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CONSTITUTIONAL AND OTHER LIMITATIONS ON ILLINOIS ADMINISTRATIVE AGENCIES

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ADMINISTRATIVE law is well recognized today as an important branch of our system of jurisprudence. A host of special agencies have been created to assist in the enforcement of that field of law. A marked departure has occurred from the common-law method of disposing of private disputes through judicial action, but the administrative branch has been developed and even accelerated under judicial guidance. In recent years, much of the analytical and descriptive writing about the development of the administrative process has been concentrated upon the federal regulatory authorities and the decisions of the federal courts. Little has been written concerning the work of state agencies under state court supervision. For that reason it is proposed to review the decisions of the Illinois courts regarding the functions, powers and limitations of the administrative agencies of the state, particularly as the same may involve aspects of constitutionality, and to describe the present status of administrative law as it exists in this state.

I. THE SEPARATION OF POWERS DOCTRINE

In constitutional theory, the governmental powers of the state are supposed to be divided among three distinct divisions, namely the legislative, the executive, and the judicial.¹ All lesser bodies, including the administrative agencies, should, under the same theory, be also susceptible of classification under the same three heads. In practical application, however, the courts have been compelled to observe that the line of demarcation between the exclusive powers of the three departments is far from clear. In the same way, many administrative agencies are frequently charged with duties that partake of the character of all three de-

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¹ Ill. Const. 1870, Art. III. Substantially the same idea was expressed in Ill. Const. 1818, Art. I, and in Ill. Const. 1848, Art. II.

partments although such duties, in all strictness, cannot be classed as belonging to either.

A single illustration should suffice to demonstrate this fact. Taxing officials of the many municipal subdivisions of the state are authorized to levy and apportion taxes. In the performance of that duty they must first determine what taxes shall be levied; second, evaluate the property to be assessed; and third, apportion the total tax between the several items of property. The first of these duties is, intrinsically, legislative in nature; the second, judicial; while the third calls for the exercise of executive functions. If the work of the state is to be performed in a prompt and efficient fashion, too rigid an insistence on the doctrine of separation of powers would defeat that end for it would only serve to multiply the number of functionaries and add confusion. In the interest of efficiency, therefore, a mingling of such powers in one agency has been tolerated despite the apparent constitutional dogma against that practice.

A. JUDICIAL POWER

Very often, administrative and executive officers are called upon, in the performance of their duties, to exercise judgment and discretion and to investigate, deliberate and decide. In such respects, their work closely approximates the function performed by the courts, yet it has been held that such officials do not exercise judicial power within the meaning of that term as used in the Illinois constitution. Just where the dividing line is to be drawn between legislative, executive and judicial powers with respect to certain subjects often presents questions about which enlightened courts and eminent jurists differ widely.² So long

² In the early case of *Field v. People*, 3 Ill. (2 Scam.) 79 at 83-4 (1839), the court, when speaking of the doctrine of separation of powers, said: "It does not mean that the legislative, executive, and judicial power should be kept so entirely separate and distinct as to have no connection or dependence . . . its true meaning . . . is . . . the whole power . . . shall not be lodged in the same hands, whether of one or many. . . . In every [government], there is a theoretical or practical recognition of this maxim, and at the same time a blending and admixture of different powers." See also *Devine v. Brunswick-Balke Co.*, 270 Ill. 504, 110 N. E. 780 (1915); *People v. Simon*, 176 Ill. 165, 52 N. E. 910 (1898); *People v. Bartels*, 138 Ill. 322, 27 N. E. 1091 (1891); *Owners of Lands v. People*, 113 Ill. 296 (1885).

as such officials do not, in fact, assume to perform the actual functions of the courts there is a definite tendency to hold that the delegation of authority to them does not violate constitutional restraints. For that reason, whenever a statute, by words or implication, commits to any such officer the duty to look into the facts and act upon them, not altogether in a way which the statute specifically directs but rather after a discretion which is essentially judicial in nature, the function so performed is termed "quasi-judicial."³

The prefix "quasi" is a Latin word frequently used in civil law and signifies that the thing described by the word has some of the legal attributes denoted by the legal term but that it has not all of them. It is synonymous with the phrase "as if" or "almost" and to the lawyer means "not exactly." It indicates a resemblance, but it supposes a small difference between the two objects. "Quasi-judicial," therefore, is a term used to designate acts presumed to be the product of judgment based on evidence, either oral or visual or both, which acts lie midway between the purely judicial and the purely ministerial.⁴

If the administrative agency performs only quasi-judicial acts, then, no violation of the constitutional doctrine of separation of powers has occurred. The Illinois law abounds with many such instances of which the following are but illustrations. The act of a clerk of a court in approving a bond;⁵ or an assessor or the like when equalizing or assessing property;⁶ or a super-

³ Illustrations of the use of that term may be found in *Cemetery Association v. Murphy*, 383 Ill. 301, 50 N. E. (2d) 582 (1943); *Nega v. Chicago Railways Co.*, 317 Ill. 482, 148 N. E. 250 (1925); *Bagdonas v. Liberty Land & Invest. Co.*, 309 Ill. 103, 140 N. E. 49 (1923); *People v. Orvis*, 301 Ill. 350, 133 N. E. 787 (1922); *Chicago v. Washingtonian Home*, 289 Ill. 206, 124 N. E. 416 (1919); *Mitchell v. Lowden*, 288 Ill. 327, 123 N. E. 566 (1919); *Witter v. Cook County Comrs.*, 256 Ill. 616, 100 N. E. 148 (1912); *State v. Ill. Central R. R. Co.*, 246 Ill. 188 at 231, 92 N. E. 814 at 833 (1910).

⁴ *Devine v. Brunswick-Balke Co.*, 270 Ill. 504 at 510, 110 N. E. 780 at 782 (1915).

⁵ *People v. Percells*, 8 Ill. (3 Gil.) 59 (1846); *Hawthorn v. People*, 109 Ill. 302 (1883).

⁶ *People v. Orvis*, 301 Ill. 350, 133 N. E. 787 (1922); *Owners of Lands v. People*, 113 Ill. 296 (1885); *Lake v. City of Decatur*, 91 Ill. 596 (1879); *People ex rel. Dunham v. Morgan*, 90 Ill. 558 (1878); *Porter v. P. R. I. & St. L. R. Co.*, 76 Ill. 561 (1875); *Spencer & Gardner v. People*, 68 Ill. 510 (1873); *Rich v. City of Chicago*, 59 Ill. 286 (1871); *Wright v. City of Chicago*, 48 Ill. 285 (1868); *People v. Supervisors*, 47 Ill. 256 (1868).

intendent of schools in passing on appeals taken from the action of a school board;⁷ or the final determination of a department of public works and buildings;⁸ that of a recorder in taking and approving a bond;⁹ or a city council in granting or revoking a dram-shop license;¹⁰ or a school superintendent when granting or revoking a teacher's certificate¹¹ have all been treated as being merely quasi-judicial acts. So, too, is the conduct of a fish commissioner in granting a permit to take fish for propagation at times and by means otherwise prohibited,¹² while the work of a coroner and coroner's juries,¹³ of commerce commissions,¹⁴ industrial commissions,¹⁵ unemployment boards,¹⁶ retail sales tax boards,¹⁷ and many others¹⁸ is so well understood to be quasi-judicial as to call for no further comment. So long as the work of each is subject to judicial review of some sort or another, the result has been to hold that no violation of the separation of powers doctrine has occurred nor has the legislature attempted, in unconstitutional fashion, to interfere with the function of the judicial department.

B. LEGISLATIVE POWER.

It is equally fundamental that the power to make laws for a state is vested in the state legislature and is a sovereign power of such nature, requiring the exercise of judgment and discretion, that it cannot properly be delegated away. The legislature can authorize others to execute the laws it adopts for it cannot

⁷ *Board of Education v. Board of Education*, 314 Ill. 83, 145 N. E. 169 (1924).

⁸ *Chicago v. Washingtonian Home*, 289 Ill. 206, 124 N. E. 416 (1919).

⁹ *Hawthorn v. People*, 109 Ill. 302 (1883).

¹⁰ *Meyers v. Baker*, 120 Ill. 567, 12 N. E. 79 (1887).

¹¹ *People v. Flaningam*, 347 Ill. 328, 179 N. E. 823 (1932).

¹² *People v. Brooks*, 101 Mich. 98, 59 N. W. 444 (1894).

¹³ *Devine v. Brunswick-Balke Co.*, 270 Ill. 504, 110 N. E. 780 (1915).

¹⁴ *People v. C., I. & L. Ry. Co.*, 223 Ill. 581, 79 N. E. 144 (1906).

