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1973

# A Survey of the Ohio Administrative Procedures Act

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## Recommended Citation

Note, 22 Clev. St. L. Rev. 320 (1973)

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## *A Survey of the Ohio Administrative Procedures Act*

THE RECENT EXPANSION OF THE USE OF ADMINISTRATIVE AGENCIES to facilitate the functioning of the various levels of governmental operations has created a correspondingly complex morass of procedural law.<sup>1</sup> Administrative procedure being the creation of administrative law, a definition of the latter is necessary for an understanding of the former. This area of law has been demarcated by "the provisions of statutes conferring rule making and adjudicatory powers upon organizations in government outside the judicial branch and orders entered by these agencies pursuant to such powers."<sup>2</sup> It should be noted, however, that this definition, like other brief definitions of broad areas of law, is not totally complete or absolutely accurate. It will be satisfactory for the purpose of forming a basis of understanding for the purpose of this discussion.

In Ohio, the General Assembly has granted a variety of agencies the authority to create and enforce rules and regulations in order to carry out their statutorily allocated responsibilities.<sup>3</sup> Each agency is established by a separate set of statutes which sets forth not only the basic deontological parameters of the agency, but also the procedural methods by which these goals would be attained. In 1941, the General Assembly of Ohio passed Amended Bill 324, creating the Administrative Law Commission for the purposes of studying the current exigencies of the state's administrative law and to report their findings in the form of a proposed procedural code.<sup>4</sup> As a result of its recommendation, the General Assembly enacted the Ohio Administrative Procedures Act (hereinafter referred to as the A.P.A.) in 1943.<sup>5</sup> This act originally applied to the activities of those agencies accorded a licensing authority, but in 1945 an amendment was enacted extending the A.P.A. to other agencies as defined in the current Ohio Revised Code §119.01.<sup>6</sup> There are currently some eighty agencies or activities encompassed by this act.<sup>7</sup>

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<sup>1</sup> *Rosenberg v. Cleveland Bd. of Bldg. Standards*, 24 Ohio Misc. 10, 15, 263 N.E.2d 325, 329 (C.P. 1970); 1 Ohio Jur.2d, *Administrative Law and Procedure* §5 (1953).

<sup>2</sup> A. Reilly, Jr., *Background of the Administrative Procedure Act*, REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION, ADMINISTRATIVE LAW CONFERENCE 1.02 (Ohio Legal Center Institute 1965).

<sup>3</sup> 1 Ohio Jur.2d, *Administrative Law and Procedure* §5 (1953).

<sup>4</sup> 119 Laws of Ohio 388 (Page 1941).

<sup>5</sup> Ohio Gen. Code §§154-61 to 154-73; 120 Laws of Ohio 358 (Page 1944).

<sup>6</sup> Ohio Gen. Code §§154-61 to 154-73, as amended, (1943); 121 Laws of Ohio 578 (Page 1946).

<sup>7</sup> For a listing of agencies subject to the Ohio A.P.A. see S. N. Melvin, *Appeals to Court Under the Administrative Procedure Act*, REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION ADMINISTRATIVE LAW CONFERENCE 4.09, Appendix A (Ohio Legal Center Institute 1965).

Presently, there are three means by which an agency may be brought under the auspices of the A.P.A.<sup>8</sup>

- 1) Where the statute which brings the agency into being and/or which grants it its authority specifically designates that the agency is so subject; or
- 2) Any official, board, or commission possessing the power to promulgate rules or make adjudications in specified departments and commissions identified in §119.01(A) of the Ohio Revised Code; or
- 3) Any licensing function of any administrative or executive officer, department, division, bureau, board, or commission of government of the state having the authority or responsibility to issue, suspend, revoke, or cancel licenses.

The A.P.A. does, however, exclude certain agencies and specific functions of others which otherwise would be encompassed by the act.<sup>9</sup> Most predominant among these exclusions named are the Ohio Public Utilities Commission, the Bureau of Workmen's Compensation of the Ohio Industrial Commission, and certain acts of the Bureau of Employment Services (formerly the Bureau of Unemployment).<sup>10</sup> The procedures which are used in the action of these agencies are delineated by separate statutes, usually in the code sections creating and empowering them.<sup>11</sup>

Each agency is vested with its particular power and collateral responsibilities by specific legislations, but the A.P.A. is a general code, designating the extreme procedural limits of the legislative grant of authority to these boards.<sup>12</sup> Because administrative law has its origins in legislation, these powers are strictly confined to conform with that legislation.<sup>13</sup>

In particular the A.P.A. covers three primary functions of administrative agencies: promulgation of rules and regulations, licensing, and adjudication. The remainder of the act is involved with adjuncts of the activities, *e.g.* hearings, notice, records, and judicial review.

<sup>8</sup> Ohio Rev. Code §119.01(A) (Page 1969); *In re Martins Ferry Metro. Housing Authority*, 2 Ohio App. 2d 237, 240, 207 N.E.2d 672, 674 (1965).

<sup>9</sup> *Id.*

<sup>10</sup> Ohio Rev. Code §119.01 (Page 1969).

<sup>11</sup> For an example of this type of procedural action, *see* Ohio Rev. Code §4111.01 et seq. (Page 1969), dealing with the Director of Industrial Relations; and for an example of its application *see* *Acme Laundry and Dry Cleaning Co. v. Mahoney*, 92 Ohio L. Abs. 147, 189 N.E.2d 915 (C.P. Franklin County 1963).

<sup>12</sup> 1 Ohio Jur.2d, *Administrative Law and Procedure* §§90-94 (1953).

<sup>13</sup> *Rosenberg v. Cleveland Bd. of Bldg. Standards*, 24 Ohio Misc. 10, 263 N.E.2d 325 (C.P. 1970); *Akron and Barberton Belt Rd. Co. v. Public Util. Comm'n*, 165 Ohio St. 316, 319, 135 N.E.2d 400, 402 (1956).

## Rule Making

The rules of a particular agency are the basis for all actions which it takes that are of legal interest. These rules fall within two categories defined by their application. The first group, those regulations pertaining to internal management and administration, is not within the purview of the A.P.A.<sup>14</sup> The second group is comprised of those regulations which have the force and effect of law, and it is mandatory that their creation comply with all the statutory procedural provisions. Failure to do so will invalidate any rule thus adopted, amended, or rescinded.<sup>12</sup> The action of an agency in changing its rules has been defined as a quasi-legislative authority, as opposed to its quasi-judicial authority in adjudicatory decisions.<sup>15</sup>

The quasi-legislative action occurs whenever an agency determines a need to adopt, amend, or rescind a rule or regulation; the procedure outlined in the Ohio Revised Code §119.03 is directly applicable in these situations.

