Denver Law Review

Volume 53 | Issue 2 Article 6

January 1976

Standing of State Political Subdivisions to Challenge State Agency Rulings under the Colorado Administrative Procedure Act

Susan E. Ertle

Standing of State Political Subdivisions to Challenge State Agency Rulings under the Colorado Administrative Procedure Act

COMMENT

STANDING OF STATE POLITICAL SUBDIVISIONS TO CHALLENGE STATE AGENCY RULINGS UNDER THE COLORADO ADMINISTRATIVE PROCEDURE ACT

INTRODUCTION

It is the purpose of Colorado's Administrative Procedure Act[1] (APA) to provide a uniform system of rulemaking and licensing procedures for designated state agencies. With respect to judicial review of rules promulgated thereunder the statute provides:

> In order to assure a plain, simple, and prompt judicial remedy to persons or parties adversely affected or aggrieved by agency actions, the provisions of this section shall be applicable.[2]

Since it appears that the statute provides a remedy to any person or party adversely affected by an agency decision, one might assume that there is a broad scope of judicial review. Before such a conclusion may be reached, however, it is necessary to examine the definitions of "person" and "party" in the APA. It is only from the organic definitions of these terms, and subsequent judicial interpretation which either expands or confines them, that the scope of review provided can be determined. Two recent Colorado Supreme Court cases, in which boards of county commissioners were denied standing to challenge decisions of state agencies, are illustrative of the manner in which a seemingly broad statutory mandate may be limited by the courts.

In both cases, *Board of County Commissioners [of Dolores County] v. Love*[3] and *Board of County Commissioners [of Otero County] v. State Board of Social Services,*[4] the issue to be resolved was whether a county has standing to seek judicial review of an agency decision which directly affects it. Since there are no political subdivisions of the federal government with a status equivalent to that which a county occupies in relation to its parent state, the federal APA and decisions interpreting it are not relevant to an analysis of the issue by the Colorado court. Other

---

[1] COLO. REV. STAT. ANN. §§ 24-4-101 to -107 (1973) (hereinafter cited as APA).

[2] *Id.* § 24-4-106(1).

[3] 172 Colo. 121, 470 P.2d 861 (1970).

[4] 528 P.2d 244 (Colo. 1974).

state courts have faced the issue,[5] and, although those courts applied persuasive rationales, none of the cases involved statutory provisions for judicial review identical to those of the Colorado APA. Thus, the Colorado Supreme Court was relatively unassisted by precedent. Nevertheless, given Colorado's statute and the definitions contained therein, neither decision is logically supportable. In attempting to reach a result which it may have considered the lesser of evils, the court, in contrast to its usual approach to statutory construction[6] circumvented the plain meaning of the statute and weakened the definitions of "person" and "party." The confusion created by these decisions will necessarily be inherited by subsequent cases brought under the APA. A careful analysis of the relevant APA provisions will illuminate the issues faced by the court and provide a basis for examining the alternatives available to it.

I. WHAT IS A "PERSON OR PARTY"?

Judicial review of agency action is granted by the APA to all aggrieved "persons or parties."[7] Therefore, in order for a county to have standing to challenge an agency action, it must be included within one of those terms. The statute defines "person" as "an individual, partnership, corporation, association, and public or private organization of any character *other than an agency.*"[8] Although the judicial review section had been expanded in the 1969 revisions to include "parties," the court in *Dolores County* relied on the 1963 provisions which granted judicial review only to aggrieved persons.[9] The effective date of the amendment was July 1, 1969, and *Dolores County* was not argued

---

[5] Cooper Township v. State Tax Comm'n, 393 Mich. 58, 222 N.W.2d 900 (1974); *In re* St. Joseph Lead Co., 352 S.W.2d 656 (Mo. 1962).