¹⁵ *Nega v. Chicago Railways Co.*, 317 Ill. 482, 148 N. E. 250 (1925); *Grand Trunk West. Ry. v. Indus. Com.*, 291 Ill. 167, 125 N. E. 748 (1920).

¹⁶ *Cemetery Association v. Murphy*, 383 Ill. 301, 50 N. E. (2d) 582 (1943).

¹⁷ *Department of Finance v. Cohen*, 369 Ill. 510, 17 N. E. (2d) 327 (1938); *Winter v. Barrett*, 352 Ill. 441, 186 N. E. 113 (1933).

¹⁸ See, for example, *Investors Syndicate v. Hughes*, 378 Ill. 413, 38 N. E. (2d) 754 (1942); *Milstead v. Boone*, 301 Ill. 213, 133 N. E. 679 (1922).

always understandingly or advantageously do so itself and, from a practical standpoint, there must be authority in some one to see that the laws enacted are enforced. Such task is often placed on administrative agencies, but again there is no violation of the constitution for the power to make a law and the enforcement thereof represent two different functions. The former cannot be delegated while the latter may. Therein lies the true distinction between legislative and administrative functions.

A review of the decisions in Illinois indicates that the courts have long recognized and repeatedly applied this distinction when asked to test the validity of statutes delegating authority to administrative bodies. Where the law is reasonably complete and merely requires enforcement, albeit with some exercise of discretion on the part of the administrative official, the same has been upheld. If, however, it is lacking in detail so that the official must virtually write the law before he can enforce it, then an unconstitutional attempt to delegate legislative authority has occurred.

An illustration of the former may be found in a case involving a municipal ordinance which required the installation of sprinkler systems in certain types of buildings. The ordinance did not require that any particular system be used but did provide, as a safety measure, that the plan be approved by the chief of the fire prevention bureau before installation took place. Such was not regarded as an unconstitutional delegation of authority.¹⁹ In another case, that of *Arms v. Ayer*,²⁰ a factory inspector was to determine how many fire escapes were required and in what position the same should be placed on a factory building. That delegation of discretion was not deemed improper in view of the fact that the statute required fire escapes on all buildings four or more stories in height and even on buildings of two or more stories when used for certain designated pur-

¹⁹ *Chicago v. Washingtonian Home*, 289 Ill. 206, 124 N. E. 416 (1919).

²⁰ 192 Ill. 601, 61 N. E. 851 (1901).

poses. As the general policy of the law had been adequately stated, a filling in of administrative detail was not deemed improper.

Again, the grant of authority to a commissioner of public works to approve a drip-pan or other device to prevent the spilling of oil on municipal streets was upheld in *Spiegler v. City of Chicago*²¹ since the ordinance in question regulated the hauling of oil in tank wagons and required all such wagons to be so equipped. The function of the official was treated as pertaining solely to enforcement and not regarded as legislative in character. In *City of Pekin v. Industrial Commission*,²² the ordinance directed that bridge tenders should be under the supervision of the bridge committee of the city council which committee should prescribe rules regulating employment and fixing hours of work. Delegation of that much authority to the committee was not regarded an objectionable as the duties of bridge tenders were sufficiently specified in the ordinance, hence the committee was not obliged to exercise the full legislative function. Perhaps even broader was the grant of authority to be found in *Block v. City of Chicago*²³ where an ordinance required a permit for the exhibition of motion pictures and directed the chief of police not to issue such permit in case the film was "immoral or obscene." No other criterion was provided, but the court found the delegation proper on the ground that no better definition could be formulated than the words used in the ordinance.

On the other hand, the Illinois courts have not hesitated to hold certain statutes and ordinances unconstitutional because involving an undue delegation of legislative power to administrative officers. Perhaps the clearest illustration is provided by the case of *People ex rel. Gamber v. Sholem*²⁴ in which the statute authorized the fire marshal to order conditions remedied whenever he should find any building or structure in want of proper

²¹ 216 Ill. 114, 74 N. E. 718 (1905).

²² 341 Ill. 312, 173 N. E. 339 (1930).

²³ 239 Ill. 251, 87 N. E. 1011 (1909).

²⁴ 294 Ill. 204, 128 N. E. 377 (1920).

repair, specially liable to fire by reason of age, dilapidated condition, or any other cause, or was "so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein."²⁵ The act was declared unconstitutional because of the degree of delegation of the legislative function. In that regard, the court said:

In the present instance the section in question lays down no rule by which the fire marshal is to determine when a building is especially liable to fire. It may be "for want of proper repair." What is proper repair is entirely within the discretion of the fire marshal. It may be "by reason of age and dilapidated condition." What shall constitute age and dilapidated condition is wholly within the discretion of the fire marshal. It may be "or for any cause," leaving to the fire marshal complete arbitrary powers to nominate the cause and determine its effect on any building. . . . By this act the fire marshal is given the power arbitrarily to determine, without the intervention or assistance of a court or jury, where the line of demarkation is in any case.²⁶

In another instance, that of *City of Chicago v. Matthies*,²⁷ an ordinance provided, in general terms, for the type of construction to be used in various kinds of buildings and forbade change in use from one kind to another without the consent of the building commissioner. The defendant was prosecuted for converting his building into a rooming house without first obtaining a permit. He claimed that the ordinance was unconstitutional because it left to the building commissioner the function of determining the meaning of the term "rooming house." The contention was sustained when the court observed:

The city council, under the powers granted to it by the legislature, has authority to define a rooming house, and before that body imposes restrictions upon the use of a rooming

²⁵ Laws 1909, p. 269, § 9.

²⁶ 294 Ill. 204 at 209-11, 128 N. E. 377 at 379.

²⁷ 320 Ill. 352, 151 N. E. 248 (1926).

house it is necessary either that the term be so generally understood as to need no definition or the ordinance must define it. . . . An ordinance which leaves to an executive officer the definition of the thing to which such ordinance applies, such definition not being commonly known, is an unwarranted and void delegation of legislative power to an executive officer.²⁸

Other instances of lack of adequate definition may be found in situations where, for example, a bond "with terms and in form to be approved by the Secretary of State," was required of security dealers;²⁹ a county superintendent of schools was given discretion to determine what was necessary to form a "satisfactory and efficient" high school district;³⁰ a zoning board of appeals had authority to permit changes to correct "practical difficulties or unnecessary hardships" produced by the zoning law;³¹ or a commissioner of public works was left to decide whether a certain driveway would "unduly obstruct public travel or be dangerous to the public."³² The generality of language used in each instance was regarded as objectionable because the legislative body had failed to define the objects to which the law applied.

Even more clearly offensive to constitutional requirements are unlimited grants of authority to be exercised as if by whim or caprice. In *City of Sullivan v. Cloe*,³³ for example, an ordinance was declared invalid which forbade the erection of poles or wires upon municipal streets or alleys without permission from a designated source but failed to specify the conditions upon which permission should be granted or to prescribe rules to guide the administrators of the ordinance in granting or refus-

²⁸ 320 Ill. 352 at 355, 151 N. E. 248 at 249.

²⁹ *People v. Beekman & Co.*, 347 Ill. 92, 179 N. E. 435 (1932).

³⁰ *Kenyon v. Moore*, 287 Ill. 233, 122 N. E. 548 (1919). See also *Jackson v. Blair*, 298 Ill. 605, 132 N. E. 221 (1921).

³¹ *Welton v. Hamilton*, 344 Ill. 82, 176 N. E. 333 (1931).

³² *Lydy v. City of Chicago*, 356 Ill. 230, 190 N. E. 273 (1934).

³³ 277 Ill. 56, 115 N. E. 135 (1917).

ing permits.³⁴ The fact that the administrative official has exercised such discretion within what would have been permissible limits if the same had been adequately stated will not serve to save the statute or ordinance, for it is essential under our constitutional system not only that the laws be clear and certain but that they emanate from a proper source.

It may be said, therefore, that the Illinois courts have adhered to the well-established doctrine that for the administrative statute to be constitutional it must not involve a delegation of legislative authority but that no such violation occurs where the law establishes a precise system with adequate definition of the objects to which the act shall apply.

C. SUFFICIENCY OF STANDARDS.

The legislature, in keeping with such constitutional requirements, has enacted many statutes through which it has attempted to provide reasonable standards to guide administrative agencies in the performance of their executive duties, so that every person affected might know what his rights and duties were.

Wherever such standards, definitions and limitations have been explicit and comprehensive, all such statutes have been sustained even though the terminology used may have been given no special elaboration. Certain phrases have come to possess a well-established meaning so that more precise definition has become unnecessary. The use thereof, consequently, has been regarded as sufficient in many instances.³⁵ For example, in *People ex rel. Odell v. Flaningam*³⁶ authority in an examining board to determine whether an applicant possessed "good moral char-

³⁴ In *People v. Yonker*, 351 Ill. 139, 184 N. E. 228 (1933), a statute was held unconstitutional which vested a city clerk with power to grant or refuse licenses to conduct sales of various kinds for lack of definition of the object to which the act applied.