Whenever a rule change is proposed, the initial requirement of the A.P.A. is that the agency must give reasonable public notice of the proposed change and establish a hearing date at least thirty days following publication of the notice.<sup>16</sup> The manner and form of the notice is left to the discretion of the individual agency, but it must be reasonable<sup>17</sup> and adequate.<sup>18</sup> Each agency must adopt a regulation standardizing its method of publishing notice.<sup>19</sup> It should be noted that in order to fulfill the reasonableness requirement the notice must contain a statement of the agency's intent,<sup>20</sup> and either a synopsis of the proposed rule change or a statement of the subject matter of the change,<sup>21</sup> as well as the date, time, and place of the hearing.<sup>22</sup> While the agency may, if it so desires, give additional notice (e.g. to individuals and/or businesses directly affected by the new rule), they are under no obligation to do so, nor is the necessity for a standard rule extended to this extraordinary notification when and if, it is exercised.

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<sup>14</sup> Ohio Rev. Code §119.01(C) (Page 1969); *Lloyd v. Industrial Comm'n*, 119 Ohio App. 467, 200 N.E.2d 705 (1964).

<sup>15</sup> Ohio Rev. Code §119.02 (Page 1969); *In re Rules and Regulations of Div. of Social Admin.*, 118 Ohio App. 407, 412, 195 N.E.2d 112, 116 (1963).

<sup>16</sup> Ohio Rev. Code §119.03(A) (Page 1969).

<sup>17</sup> *Id.*

<sup>18</sup> *Tripodi v. Liquor Control Comm'n*, 21 Ohio App.2d 110, 255 N.E.2d 294 (1970).

<sup>19</sup> Ohio Rev. Code §119.03(A)(3) (Page 1969); *In re Rules and Regulations of Div. of Social Admin.*, 118 Ohio App. 407, 409, 195 N.E.2d 112, 114 (1963).

<sup>20</sup> Ohio Rev. Code §119.03(A)(1) (Page 1969).

<sup>21</sup> Ohio Rev. Code §119.03(A)(2) (Page 1969).

<sup>22</sup> Ohio Rev. Code §119.03(A)(3) (Page 1969).

The statement of the proposed rule change in the notice must state the new rule in its final, adopted form. There is no requirement that each revision of the proposed rule be published.<sup>23</sup>

Once notice has been given as required, the agency must hold a public hearing as scheduled.<sup>24</sup> These hearings are to be held according to the Ohio Revised Code §119.03 which instructs the agency to allow "any person affected by the proposed change" to appear, be heard, examine witnesses and offer evidence "tending to show that said proposed rule, amendment, or rescission, if adopted or effectuated, *will be unreasonable or unlawful.*" (Emphasis added). A strict interpretation of this section indicates that concerned individuals may appear only if they are against the proposed rule change. Also the agency is solely responsible for gathering evidence to document the reasonableness and lawfulness of the proposal.

Other requirements of the hearings are that the agency, at its own expense, must make a record of the testimony, evidence, and admissibility rulings; that the agency shall have the right, but not the duty, to administer oaths; and that the agency shall pass on the admissibility of evidence. When the agency rules that a specific piece of offered evidence is inadmissible, any affected person may make an objection, and upon the offeror's proffering of the evidence, such proffer will be made a part of the official record.<sup>25</sup>

Section 119.03 also requires that where a rule is amended, the change will be accomplished by enacting the entire new rule, by including the amended portion, and by repealing the old rule. The original case law on this point held that the old rule had to be specifically repealed by the agency and that if it were not, the attempted institution of the new rule would be a nullity.<sup>26</sup> This particular technicality has been removed by the rationalization that the effectuation of the new rule repeals its predecessor automatically as long as the necessary statutory procedural rules are followed.<sup>27</sup>

Subsequent to the adoption of the rule by the agency, several requirements must be met. The A.P.A. provides that:

- 1) a certified copy of the rule must be filed with the secretary of state;<sup>28</sup>

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<sup>23</sup> Ohio State Fed'n. of Licensed Nursing Homes v. Public Health Council, 113 Ohio App. 113, 116, 117, 172 N.E.2d 726, 729 (1961), *aff'd* 172 Ohio St. 227, 174 N.E.2d 251 (1961).

<sup>24</sup> Ohio Rev. Code §119.03(C) (Page 1969).

<sup>25</sup> *Id.*

<sup>26</sup> Golubski v. Board of Embalmers, 114 Ohio App. 111, 180 N.E.2d 861 (1961).

<sup>27</sup> Jamison Plumbing and Heating Co. v. Rose, 14 Ohio App.2d 47, 236 N.E.2d 561 (1967), *overruling* Golubski v. Board of Embalmers, 114 Ohio App. 111, 180 N.E.2d 861 (1961).

<sup>28</sup> Ohio Rev. Code §119.04 (Page 1969).

- 2) the effective date of the rule shall be set not less than 10 days after filing;<sup>29</sup>
- 3) the agency will make a reasonable attempt to inform those affected and will have copies of the rule available for distribution upon request.<sup>30</sup>

### Adjudication Proceedings

The mere passage and enactment of rules would be an abstract motion were the agency not granted a corresponding authority to enforce those rules. This enforcement is accomplished by adjudication proceedings through which the agencies act in a quasi-judicial manner.<sup>31</sup> Each agency employs the existing applicable law available in any particular case.<sup>32</sup> Where using an adjudicatory process to enforce an order, the agency may act only to the extent of its statutorily granted authority.<sup>33</sup> Thus, these proceedings are guided by the dual directives of the granting authority and of the A.P.A. as are all the proceedings of the agencies.<sup>34</sup>

Procedures involved in quasi-legislative activities are comparatively standardized, but adjudication procedures may become much more complicated by the very nature of the proceeding involved. The adjudicatory activities of the agencies are described as being quasi-judicial<sup>35</sup> and as such may become at least as diverse and involved as in any court proceeding.

There are a variety of situations in which an agency may issue an adjudication order. One of these situations is where the agency exercises its power to suspend licenses for a violation of either agency regulation or law.<sup>36</sup>

Ordinarily a hearing must be held prior to the issuance of an adjudicatory order by the agency. However, there are several exceptions to this rule. These situations arise when an agency is statutorily required to revoke a license as a result of a court order; when a suspension is allowed by a statute expressly negating the

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<sup>29</sup> Ohio Rev. Code §119.03 (D) (Page 1969).

<sup>30</sup> Ohio Rev. Code §119.03 (E) (Page 1969).

<sup>31</sup> 1 Ohio Jur.2d, *Administrative Law and Procedure* §88 (1953).

<sup>32</sup> M. S. CULP, CASES AND MATERIAL ON THE ADMINISTRATIVE LEGISLATIVE PROCESS 311 (1966).

