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# Licensing, and Administrative Procedure Acts

Homer W. Giles

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## Licensing, and Administrative Procedure Acts

Homer W. Giles\*

L ICENSING LAWS HAVE PROVED to be very effective governmental regulatory devices. Although the supposed purpose of government in requiring a license for a particular activity is to regulate, "by a general formal denial of a right, which is then made individually available by an administrative act of approval, certification, consent or permit,"<sup>1</sup> the effect in many cases is actually to prohibit.<sup>2</sup>

While government should be permitted to prohibit activities which it regards with disfavor, it should not be permitted to allow an administrative agency to deprive a person of a license for a business or occupation, otherwise lawful, without giving that person an opportunity to challenge the appropriateness of the order of the administrative body in a proceeding before a properly constituted judicial court. Yet that has been the practice in many states, and was the law in Ohio, in some instances, prior to the passage of the Ohio Administrative Procedure Act.<sup>3</sup> In some states it has even been held that revocation of a license may be effected without notice or hearing.<sup>4</sup>

The licensing process has proved effective because the burden of proof is upon the party seeking the license, rather than on the government. It is incumbent upon the applicant to demonstrate that he qualifies for the license. As a result the licensing process can be an instrument of prohibition and restraint. The administrative agency or official charged with responsibility for processing applications and issuing licenses has the power, initially at least, to delay and discourage, and perhaps in some cases even to prohibit, the issuance of a license or permit.

\* Law Clerk to the Ohio Court of Appeals, 8th District; A. B., LL.B., Western Reserve University; and member of the Ohio Bar.

<sup>1</sup> Freund, "Licensing," 1 Encyc. Soc. Sci. 447-451 (1933); Freund, *Administrative Powers Over Persons and Property* 140-174, ch. VII (1928).

<sup>2</sup> See discussion in Davis on Administrative Law, 250-254 (1951).

<sup>3</sup> See, *The State, ex rel. Zugravu v. O'Brien*, 130 Ohio St. 23, 3 O. O. 74, 196 N. E. 664 (1935), where the court held that the Liquor Control Act, which permitted a revocation of a liquor permit by the Board of Liquor Control without providing for recourse to the courts by appeal or error, was a proper exercise of the police power of the State, and did not amount to a denial of due process of law.

<sup>4</sup> *Nulter v. State Road Commission*, 119 W. Va. 312, 317, 318, 193 S. E. 549, 552 (1937).

The import and scope of licensing processes have become increasingly significant. There are few residents of any state who do not require a state license for some purpose. It is usually necessary to obtain a license to hunt or fish, to drive or own an automobile or truck, or to engage in the practice of a profession. If a person has a retail establishment he must secure a vendor's license; and if he sells certain merchandise or services, which are subject to special taxes, such as beer, wine or liquor, cigarettes, or gasoline, or engages in horse racing or runs an eating place, to mention a few examples, he must obtain the proper license or permit. If a person wishes to form a corporation or an association, or to organize charitable activities, he must secure the approval of the proper administrative agency.<sup>5</sup> Again, if a person conducts a business which is subject to sanitary or safety laws, such as the manufacture of soft drinks, baked goods, or ice cream, the sale of milk, seeds, or fertilizer, or the manufacture of explosives, he must secure the requisite state license. In addition, he must also concern himself with licenses or permits which are required by the various counties and municipalities of the state.

The licensing process has become a powerful administrative device for regulation and law enforcement. With its growth have come the expected attendant abuses. Ohio, however, like other states, has become increasingly aware of the necessity of completely revising its original licensing process. To this end, the Ohio Legislature appointed an Administrative Law Commission<sup>6</sup> to study the problems of administrative law and licensing and to make recommendations.

The Administrative Law Commission stated, in its report, that in 1940 there were 187 different types of state licenses, administered by 47 different administrative agencies, under 76 separate licensing acts.<sup>7</sup> It is important to note that most of these licenses have been created in the last twenty-five years.