³⁵ Conversely, terms of technical or special meaning not well enough known to permit general compliance therewith in the absence of express definition will be insufficient: *Vallat v. Radium Dial Co.*, 360 Ill. 407, 196 N. E. 485 (1935); *Mayhew v. Nelson*, 346 Ill. 381, 178 N. E. 921 (1931); *Chicagoland Agencies v. Palmer*, 364 Ill. 13, 2 N. E. (2d) 910 (1936).

³⁶ 347 Ill. 328, 179 N. E. 823 (1932).

acter" was said to involve no uncertainty. Other expressions such as "deceptively similar,"³⁷ "gross incompetency or recklessness,"³⁸ "reputable dental college,"³⁹ or "unprofessional or dishonorable conduct,"⁴⁰ have been attacked as rendering statutes incomplete and thereby forcing upon administrative officials the necessity of providing definitions, but all have been deemed sufficiently descriptive to form acceptable standards. In one case, in fact, the court observed that "the requirements of a statute can be stated only in general terms."⁴¹ For that reason, a grant of authority to the Department of Public Works to post signs and adopt different traffic rules "where a dangerous condition is found from time to time in divers places to exist" was regarded as sufficiently specific.⁴²

Where the words "to his or its satisfaction" have been used, as in a statute vesting discretion in an officer or commission to determine the existence of an essential fact, there is some occasion to pause and consider whether such grant of authority is not wholly lacking in standards and limitations. Such was the question in *Proffitt v. County of Christian*⁴³ where an examiner was obliged to determine whether an applicant for a pension was blind or not. Since some one in authority had to decide if the applicant was blind, it was considered to be merely an administrative discretion legally bestowed on the examiner. It is not necessary, in such situations, that the applicant "satisfy" the prejudiced, capricious, unreasonable or arbitrary-minded person but should obtain approval in the judgment of a reasonable man acting honestly and without bias or prejudice. Where the proof is susceptible of but one fair construction, therefore, the official

³⁷ *Investors Syndicate v. Hughes*, 378 Ill. 413, 38 N. E. (2d) 754 (1942).

³⁸ *Klafter v. Examiners of Architects*, 259 Ill. 15, 102 N. E. 193 (1913).

³⁹ *Dental Examiners v. People*, 123 Ill. 227, 13 N. E. 201 (1887).

⁴⁰ *Ramsay v. Shelton*, 329 Ill. 432, 160 N. E. 769 (1928); *People v. Apfelbaum*, 251 Ill. 18, 95 N. E. 995 (1911).

⁴¹ *Investors Syndicate v. Hughes*, 378 Ill. 413 at 420, 38 N. E. (2d) 754 at 758 (1942).

⁴² *Hamann v. Lawrence*, 354 Ill. 197, 188 N. E. 333 (1933).

⁴³ 370 Ill. 530, 19 N. E. (2d) 345 (1939).

may not refuse to be satisfied so no further definition or standard is necessary.⁴⁴

The exercise of reasonable care in drafting the administrative statute, particularly with reference to the choice of words setting forth precise standards to guide the administrative official, will usually result in a constitutional product for the Illinois courts have been fairly liberal in their application of the separation of powers doctrine.

II. THE REQUIREMENT OF DUE PROCESS

Administrative functions must also measure up to constitutional requirements in another respect, for the guarantee of due process of law afforded to the citizen affected by the particular agency must also be satisfied. When the administrative agency is performing more than merely ministerial duties, it must act impartially or its work clashes with Section 2 of Article 2 of the state constitution.⁴⁵ The major difficulty, though, is to determine just what is meant by "due process" for it is doubtful if any definition of the phrase is sufficiently broad to permit the courts to apply it in every instance. Courts have said that the phrase is synonymous with "law of the land," so if an administrative proceeding accords with those rules and forms which have been established for the protection of personal and property rights under judicial process, it will probably accord the essentials of due process. In an ordinary legal proceeding, two requisites are insisted upon, to-wit: (1) the giving of adequate notice, and (2) providing an opportunity for a hearing. If these fundamentals are observed, whether through ancient and uniform custom or by the exercise of legislative power in furtherance of the public good, principles of liberty and justice will have been subserved.⁴⁶ The term "due process" is not confined to judicial proceedings,

⁴⁴ *Toplis & Harding, Inc. v. Murphy*, 384 Ill. 463, 51 N. E. (2d) 505 (1943).

⁴⁵ Ill. Const. 1870, Art. II, § 2, sets forth the standard due process clause.

⁴⁶ It follows that failure to observe these requirements will result in a denial of due process: *People v. Belcastro*, 356 Ill. 144, 190 N. E. 301 (1934); *Sheldon v. Hoyne*, 261 Ill. 222, 103 N. E. 1021 (1914); *Comrs. of Drainage Dist. v. Smith*, 233 Ill. 417, 84 N. E. 376 (1908).

for the constitutional guarantee is designed to protect against arbitrary legislative as well as capricious executive action.⁴⁷ If, however, the latter produce a "general public law, legally enacted, binding upon all members of the community under all circumstances,"⁴⁸ enforced by orderly proceedings according to established rules or forms of procedure, then there will have been no violation of fundamental rights.

The first element to be examined indicates that the administrative statute must be a general one "binding upon all members of the community alike." Illustrative of this requirement are statutes of the character of the Unemployment Compensation Act,⁴⁹ the Retailers' Occupation Tax Act,⁵⁰ and the Attorneys' Lien Act,⁵¹ all of which have been held valid. But a law which deprives one class of persons of either personal liberty or the right to acquire and enjoy property, with all its incidents, such as is granted to other classes under like conditions and circumstances, will be clearly invalid. Evidence of this fact can be found in *Metropolitan Trust Company v. Jones*⁵² which declared Section 12 of the Small Loans Act⁵³ invalid because it restricted the hypothecation of borrowers' notes to banks thereby singling them out as a class of favored persons without any reasonable basis for discriminating against trust companies. Of similiar character was the 1933 amendment to the Vagabond Act⁵⁴ which purported to class as vagrants all persons who were reputed to be habitual violators of the criminal law or who were carriers of

⁴⁷ *People v. Belcastro*, 356 Ill. 144, 190 N. E. 301 (1934); *Sheldon v. Hoyne*, 261 Ill. 222, 103 N. E. 1021 (1914); *People v. Apfelbaum*, 251 Ill. 18, 95 N. E. 995 (1911); *People v. Strassheim*, 242 Ill. 359, 90 N. E. 118 (1909).

⁴⁸ *Metropolitan Trust Co. v. Jones*, 384 Ill. 248 at 253, 51 N. E. (2d) 256 at 259 (1943). See also *People v. Apfelbaum*, 251 Ill. 18, 95 N. E. 995 (1911).

⁴⁹ Ill. Rev. Stat. 1945, Ch. 48, § 217 et seq., held valid in *Zelney v. Murphy*, 387 Ill. 492, 56 N. E. (2d) 754 (1944); *Murphy v. Cuesta, Rey & Co.*, 381 Ill. 162, 45 N. E. (2d) 26 (1942).

⁵⁰ Ill. Rev. Stat. 1945, Ch. 120, § 440 et seq., upheld in *Reif v. Barrett*, 355 Ill. 104, 188 N. E. 889 (1933).

⁵¹ Ill. Rev. Stat. 1945, Ch. 13, § 14, declared constitutional in *Catherwood v. Morris*, 360 Ill. 473, 196 N. E. 519 (1935).

⁵² 384 Ill. 248, 51 N. E. (2d) 256 (1943).

⁵³ Ill. Rev. Stat. 1945, Ch. 74, § 30.

⁵⁴ *Ibid.*, Ch. 38, § 578.

concealed weapons. That amendment was declared invalid, as depriving citizens of their liberty without due process of law, for it purported to clothe administrative officers with discriminatory power to arrest on sight.⁵⁵ For much the same reason another statute, placing unlimited discretion in the hands of the fire marshal to say who should be amenable to the Gas Safety Appliance Act,⁵⁶ was held invalid in *Sheldon v. Hoyme*⁵⁷ as it appeared that the statute vested in him such an uncontrolled discretion that it could not be said to be binding upon any particular member of the community. Where a reasonable basis for classification exists, however, it is not a violation of due process to enact a statute having limited application.⁵⁸

The second element requires that the administrative statute be enforced "by orderly proceedings." It is not essential that the "proceedings" be judicial in character, for decisions by administrative agencies may well satisfy the requirements of due process. Thus it is not necessary that a prisoner who has violated his parole be given a judicial hearing before he can be confined for the term of his original sentence as the parole board may validly determine whether the terms of the parole have been broken.⁵⁹ It is equally true that a determination by a licensing agency to the effect that cause exists for the revocation of a license will involve no violation of constitutional rights.⁶⁰ Perhaps the best illustration for the application of this concept is to be found in *People ex rel. Radium Dial Company v. Ryan*,⁶¹ where many of the earlier cases are reviewed and analyzed.