<sup>33</sup> State *ex rel* Kahler-Ellis Co. v. Cline, 69 Ohio L. Abs. 305, 125 N.E.2d 222 (C.P. Lucas County 1954).

<sup>34</sup> Pepperidge Farm, Inc. v. Foust, 66 Ohio L. Abs. 482, 117 N.E.2d 725 (C.P. Franklin County 1954); 1 Ohio Jur.2d, *Administrative Law and Procedure* §86 (1953).

<sup>35</sup> 1 Ohio Jur.2d, *Administrative Law and Procedure* §§37-39; see also *Handler v. Department of Commerce*, 14 Ohio Misc. 9, 233 N.E.2d 147 (C.P. 1967); compare *S. S. Kresge Co. v. Bowers*, 170 Ohio St. 405, 166 N.E.2d 139 (1960).

<sup>36</sup> Ohio Rev. Code §119.061 (Page 1969); Ohio Rev. Code §119.07 (Page 1969).

hearing requirement; or when an appeal to a higher level agency exists, as long as a hearing is available at that level.<sup>37</sup> In some instances there is an absence of an automatic hearing requirement.<sup>38</sup> When there has been a judicial determination that a licensee may successfully demand a hearing upon the suspension.<sup>39</sup> In these circumstances the suspension takes effect upon issuance and remains in effect during the subsequent hearing.

As previously observed, a hearing must be held prior to the issuance of most adjudicatory orders. The A.P.A. requirements in these instances demand that the agency notify the licensee of his opportunity to request a hearing, stating his right to legal counsel and profferment of evidence, and the charge against him.<sup>40</sup> The Ohio Revised Code, §119.07, states that "the notice shall be given by registered mail, return receipt requested. . . ." The courts look upon this statutory requirement as a method of insuring that adequate notice has been given the licensee. The adequacy of the notice is the primary consideration, rather than precise compliance.<sup>41</sup> With this theory as a basic premise the courts treat a signed, returned receipt as *prima facie* evidence of adequate notice, but the licensee may present evidence in rebuttal of this fact.<sup>42</sup> On the other hand, when the licensee arrives at the hearing prepared to litigate the subject matter, but he has not been given notice by the approved method, it may be assumed that he has waived the notice requirement.<sup>43</sup>

The hearing must be originally set at not less than seven but not more than fifteen days after the party's request has been made, but may be postponed or continued upon the motion of any affected party or of the agency.<sup>44</sup> Section 119.07 of the Ohio Revised Code does not establish the maximum time allowed for delays. However, the courts have determined that an unexplained and unreasonable delay deprives the affected party of due process.<sup>45</sup> These decisions

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<sup>37</sup> Ohio Rev. Code §119.06 (Page 1969).

<sup>38</sup> Skall v. Department of Liquor Control, 72 Ohio L. Abs. 134, 135, 134 N.E.2d 390, 391 (Cr. App. 1953).

<sup>39</sup> Toledo v. Bernoir, 18 Ohio St.2d 94, 98, 247 N.E.2d 740, 744 (1969) (registrar of motor vehicles may suspend a driver's license under Ohio Rev. Code §119.06(B), but must afford a hearing upon the driver's request under Ohio Rev. Code §4509.04).

<sup>40</sup> Ohio Rev. Code §119.07 (Page 1969).

<sup>41</sup> Tripodi v. Liquor Control Comm'n, 21 Ohio App.2d 110, 255 N.E.2d 294 (1970).

<sup>42</sup> *Id.*

<sup>43</sup> Meyer v. Board of Liquor Control Comm'n, 69 Ohio L. Abs. 407, 410, 119 N.E.2d 156, 158 (C.P. Franklin County 1954).

<sup>44</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>45</sup> *In re Milton Hardware Co.*, 19 Ohio App.2d 157, 250 N.E.2d 262 (1969); *see* Cunningham v. Jerry Spears Co., 119 Ohio App. 169, 197 N.E.2d 810 (1963); *State ex rel. Columbus Gas and Fuel Co. v. Public Util. Comm'n*, 122 Ohio St. 473, 172 N.E. 284 (1930).

have established that the agency must provide a timely and expeditious hearing but that the reasonableness of the delay is determined by the particular facts of each case.<sup>46</sup> In some instances statutes other than Chapter 119 state a particular period when a specific agency must hold the hearing. In these situations this mandatory duty may successfully be avoided by the agency only if it can show that compliance would inevitably produce a conflict with the rights of a party other than those of the party involved and that this third party's rights are the superior of the two.<sup>47</sup>

Once the date, time, and place of the hearing have been determined and notice has been issued, the agency is empowered to require the attendance of witnesses and the production of documents, papers, records, and books it feels are necessary for a fair hearing. This is accomplished through the use of a *subpoena* or a *subpoena duces tecum*.<sup>48</sup>

At the beginning of the hearing, the agency must determine whether or not a stenographic record is required. In most instances such a record is required and must contain all the evidence and testimony presented at the hearing.<sup>49</sup> There is no record required when there will be no appeal to a court from the decision of the agency.<sup>50</sup> Yet, because any person adversely affected by the decision may appeal under the provisions of the A.P.A.,<sup>51</sup> a stenographic record is a pragmatic necessity at most hearings.<sup>52</sup> The importance of the record, at least from the agency's viewpoint cannot be over-emphasized. If there should be an appeal from the ruling of the agency, the courts will admit only the recorded evidence and testimony as proof of the reasonableness and lawfulness of the agency's decision.<sup>53</sup> When a record has not been made<sup>54</sup> or when it is incomplete to the extent of failing to show sufficient justification,<sup>55</sup> the board's ruling will not stand.

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<sup>46</sup> *Id.*

<sup>47</sup> *State ex rel. Hannan v. DeCourcy*, 18 Ohio St.2d 73, 77, 78, 247 N.E.2d 465, 468 (1969).

<sup>48</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Ohio Rev. Code §119.12 (Page 1969).

<sup>52</sup> The most obvious case where a record need not be made is where the licensee pleads guilty to the violation, but even here there may be an appeal on procedural grounds.

<sup>53</sup> *Doelker v. Accountancy Bd.*, 12 Ohio St.2d 76, 80, 232 N.E.2d 407, 410 (1967); *Arcaro Bros. Builders, Inc. v. Zoning Bd. of Appeals*, 7 Ohio St.2d 32, 218 N.E.2d 179 (1966).

<sup>54</sup> *Fahrenbruck v. State Bd. of Landscape Architect Examiners*, 13 Ohio Misc. 39, 230 N.E.2d 691 (C.P. 1967); *American Legion, Post 96 v. Board of Liquor Control*, 21 Ohio Op.2d 320, 322, 187 N.E.2d 195, 196 (C.P. 1962); *Matash v. Dept. of Insurance*, 117 Ohio St. 55, 202 N.E.2d 305 (1964).