[6] "[A] statute that is clear and unambiguous is not subject to interpretation. Such an act is held to mean what it clearly says." McMillin v. State, 158 Colo. 183, 187, 405 P.2d 672, 674 (1965), *citing* Andrews v. Lou, 139 Colo. 536, 541, 341 P.2d 475, 478 (1959), Montrose v. Niles, 124 Colo. 535, 542, 238 P.2d 875, 878 (1954), Isaak v. Perry, 118 Colo. 93, 95, 193 P.2d 269, 270 (1948), *and* People v. Mooney, 87 Colo. 567, 571, 290 P. 271, 272 (1930). *See also* Harding v. Industrial Comm'n, 183 Colo. 52, 59, 515 P.2d 95, 98 (1973), *citing* Lidke v. Industrial Comm'n, 159 Colo. 580, 583, 413 P.2d 200, 202 (1966), *and* Jones v. Board of Adjustment, 119 Colo. 420, 428, 204 P.2d 560, 564 (1949); Clayton v. People, 53 Colo. 124, 127, 123 P. 662, 664 (1912).

[7] APA § 24-4-106(1).

[8] *Id.* § 24-4-102(11) (emphasis added).

[9] 172 Colo. at 126, 470 P.2d at 863, *citing* COLO. REV. STAT. ANN. § 3-16-5 (1963). The court failed to cite ch. 33, § 6, [1969] Colo. Sess. Laws 89, which amends section 3-16-5.

until January 12, 1970. Thus, the amendment had been published, but, perhaps through oversight, was not presented to the court.[10]

What should have been available in *Dolores County,* and was subsequently argued in *Otero County,* is the alternative basis for standing as an aggrieved "party." "Party" is defined as including:

> [A]ny person *or agency* named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding subject to the provisions of this article.[11]

If a "person" is anything but an "agency," and if "party" includes "agencies," it is apparent that the definition of "agency" is critical to the statute's interpretation. Part of the confusion in these cases may have arisen because there are two sections of the APA which are relevant to that term. "Agency" is first defined as:

> [A]ny board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative or judicial branches and except state educational institutions . . . .[12]

The jurisdiction of the APA is further qualified by a section added in 1969:

> This article applies to every agency of the state having statewide territorial jurisdiction except those in the legislative or judicial branches, courts-martial, military commissions, and arbitration and mediation functions. It applies to every other agency to which it is made to apply by specific statutory reference; but, where there is a conflict between this article and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.[13]

Thus, the definitional section explains what an "agency" is, while the jurisdictional section specifies to which "agencies" the APA will apply.[14]

---

[10] The Clerk of the Colorado Supreme Court has no record of briefs filed for either the plaintiff or defendant. However, Mr. Guy B. Dyer, Jr., counsel for plaintiff, confirmed by interview on March 22, 1976, that, although he was aware of the amendments, he did not argue them before the court.

[11] APA § 24-4-102(11) (emphasis added).

[12] *Id.* § 24-4-102(3).

[13] *Id.* § 24-4-107.

[14] Interview with Hubert D. Henry, Colorado Legislative Draftsman, July 16, 1975.

As with the addition of the term "party" in the amendment to section 106, the jurisdictional provision was not argued in *Dolores County*. Relying solely on the definition of "agency," the court concluded that plaintiff Dolores County was an "agency" and, therefore, not a "person" who had standing to sue.[15] The court's determination that a county is an "agency," if logically extended, would require counties to follow other APA provisions in regard to rulemaking and licensing procedures. There can be no doubt that political subdivisions of the state are unable to bear the cost of the administrative procedures mandated by the APA. It is fortunate that the amendment which limits the application of APA requirements to agencies of statewide territorial jurisdiction, thus eliminating counties, was later recognized by the court in *Otero County*. Nonetheless, the inclusion of "counties" in the definition of "agencies" is a questionable interpretation of the statute which should not have been made if there were more reasonable alternative interpretations.[16]

II. *Dolores County*

The dispute in this case arose from an administrative decision by the Colorado State Board of Equalization and the Colorado Tax Commission to review appraisals made by the Dolores County assessor and to order reappraisals. The county commissioners charged that, in making their decision, the agencies abused their discretion and exceeded their authority. The commissioners sought review under alternative theories: First, under rule 106[17] in the nature of mandamus and prohibition against the defendants, and, second, under the APA as an aggrieved "person."

---

[15] 172 Colo. at 126, 470 P.2d at 863.