It should be remembered that the constitutional guarantee of due process is not one against erroneous decisions. If errors are committed in the course of "orderly proceedings," even though unjust decisions are thereby reached, the attack thereon

⁵⁵ *People v. Belcastro*, 356 Ill. 144, 190 N. E. 301 (1934).

⁵⁶ *Laws 1911*, p. 146.

⁵⁷ 261 Ill. 222, 103 N. E. 1021 (1914).

⁵⁸ *People v. Stokes*, 281 Ill. 159, 118 N. E. 87 (1917).

⁵⁹ *People v. Strassheim*, 242 Ill. 359, 90 N. E. 118 (1909).

⁶⁰ *Klafter v. Examiners of Architects*, 259 Ill. 15, 102 N. E. 193 (1913).

⁶¹ 371 Ill. 597, 21 N. E. (2d) 749 (1939).

must be in the manner provided by law rather than on constitutional grounds, as a mere error in decision does not deprive the losing party of the benefit of due process.⁶² The scope and manner of obtaining review of such erroneous decisions is discussed in a subsequent section.

One other factor needs mention at this point. The administrative proceeding must be conducted "according to established rules or forms of procedure." It is fundamental that no judicial proceeding would be valid if the judge were biased or prejudiced against a party. Federal administrative statutes recognize that due process would be violated if personal rights had to be submitted to prejudiced officials, for they provide for disqualification of such officials on proper motion.⁶³ No statute in this state makes provision for the disqualification of administrative personnel under such circumstances, but the Supreme Court has declared that statutes which forced persons to submit their controversies to tribunals composed of biased or interested officials would clearly violate constitutional rights.⁶⁴ Some statutory provision, similar to the one for securing change of venue in judicial proceedings, could well be enacted in this state.

III. EXTENT OF THE RULE-MAKING POWER

When expediency dictates that authority be conferred on administrative agencies to survey, direct and control particular activities, the legislature may vest such agencies with the power to formulate rules and regulations to help carry out the desired objective. That power is not to be regarded as general in scope for it is limited to the making of rules necessary to the performance of the duties imposed. Such rules must, consequently,

⁶² *Abrams v. Awotin*, 388 Ill. 42, 57 N. E. (2d) 464 (1944); *Durkin v. Hey*, 376 Ill. 292, 33 N. E. (2d) 463 (1941).

⁶³ See, for example, the qualifications laid down for members of the Federal Power Commission, 16 U. S. C. A. § 792. See also 42 Am. Jur., Public Administrative Law, §§ 20 and 23.

⁶⁴ *City of Naperville v. Wehrle*, 340 Ill. 579, 173 N. E. 165 (1930); *Ramsay v. Shelton*, 329 Ill. 432, 160 N. E. 769 (1928); *Comrs. of Drainage Dist. v. Smith*, 233 Ill. 417, 84 N. E. 376 (1908).

relate to procedural matters. Although the agency may construe the statute and such construction will be given weight, the courts will not allow the administrative body to extend the operation of the statute by rules or regulations,⁶⁵ for to permit this would again involve an unconstitutional delegation of legislative authority.

A number of cases have arisen in Illinois testing the validity of administrative rules and regulations. In *People ex rel. Chicago Bar Association v. Goodman*,⁶⁶ for example, a rule of the Industrial Commission which authorized laymen to appear and present claims on behalf of applicants for compensation was held invalid on the ground that neither the commission nor the legislature had the right to grant to non-lawyers the authority to practice law.⁶⁷ Rules which purport to affect or create substantive rights are likewise open to condemnation. That point is amply illustrated by *Zurich Accident Insurance Company v. Industrial Commission*,⁶⁸ a case striking down another rule of the Industrial Commission which purported to declare that no insurance policy should be terminated, whether by cancellation or lapse of time, without ten days' notice being first given to the commission. The rule also purported to declare that liability of the insurer continued until the expiration of the ten-day period. The court pointed out that the rule dealt with substantive matters rather than procedural ones, tended to create liability where the law would find none, and was, as a consequence, void. In the same way, the administrative agency will not be allowed, by rule, to nullify a statutory provision by substituting its own method for obtaining security of compensation if that method is different from, hence derogatory to, the statutory one.⁶⁹ Certainly, if the rule or regulation is arbitrary, unreasonable, or based upon a

⁶⁵ *Mallen Co. v. Department of Finance*, 372 Ill. 598, 25 N. E. (2d) 43 (1940).

⁶⁶ 366 Ill. 346, 8 N. E. (2d) 941 (1937).

⁶⁷ A rule of the Department of Finance was declared invalid for the same reason in *Chicago Bar Ass'n v. United Taxpayers of America*, 312 Ill. App. 243, 38 N. E. (2d) 349 (1942).

⁶⁸ 325 Ill. 452, 156 N. E. 307 (1927).

⁶⁹ *People v. O'Connell*, 386 Ill. 606, 54 N. E. (2d) 521 (1944).

mistaken concept of the law, the courts will not hesitate to declare the same null and void.⁷⁰

On the other hand, rules promulgated by administrative agencies have been held valid if they are reasonable in scope and purpose and do tend to carry out statutory objectives. A rule of a board of education prohibiting teachers from belonging to, or being affiliated with, trade unions was upheld in *People ex rel. Fursman v. City of Chicago*⁷¹ against the claim that such rule impaired the contract of employment. The court pointed out that the selection of a teacher was a mere offer of employment subject to all proper board rules and acceptance of that offer did not occur until the teacher appeared for duty on the first day of school. It was also noted that there was no restriction in either constitution or statute against such a rule. Other rules adopted pursuant to an authority to discipline and control schools under the jurisdiction of the board were upheld in *Wilson v. Board of Education of Chicago*⁷² as being reasonable and not involving any abuse of discretion.

IV. THE ADMINISTRATIVE FUNCTION

A. QUASI-JUDICIAL FUNCTIONS

Once the general structure of the administrative agency has been found to meet constitutional requirements, any further criticism must be directed against the manner in which it performs its functions. Comment has already been made on the fact that many such agencies must exercise discretion in the performance of their duties. If the judgment exercised is merely incidental to the execution of a ministerial power, no exercise of judicial power is involved. But the line is often difficult to draw. One great constitutional writer has noted that the judicial power is one which adjudicates upon and protects the rights and interests

⁷⁰ *Schireson v. Walsh*, 354 Ill. 40, 187 N. E. 921 (1933); *People ex rel. Killeen v. Geary*, 317 Ill. App. 463, 47 N. E. (2d) 102 (1943); *Murphy v. Houston*, 250 Ill. App. 385 (1928).

⁷¹ 278 Ill. 318, 116 N. E. 158 (1917).

⁷² 233 Ill. 464, 84 N. E. 697 (1908).

of individual citizens and to that end construes and applies the law.⁷³ That definition received early acceptance in this state⁷⁴ and has been approved on a number of occasions.⁷⁵ Since the judicial power is vested in the courts,⁷⁶ it was observed in *State ex rel. City of Rockford v. Maynard*⁷⁷ that no person except a judge or a justice of the peace might exercise the judicial power. Although the legislature might multiply the number of certain of these officials,⁷⁸ the power reposed in them after the legislature has exercised its prerogative stems directly from the constitution. As a consequence, it is legally impossible to vest the judicial power in administrative agencies, and efforts of such agencies to pronounce decisions having authoritative effect, as by divesting titles, have come to nought.⁷⁹

A brief analysis of some of the cases will illustrate how the Supreme Court has insisted on the strict observance of the division of power and how it has prevented ministerial officials from performing judicial functions. In *Hall v. Marks*,⁸⁰ for example, a judgment by default was entered by the clerk of court but was reversed and the statute held unconstitutional on the ground that the power to adjudge, determine and pronounce judgment was intrinsically a judicial one and it was a perversion of language to call the clerk of a court a judicial officer even though he was attached to the judicial department. The ordinance in *Poppen v. Holmes*,⁸¹ enacted pursuant to statute, purported to authorize the pound master to sell impounded animals for penalties incurred but it was held that the function of determining whether

⁷³ Cooley, Const. Lim., 8th Ed., Vol. I, p. 184.