<sup>55</sup> *Minarik v. Board of Review, Dep't of State Personnel*, 118 Ohio App. 71, 193 N.E.2d 396 (1962).



The agency is empowered to call witnesses to testify under oath.<sup>56</sup> The general rules of cross-examination are used as a guide for the method of interrogating these witnesses.<sup>57</sup>

One of the most sensitive areas of discretion in which the agency becomes involved is in the determination of the admissibility of evidence. The Ohio Revised Code §119.09 grants the authority to the agencies to make these determinations in each hearing.<sup>58</sup> The legislature, of course, has the authority to grant the right to prescribe rules of evidence to the agencies.<sup>59</sup> This power to enact rules of evidence is limited in that provision must be made for an equitable forum<sup>60</sup> which will not deprive the subject party of his right to due process.<sup>61</sup> In ruling on admissibility, the agency is not required to conform to the strict criteria of evidentiary rules applicable to a court of law because the agencies are only quasi-judicial.<sup>62</sup> This is not to state that this atmosphere of informality may be allowed to become so extreme as to be lax, because the underlying tenet of fairness must remain superior to the practical necessity of an efficient mechanical process.<sup>63</sup>

These limits give the agency a great deal of latitude in its evidentiary rules but still limit them from grossly unfair rulings. They may not admit as evidence what clearly is not evidence<sup>64</sup> or, conversely, exclude what clearly has evidentiary merit.<sup>65</sup> The A.P.A. does very little to solidify the guidelines within which the evidentiary rules are to be established, but it must be remembered that the basis of a hearing is fairness and reasonableness.<sup>66</sup> Thus, it has been suggested that the specific rules of evidence established should

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<sup>56</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>57</sup> 1 Ohio Jur.2d, *Administrative Law and Procedure* §119 (1953).

<sup>58</sup> *Lakis v. Board of Liquor Control*, 120 Ohio App. 163, 201 N.E.2d 605 (1963), *appeal dismissed*, 177 Ohio St. 80, 202 N.E.2d 309 (1964).

<sup>59</sup> *Ohio Power Co. v. Diller*, 18 Ohio App.2d 167, 247 N.E.2d 774 (1969).

<sup>60</sup> *In re Milton Hardware Co.*, 19 Ohio App.2d 157, 250 N.E.2d 262 (1969).

<sup>61</sup> *Department of Liquor Control v. Santucci*, 17 Ohio St.2d 69, 72, 73, 246 N.E.2d 549, 551 (1969).

<sup>62</sup> *In re Milton Hardware Co.*, 19 Ohio App.2d 157, 250 N.E.2d 262 (1969); *Provident Savings Bank and Trust Co. v. Tax Comm'n*, 26 Ohio L. Abs. 175, 178 (C.P. Hamilton County 1931).

<sup>63</sup> *Fugate v. Columbus*, 4 Ohio App.2d 147, 211 N.E.2d 885 (1963).

<sup>64</sup> *In re Milton Hardware Co.*, 19 Ohio App.2d 157, 250 N.E.2d 262 (1969); *General Motors Corp. v. Baker*, 92 Ohio App. 301, 110 N.E.2d 12 (1952); *Eastern Ohio Distrib. Co. v. Board of Liquor Control*, 59 Ohio L. Abs. 188, 98 N.E.2d 330 (Ct. App. 1950).

<sup>65</sup> *Ohio Real Estate Comm'n v. Cohen*, 90 Ohio L. Abs. 137, 145-46, 187 N.E.2d 641, 645-46 (C.P. Muskingum Co. 1962); *Fugate v. Columbus*, 4 Ohio App.2d 147, 152-54, 211 N.E.2d 885, 889 (1963).

<sup>66</sup> *General Motors Corp. v. Baker*, 92 Ohio App. 301, 110 N.E.2d 12 (1952); 1 Ohio Jur.2d, *Administrative Law and Procedure* §110 (1969).

parallel those used by a court of law in civil proceedings rather than criminal.<sup>67</sup> These guidelines are generally applicable, but there are instances when specific agencies are statutorily limited<sup>68</sup> or immune to these guidelines; thus, the procedure established for individual agencies must be closely examined prior to hearings before them. A suggested goal for the establishment of more uniform and reasonable evidentiary guidelines has been suggested; replacing rules with discretion, admitting all evidence that seems to the presiding officer to be relevant and useful, and relying upon the kind of evidence on which responsible persons are accustomed to rely upon in serious affairs.<sup>70</sup>

Whenever the agency makes an unfavorable ruling upon offered evidence, the offeror may object. Upon a continued unfavorable ruling, the evidence may be proffered, and such proffer shall be made a part of the official record of the hearing.<sup>71</sup> Because the record is the only presentation of the hearing that an agency may make to an appellate court, it is obvious that any disputes in the evidence will be included in the record.

The form of the evidence presented is also less restrictive than in regular judicial proceedings. An agency may use any evidence which is presented to, and accepted by it, regardless of its form or manner of presentation.<sup>72</sup> In any individual situation, determination of the proper form, as in the case of acceptable substance, is left largely to the discretion of the board holding the hearing.<sup>73</sup> Depositions, for example, may be taken by the agency, but the language of the A.P.A. indicates that a licensee or other affected party may enter depositions only within the rules for other evidence, that is, at the reasonable discretion of the hearing board.<sup>74</sup> This discretion may be restricted by the particular agency statute which might give an absolute right or prohibition as to such depositions.<sup>75</sup>

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<sup>67</sup> *Matteo v. Department of Liquor Control*, 71 Ohio L. Abs. 97, 130 N.E.2d 351 (Ct. App. 1955); *State ex rel Mayers v. Gray*, 114 Ohio St. 270, 151 N.E. 125 (1926).

<sup>68</sup> *See, e.g.*, Ohio Rev. Code §4715.37 (Page 1969) (State Dental Board) and Ohio Rev. Code §§4123.515-4123.519 (Page 1969) (Ohio Industrial Commission).

<sup>69</sup> *See* Ohio Rev. Code §4141.28(J) (Supp. 1972) (Board of Review of the Bureau of Unemployment Compensation) and Ohio Rev. Code §4123.515 (Bureau of Workmen's Compensation), which specifically make the common law and statutory rule of evidence unenforceable in hearings before these boards.

<sup>70</sup> K. C. DAVIS, *ADMINISTRATIVE LAW TEXT* 271 (3rd ed. 1972).

<sup>71</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>72</sup> *Reinhart v. Industrial Comm'n*, 137 Ohio St. 159, 28 N.E.2d 498 (1940).

<sup>73</sup> *Id.*

<sup>74</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>75</sup> *See, e.g.*, Ohio Rev. Code §4903.06 (Page 1969).