[16] "[T]he court should not adopt an interpretation, which produces absurd, unreasonable, unjust, or oppressive results, if such interpretation can be avoided." City & County of Denver v. Holmes, 156 Colo. 586, 590, 400 P.2d 901, 903 (1965), *citing* Western Lumber & Pole Co. v. City of Golden, 22 Colo. App. 209, 213, 124 P. 584, 586 (1912). This philosophy has been codified in COLO. REV. STAT. ANN. § 2-4-203(1)(e) (1973), which states that:

> (1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters:
>
> . . . .
>
> (e) The consequences of a particular construction.

[17] COLO. R. CIV. P. 106.

A. *Rule 106*

It was argued by the commissioners that counties are granted the "capacity to sue and be sued"[18] and that, therefore, they have standing to challenge the board of equalization and the tax commission. However, the court reasoned that, since a county is an arm of the state[19] and possesses only those powers expressly conferred upon it,[20] the power to sue and be sued is limited only to disputes involving other powers specifically granted to it.

This conclusion presumes that a general power to seek judicial review must be specifically granted by the state to its subdivisions. However, in *Board of County Commissioners v. Donoho*[21] the Arapahoe County commissioners sought a declaratory judgment after the state board of welfare ordered the county to place Mrs. Donoho on public assistance. The order was challenged by Donoho and the state board on the grounds that the proper procedure had not been followed—that the county should have filed a complaint in the nature of certiorari (prohibition) under rule 106. The court agreed that certiorari would have been more appropriate, but continued to entertain the action. The court assumed that the county was acting within its authority in seeking judicial review, without discussing whether it was necessary for the county to have been expressly granted that power.

It appears that the court in *Dolores County* was either unaware of the *Donoho* decision or chose not to follow it. In either case, it may have erred by assuming that the county must be explicitly granted the power to seek judicial review.

B. *Judicial Review Under the APA*

More significantly, in *Dolores County* it was argued that the county was an aggrieved "person" and, therefore, had the right to seek judicial review of the reappraisals ordered by the agencies. After noting that a "person" is anything except an "agency," the court summarily dismissed the issue, concluding:

---

[18] COLO. REV. STAT. ANN. § 30-11-101(1)(a) (1973).

[19] Board of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962); Colorado Inv. & Realty Co. v. Riverview Drainage Dist., 83 Colo. 468, 266 P. 501 (1928) (dictum).

[20] Farnik v. Board of County Comm'rs, 139 Colo. 481, 341 P.2d 467 (1959); Robbins v. Hoover, 50 Colo. 610, 115 P. 526 (1911).

[21] 144 Colo. 321, 356 P.2d 267 (1960).

> It is clear that a board of county commissioners is an "agency" within the meaning of the Administrative Code and as such is not a person who may seek review of "final agency action."[22]

However, it is not as clear as the court would have us believe that a board of county commissioners is an "agency." Although a county is a mere political subdivision of the state, existing only for convenient administration,[23] it is not necessarily an "agency" as defined in the APA. Nor is it precluded from being a "person" in the legal sense.[24]

One scholar has stated that "it is generally held that county and municipal boards are not 'agencies' within the strict meaning of the [APA] . . . ."[25] It may be noted that the court was following a very general trend which denies an administrative officer standing to challenge the decision of a superior board or tribunal.[26] However, in other states, courts have developed an important exception to that rule, and have granted standing in cases where the challenging party is a political entity which represents a distinct geographical unit.[27] The basis of the exception is that political subdivisions represent significantly different interests from the state's when matters of local taxation and administration are affected by an agency's decision. Therefore, it was held to be error for the Michigan State Tax Commission to deny review to a township that wished to challenge the county board of commissioners' order increasing the township's assessment.[28] Both the township and the county were included in the definition

---

[22] 172 Colo. at 126, 470 P.2d at 863.

[23] Cases cited note 19 *supra*.

[24] Thus, where a statute granted the power of foreclosure to any person holding a lien on the property, it was held that "[t]he county is a 'person', in the legal sense of the term . . . ." County of Lancaster v. Trimble, 34 Neb. 752, 756, 52 N.W. 711, 712 (1892). *See also* Calhoun County v. Brandon, 237 Ala. 537, 540, 187 So. 868, 870 (1939); Longview Co. v. Cowlitz County, 1 Wash. 2d 64, 73-74, 95 P.2d 376, 380 (1939).