⁷⁴ *Owners of Lands v. People*, 113 Ill. 296 (1885).

⁷⁵ *People v. Chase*, 165 Ill. 527 at 538, 46 N. E. 454 at 458 (1897); *People v. Simon*, 176 Ill. 165, 52 N. E. 910 (1898); *Devine v. Brunswick-Balke Co.*, 270 Ill. 504, 110 Ill. 780 (1915).

⁷⁶ Ill. Const. 1870, Art. VI, § 1.

⁷⁷ 14 Ill. 419 (1853).

⁷⁸ Ill. Const. 1870, Art. VI, § 1, permits the legislature to vest the judicial power in other courts "as may be created by law," with the exception that there shall be but one Supreme Court.

⁷⁹ See, for example, *C., S. F. & C. Ry. Co. v. Lorange*, 180 Ill. 180, 54 N. E. 284 (1899).

⁸⁰ 34 Ill. 358 (1864).

⁸¹ 44 Ill. 360 (1867).

a penalty had in fact been incurred was purely judicial in character, hence could not be exercised by that official. Of somewhat similar character was *Bullock v. Geomble*,⁸² only there the assessment of damage caused by stock running at large was to be made by three disinterested citizens of the town. The latest pronouncement on this point is found in *Reid v. Smith*⁸³ wherein the statute authorized the department to withhold a forfeiture or penalty from the contract price and purported to vest it with power to render decisions in that regard. The fact that an appeal from the decision of the department was permitted was insufficient to save the statute.

As the legislature itself may not perform the functions of the judicial department, it clearly cannot validly delegate the judicial power to any of its creatures. Decisions by the latter must, therefore, be confined to the exercise of discretion in ministerial matters, must be no higher than quasi-judicial in scope, and must not purport to adjudicate upon the rights and interests of individuals.

B. RIGHT TO JURY TRIAL

Many administrative agencies are authorized, in the performance of their functions, to hear and determine matters of fact which determinations may or may not be open to judicial review. It has been argued that investigations of that character violated the constitutional guaranty of right to trial by jury,⁸⁴ since it took from the jury the principal function for its existence.

The right of an administrative agency to exercise the duty of ascertaining the facts was vindicated in *Grand Trunk Western Railway Company v. Industrial Commission*⁸⁵ on the ground that the legislature might, in the exercise of the police power, confine the scope of the guaranty of the right to trial by jury. That case

⁸² 45 Ill. 218 (1867).

⁸³ 375 Ill. 147, 30 N. E. (2d) 908 (1940).

⁸⁴ Ill. Const. 1870. Art. II, § 5.

⁸⁵ 291 Ill. 167, 125 N. E. 748 (1920).

involved the issue as to whether or not a workmen's compensation proceeding deprived an employer of a jury trial. The court noted that while the constitutional provision directed that trial by jury "as heretofore enjoyed" was to remain inviolate, still the guaranty extended only to those causes recognized by law. The purpose of the Workmen's Compensation Act was to take away the cause of action theretofore enjoyed by the employee on the one hand and to abolish certain defenses formerly available to the employer on the other. In place thereof, a fixed and certain statutory indemnity emerged in place of both. As the power to extinguish a pre-existing form of action known to the common law was acknowledged to exist, it followed that upon its extinguishment the incidental right to trial by jury thereon disappeared.⁸⁶

Since no person has a vested interest in any particular rule of procedural law, he may not insist that it remain unchanged for his benefit.⁸⁷ If the legislature, by a proper exercise of the police power, sets aside one body of rules and establishes another system in its place, no person can complain that rights he had previously enjoyed are no longer available. Should the legislature validly create an entirely new body of rights and provide a new tribunal for their enforcement, it goes without saying that no person can insist upon older methods of fact-determination if the legislature sees fit to provide newer ones for use in such a tribunal. It follows, therefore, that no constitutional right to trial by jury is violated by permitting the administrative agency to hear and determine disputed issues of fact.

A related problem involved in ascertaining the facts on any administrative question concerns the ability of the agency to compel the attendance of witnesses and the production of books, records, or other documents containing essential data. Some

⁸⁶ The court said: "The right of jury trial being incidental to the right of action, to destroy the latter is to leave the former nothing upon which to operate." 291 Ill. 167 at 176, 125 N. E. 748 at 752.

⁸⁷ *Wall v. Chesapeake & Ohio Ry. Co.*, 290 Ill. 227, 125 N. E. 20 (1919), appeal dismissed 256 U. S. 125, 41 S. Ct. 402, 65 L. Ed. 856 (1921).

agencies possess statutory authority to issue subpoenas, but enforcement thereof is left somewhat vague and indefinite. As the agency would not enjoy the power to punish for contemptuous disregard of its subpoenas, it is usually directed to "apply to" or "invoke the aid of" the courts. Little has been said on this matter by the courts of Illinois, but it would seem from the decision in *Durkin v. Hey*⁸⁸ that judicial aid can be obtained only upon the giving of notice and the granting of a hearing even though the administrative statute is silent on the subject.

V. JUDICIAL REVIEW

Because most administrative determinations are only quasi-judicial in nature, some form of judicial action may be necessary to give enforceable effect to them. When recourse to the courts becomes necessary, the judicial department is then able to review the action, whether taken or contemplated, and can thereby preserve the balance of power intrinsic in our form of state government. Constitutional issues as well as questions concerning the proper exercise of administrative powers may then be examined.

A. REFUSAL TO REVIEW

There are times, however, when the courts will refuse to review administrative acts, particularly where the power exercised by the agency is purely a ministerial one. So long as no law is construed or applied, so long as no legal rights are adjudicated, the courts will not intervene for it is not their province to substitute themselves in place of the administrative agency. Such was the holding in *People ex rel. Palmer v. Niehaus*⁸⁹ where the Supreme Court refused to substitute itself for the Department of Insurance or to assume the clearly defined obligations placed on that body by the legislature. It has also refused to interfere with the exercise of sound business judgment on the part of tax-

⁸⁸ 376 Ill. 292, 33 N. E. (2d) 463 (1941).

⁸⁹ 356 Ill. 104, 190 N. E. 349 (1934). See also *People v. Palmer*, 363 Ill. 499, 2 N. E. (2d) 728 (1936); *State v. Ill. Central R. R. Co.*, 246 Ill. 188, 92 N. E. 814 (1910).

ing agencies, being content to act only to prevent a clear abuse of discretionary power by such officials.⁹⁰

Even where administrative decisions have been based on statutes of doubtful nature, the courts have refused to weigh the propriety or expediency of the legislative acts or to seek for the motives which prompted their passage let alone test the public policy reflected thereby. They have investigated to see if such statutes were within legislative competence, whether classifications therein were reasonable, and whether equal protection has been accorded, but beyond that they will not go.⁹¹ They cannot supply omissions, for to do so would involve them in the sphere of legislative action.⁹² Decisions of administrative agencies will not be reversed if there is legal evidence to support the same, for it is deemed not to be the province of the courts to pass upon the weight or sufficiency thereof,⁹³ and if the agency is clearly acting as a subordinate of the legislature, judicial intervention would be deemed objectionable as an encroachment on a co-ordinate branch of the government.⁹⁴

One thing is certain, no court will assume to weigh an exercise of discretion by a public official acting within the scope of his duty for the judicial department has carefully refrained from encroaching upon the power of such an officer. If any reasonable doubt exists as to the question of discretion or want of it, courts are even inclined to extend the benefit of the doubt in favor of the official.⁹⁵

⁹⁰ *People v. Westminster Build. Corp.*, 361 Ill. 153, 197 N. E. 573 (1935); *People v. B. & O. S. W. Ry. Co.*, 353 Ill. 492, 187 N. E. 463 (1933).

⁹¹ *Reif v. Barrett*, 355 Ill. 104, 188 N. E. 889 (1934).

⁹² *Boshuizen v. Thompson & Taylor Co.*, 360 Ill. 160, 195 N. E. 625 (1935).

⁹³ *Goelitz Co. v. Industrial Board*, 278 Ill. 164, 115 N. E. 855 (1917); *Parker-Wash. Co. v. Industrial Board*, 274 Ill. 498, 113 N. E. 976 (1916); *Victor Chemical Works v. Industrial Board*, 274 Ill. 11, 113 N. E. 173 (1916).

⁹⁴ *People v. Eakin*, 383 Ill. 383, 50 N. E. (2d) 474 (1943). But see *Catholic Bishop v. Palos Park*, 286 Ill. 400, 121 N. E. 561 (1919); *City of Chicago v. M. & M. Hotel Co.*, 248 Ill. 264, 93 N. E. 753 (1911).