The State of Ohio, in 1940, issued more than 8,337,000 licenses.<sup>8</sup> Eighty per cent of this total was accounted for by the various licenses, certificates and permits required with the sale

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<sup>5</sup> See, Oleck, *Non-Profit Corporations and Associations*, Secs. 10-16 (1956).

<sup>6</sup> Administrative Law Commission created in 1941 by the 94th General Assembly of Ohio.

<sup>7</sup> Report of the Administrative Law Commission to the Governor and General Assembly of the State of Ohio, pages 8-9, December 13, 1942.

<sup>8</sup> Report of the Administrative Law Commission of Ohio to the Governor and General Assembly, pgs. 38-39 (1945).

and operation of motor vehicles. Hunting and fishing licenses accounted for another fourteen per cent of the total. The other eight per cent, or approximately one half million licenses, of 161 varying kinds, were issued by 45 different state administrative agencies. There is no doubt that this total is far greater today.

Each year more and more persons are being confronted by this regulatory device. For example, Ohio now requires the following professions and occupations to be licensed: accountants, architects, barbers, beer distributors, boiler inspectors, brewery manufacturers, chiropractors, cocktail dealers, cold storage warehousemen, commercial canners, cosmetologists, cosmetology instructors, dentists, dental hygienists, distilling manufacturers, dry cleaners, elevator inspectors, embalmers, engineers and surveyors, fair concessionaires, frozen desserts manufacturers, funeral directors, highball manufacturers, hospital service agents, hotel keepers, lawyers, liquid fuel dealers, livestock agents, livestock dealers and brokers, manicurists, midwives, milk weighers, mine foremen, mine fire bosses, minnow dealers, motor transportation agents, movie film exhibitors, notaries, nursery stock dealers, nursery stock agents, nurses, optometrists, osteopaths, pharmacists, physicians and surgeons, plumbing inspectors, real estate brokers and salesmen, restaurant operators, sacramental wine distributors, sales tax vendors, security dealers, soft drink manufacturers and bottlers, steam boiler and engine operators, teachers, veterinarians, wine dealers and bottlers, wine distributors and winery manufacturers.

Nor is this list exhaustive, for each session of the legislature changes and adds to the number. The legislature also has been inclined to shorten the time for which licenses are issued, thus adding to the burdens of persons already affected by this convenient method of regulation.

The Commission found that while the licensing acts of Ohio generally permitted the agencies administering the acts to adopt rules and regulations, the extent of this rule-making power, other than that such rules or regulations should be reasonable and not inconsistent with law, was not ordinarily defined. Except for this minor impediment, the rules and regulations promulgated by the agencies had the force of law. Yet the Commission's report showed that these rules and regulations could be and usually were adopted, amended, and rescinded, without public notice before or after action was taken by the agencies, and that they were ordinarily adopted, amended, and rescinded

without opportunity for a hearing for those most concerned. The Commission found that in many instances the rules and regulations were not published and that those licensed were not furnished copies of the rules and regulations governing them, although violations of such rules might be a misdemeanor, or result in a revocation of their license.

Generally these rules and regulations became effective without affording a licensee time to become acquainted with them, or to test their validity, until after being charged or found guilty of violating them. Licensees are further mystified by the failure of most agencies to publish their organizational structure and procedure. A licensee, in some instances, would not even know where the office of an agency was located.<sup>9</sup>

The safeguards recommended by the Commission concerned: (1) a fixed type of notice prior to the adoption of a rule or regulation; (2) an opportunity for interested persons to express their views on a proposed rule or regulation; and (3) that full information on all rules and regulations be available to any interested person on request.