[25] F. COOPER, STATE ADMINISTRATIVE LAW 106 (1965), *citing* Board of Health v. Sousa, 338 Mass. 547, 156 N.E.2d 52 (1959), Kessler v. Board of Educ., 87 N.W.2d 743 (N.D. 1958), Hansen v. Civil Serv. Bd., 147 Cal. App. 2d 732, 305 P.2d 1012 (1957), Stark v. Heart River Irrigation Dist., 78 N.D. 302, 49 N.W.2d 216 (1951), State *ex rel.* Wasilewski v. Board of School Directors, 14 Wis. 2d 243, 111 N.W.2d 198 (1961), *and* Sloven v. Olsen, 98 N.W.2d 115 (N.D. 1959).

[26] *See* Davis, *Standing of a Public Official to Challenge Agency Decisions: A Unique Problem of State Administrative Law*, 16 AD. LAW REV. 163 (1964).

[27] *Id.* at 173.

[28] Cooper Township v. State Tax Comm'n, 393 Mich. 58, 222 N.W.2d 900 (1974).

of "person" under the Michigan APA.[29] With respect to the interests that each represented, the court noted:

> The Township, as the representative for equalization purposes of all the taxpayers within its boundaries, has a valid and recognizable interest in assuring that its residents are not taxed at an unfair rate. Likewise, the County Board of Commissioners, as representatives of the entire county, have a duty to equalize the assessments throughout the county so that all taxpayers pay a proportionately fair share of the cost of government.[30]

Although the case may be distinguished by noting that the township sought review from an administrative agency and not from a court and that the Michigan statute specifically recognizes that governmental subdivisions are "persons," the court's discussion of the separate interests which the state and a political subdivision may represent is nevertheless enlightening. This theory was also advanced in a Missouri case, *In re St. Joseph Lead Co.*,[31] which is factually similar to *Dolores County*. There the county sought judicial review of an order requiring reassessment of property within the county. It was granted standing after the court reasoned that counties levied taxes in accordance with express constitutional powers and, therefore, had a vital interest in all questions relating to the levy and assessment of taxes. Hence, a county was an aggrieved "person" or "party" within the meaning of the relevant statutes.[32]

It is apparent from these cases that there is a rationale, albeit developed in foreign jurisdictions, for granting standing to a county as an aggrieved "person." However, the Colorado court, in choosing not to accept the rationale, failed to recognize the unique interests a county represents. This decision may be due, in part, to the fact that the court was not presented with the most recent amendments to the APA, which subject an "agency" to the

---

[29] MICH. COMP. LAWS ANN. § 24.205(4) (Supp. 1975-76): "'Person' means an individual, partnership, association, corporation, governmental subdivision or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling or contested case."

[30] Cooper Township v. State Tax Comm'n, 393 Mich. 58, 65, 222 N.W.2d 900, 905-06 (1974).

[31] 352 S.W.2d 656 (Mo. 1962).

[32] *Id.* at 661. It should be noted that Missouri's provisions for administrative procedure and review, MO. ANN. STAT. §§ 536.010-.140 (Vernon Cum. Supp. 1975), do not contain a definition of either "person" or "party."

act's provisions only if it is of "state-wide territorial jurisdiction" and which grant standing to an aggrieved "party." The court may also have been concerned with previous decisions which disallowed county interference with decisions by the state board of equalization,[33] or which stated that the powers of the state in matters of taxation are not subject to judicial control.[34] However, those decisions were not brought under the APA provisions for judicial review, and, therefore, should not have been controlling. Moreover, such an argument was dismissed by the Missouri Supreme Court in *In re St. Joseph Lead Co.*[35] and could have been similarly dealt with in *Dolores County.* It appears that the Colorado court was more concerned with finding a rationale which would harmonize with related, though non-controlling, precedent than with carefully analyzing the APA.

The implications of *Dolores County* are far-reaching for counties and other units of local government, such as school and water districts. If applied literally, its effect is that, no matter how particularized or severe the harm caused by an agency's action, local governmental units will not be offered the opportunity to seek judicial review of the action. Denying access to the courts in this regard is tantamount to denying access to all those persons within the governmental unit who, although not personally aggrieved by the agency decision, are citizens of the political subdivision and may be harmed indirectly.