⁹⁵ *Investors Syndicate v. Hughes*, 378 Ill. 413, 38 N. E. (2d) 754 (1942); *MacGregor v. Miller*, 324 Ill. 113, 154 N. E. 707 (1926); *Smith v. McDowell*, 148 Ill. 51, 35 N. E. 141 (1893).

B. GROUNDS FOR REVIEW

In those situations where judicial action is necessary or proper, because private legal rights and obligations are under consideration, the matter of judicial review has experienced a long history of development. The principal functions of the courts in their relation to administrative agencies on this point have been to interpret the authority under which administrative action has been taken and to test such points as jurisdiction, due process, standards and definitions, and the validity and applicability of agency rules. An analysis of some of the cases will illustrate the extent to which the courts will review administrative action.

There is no question but what the courts will grant review and declare administrative statutes unconstitutional if there has been a failure to accord due process, for any statute which applies to one person or property and not to another while both are in the same situation or of the same class is clearly invalid.⁹⁶ It should be remembered, in this respect, that administrative as well as judicial proceedings are governed by this fundamental requirement.⁹⁷

Right to seek review and to obtain relief will also be accorded where the law fails to make provision for the control of administrative action. Thus a zoning statute which gives no direction or furnishes no rule for determining what are "practical difficulties or unnecessary hardships" was held invalid in *Welton v. Hamilton*.⁹⁸ Again, an ordinance which authorizes a building inspector to exercise summary powers to abate a business which he may, in his unguided judgment, determine to be a nuisance can be judicially tested.⁹⁹ If a permissible discretion is lodged in an

⁹⁶ *Sheldon v. Hoyne*, 261 Ill. 222, 103 N. E. 1021 (1914).

⁹⁷ *Italia America Shipping Corp. v. Nelson*, 323 Ill. 427, 154 N. E. 198 (1926). See also cases cited ante, note 47.

⁹⁸ 344 Ill. 82, 176 N. E. 333 (1931).

⁹⁹ *City of Kankakee v. N. Y. C. R. R. Co.*, 387 Ill. 109, 55 N. E. (2d) 87 (1944). See also *Moy v. City of Chicago*, 309 Ill. 242, 140 N. E. 845 (1923); *Noel v. People*, 187 Ill. 587, 58 N. E. 616 (1900).

administrative agency, there is an implied term in all such statutes that the discretion is to be exercised fairly and impartially. As a consequence, the courts will examine the action taken by the official to see whether such discretion has been abused or exercised with manifest injustice.¹

Judicial review may also be obtained whenever the rules and regulations adopted by governmental agencies affect substantive rights instead of dealing simply with matters of procedure,² or operate to expand the statute under which they are promulgated.³ Of interest on the latter point is the recent decision in *Northwestern Institute of Chiropody v. Thompson*⁴ wherein the court reviewed a determination by an agency to the effect that a certain school did not measure up to administrative rules as to what should be necessary for any school to be "reputable and in good standing." The court observed that the rules adopted by the department were ineffective because the act made no provision for investigation or hearing by the department before the promulgation thereof.

The question of jurisdiction is always open to judicial investigation for it is at this point that the agency is most likely to be found exercising judicial power in contravention of the state constitution. Some cases on this aspect of review have already been noted.⁵ In addition thereto, mention might be made of *Jarman v. Board of Review*⁶ in which the administrative agency purported to make an assessment of omitted property without hearing any evidence to support such assessment. It was held that the determination of the agency might be reviewed on cer-

¹ *People v. Brady*, 268 Ill. 192, 108 N. E. 1009 (1915); *People v. Potts*, 264 Ill. 522, 106 N. E. 524 (1914); *Town of Somonauk v. People*, 178 Ill. 631, 53 N. E. 314 (1899); *Dental Examiners v. People*, 123 Ill. 227, 13 N. E. 201 (1887); *C., B. & Q. R. R. Co. v. Wilson*, 17 Ill. 122 (1855); *People ex rel. Barrett v. Fond du Lac State Bank*, 310 Ill. App. 28, 33 N. E. (2d) 714 (1941).

² *Zurich Accident Ins. Co. v. Indus. Com.*, 325 Ill. 452, 156 N. E. 307 (1927).

³ *Madsen v. Industrial Com.*, 333 Ill. 590, 50 N. E. (2d) 707 (1943); *Cemetery Association v. Murphy*, 383 Ill. 301, 50 N. E. (2d) 582 (1943); *Mallen Co. v. Department of Finance*, 372 Ill. 598, 25 N. E. (2d) 43 (1940).

⁴ 386 Ill. 615, 55 N. E. (2d) 61 (1944).

⁵ See cases cited ante, notes 3 to 17 inclusive.

⁶ 345 Ill. 248, 178 N. E. 91 (1931).

tiorari since it amounted to an exercise of judicial power over the property of the taxpayer. Certainly, if the agency has acted entirely beyond the scope of the statute creating it or has dealt with matters not within the purview thereof, judicial review well may be obtained.⁷

Review may also become proper when the question is not solely one of law but is one of fact also. Pivotal consideration in these situations may turn on either the statutory authority or the sufficiency of evidence upon which the action was taken. So closely related are these questions in many cases, particularly where statutory language is broad, that it is not always possible to distinguish whether decisions are based on one or the other ground. If constitutionality of the statute depends on a question of fact, courts will usually be cautious about reaching a conclusion on the facts contrary to that obtained by the legislature, particularly where the question is a fairly debatable one, so that the only recourse against possible abuse is by appeal to the legislature.⁸ Such reluctance, however, is no longer displayed if the fact determination is made by an agency rather than the legislature, especially so where the agency may have acted beyond the scope of its authority, made findings without any reasonable basis in evidence, or has infringed upon constitutional rights.⁹

Review solely on the question of the sufficiency of evidence to support administrative action is fairly rare for the courts usually are not prone to upset purely factual findings.¹⁰ As the court observed in *Illinois Central Railroad Company v. Illinois Commerce Commission*,¹¹ if the agency has not contravened any

⁷ *Chicago & A. R. Co. v. Industrial Commission*, 288 Ill. 603, 124 N. E. 344 (1919).

⁸ *People v. Eakin*, 383 Ill. 383, 50 N. E. (2d) 474 (1943); *American Asphalt Co. v. Chicago*, 330 Ill. 330, 161 N. E. 772 (1928).

⁹ *Commerce Com. v. C. & E. I. Ry. Co.*, 332 Ill. 243, 163 N. E. 664 (1928), particularly 332 Ill. pp. 248-9; *Choate v. Commerce Com.*, 309 Ill. 248, 141 N. E. 12 (1923); *Utilities Com. v. C., M. & St. P. Ry. Co.*, 287 Ill. 412, 122 N. E. 803 (1919).

¹⁰ *Banner Tailoring Co. v. Industrial Com.*, 354 Ill. 513, 188 N. E. 548 (1933); *Vulcan Detinning Co. v. Indus. Com.*, 295 Ill. 141, 128 N. E. 917 (1920); *Sparks Milling Co. v. Industrial Com.*, 293 Ill. 350, 127 N. E. 737 (1920). But see also *Lickhalter v. Industrial Com.*, 383 Ill. 527, 50 N. E. (2d) 729 (1943).

¹¹ 387 Ill. 256, 56 N. E. (2d) 432 (1944).

constitutional limitation or rule of law, has acted within constitutional and statutory authority, and has a substantial basis in evidence for its findings, the same "cannot be set aside."¹² On the other hand, if the order is unreasonable because lacking a basis in evidence or because the agency exceeded its authority, judicial review can always be obtained. Even if the facts are not in dispute, the courts will grant review to determine, as a matter of law, whether the uncontroverted facts are sufficient to support the finding,¹³ and statutes which purport to limit judicial review solely to questions of law will be disregarded in this respect. Some statutes specify that rules of evidence are not to apply or be binding upon the administrative tribunal, at least so far as the admission of immaterial or incompetent evidence is concerned. It does not follow, though, that findings may be based upon such incompetent material, so judicial review still may be had to determine whether there is competent and sufficient evidence to support the administrative action.¹⁴

It is evident, therefore, that fairly extensive grounds exist to support judicial review in all cases of administrative discretion having bearing on private legal rights or obligations.

C. METHODS OF REVIEW

The long established rule of this state has been that the appellate jurisdiction existing in our courts has been provided for the purpose of reviewing the decisions of inferior courts rather than those of non-judicial bodies. As hearings before, and determinations of, administrative officials are not judicial proceedings, it follows that any statutory provision authorizing judicial review, whether called an appeal or not, must refer to an action of some sort in a *nisi prius* court with further review, if permitted, before the appropriate Appellate or Supreme Court. The varied

¹² 387 Ill. 256 at 275, 56 N. E. (2d) 432 at 440.