The Commission study of hearings held by the licensing agencies of the State revealed that: (1) many of the licensing acts failed to provide for a hearing on the revocation, suspension, refusal to issue or renew a license; (2) in those acts which did contemplate a hearing, such procedural essentials as notice, record and the attendance of witnesses were not ordinarily provided for; and (3) the procedures for hearings established by the licensing acts lacked any semblance of uniformity. The Commission felt that any person who desired a hearing should have the opportunity whenever any agency revoked, suspended, refused to issue, or refused to renew a license, and that such hearing should be conducted according to accepted standards of procedural fair play.<sup>10</sup> The Commission also found great diversity in rules governing appeals. Many acts made no provision for appeal.<sup>11</sup> Also, the grounds for appeal were various and sundry.<sup>12</sup>

The bulk of the Commission's recommendations were

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<sup>9</sup> *Op. cit.*, supra, n. 7, page 56.

<sup>10</sup> See note, 21 U. Cinn. L. R. 107-108 (1952) for an account of the various methods provided for hearings before administrative agencies prior to the passage of the Ohio Administrative Procedure Act.

<sup>11</sup> *Op. cit.*, supra, n. 10; n. 3.

<sup>12</sup> *Op. cit.*, supra, n. 10.

adopted and embodied in the Administrative Procedure Act which the Legislature passed in 1943,<sup>13</sup> and strengthened by amendment in 1945.<sup>14</sup>

The Administrative Procedure Act, as originally enacted,<sup>15</sup> related only to licensing agencies. But by the 1945 amendment<sup>16</sup> the coverage of the Act was expanded to include other agencies. The Act, however, does not include all agencies, but only those specifically enumerated.<sup>17</sup> Certain exceptions are also made as to the application of the Act to certain agencies.<sup>18</sup>

The Act provides that, before an agency can adopt, amend or rescind a rule, it must give reasonable public notice, at least thirty days prior to the date set for a hearing. The date, time and place of the hearing must be set forth in the notice. The notice must also include a synopsis of the proposed rule, amendment or rescission, or a general statement of the subject matter to which it relates. Each agency must adopt a rule setting forth in detail the method which it shall follow in giving such public notice. The full text of the proposed rule, amendment or rescission must be filed for thirty days with the Secretary of State. At the public hearing which is then held, any person affected by the proposed action may appear and be heard, in person or by his attorney,<sup>19</sup> and present his position, arguments, or contentions, orally or in writing. He may offer and examine witnesses and present evidence in opposition to such proposed action. A full stenographic record of the hearing must be made at the expense of the agency.

If these requirements are complied with, the agency may issue an order adopting a rule. The effective date of such a rule cannot be earlier than ten days after the rule has been filed with the Secretary of State. The agency must also make a reasonable effort to inform parties affected by a rule, prior to its

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<sup>13</sup> Ohio Laws 358 (1943-1944).

<sup>14</sup> Ohio Laws 578 (1945-1946).

<sup>15</sup> Op. cit., supra, n. 13.

<sup>16</sup> Op. cit., supra, n. 14.

<sup>17</sup> Ohio R. C., Sec. 119.01.

<sup>18</sup> Ibid., n. 17.

<sup>19</sup> Ohio R. C., Sec. 119.13 provides that at any hearing conducted by any agency under the Administrative Procedure Act a person may be represented by an attorney or by such other representative as is lawfully permitted to practice before the agency in question. However, only attorneys at law may represent parties at a hearing where a record is taken which may be the basis of an appeal to a court.

effective date. The agency should also have available for distribution copies of the rule.

This procedure, however, may be circumvented, if the Governor, upon the request of an agency, determines that an emergency exists. The agency may then immediately adopt a rule, amendment, or rescission, and it becomes effective as soon as it is certified and filed with the Secretary of State. Such rule, amendment, or rescission, becomes invalid at the end of sixty days, unless the agency has complied with the procedure prescribed by the Act for the adoption, amendment, or rescission of rules, generally.<sup>20</sup>

The Act makes certain other exceptions to the requirement that a rule, to be valid, must provide an opportunity to be heard for any person affected by such rule. These exceptions are: (1) where an agency is required by statute to revoke a license pursuant to the judgment of a court; (2) where the basic statute authorizes suspension of a license without a hearing, and (3) where rules or statutes grant a right of appeal to higher authority within the agency, or to a court with a hearing on such appeal. Where a statute permits the suspension of a license, however, without a prior hearing, the person to whom the order is issued shall be allowed a hearing upon request.<sup>21</sup>