One might also speculate as to the nature of decisions made by state agencies confident that their decisions are beyond challenge from political subdivisions. A decision such as *Dolores County* potentially increases the indirect power of state agencies. Relief through court action has historically been the most significant "check" on the irresponsible exercise of governmental powers. Absent that "check," state agencies become less accountable to local governments and their citizens.

III. *Otero County*

Although the issue presented by *Dolores County* will proba-

---

[33] *E.g.*, Board of County Comm'rs v. McIntire, 23 Colo. 137, 46 P. 638 (1896).

[34] *E.g.*, Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

[35] "[T]he fact that the commission may in certain circumstances be the final arbiter of valuation [does] not necessarily mean that . . . a political subdivision, a county, may or should be denied the right of judicial review."

bly arise infrequently, the Colorado Supreme Court soon had an opportunity to reconsider the issue in *Otero County*.[36] The amendments limiting the application of the APA to agencies of "state-wide territorial jurisdiction" and granting standing to aggrieved "parties" as well as "persons" are discussed in the *Otero County* opinion, which indicates that the court had all the relevant statutory provisions before it. Had the court chosen to reevaluate its policy of denying standing to political subdivisions, an excellent opportunity to do so was presented. However, *Dolores County* was held to be controlling in all respects. In order to reach that result, the court summarily dismissed the amendment giving "parties" the right to seek judicial review, stating that it added nothing to the statute.

Otero County involved a dispute over a rule promulgated by the Colorado State Board of Social Services. The rule, "Revised County Compensation for 1974," provided salary increases for county public assistance and welfare department employees. The Board of County Commissioners of Otero County and the Colorado State Association of County Commissioners sued, alleging that the rule exceeded the state board's jurisdiction and constituted an abuse of its discretion. The suit was dismissed for want of standing, and the Otero County commissioners appealed, contending that the APA granted a judicial remedy to "persons" or "parties" adversely affected or aggrieved.

The court succinctly stated the issue to be "whether a Colorado county, acting through its Board of County Commissioners, has standing to challenge the rules and regulations promulgated by the State Board of Social Services."[37] After reciting the provisions authorizing judicial review for either an aggrieved "person" or "party," the court then endeavored to determine whether Otero County was an aggrieved "person." Reiterating the notion that a county is a mere subdivision of the state, the court held that *Dolores County* was controlling, and, therefore, Otero County was an "agency," not a "person."

In response to the argument that the court in *Dolores County* had failed to consider the 1969 amendment limiting the applica-

[36] 528 P.2d 244 (Colo. 1974).

[37] *Id.* at 245.

bility of the APA to agencies of statewide jurisdiction, the court concluded that the amendment was not applicable to the problem. This conclusion seems to imply that the amendment to section 107 does not qualify the definition of "agency," but instead only specifies which "agencies" are required to comply with APA procedures. Thus, there are some agencies (those of statewide jurisdiction) which will apply APA procedures and other agencies which do not have to apply APA procedures but are nevertheless "agencies" within the statutory definition.[38] It is of little consequence to the court which type of "agency" a county is. Once held to be an "agency," the county is denied standing as an aggrieved "person."

Although the court may be correct in its interpretation of section 107, the difficulty with its analysis is that it avoids the more basic question first presented in *Dolores County*: Admitting that a county is a political subdivision of the state, does that necessarily mean that it is an "agency"? One can only speculate as to the reason for the court's avoidance of this issue. Its effect was to eliminate the county's first argument, leaving only the alternative ground for standing as an aggrieved "party" in issue. The definition of "party" includes "persons" *and* "agencies" who have been admitted or are entitled to be admitted to the proceedings.[39] In light of the court's reiteration of its determination that counties are "agencies," it seems clear that the county should have had standing as an aggrieved "party" if it had some interest in the rule which was promulgated. However, the court again denied standing to the county, this time by dismissing an entire legislative amendment.

After setting out the definition of "party," the court concludes:

> The addition of the term "party" in 1969 does not enhance the appellant's position or diminish the efficacy of the Court's reasoning

---

[38] In a more recent case, Chroma Corp. v. County of Adams, 543 P.2d 83 (Colo. Ct. App. 1975), it was held that the county was not required to conduct liquor license suspension proceedings pursuant to the APA. Citing both *Dolores County* and *Otero County*, the court reasoned that, although the county was a state agency, it was not one of statewide territorial jurisdiction, nor had the general assembly directed counties to apply APA procedures. Thus, it appears that the courts will follow the rationale that there are two types of agencies.