A point of evidence which is not statutorily defined is the extent to which the agency may use its own expertise or official knowledge in arriving at a determination. Because an administrative hearing lacks the elements of a true adversary situation, the agency may not use its expertise or official knowledge as the sole basis for its decision, although, from a pragmatic viewpoint, the members of the hearing board will be affected by their cognizance of the subject matter.<sup>77</sup>

In most agency adjudicatory hearings, the burden of proof rests upon the party asserting the affirmative viewpoint,<sup>78</sup> as is the general rule in regular judicial proceedings.<sup>79</sup>

The Ohio A.P.A. provides for an additional type of adjudicatory procedure other than the usual hearing. Any agency operating under Chapter 119 of the Ohio Revised Code may appoint a referee or examiner to conduct the hearing.<sup>80</sup> The qualifications of this individual are left to the discretion of the agency, with the only restriction being the admission of the referee or examiner to the practice of law in the State of Ohio.<sup>81</sup> This referee files a written report of his findings of fact, his conclusions of law, and his recommendations as to the action to be taken by the agency. Within five days after the filing of this report with the agency, a copy will be sent to the party or his attorney, who will then file his objections to the report. The agency, upon consideration of both the referee's report and the objections thereto, may approve, modify, or disapprove the recommendations. An order of an agency determined in this manner has the same weight and authority as if determined by a full agency hearing.<sup>82</sup>

In both a full board and referee hearing, there are imposed requirements that the agency must adhere to in arriving at its decisions through proper consideration of the evidence.<sup>83</sup> The adjudicatory order must be based on evidence which is reliable, probative,

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<sup>76</sup> Pollack and Leach, *A Re-Appraisal of the Ohio Administrative Procedures Act*, 11 OHIO STATE L.J. 69, 84 (1950).

<sup>77</sup> 1 OHIO JUR.2d, *Administrative Law and Procedure* §104 (1953).

<sup>78</sup> *General Motors Corp. v. Baker*, 92 Ohio App. 301, 110 N.E.2d 12 (1952); *Canton Malleable Iron Co. v. Green*, 75 Ohio App. 526, 62 N.E.2d 756 (1944).

<sup>79</sup> C. MCCORMICK, *MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE* §337 (2d ed. 1972)

<sup>80</sup> Ohio Rev. Code §119.09 (Page 1969).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Ohio Rev. Code §119.12 (Page 1969).

and substantial.<sup>84</sup> The order must also be lawful<sup>85</sup> and reasonable<sup>86</sup> as determined by the powers conferred upon the agency by the Ohio Constitution and statutes which created the agency or vested such power in it.<sup>87</sup>

Once a determination has been made, it enters the decision in its journal and serves, by registered mail, a certified copy of the order to the person or persons affected, as well as to the attorney of record.<sup>88</sup> When the order is adverse to the party, the agency also will send instructions as to the time and method by which an appeal may be made.<sup>89</sup>

### Appeals

There are two appeals sections of the A.P.A. The first, the Ohio Revised Code §119.11, deals with appeals from rules adopted, amended, or rescinded by an agency under the Ohio Revised Code §119.03. The second concerns appeals from adjudicatory rulings. Because these appeals have their basis in statutory authority, sections 119.11 and 119.12 must be strictly complied with by the courts.<sup>90</sup> This can raise a number of problems because the courts must at the same time expect a certain lack of precision from the quasi-courts of the agencies.<sup>91</sup>

### Appeals From Agency Rules

The Ohio Revised Code, §119.11 states in part that:

Any person adversely affected by an order of an agency [determined under authority of the Ohio Rev. Code §119.03] . . . may appeal to the court of common pleas of Franklin County on the grounds that said agency failed to comply with the law in adopting, amending, rescinding, publishing, or distributing said rule, or that the rule as adopted or amended by the agency is unreasonable or unlawful or that the rescission of the rule was unreasonable or unlawful.

<sup>84</sup> *Id.*; *In re* Milton Hardware Co., 19 Ohio App.2d 157, 162, 250 N.E.2d 262, 266 (1969).

<sup>85</sup> Ohio Rev. Code, §119.12 (Page 1969); *Evans v. Board of Liquor Control*, 112 Ohio App. 264, 172 N.E.2d 336 (1960).

<sup>86</sup> *Woody's Market, Inc. v. Board of Bldg. Appeals, Dep't of Indust. Relations*, 58 Ohio Op.2d 509, 283 N.E.2d 459 (C.P. 1972); *General Motors Corp. v. Baker*, 92 Ohio App. 301, 110 N.E.2d 12 (1952).

<sup>87</sup> *In re* Milton Hardware Co., 19 Ohio App.2d 157, 162, 163, 250 N.E.2d 262, 267, 268 (1969); *State ex rel. Mayers v. Gray*, 114 Ohio St. 270, 275, 151 N.E. 125, 126 (1926); *Eastern Ohio Distrib. Co. v. Board of Liquor Control*, 59 Ohio L. Abs. 188, 189, 190, 98 N.E.2d 330, 331 (Ct. App. 1950).

<sup>88</sup> Ohio Rev. Code §119.09 (1969).

<sup>89</sup> *Id.*

<sup>90</sup> *Detelich v. Department of Liquor Control*, 62 Ohio L. Abs. 195, 107 N.E.2d 415 (Ct. App. 1950).

<sup>91</sup> *General Motors Corp. v. Baker*, 92 Ohio App. 301, 110 N.E.2d 12 (1952); *Canton Malleable Iron Co. v. Green*, 75 Ohio App. 526, 62 N.E.2d 756 (1944).

Obviously this statute offers a great deal of latitude for argumentative grounds upon which an appeal can be based. However, before the court will hear an appeal, the affected person must insure that he has exhausted all his available administrative remedies.<sup>92</sup> Failure to exhaust these remedies bars the appeal from the courts,<sup>93</sup> except when an appellant can show evidence that attempts at such administrative appeals would be futile.<sup>94</sup> The logic behind this requirement is twofold. First, the common law required that statutes in derogation of the common law be strictly construed. This demands that the A.P.A. definition of an administrative adjudication as "the determination by the highest or ultimate authority of an agency . . ." be followed because at common law there were no administrative agencies. Second, the precedent followed in general administrative law has been that the courts will not interfere with agency proceedings prior to their conclusion.<sup>95</sup> There are exceptions to this general rule against court interference. When the agency has clearly exceeded its authority<sup>96</sup> or, in the consociated circumstance, when there is a determination that the agency has no authority to act in any respect,<sup>97</sup> the courts may take what otherwise would be premature action and act on an injured party's action.