The Act provides that a person shall also be allowed a hearing in the following instances: (1) Whenever an agency claims that a person is required to obtain a license and the person denies it, if requested, the agency shall allow him a hearing. (2) Whenever any person has been refused admission to an examination, where such examination is a prerequisite to the issuance of a license, and a hearing was not held prior to such refusal. (3) Whenever any licensee is required to renew his license periodically, and such renewal is denied and a hearing was not held prior to such denial. And (4) whenever any person's application for a license or a renewal of a license has been rejected, and a hearing was not held prior to such refusal.<sup>22</sup>

The action of any agency in rejecting an application for renewal of a license is not effective until fifteen days after notice of the rejection is mailed to the applicant. Also, a licensee who has filed his application for renewal within the time and in the manner provided for by statute or rule of the agency, does not

<sup>20</sup> This discussion of the procedure for adoption, amendment or rescission of rules has been culled from Ohio R. C. Sec. 119.03.

<sup>21</sup> Ohio R. C., Sec. 119.06.

<sup>22</sup> *Ibid.*, n. 21.

have to discontinue his business or occupation, if the agency fails to act on his application.<sup>23</sup>

Unless a particular statute prescribes how notice shall be given prior to the issuance of an order by an agency, the agency is required to give notice by registered mail, return receipt requested. The notice must inform the person to whom it is sent that he is entitled to a hearing within thirty days of the time of mailing the notice. The notice must include the charges or reasons for the proposed action, and the law or rule involved. Notice by publication is provided for, if the registered notice is returned undelivered. Failure to give notice, as required by the Act, invalidates the order.<sup>24</sup>

The agency is authorized to determine the time and to designate the place of the hearing.<sup>25</sup> It can compel the attendance of witnesses and the production of books and papers. It can pass on the admissibility of evidence, and appoint referees or examiners to hold hearings.<sup>26</sup>

The Act provides that any person adversely affected by an order of an agency, in adopting, amending or rescinding a rule, may appeal to the Court of Common Pleas of Franklin County, on the ground that: (1) the agency failed to comply with the law in adopting, amending, rescinding, publishing or distributing said rule; or (2) that the rule as adopted or amended by the agency was unreasonable, or (3) that it was unlawful. Any person who desires to appeal from an order of an agency must file his notice of appeal with the agency, within fifteen days of the order, and prior to the effective date of the rule, amendment or rescission. The notice of appeal must set forth the order appealed from and the grounds of the appeal. A copy of the notice of appeal must also be filed with the court. Within ten days after the filing of the notice of appeal, the agency must send a transcript of its record to the clerk of the court. Within three days after receiving the transcript of the record, the court must set the date, time and place for a hearing, and notify the appealing party and the agency of its action. The hearing must then be held within twenty days after the filing of the transcript

<sup>23</sup> *Ibid.*, n. 21.

<sup>24</sup> Ohio R. C., Sec. 119.07.

<sup>25</sup> Ohio R. C., Sec. 119.08.

<sup>26</sup> Ohio R. C., Sec. 119.09. It is gratifying to note that the referees or examiners must be lawyers qualified to practice in the State. The fact that they must submit written reports to the agencies, setting forth their findings of fact and conclusions of law, as well as make a recommendation of the action to be taken, is also heartening. It should also be mentioned that an agency may require additional qualifications for referees or examiners, other than that required by the Act.



of the record, and the court must render its decision within thirty days after the hearing. Unless appealed from, the order of the court is final. However, a person affected by such order is not precluded from attacking it at a later date, if its application to a particular set of facts or circumstances is unreasonable or unlawful.<sup>27</sup>

