence, cross-examine adverse witnesses, and make an oral argument.

(10) The dischargee may be represented by counsel at his own expense, if he so desires; and, if not represented by counsel, he has the right to examine himself and nis own witnesses, cross-examine adverse witnesses, and argue orally. Even though unable to afford

counsel himself, he is not entitled in civil proceedings to have counsel at public expense, but he has that right only in criminal cases.

(11) Witnesses in support of the charges should be first heard; then the defense witnesses; then rebuttal witnesses. The discharging officer can testify himself; and the dischargee can testify in his own defense, all by way of denial, refutation, or explanation of the charges. Witnesses may be called adversely. A member of the tribunal in exceptional cases may testify.

(12) All witnesses must be sworn, either by the chairman or a member of the tribunal. Witnesses declining to be sworn may affirm. All witnesses are subject to cross-examination and to segregation.

(13) Both sides have the right of subpoena, including duces tecum. Many tribunals have express statutory power to issue their own subpoenas.

(14) Tribunal members may interrogate witnesses. Opinion evidence may be offered; and if occasion arises character and impeachment evidence is admissible.

(15) It is proper during the course of the hearing that the chairman of the tribunal rule on the admissibility of evidence and on other questions, unless another member of the tribunal or the dischargee should raise a question as to the propriety of the chairman's ruling, and in that event the whole tribunal should make the ruling by a majority vote.

(16) After both sides rest, an opportunity, reasonably limited in time, should be given both sides for oral argument, including rebuttal, as to the facts and the law, unless waived.

(17) As to admissibility of evidence: (a) all testimony must be competent, relevant, and material to the charges; (b) hearsay evidence should be excluded; (c) conversations with deceased persons should generally be excluded; (d) testimony on matters remote in time should be excluded; and (e) letters, memoranda, and reports may be received as exhibits.

(18) In ruling upon the admissibility of evidence, and on other questions that arise, the tribunal must bear in mind that the dischargee is entitled to a full, fair, and impartial hearing and to "due process."

(19) To disqualify a member from sitting, any bias, prejudice or prejudgment must usually be shown intrinsically, not extrinsically, on the record during the hearing, as the qualifications of tribunal members are not subject to collateral attack and generally only direct pecuniary interest in the result of the proceeding will dis-

qualify a member. Affidavits of prejudice and change of venue are not provided by statute. Sometimes, *of necessity,* the matter must be heard and determined by a tribunal all or a majority of whose members are prejudiced, when no other tribunal having jurisdiction exists. Many tests as to qualifications applicable to jurors are wholly inapplicable to the members. The remaining members of a tribunal have no power to examine into and pass upon the alleged bias or prejudice of a fellow member.

(20) If the dischargee satisfactorily answers, refutes, or explains all the charges assigned for his removal, he cannot legally be removed. Should the tribunal find that in substance the charges have been proved, that is, sufficient charges in the law to warrant removal, it is not mandatory on the tribunal to discharge. The tribunal would still be free to dismiss the charges and reinstate the dischargee if in their judgment and discretion they found it proper.

(21) All members of the tribunal should remain in the room while testimony is offered and arguments are made, excepting only as a member may for good cause leave the hearing for a brief time. If it becomes necessary for any member to be absent from the hearing for any length of time and he were to participate in making the findings and decision, it would also be necessary to continue the hearing to a later time when all members could be present. When a member is absent for a brief period only, the reporter should read to him the testimony taken in his absence. Some statutes prescribe a time limit for completion of the hearing and the decision. This time limit may be jurisdictional.

(22) After completion of the testimony and argument, the tribunal should by itself deliberate on the matter; that is, consider and weigh the evidence offered by both sides and the arguments pro and con, and give all the testimony and arguments full, fair, and unbiased consideration.

(23) The tribunal is the judge of the veracity of all witnesses, and in sharp conflicts of testimony on material points the tribunal determines which testimony is credible and which is incredible. The tribunal can believe the testimony of any one witness against that of any number of witnesses who give testimony to the contrary. The number of witnesses on a given contraverted point is not controlling, the credibility of any and all witnesses being the material consideration.

(24) The charges should be proved to the satisfaction of the members of the tribunal and generally by fair preponderence of the credible evidence. The "burden of proof" on any contraverted material issue of fact on the charges is upon the discharging officer, and

such burden as to any affirmative defensive issue of fact is upon the dischargee.