A quasi-legislative administrative agency has been defined as an agency with the power to enact rules and regulations which carry the weight and authority of law.<sup>98</sup> These rules are intended to, and do, concern a segment of the population in general where their effect upon this segment is of a standard.<sup>99</sup>

When this quasi-legislative authority is exercised by the enactment of rules and regulations, there is no right of judicial review under the Ohio Revised Code §119.11.<sup>100</sup> The theory here is that the agency, when acting within its statutory authority, has been delegated the legislative power of the General Assembly.<sup>101</sup> Because the

<sup>92</sup> State *ex rel.* Lieux v. Westlake, 154 Ohio St. 412, 96 N.E.2d 414 (1951).

<sup>93</sup> Bureau of Unemployment Compensation v. Caudill, 27 Ohio Misc. 34, 35, 272 N.E.2d 204, 206 (C.P. 1971).

<sup>94</sup> Ogletree v. McNamara, 449 F.2d 93, 99 (6th Cir. 1971).

<sup>95</sup> McKart v. U.S., 395 U.S. 185, 194 (1969).

<sup>96</sup> *Id.*; see also, *In re* Milton Hardware Co., 19 Ohio App.2d 157, 250 N.E.2d 262 (1969).

<sup>97</sup> State *ex rel.* Barbuto v. Ohio Edison Co., 16 Ohio App.2d 55, 61-62, 241 N.E.2d 783, 787 (1968).

<sup>98</sup> Ohio Rev. Code §119.02 (Page 1969); *In re* Rules and Regulations of Division of Social Administration, 118 Ohio App. 407, 410, 195 N.E.2d 112, 116 (1963).

<sup>99</sup> *In re* Martins Ferry Metro. Housing Authority, 2 Ohio App.2d 237, 241, 207 N.E.2d 672, 674 (1965); *Bi-Metallic Investment Co. v. State Bd. of Equalization of Colo.*, 239 U.S. 441, 444 (1915); *Zimmerman v. Canfield*, 42 Ohio St. 463, 472 (1885).

<sup>100</sup> Fortner v. Thomas, 22 Ohio St.2d 13, 19, 257 N.E.2d 371, 373 (1970).

<sup>101</sup> State v. Schneckengost, 30 Ohio St.2d 30, 282 N.E.2d 50 (1972).

courts cannot and will not accept moot or abstract questions or give advisory opinions when dealing with the legislature, they will not test administrative regulations in a vacuum.<sup>102</sup> The reviewability of a rule change occurs only when the agency applies its rules to those under its authority;<sup>103</sup> and only when a question arises out of the rule's application is the validity of the regulation tested.<sup>104</sup> While this distinction may seem slight, it serves the purpose of removing the rule from the area of strict quasi-legislative matters and places it in an administrative context,<sup>105</sup> thereby subjecting the matter to the Ohio Revised Code §119.11.<sup>106</sup> To proceed under this section, the person attempting to appeal must prove his standing to question the agency's decision.<sup>107</sup> This is accomplished by showing that he was a party to the administrative hearing;<sup>108</sup> that he is amenable to, and controlled by, their rules; and that he was adversely affected by the rule change, adoption, or rescission.<sup>109</sup> The courts have been rather liberal in granting standing and thus have reduced the occurrence of an agency's decision being nonreviewable by a judicial body.<sup>110</sup>

Once the adversely affected party has determined that he intends to appeal, there are certain procedures necessary in order to initiate the action. The party wishing to appeal a rule decision must file a notice of appeal with the Franklin County Court of Common Pleas, setting forth the grounds, within fifteen days after the rule has been filed. The agency then has ten days to file in court a transcript of the proceedings held with regard to that specific rule. Within three days after receiving the record, the court will notify

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<sup>102</sup> *Tuber v. Perkins*, 6 Ohio St.2d 155, 157, 216 N.E.2d 877, 878-79 (1966); *Morgan Co. Budget Comm'n v. Board of Tax Appeals*, 175 Ohio St. 225, 226, 193 N.E.2d 146, 146 (1963).

<sup>103</sup> Ohio Rev. Code §119.02 (Page 1969).

<sup>104</sup> Ohio Rev. Code §119.11 (Page 1969); *Battles v. Ohio State Racing Comm'n*, 12 Ohio App.2d 52, 55-56, 230 N.E.2d 662 (1967).

<sup>105</sup> *Lindblom v. Board of Tax Appeals*, 151 Ohio St. 250, 85 N.E.2d 376 (1949); *Zangerle v. Evatt*, 139 Ohio St. 563, 41 N.E.2d 369 (1942).

<sup>106</sup> *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 233 N.E.2d 500 (1968); for similar decisions in other states see: *Kelly v. John*, 162 Neb. 319, 75 N.W.2d 713 (1956); *Bird v. Sorenson*, 16 Utah 2d 1, 394 P.2d 808 (1964); *Kleiber v. San Francisco*, 18 Cal.2d 718, 117 P.2d 657 (1941); cf. *Remy v. Kimes*, 175 Ohio St. 197, 191 N.E.2d 837 (1963) and *Berg v. Struthers*, 176 Ohio St. 146, 198 N.E.2d 48 (1964).

<sup>107</sup> *Columbus Green Cabs, Inc. v. Board of Review, Bureau of Unemploy. Compen.*, 88 Ohio L. Abs. 107, 112, 184 N.E.2d 257, 260 (C.P. Franklin County 1961).

<sup>108</sup> Ohio Rev. Code §119.01(G) (Page 1969).

<sup>109</sup> Ohio Rev. Code §119.11 (Page 1969); *Clermont Nat. Bank v. Edwards*, 27 Ohio App.2d 91, 97, 273 N.E.2d 783, 790 (1970), citing an unreported case: *Papp v. Darke County Agricultural Society Civil No. 9402* (Ct. App. Franklin County, Dec. 2, 1969).

<sup>110</sup> G. B. MYERS, *Rule Making and Licensing under the Administrative Procedure Act*, REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION, ADMINISTRATIVE LAW CONFERENCE 2.05 (Ohio Legal Center Institute 1965).

the appellant and the agency of the time, date, and place of the hearing (to be set not more than twenty days after the transcript has been received).<sup>111</sup>

There are two grounds for an appeal from an agency decision on rule changes. Either the agency has failed to comply with the procedural requirements of the A.P.A.,<sup>112</sup> or the rule is unreasonable and/or unlawful in its substance.<sup>113</sup> Any variance from the required procedure is sufficient to make the rule invalid.<sup>114</sup> However, a careful reading of the statute will reveal that in some instances actual compliance is satisfied when the agency has made a "reasonable effort" to fulfill the requirements and that actual, successful accomplishment of the actions is not necessarily required.<sup>115</sup>

Remembering that an agency is a creature of delegated authority, it is evident that it has no more authority than what has been granted to it.<sup>116</sup> The reasonableness and lawfulness of any of its rule changes, therefore must be considered within the framework of its statutorily granted powers.<sup>117</sup>

There is a dispute as to the admissibility of new evidence at the judicial level. The court of common pleas acts as an appellate court in these instances and as such applies the appellate rules of evidence to the action as in other error proceedings.<sup>118</sup> Furthermore, the Ohio Revised Code §119.11 states that the court's conclusion "shall be based upon the arguments, briefs of counsel, and the transcript . . ." It has been held, though, that at any stage of the proceedings an affected party may attack the reasonableness or legality of any rule. Also, the court of common pleas may accept new evidence, provided proof is produced that this evidence was unavailable at the hearing.<sup>119</sup>

In this type of appeal the burden of proof is upon the adversely affected party;<sup>120</sup> that is, there is no burden upon the agency to

<sup>111</sup> Ohio Rev. Code §119.11 (Page 1969).