¹³ *Lickhalter v. Industrial Com.*, 383 Ill. 527, 50 N. E. (2d) 729 (1943).

¹⁴ See, for example, *Durkin v. Luecht & Co., Inc.*, 379 Ill. 227, 40 N. E. (2d) 69 (1942); *Northwestern Yeast Co. v. Indus. Com.*, 378 Ill. 195, 37 N. E. (2d) 806 (1941).

methods of securing review, including any pertinent points of procedure, are here presented.

It should be noted at the outset that in all civil proceedings, both at law and in equity, there is a right to review. The expression "civil proceeding" comprehends every claim or demand cognizable in a court of justice at the time of the adoption of our constitution. It also includes any forms of action created since then in which personal or property rights are dealt with in the fashion customarily followed at law or in chancery. If the right asserted is statutory in origin but similar in character to common-law ones, there is no requirement in law that the provisions for its enforcement, at least in the initial stages, must accord with common-law methods, but when such right is eventually asserted in a court of record, so that the procedure for its enforcement assumes the aspects of an ordinary civil proceeding, then an appeal is available as in other civil suits.¹⁵

In contrast, the term "civil proceeding" does not extend to special statutory proceedings involving rights or providing remedies of a kind not previously known but utterly dissimilar from those enforced in legal or equitable actions. Rights and remedies of this character are not reviewable by ordinary civil appeals and any re-examination of such proceedings can be had only if the legislature has so provided or if some common-law writ can be made available.¹⁶

Statutory provisions authorizing judicial review of determinations by administrative agencies, though designating such

¹⁵ In *Lavin v. Wells Bros. Co.*, 272 Ill. 609, 112 N. E. 271 (1916), for example, it was held that appeal would lie from a determination of the circuit court in a workmen's compensation proceeding because the court concluded that such a claim was "of the same nature as any suit or proceeding at law for the purpose of fixing a liability and recovering money, and the result is either an order for the payment of money or the defeat of the claimant." The modern procedure in matters of that nature is discussed in Angerstein, *Appellate Procedure in Workmen's Compensation Cases*, 23 CHICAGO-KENT LAW REVIEW 205 and 287, particularly pp. 289-90.

¹⁶ An excellent discussion of the right to secure review in proceedings of this character is presented in *Superior Coal Co. v. O'Brien*, 383 Ill. 394, 50 N. E. (2d) 453 (1943).

review as an "appeal," really provide for an original judicial investigation of the matter. As a consequence, such review must first be had in a court having original jurisdiction.¹⁷ These statutes do not confer any appellate jurisdiction on such courts but, in effect, provide for a hearing *de novo* therein, for any attempt to make such review into a true appeal would be asking the courts to assume a jurisdiction they do not possess and will not exercise.¹⁸

(1) *Common Law Certiorari*

The common law writ of certiorari, issued by the circuit courts,¹⁹ has long been available in this state, even in the absence of statutory authority, as a means of searching the records of inferior tribunals exercising functions of a judicial nature.²⁰ That writ may issue whenever the inferior tribunal has (1) exceeded its jurisdiction or (2) has proceeded illegally, provided no appeal, writ of error, or other mode of direct review is available. To support the decision of the inferior tribunal, the record returned in response to the writ must show that the agency has acted upon evidence before it and the testimony, which must accompany the record, should fairly tend to sustain the order.²¹ Conclusions of law, unsupported by testimony, will clearly be insufficient to sustain the determination.²²

¹⁷ *People's Gas Co. v. City of Chicago*, 309 Ill. 40, 139 N. E. 867 (1923).

¹⁸ *Investors Syndicate v. Hughes*, 378 Ill. 413, 38 N. E. (2d) 754 (1942); *People v. Fisher*, 373 Ill. 228, 25 N. E. (2d) 785 (1940); *Borreson v. Dept. of Public Welfare*, 368 Ill. 425, 14 N. E. (2d) 485 (1938); *North Chicago Cong. v. Bd. of Appeals*, 358 Ill. 549, 193 N. E. 519 (1934); *Rail. and Ware. Com. v. L. & M. Ry. Co.*, 267 Ill. 337, 108 N. E. 347 (1915); *City of Aurora v. Schoeberlein*, 230 Ill. 496, 82 N. E. 860 (1907); *Maxwell v. People*, 189 Ill. 546, 59 N. E. 1101 (1901).

¹⁹ That writ may issue from the Superior Court of Cook County by reason of Ill. Rev. Stat. 1945, Ch. 37, § 72.25. See also *Dietzgen Co. v. Industrial Commission*, 299 Ill. 159, 132 N. E. 541 (1921).

²⁰ *Bell v. Mattoon Water-Works Co.*, 235 Ill. 218, 85 N. E. 214 (1908); *Dewell v. Sny Island Drainage Dist.*, 232 Ill. 215, 83 N. E. 811 (1908); *Wright v. Highway Commissioners*, 150 Ill. 138, 36 N. E. 980 (1894); *Lees v. Drainage Commissioners*, 125 Ill. 47, 16 N. E. 915 (1888); *Ennis v. Ennis*, 110 Ill. 78 (1884); *Hyslop v. Finch*, 99 Ill. 171 (1881); *Miller v. Trustees of Schools*, 88 Ill. 26 (1878); *Doolittle v. Galena & Chicago Union R. R. Co.*, 14 Ill. 380 (1853).

²¹ *Funkhouser v. Coffin*, 301 Ill. 257, 133 N. E. 649 (1922).

²² In *Carroll v. Houston*, 341 Ill. 531 at 536, 173 N. E. 657 at 659 (1930), the court stated: "The record must show facts giving the inferior tribunal jurisdiction and mere conclusions of law are not sufficient."

If the statute makes no specific provision for review, so that statutory certiorari is not available, then review must be had through the use of the common-law writ,²³ with all of its limitations. Jurisdiction thereunder is limited to a determination, from inspection of the record, solely to the question of whether the agency acted within its powers and jurisdiction. The *nisi prius* court may not hear additional evidence,²⁴ and the only orders possible are either to quash the writ or to quash the record.²⁵ Further judicial review must pursue ordinary channels unless some constitutional question requires direct appeal to the Supreme Court.²⁶

(2) *Statutory Certiorari*

Many administrative statutes make explicit provision for review by "certiorari," but this term is not synonymous with the common-law expression for the certiorari there referred to is some statutory form of proceeding comparable to but distinct from the ancient remedy. The procedure to be followed, the scope given to the writ, the time within which it may be sought, and similar matters, must be determined from an examination of the particular statute. Writs of this character fall into two classes: those where the reviewing court is given power to investigate questions of law or fact, or both, with authority to entertain and pronounce certain specified orders, and those where the statute is silent as to the type of orders to be rendered. In the latter situation, the court may only quash the writ or the record.²⁷

The statutory writ may permit the court to hear additional evidence in support of the decision of the tribunal, in contrast to the situation present when the earlier remedy is used.²⁸ It may likewise permit the court to use a different standard in evaluating the record instead of confining it to the common-law rule that the

²³ *Institute of Chiropody v. Thompson*, 386 Ill. 615, 55 N. E. (2d) 61 (1944).

²⁴ *Hepe v. Mooberry*, 350 Ill. 641, 183 N. E. 636 (1932).

²⁵ *Wittbrodt v. Woodland*, 295 Ill. App. 431, 15 N. E. (2d) 318 (1938).

²⁶ Ill. Rev. Stat. 1945, Ch. 110, § 199.

²⁷ *People v. Fisher*, 373 Ill. 228, 25 N. E. (2d) 785 (1940).

²⁸ See, for example, *Deslauries v. Soucie*, 222 Ill. 522, 78 N. E. 799 (1906).

order had to be upheld unless it was palpably or manifestly against the weight of the evidence. Prospect of further review before a higher court thereunder will depend upon (1) whether the statute expressly authorizes an appeal, (2) clearly forbids it, or (3) whether writ of error might lie to the trial court. If the statutory proceeding involves personal or property rights, the writ of error, unless expressly forbidden, may be obtained as a matter of right.²⁹

(3) *Other Extra-ordinary Writs*

It is sometimes possible to obtain judicial review of administrative action by other means than certiorari. The writ of mandamus, commanding the performance of non-discretionary ministerial duties, may be utilized to compel agencies to proceed in accordance with mandates or judgments of reviewing courts. It may also be used to compel action even in cases where the duty is of a discretionary character although there the writ may not direct the particular manner in which the administrative official shall act for the court will not substitute its judgment for that of the officer.³⁰ Where discretionary power has been delegated, the duty is more than a ministerial one and the court should not anticipate that the official will act in an unreasonable, arbitrary, or unjust fashion.³¹ The writ, therefore, is most often used after discretion has been exercised so that an abuse thereof can be demonstrated to exist.