Any person adversely affected by any order of an agency, in an adjudication proceeding, whereby an applicant has been denied admission to an examination, or denied the issuance or renewal or registration of a license, or has had his license revoked or suspended, may appeal from such order, to the Court of Common Pleas of the County in which his place of business is located or of the county where he resides. However, appeals from the decisions of the Board of Liquor Control may only be made to the Court of Common Pleas of Franklin County. Also, if a party does not have a place of business in Ohio, and is not a resident, his appeal must be made to the Court of Common Pleas of Franklin County. Likewise, any person adversely affected by any order of an agency, issued pursuant to any other adjudication, may only appeal to the Court of Common Pleas of Franklin County.

The person appealing must file a notice of appeal, with the agency, setting forth the order appealed from and the grounds of appeal. He must also file a copy of the notice of appeal with the court, within fifteen days after the mailing of the notice of the agency's order. The court may grant a suspension of the agency's order, and fix its terms, if it appears that the execution of the agency's order would work "an unusual hardship" upon the appealing party. Then, if a further appeal is taken from the order of the court which had previously granted a suspension of the agency's order, such order is not vacated, but is given full force and effect until the matter is finally adjudicated. During the appeal, the agency cannot deny the renewal of a license or permit by reason of the order of suspension. However, the final order of adjudication may apply to any renewal which has been granted during the appeal.

Whenever a hearing is required, the agency must, within ten days, prepare and certify to the court a complete record of the adjudication proceedings. The cost of the record is then taxed as part of the costs of the appeal, and the appealing party

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<sup>27</sup> Ohio R. C., Sec. 119.11.

must provide security for such costs. If a request is made, the agency must also furnish any interested party with a copy of the testimony and evidence, and a copy of the complete record, at cost.

While ordinarily the court only considers the record certified to it by the agency, it may grant a request for the admission of additional evidence, if it is satisfied that the additional evidence is newly discovered, and could not have been produced at the hearing before the agency.

The court must give a preference to all proceedings brought by virtue of the Act, over all other civil cases.

On appeal, the court must consider the entire record and such additional evidence as it has admitted. If it then finds that the order of the agency is supported by reliable, probative, and substantial evidence, and is in accordance with law, it may affirm the order.<sup>28</sup> Otherwise it may reverse, vacate, or modify the order, or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

Prior to October 21, 1953, an agency could not appeal from a judgment of a court which vacated its decision.<sup>29</sup> However, the Act now provides for appeal by an agency.<sup>30</sup>

From all this it can be seen that most of the old abuses have been dealt with.<sup>31</sup>

During the last twenty-five years much attention has been given to ways to improve the licensing administrative process.

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<sup>28</sup> For a discussion of this particular wording in the Act see *Andrews v. Board of Liquor Control*, 164 Ohio St. 275 (1955).

<sup>29</sup> *Miller v. Bureau of Unemployment Compensation*, 160 Ohio St. 561, 52 O. O. 451, 117 N. E. 2d 427 (1954). See also *Corn v. Board of Liquor Control*, 160 Ohio St. 9, 50 O. O. 479, 113 N. E. 2d 360 (1953); *Re Millcreek Local Dist. High School*, 160 Ohio St. 234, 52 O. O. 91, 115 N. E. 2d 840 (1953); *Re Roundhead Local Dist. High School*, 160 Ohio St. 240, 52 O. O. 94, 115 N. E. 2d 841 (1952). These cases overruled a previous Court of Appeals decision which had permitted appeal by an agency. *Board of Liquor Control v. Tancer*, 62 O. L. Abs. 360, 367, 107 N. E. 2d 532, dismissed for want of debatable question 158 Ohio St. 128, 48 O. O. 63, 107 N. E. 2d 127 (1952), and *Barn Cafe & Restaurant v. Board of Liquor Control*, 63 O. L. Abs. 348, 107 N. E. 2d 631 (1952). However, the Supreme Court did modify its decision, to the extent that if no objection was raised to the prosecution of an appeal by an agency, and the court heard the matter and rendered judgment, such judgment could not thereafter be set aside or vacated on the ground of lack of jurisdiction of the court. *Mantho v. Board of Liquor Control*, 162 Ohio St. 37, 54 O. O. 1, 120 N. E. 2d 730 (1954).