(25) The "degree of proof" required is that of preponderance of evidence to a reasonable certainty on any given material fact and on the charges as a whole. Should the charges involve fraud, clear and satisfactory evidence in proof thereof is probably required. Should the charges involve the ocmmission of a crime, the degree of proof required in a civil proceeding would still be that of preponderance of evidence rather than proof beyond reasonable doubt.

(26) All charges need not be proved, but charges sufficient to warrant discharge must be proved; and in passing upon the sufficiency of charges the tribunal must act with fairness to the dischargee and in what it believes to be in the best interests of the public service, considering the duties and responsibilities of the position involved and other appropriate factors.

(27) The tribunal must always bear in mind that charges are merely charges; that charges as of themselves are not proof; that the charges cannot be presumed to be true; that the charges must be established by credible evidence.

(28) "Preponderance of evidence" applicable here is the same as in a judicial proceeding.

(29) In determining the weight and convincing power of evidence, the tribunal members may take into consideration the knowledge, the source, and the means of information of the several witnesses, their interest or lack of interest, their candor or lack of candor, any bias or lack of bias manifested, the manner of testifying, the bearing of the witness upon the witness stand, and all facts and circumstances that are made to appear during the hearing. (Some of the foregoing statements are included in the standard court instructions to juries in civil cases).

(30) The tribunal acts in a quasi-judicial capacity. The tribunal is not held by the law to all the technicalities, niceties, refinements, discriminations, and restrictions applicable to judges of courts of record in conducting court trials, but it must at all times look at all matters from the standpoint of substance as well as form and be certain that the hearing is conducted and the matter disposed of with fairness, honesty, and impartiality.

(31) The members throughout the proceeding must in all matters use their discretion and judgment and do justice to all concerned.

(32) The essential, fundamental elements of a fair trial in a court of record must guide the tribunal and be reasonably observed throughout the proceeding.

(33) Above all, neither the tribunal as a whole, nor any member, should pre-judge the charges.

(34) No member of the tribunal is disqualified by his having some acquaintance with the particular employe and his work, as the members of the tribunal are usually employers of the dischargee and in large measure prescribe his duties and responsibilities. The members should generally disregard any prior information or knowledge, and determine the issues upon the record, the testimony, and the argument.

(35) Before a public employe having permanent tenure can be discharged, legal cause must exist, the cause must be substantial, just, consequential, and sufficient as distinguished from being merely subterfuge or fanciful, conjectural, political, religious, or otherwise insufficient.

(36) Among the causes for discharge recognized in the law are:

(a) Neglect or improper performance of duties; (b) incompetence; (c) failure to discharge properly the responsibilities of the position; (d) failure to perform the duties in harmony with the lawful instructions and orders of superiors; (e) failure to perform the duties in harmony with fellow-employes; (f) violation of any valid rule or regulation of the employer; (g) insubordination towards superiors; (h) persistent lack of discretion and display of ill-temper; (i) persistent discourteous acts or language toward fellow-employes or members of the public frequenting the place of employment; (j) persistent actions or conduct detrimental to the best interests of the employer or the public; and (k) any other substantial cause.

(37) The tribunal must make findings as to which, if any, of the charges are properly proved. It should bear in mind that in most cases the findings of fact cannot be disturbed by a court if the evidence under any reasonable view sustains the findings. The courts in reviewing the actions of these tribunals are limited to passing upon jurisdictional requirements, including the question as to whether ample cause for discharge has been proved.

(38) The tribunal must make and file a written decision. As a general rule, it is wise for the members to take up multiple charges, one by one, and dispose of them by formal or informal vote. The findings and decisions may be made by motions or resolutions as distinguished from formal court findings and decisions.

If the foregoing rules and guides are all reasonably observed, due process of law will be accorded; and it must be remembered that if in any material manner due process of law be denied, the court, upon review, will vacate the discharge or other tribunal action.

The constitutional right to due process of law does not include the right to appeal. Whether the right of review by the courts and an appeal therefrom to the Supreme Court exists, depends upon the applicable statutes.