Illustrations of this character may be found in cases where mandamus has issued to test whether a public official has correctly construed a statute when refusing to issue a corporate charter,³² or has given a mistaken construction thereto.³³ It has

²⁹ *Superior Coal Co. v. O'Brien*, 383 Ill. 394, 50 N. E. (2d) 453 (1943). See also *Butler Mfg. Co. v. Dept. of Finance*, 383 Ill. 220, 49 N. E. (2d) 31 (1943); *Institute of Chiropody v. Thompson*, 386 Ill. 615, 55 N. E. (2d) 61 (1944).

³⁰ *People v. City of Chicago*, 234 Ill. 416, 84 N. E. 1044 (1908).

³¹ *Gustafson v. Withersfield Township High School*, 319 Ill. App. 255, 49 N. E. (2d) 311 (1943).

³² *People v. Potts*, 264 Ill. 522, 106 N. E. 524 (1914).

³³ *People v. Czarnecki*, 254 Ill. 72, 98 N. E. 252 (1912); *Town of Somonauk v. People*, 178 Ill. 631, 53 N. E. 314 (1899); *C., B. & Q. R. R. Co. v. Wilson*, 17 Ill. 122 (1855).

been utilized where the administrative officer has positively refused to act,³⁴ as well as in cases where the inferior tribunal has acted without power or authority.³⁵ It will, of course, lie where there has been a clear abuse of discretion, so remedy by mandamus may often prove to be a desirable substitute for certiorari.

The writ of quo warranto, or its statutory counterpart,³⁶ may be used to question the right of one charged with usurping, intruding into or unlawfully holding or exercising any office of public nature.³⁷ It can, therefore, be used to test the authority or legality of the actions of even an appointed administrative officer,³⁸ provided the statute or the common law has fixed some qualification upon the office which the particular incumbent does not satisfy, or the statute under which he purports to act is void. As there are limitations upon the right of a private person to claim the benefits of this high prerogative writ,³⁹ however, it may not be as readily available as other remedies.

Still another remedy is provided in the form of an equitable injunction, open to use whenever irreparable injury is threatened to private rights by administrative action. If the question is one of the exercise of discretion, injunction will not lie for it would require the chancellor to exercise the discretion placed by law in the hands of the administrative official. But if the law fails to regulate that discretion, so as to leave it to the official to determine whether the law shall be enforced and, if so, against whom, then the arbitrary quality of the statute may well be tested by injunction. Such was the holding in *Sheldon v. Hoyne*,⁴⁰ where

³⁴ *People v. Board of Supervisors*, 308 Ill. 543, 139 N. E. 898 (1923); *Dental Examiners v. People*, 123 Ill. 227, 13 N. E. 201 (1887); *Bransfield Co. v. Kingery*, 283 Ill. App. 405 (1936).

³⁵ *City of Chicago v. People*, 210 Ill. 84, 71 N. E. 816 (1904).

³⁶ Ill. Rev. Stat. 1945, Ch. 112, § 9 et seq.

³⁷ See, for example, *People ex rel. Reich v. McCoy*, 387 Ill. 288, 56 N. E. (2d) 393 (1944); *People ex rel. Cromer v. Village of Maywood*, 381 Ill. 337, 45 N. E. (2d) 617 (1942).

³⁸ *People ex rel. Lafferty v. Owen*, 286 Ill. 638, 122 N. E. 132 (1919).

³⁹ Ill. Rev. Stat. 1945, Ch. 112, § 10.

⁴⁰ 261 Ill. 222, 103 N. E. 1021 (1914).

the statute permitted the public official to exercise a discretion as to whether or not certain buildings should be exempted from the operation of the act so as to permit the law to depend on the caprice of the officer. Injunction has also been permitted to determine whether the administrative officer has been guilty of an improper sub-delegation of his powers.⁴¹ There is ample law, therefore, to support the use of this remedy.

(4) *Right to Further Review*

Each of the foregoing remedies will be provided, if at all, in *in rem* courts. Should further review before intermediate or higher tribunals be desired or necessary, questions may arise as to whether or not limitations exist upon the right to obtain further review. Note has already been made of the fact that some such limitations do exist. When constitutional or other jurisdictional questions are involved, appeal direct to the Supreme Court is permitted under Section 75 of the Civil Practice Act,⁴² notwithstanding any provision in the particular statute to the contrary.⁴³ The right to appeal generally, however, is statutory in nature and can apply only to the final orders, judgments or decrees of the trial courts. Being statutory in nature, the legislature may circumscribe the right and it has, in many instances, limited further review solely to writs of error issued as a matter of grace within a limited time.⁴⁴ Such a restriction was held valid in *Durkin v. Hey*,⁴⁵ although the court did indicate that if an appeal is also permitted it is merely a cumulative remedy.

Standard procedure for further review in administrative matters before higher judicial tribunals is provided through the use of the writ of error. Such a writ will lie as a matter of right from either the Supreme or an Appellate Court, even in the absence of statutory authority, in all proceedings not according

⁴¹ *Ramsay v. Shelton*, 329 Ill. 432, 160 N. E. 769 (1928).

⁴² Ill. Rev. Stat. 1945, Ch. 110, § 199.

⁴³ *Institute of Chiropractic v. Thompson*, 386 Ill. 615, 55 N. E. (2d) 61 (1944).

⁴⁴ See, for example, Ill. Rev. Stat. 1945, Ch. 48, § 172.19(f) (2).

⁴⁵ 376 Ill. 292, 33 N. E. (2d) 463 (1941). See also *Haines v. People*, 97 Ill. 161 (1880).

to the course of the common law affecting property rights or liberty, since the party affected has no other mode for obtaining review.⁴⁶ The legislature may not derogate against this right for it is inherent in the common-law jurisdiction of the higher tribunals. If property rights or personal liberty are not involved, however, review by writ of error will be denied for the Supreme Court has consistently refused to give that writ any wider scope than it possessed in common-law days.⁴⁷ Use of the writ has been denied, therefore, in proceedings to remove a county seat,⁴⁸ to organize a drainage district,⁴⁹ to review the action of the Secretary of State over the filing of a statement for the purpose of classifying corporate shares or regulating the sale of securities,⁵⁰ and also in zoning matters.⁵¹

It may have been gathered, from this discussion of the methods for securing judicial review of administrative decisions, that a single and uniform method of procedure would be highly desirable. A step has been made in that direction by the adoption, in 1945, of a new Administrative Review Act.⁵² It not only provides for one standard system of procedure, but also enlarges the power of the trial court when passing upon the administrative action.⁵³ It likewise substitutes the ordinary civil procedure for further review before the higher courts instead of the complications heretofore existing. There is one drawback; the act does not have universal application but extends only to those administrative tribunals whose organic law has been amended to make the new statute applicable thereto.⁵⁴ It remains to be seen, therefore, whether the statute will meet with the approval of the bar.

⁴⁶ *Kingsbury v. Sperry*, 119 Ill. 279, 10 N. E. 8 (1887); *Superior Coal Co. v. Dept. of Finance*, 377 Ill. 282, 36 N. E. (2d) 354 (1941); *Institute of Chiropraxy v. Thompson*, 386 Ill. 615, 55 N. E. (2d) 61 (1944).

⁴⁷ *Ekendahl v. Svolos*, 388 Ill. 412, 58 N. E. (2d) 585 (1945), reversing 321 Ill. App. 457, 53 N. E. (2d) 302 (1944).

⁴⁸ *Loomis v. Hodson*, 224 Ill. 147, 79 N. E. 590 (1906).

⁴⁹ *Wetaug Drain. Dist. v. I. C. R. R. Co.*, 297 Ill. 350, 130 N. E. 732 (1921).

⁵⁰ *People v. Emmerson*, 294 Ill. 219, 128 N. E. 385 (1920).

⁵¹ *Phelps v. Board of Appeals*, 325 Ill. 625, 156 N. E. 826 (1927).

⁵² *Laws 1945*, p. 1144; *Ill. Rev. Stat. 1945*, Ch. 110, § 264 et seq.

⁵³ *Ill. Rev. Stat. 1945*, Ch. 110, § 275.

⁵⁴ *Ibid.*, § 265.

This discussion may be closed with the brief comment that any study of the administrative process in action within a particular state will usually disclose that the problems presented, and the disposition thereof, parallel closely those found in the field of federal law. Where courts have found it necessary to declare state administrative statutes or practices unconstitutional, the decision has not been dictated by any thought that the attempted legislation or action was socially undesirable but rather because there has been found to exist a careless disregard of fundamental doctrines. Closer attention thereto should result in the shaping of a sounder body of law, for the administrative system is unquestionably with us to stay.