<sup>30</sup> This discussion of appeal from an order of an agency in an adjudication proceeding has been distilled from Ohio R. C., Sec. 119.12. It should be noted that this section does not apply to appeals from the Department of Taxation.

<sup>31</sup> See, *supra*, at n. 3-6.

Commencing in the early thirties, such prominent groups as the American Bar Association,<sup>32</sup> the President's Committee on Administrative Management,<sup>33</sup> the Attorney General's Committee on Administrative Management<sup>34</sup> and the Judiciary committees of both houses of Congress<sup>35</sup> made studies of the problems created by the growth and number of federal administrative agencies.

After many abortive efforts, a bill was finally adopted by the Congress, only to be vetoed by President Roosevelt.<sup>36</sup> However, in 1946 the Congress was successful and the Federal Administrative Procedure Act was enacted.<sup>37</sup>

Meanwhile, state administrative practices were also being scrutinized. The State of New York, in 1930, appointed Robert M. Benjamin to study the functions of its administrative agencies. The report of the Benjamin committee<sup>38</sup> pointed up the need for procedural reform. However, the report did not recommend a uniform procedural code.<sup>39</sup>

<sup>32</sup> A Special Committee on Administrative Law was appointed by the American Bar Association in 1932. This committee made a study of federal administrative procedure and its report was embodied in a series of articles published in its journal. 58 A. B. A. Rep. 407-427 (1933); 59 A. B. A. Rep. 539-564 (1934); 60 A. B. A. Rep. 136-143 (1935) and 61 A. B. A. Rep. 720-794 (1936). Also, in 1938 the Section on Judicial Administration of the Committee on Administrative Agencies of the American Bar Association, under the leadership of Arthur T. Vanderbilt, issued an excellent report on judicial review in state administrative agencies. 63 A. B. A. Rep. 623. A second article was published in 1939. 64 A. B. A. Rep. 407. These articles were the footings upon which the Model State Administrative Procedure Act was built.

<sup>33</sup> Report of President's Committee on Administrative Management (1937). This committee was appointed by President Roosevelt in 1936, to study federal administrative procedure. Its report was a condemnation of the federal agencies' haphazard growth, overlapping functions and general irresponsibility. The federal agencies, in its words, constituted, "a fourth branch of the government for which there was no sanction in the Constitution." Remedial legislation was strongly urged.

<sup>34</sup> Report of Attorney General's Committee on Administrative Procedure (1941). Both the majority and minority members of the Committee issued a report and drafts of suggested bills.

<sup>35</sup> The Judiciary Committees of both houses of Congress had made an almost continuous study of the practices and procedures of the federal administrative agencies, and had introduced a number of bills for the Congress' consideration. All to no avail, however.

<sup>36</sup> Walter Logan Bill, S. 915 and H. R. 624.

<sup>37</sup> Public Law 404, 79th Cong. 2nd Sess., 60 Stat. 237, 8 U. S. C. Sections 1001-11 (Supp. 1946), Approved June 11, 1946.

<sup>38</sup> Report on Administrative Adjudication in the State of New York, 1942.