<sup>112</sup> Ohio Rev. Code §119.11 (Page 1969); *see also*, *Ogletree v. McNamara*, 449 F.2d 93, 99 (6th Cir. 1971).

<sup>113</sup> Ohio Rev. Code §119.11 (Page 1969); *In re* Rules and Regulations of the Div. of Social Admin., Dept. of Pub. Welfare, 118 App. 407, 408, 195 N.E.2d 112, 114 (1963).

<sup>114</sup> *Id.*

<sup>115</sup> *See*, G. B. MYERS, REFERENCE MANUAL, *supra* note 109.

<sup>116</sup> *State ex rel. Kahler-Ellis Co. v. Cline*, 69 Ohio L. Abs. 305, 125 N.E.2d 222 (1954).

<sup>117</sup> *Rosenberg v. Cleveland, Bd. of Bldg. Standards*, 24 Ohio Misc. 10, 263 N.E.2d 325 (C.P. 1970).

<sup>118</sup> *In re* Bd. of Liquor Control's Amendments, 115 Ohio App. 243, 184 N.E.2d 767 (1961); *In re* Appeal from Bd. of Liquor Control, 103 Ohio App. 517, 146 N.E.2d 309 (1957).

<sup>119</sup> *In re* Owner-Trainer Topper, 109 Ohio App. 289, 165 N.E.2d 19 (1959).

<sup>120</sup> *Long v. Division of Watercraft*, 118 Ohio App. 369, 195 N.E.2d 128 (1963).

prove that the rule change as adopted was supported by the evidence before it, that it was reasonable or lawful, or that it was enacted through proper procedure.<sup>121</sup>

The court must make a decision based on the arguments and the evidence presented. It must be shown that the decision of the agency was excessively unreasonable or done with a complete lack of jurisdiction before the court will take corrective action.<sup>122</sup> The appellant must show that there was clearly an error because the courts are reluctant to disturb a decision solely on the substitution of their discretion for that of the hearing board.<sup>123</sup>

The court of common pleas has only two options in arriving at a conclusion. It can decide that the agency fulfilled its requirements and thus affirm the order of the agency, or it can decide that the agency committed a fatal error and thus declare the rule change invalid.<sup>124</sup> The court of common pleas does not have the authority to remand a case back to the agency for further proceedings, nor may it modify in any way the adoption, rescission, or amendment with which it was dealing.<sup>125</sup>

The decision of the court of common pleas may be appealed in the same manner as any other decision, but if there is no appeal taken, the court's order is final.<sup>126</sup>

### Appeals From Adjudicatory Orders

The second section of the A.P.A. dealing with appeals is the Ohio Revised Code §119.12 which is concerned with the adjudicatory powers of the agencies. Here, only a party adversely affected by an order of the agency, pursuant to an adjudication proceeding, may establish standing.<sup>127</sup> The procedure to be followed is similar, but not parallel, to that followed under the Ohio Revised Code §119.11. The appealing party must file a notice to that effect, setting forth the specific order appealed from and the grounds of the appeal, within fifteen days of the mailing of the agency's notice of order. Upon

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<sup>121</sup> *In re Bd. of Liquor Controls Amendments*, 115 Ohio App. 243, 184 N.E.2d 767 (1961)

<sup>122</sup> *State v. Schreckengost*, 30 Ohio St.2d 30, 282 N.E.2d 50 (1972).

<sup>123</sup> *Weiner v. Cuyahoga Community College Dist.*, 15 Ohio Misc. 289, 238 N.E.2d 839 (C.P. 1968); *Alliance v. Joyce*, 49 Ohio St. 7, 30 N.E. 270 (1892).

<sup>124</sup> Ohio Rev. Code §119.11 (Page 1969).

<sup>125</sup> *Rosenberg v. Cleveland Bd. of Bldg. Standards* 24 Ohio Misc. 10, 263 N.E.2d 325 (C.P. 1970); *Ruggiero v. Brooklyn Bd. of Zoning Appeals*, 32 Ohio Op.2d 346, 197 N.E.2d 828 (Ct. App. 1964).

<sup>126</sup> Ohio Rev. Code §119.11 (Page 1969).

<sup>127</sup> Ohio Rev. Code §119.12 (Page 1969).



receipt of the appeal notice, the court may determine whether the agency order will create a hardship upon the affected party and, at its discretion, may suspend this order pending the outcome of its hearing.<sup>128</sup>

Within twenty days after receipt of notification of appeal, the agency must prepare and certify a complete record of the proceedings in the case.<sup>129</sup> (One ten-day continuance may be granted.) Once again, the record is the only evidence which the agency is allowed to use unless otherwise permitted by statute.<sup>130</sup> In cases where evidence is not available at the hearing, the court may allow a request for its admission.<sup>131</sup>

Because proceedings under Chapter 119 of the Ohio Revised Code are given preference over all other civil cases there is usually little delay even though there is not a specific time in which the case must be heard.<sup>132</sup>

There are a variety of aspects which the court must examine in this type of appeal. The initial point to which attention must be given is the certified record of the administrative hearing required from the agency. When no record is made at the hearing, the court must reverse the agency's order.<sup>133</sup> If no record is submitted, it will be assumed that there was none. When a certified record is submitted, it still must be complete, and the courts have been very strict in their interpretation of this requirement. Cases in which the agency has failed to directly state that the record is complete,<sup>134</sup> in which the record did not indicate the final order of the agency,<sup>135</sup> in which the record did not include an official certification but only a signature,<sup>136</sup> or in which the record lacked the instructions for appeal,<sup>137</sup> all have been considered sufficient bases to support the court's overturning of the agency order.

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*; *Doelker v. State of Ohio, Accountancy Bd. of Ohio*, 12 Ohio St.2d 76, 232 N.E.2d 407 (1967); *Arcaro Builders, Inc. v. Zoning Bd. of Appeals*, 7 Ohio St.2d 32, 218 N.E.2d 179 (1966).