Court review is generally by special proceeding, mostly by certiorari, sometimes by mandamus. In certiorari, evidence outside the record is inadmissible.[18]

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[18] 30 Am. Juris. 783; 18 C. J. 27-29; 25 C. J. 1133; 46 C. J. 993; 56 C. J. 409; 16 C. J. S. 1140, 1200, 1252, 1265, 1402, 1477, 1506; McQuillin, Municipal Corporations, 2d ed., Rev. Vol. II (1939) 483; 15 R. C. L. 530; 22 R. C. L. 572; Andrews v. King, 77 Me. 224, (1884); Arbogast v. Weber, 249 Ky. 20, 60 S. W. 2d 144 (1933); Beavers v. Inman. 35 Ga. App. 351, 133 S. E. 275 (1926); Boullioum v. Little Rock, 17 Ark. 489, 3 S. W. 2d. 334 (1928); Butler v. Scholefield, Supervisor, 54 Cal. App. 217, 201 Pac. 625 (1921); Clark v. Blochowiak, 241 Wis. 236, 5 N. W. 2d 772 (1942) Corrigan v. News Bedford, 250 Mass. 334, 145 N. E. 530 (1924); Dickey v. Civil Service Commission, Iowa, 205 N. W. 961 (1925); Ekern v. McGovern, 154 Wis. 157, 142 N. W. 595 (1913); Fetters v. Guth et al., 221 Iowa 359, 265 N. W. 625 (1936); Finch v. Fractional School Dist. etc., 225 Mich. 674, 196 N. W. 532 (1924); General Accident Fire & Life Assurance Corp. v. Industrial Commission, 223 Wis. 635, 271 N. W. 385 (1937); Hall v. Thayer, 105 Mass. 219 (1870); Hawkins v. Common Council of Grand Rapids, 192 Mich. 276, 158 N. W. 953 (1916); Heap v. City of Los Angeles et al., 6 Calif. (2nd) 405, 57 Pac. (2nd) 1323 (1936); Inland Steel Co. v. National Labor Relations Board, 109 Fed. (2nd) 9 (1940); Keim v. U. S., 177 U. S. 290, 20 S. Ct. 574 (1900); Lyon v. Bell, 120 S. W. (2nd) 752 (Kentucky) (1938); Maahs v. Schultz, 207 Wis. 624, (1932); Madison Airport Co. v. Wrabetz, 231 Wis. 147, 285 N. W. 504 (1939); McHugh v. Hasbrouck Heights, 144 Atl. 799, (New Jersey) (1929); Morgan v. U. S., 304 U. S. 1 (1938); People v. Coffin. 202 Ill. App. 103 (1917); Queen, The v. London County Council 1 Q.B. 190; Reichstein v. Turner, 6 N. J. Misc. Re. 382, 141 Atl. 588 (1928); Stanley v. Fiscal Court of Hopkins County, 189 Ky. 390, 227 S. W. 813 (1921); State v. District Court, 285 Pac. 928 (Montana) (1930); State ex rel Arnold v. Common Council, 157 Wis. 505, 147 N. W. 50 (1914); State ex rel Beebe v. Seattle, 159 Wash. 392, 293 Pac. 459 (1930); State ex rel Getchel v. Bradish, 95 Wis. 205, 70 N. W. 172 (1897); State ex rel Goldman v. Kansas City, 319 Mo. 1078, 8 S. W. (2nd) 620 (1928); State ex rel Nolan v. Mensing et al, 228 Wis. 34, 279 N. W. 659 (1938); State ex rel Progreso D. Co. v. Brokers Board, 202 Wis. 155, 231 N. W. 628 (1930); State ex rel Rawlings v. Kansas City, 213 Mo. App. 349, 250 S. W. 927 (1923); State ex rel Starkweather v. Common Council of the City of Superior, 90 Wis. 612, 64 N. W. 304 (1895); State ex rel Wagner v. Dahl, 140 Wis. 301, 122 N. W. 748, (1909); Stiver v. Kent, 1 N. E. (2nd) 1006 (1936), 7 N. E. (2nd) 183 (1937); Tesch v. Industrial Commission, 200 Wis. 616, 229 N. W. 194 (1930); Toothaker v. School Committee of Rockland, 256 Mass. 584, 152 N. E. 743 (1926); Walker v. Rogan, 1 Wis. 511 (1853); Witzler v. Glassner, 185 Wis. 593, 201 N. W. 740 (1925); Whitney v. Judges of the District Court, 271 Mass. 448, 171 N. E. 648 (1930); Wis. Coop. M. Pool v. Saylesville C. Mfg. Co., 219 Wis. 350, 263 N. W. 197 (1935); Wis. Tel Co. v. Public Service Commission, 232 Wis. 274, 287 N. W. 122 (1939); Zober v. Turner, 106 N. J. L. 86, 148 Atl. 894 (1930).