<sup>39</sup> The Benjamin report, as had the majority report of the U. S. Attorney General, thought that the problems confronting administrative agencies were too varied to be dealt with in a single procedural administrative

From these efforts the Model State Administrative Procedure Act was evolved.<sup>40</sup> This model act was adopted by the National Conference of Commissioners on Uniform State Laws in 1946. The model code represents the best present thinking of many able and learned persons. It is not a "uniform act," but instead embodies what it considers to be basic principles of justice and procedural fair play. These basic principles have been summarized thus: (1) Requirement that each agency shall adopt essential procedural rules and that, so far as practicable, all rule-making, both procedural and substantive, shall be accompanied by notice of hearing to interested persons.<sup>41</sup> (2) Assurance of proper publicity for administrative rules that affect the public.<sup>42</sup> (3) Provision for advance determination or "declaratory judgments" on the validity of administrative rules, and for "declaratory rulings" affording advance determination of the application of administrative rules to particular cases.<sup>43</sup> (4) Assurance of fundamental fairness in administrative hearings, particularly in regard to rules of evidence and the taking of official notice in quasi-judicial proceedings.<sup>44</sup> (5) Provisions assuring personal familiarity, on the part of the responsible deciding officers and agency heads, with the evidence, in quasi-judicial cases decided by them.<sup>45</sup> (6) Assurance of proper scope of judicial review of administrative orders, to guarantee correction of administrative orders.<sup>46</sup>

The Ohio Administrative Procedure Act provides all of the basic principles of justice and fair play set forth in the

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*(Continued from preceding page)*

code. The report said: "My description of diversity of existing procedure has, I believe, shown more than the extent of change that a general procedural code would bring about. It has shown that much of the existing diversity exists for reasons that are not merely valid, but inescapable. Thus a uniform procedure would be impossible, if it were thought desirable."

<sup>40</sup> The Model Act is reprinted in its present form in the Handbook of the National Conference of Commissioners on Uniform State Laws, 329-336 (1944). See Stason, *The Model State Administrative Procedure Act*, 33 Iowa L. R. 196 (1948). This article is the first of ten articles of a symposium on state administrative law, in the January 1948 issue of the Iowa Law Review.

<sup>41</sup> Model State Administrative Procedure Act, Sec. 2.

<sup>42</sup> *Ibid.*, Secs. 3-4.

<sup>43</sup> *Ibid.*, Secs. 6, 7.

<sup>44</sup> *Ibid.*, Secs. 8, 9.

<sup>45</sup> *Ibid.*, Sec. 10.

<sup>46</sup> *Ibid.*, Secs. 11, 12.

model code. It also has made generally adequate provisions for court review to protect them. While it differs in detail from the model act, the Ohio Act covers practically all the subjects noted in the model code.

The Legislature, however, has severely limited the scope of the Act. The Act only applies to the agencies specifically enumerated in Revised Code Section 119.01. Moreover, while the Act includes the licensing function of any agency "having the authority or responsibility of issuing, revoking or cancelling licenses,"<sup>47</sup> the actions of the Public Utilities Commission, and certain activities of the Superintendent of Banks, Superintendent of Building and Loan Associations, Superintendent of Insurance, and of the Industrial Commission, are excluded. Nor does the Act apply to the actions of the Bureau of Unemployment Compensation, except that the licensing function of the Bureau is amenable to the act.

Whether these exceptions and limitations are justified is at least questionable. It also may be regretted that the Act does not require a regular publication of all administrative rulings in a single volume. I have in mind the Federal Register, where all federal agencies are required to publish their rules and regulations prior to their effective dates. Perhaps, however, such a publication is unwarranted at this time.<sup>48</sup> The Ohio Act, unlike the model code, does not provide for declaratory judgments to test the validity of rules or of their application. However, it does provide that any person adversely affected by an order of an agency may appeal to a court from such an order.<sup>49</sup> This provision of the Act provides an adequate substitute for a declaratory judgment proceeding.

The Ohio Administrative Procedure Act has brought relative order to an increasingly important area of State regulation. It has, for the most part, eliminated the major abuses of the licensing processes which brought the Act into being. Much still needs to be done, but much has been accomplished.

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<sup>47</sup> Ohio R. C., Sec. 119.01.

<sup>48</sup> Pennsylvania had such a law. Penna. Stat. Ann. 71, Sect. 1710-10, 1710-104. It was repealed, however, in 1947. Penna. Laws, No. 509 (1947).

<sup>49</sup> Ohio R. C., Sec. 119.11.