<sup>131</sup> Ohio Rev. Code §119.12 (Page 1969).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*; *Fahrenbruck v. State Bd. of Landscape Architect Examiners*, 13 Ohio Misc. 39, 230 N.E.2d 691 (Ct. App. 1967); *Stephan v. State Veterinary Medical Bd.*, 113 Ohio App. 538, 173 N.E.2d 389 (1960); *American Legion Post 96 v. Board of Liquor Control*, 116 Ohio App. 173, 187 N.E.2d 194 (C.P. 1962); *Matash v. Ohio, Dep't of Insurance*, 177 Ohio St. 55, 202 N.E.2d 305 (1964).

<sup>134</sup> *Board of Real Estate Examiners v. Peth*, 4 Ohio App.2d 413, 213 N.E.2d 188 (1964).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*; *Brockmeyer v. Ohio Real Estate Commission*, 5 Ohio App.2d 161, 214 N.E.2d 265 (1966).

<sup>137</sup> *Id.*; *cf. Starr v. Young, Adm'r*, 172 Ohio St.2d 317, 175 N.E.2d 514 (1961); and *Parker v. Young, Adm'r*, 172 Ohio St. 464, 178 N.E.2d 798 (1961).

When the agency does provide a correct, complete, and certified record, the court may determine its opinion based on the agency's decision. The primary principle underlying this type of case is no different from that of any other appeal in that the court is attempting to ascertain whether the appellant's rights have been observed and protected and whether the agency decision has been fairly determined.<sup>138</sup>

Under the Ohio Revised Code §119.09, as under §119.07, the agency has the authority to pass on evidence admissibility. It is required by the A.P.A. that the evidence be "reliable, probative, and substantial" and be in accordance with the law.<sup>139</sup> In determining whether or not this was accomplished, the court must look at the entire record of the hearing.<sup>140</sup> When the court finds that the evidence was sufficient, both quantitatively and qualitatively, it must affirm the agency's decision.<sup>141</sup> The degree of proof required is subjective, but the courts are hesitant to disturb the agency's exercise of discretion unless there are many unreasonable evidentiary rulings or unjustified conclusions.<sup>142</sup> The court must act, however, when it finds that the evidence does not support the decision at all<sup>143</sup> or when it is in direct contradiction to the decision.<sup>144</sup> An admission of guilt to an agency charge at the hearing is sufficient in and of itself to sustain an adverse ruling, and in this instance the licensee is estopped from any appeal.<sup>145</sup> In those cases where the court finds it must overturn the agency's decision, it has the choice of reversing, vacating, or modifying the order.<sup>146</sup> In those instances when an agency's revocation or suspension of license order is suspended by the court, such suspension supersedes the revocation as of the date of the latter's issuance.<sup>147</sup>

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<sup>138</sup> *Department of Liquor Control v. Santucci*, 17 Ohio St.2d 69, 246 N.E.2d 549 (1969).

<sup>139</sup> Ohio Rev. Code §119.12 (Page 1969); *Lakis v. Board of Liquor Control*, 120 Ohio App. 163, 201 N.E.2d 605 (1963).

<sup>140</sup> *Handler v. Department of Commerce*, 14 Ohio Misc. 9, 233 N.E.2d 147 (C.P. 1967).

<sup>141</sup> *Henry's Cafe, Inc. v. Board of Liquor Control*, 170 Ohio St. 233, 163 N.E.2d 678 (1959).

<sup>142</sup> *Weiner v. Cuyahoga Community College Dist.*, 15 Ohio Misc. 289, 238 N.E.2d 839 (C.P. 1968); *Alliance v. Joyce*, 49 Ohio St. 7, 30 N.E. 270 (1892).

<sup>143</sup> *Buckeye Lake Hotel Co. v. Board of Liquor Control*, 108 Ohio App. 417, 159 N.E.2d 632 (1958).

<sup>144</sup> *Ace Steel Baling, Inc. v. Porterfield*, 19 Ohio St.2d 137, 249 N.E.2d 892 (1969); for comparative decisions in other states *see*: *Chicago B & Q R. Co. v. Illinois Commerce Comm'n*, 1 Ill.2d 614, 116 N.E.2d 392 (1954); *Matlock v. Industrial Comm'n*, 70 Ariz. 25, 215 P.2d 612 (1950); *Public Service Comm'n v. Indiana Bell Telephone Co.*, 235 Ind. 1, 130 N.E.2d 467 (1955); *Fisher School v. Assessors*, 325 Mass. 529, 91 N.E.2d 657 (1950).

<sup>145</sup> *Department of Liquor Control v. Santucci*, 17 Ohio St.2d 69, 246 N.E.2d 549 (1969); *cf.* *Johnson v. United States*, 254 F.2d 239 (8th Cir. 1958); *McConaughy v. Alvis*, 165 Ohio St. 102, 133 N.E.2d 133 (1956); *Click v. Eckle*, 174 Ohio St. 88, 186 N.E.2d 731 (1962); *Yarbrough v. Maxwell*, 174 Ohio St. 287, 189 N.E.2d 136 (1963).

<sup>146</sup> Ohio Rev. Code §119.12 (Page 1969).

<sup>147</sup> *Lewis v. Anson*, 92 Ohio App. 78, 109 N.E.2d 545 (1951).

Prior to the existence of the A.P.A., there were other methods used in appealing or refuting agency rulings, including actions in mandamus, actions for declaratory judgments, or actions for damages. Today, in those agencies within the control of the A.P.A., these actions will not issue as a substitute for appeal<sup>148</sup> because these are extraordinary remedies and an adequate remedy is available through the procedures established by the A.P.A.

The Ohio Revised Code Chapter 119 is intended to standardize the procedure of administrative agencies in this state, but it must be noted that it is only one of an interrelated group of statutes. The A.P.A. must always be used in conjunction with those statutes pertaining to the particular agency involved in any specific instance. It acts only as a guideline within which the activities of the controlled agencies must operate.

*Glenn R. Jones†*

<sup>148</sup> *Kaufman v. Newburgh Heights*, 26 Ohio St.2d 217, 271 N.E.2d 280 (1971) (mandamus, declaratory judgment, action for damages); *Shelby v. Hoffman*, 7 Ohio St. 450 (1857) (mandamus); *State ex rel. Stein v. Sohngen*, 147 Ohio St. 359, 71 N.E.2d 483 (1947) (mandamus); *State ex rel. Sidell v. Cole*, 147 Ohio St. 203, 70 N.E.2d 451 (1946) (mandamus); *State ex rel. Ohio Assoc. of Insurance Agencies, Inc. v. Ohio Dep't of Insurance*, 29 Ohio St.2d 188, 281 N.E.2d 9 (1972) (mandamus); *State ex rel. Welsh v. Court of Appeals of the 10th App. Dist.*, 171 Ohio St. 555, 173 N.E.2d 128 (1961) (prohibition).

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