[39] See text accompanying note 11 *supra*.

> in [*Dolores County*]. Viewing the term "party" in the context of the act makes it clear that its addition does not confer rights upon the Commissioners which did not exist under the original act.[40]

Contrary to that conclusion, an amendment which grants standing to "persons" and "agencies," where the original statute granted standing only to "persons," *must* confer additional rights. There would be little, if any, reason for such an amendment if the legislature had not intended to allow judicial review for agencies which were or could have been parties to the administrative proceedings.[41] In addition, the county had in fact been admitted as a party to the rulemaking proceedings of the board of social services. The state board had, therefore, implicitly recognized the unique interests which the county represented, *i.e.*, that the county would be the administrator of the welfare program and that county funds would be expended for the salary increases authorized by the state.

Because the county had participated at the rulemaking hearing, it would seem illogical to deny it standing as an aggrieved "party" for the purpose of challenging the rule created thereby. However, the court noted that the statutory provisions only require that notice of hearings be given to "persons" affected and that interested "persons" be given the opportunity to submit views.[42] Since counties are not "persons" in the court's analysis, it concludes that the county had been extended the mere *courtesy* of presenting evidence at the rulemaking hearing[43] but was not, in fact, a "party." Thus, the anomaly is created that, because the county was not a "person," it was not a "party" either—even though it had been an active participant in the rulemaking pro-

---

[40] 528 P.2d at 246.

[41] "In making material changes in the language of a statute, the legislature cannot be presumed to have regarded such changes as without significance, but must be presumed to have had a reasonable motive." General Motors Corp. v. Blevins, 144 F. Supp. 381, 393 (D. Colo. 1956), *citing* Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 107 (1941). "[A]n amendment generally instead of implying an intent to reiterate implies an intent to change the amended law . . . ." People v. City & County of Denver, 84 Colo. 576, 579, 272 P. 629, 630 (1928).

[42] APA §§ 24-4-103(2), (4), (11) (j).

[43] 528 P.2d at 248. In a similar case, Will County Bd. of Review v. Property Tax Appeal Bd., 48 Ill. 513, 272 N.E.2d 32 (1971), it was argued that the county board of review was not a "party" within the meaning of the APA. The court held that, from the provisions of the statute which required that the county board be notified of the filing of a petition for review with the appeal board, it could be implied that the county was a "party."

cess. In effect, the court allows the county to function as a "party" for the purpose of rulemaking, but not for the equally important purpose of seeking judicial review. This determination was justified by an extended discussion of the "legislative scheme" of the Colorado Social Services Code[44] and the subordinate role played by the county therein. Ultimately, the court held:

> We conclude that the right to judicial review of the final administrative actions of the State Board of Social Services, under the law of this state, is limited to those parties to the proceeding before the administrative agency whose rights, privileges, or duties, as distinct from those of the State, are adversely affected by the decision.[45]

No such language can be found in any of the pertinent statutes. This was, in effect, a major redrafting of the APA provisions for judicial review. Perhaps the court feared that a different decision would open the door to additional litigation, or that political subdivisions should not be able to challenge decisions of the state government which created them. That theory has been supported by the argument that, if state administrative decisions are subject to review brought by affected governmental subdivisions as well as affected persons, those decisions tend to become mere recommendations.[46] But, if there are valid reasons for denying standing to counties, they were not enunciated by the court, and it remains unclear why careful analysis of the APA was sacrificed.

IV. ALTERNATIVES

The modifications of the terms "person" and "party" resulting from the court's analysis in *Otero County* were unnecessary in light of the several alternative solutions available. Some would have had the same effect of denying standing to the county, while causing less damage to the APA.

If the errors made in *Dolores County* are attributable to a failure to argue all of the relevant statutory provisions, it is more difficult to understand the court's failure to recognize those provisions in *Otero County*. Had the court overruled *Dolores County*, granted standing to Otero County as an aggrieved "person" and

---

[44] 528 P.2d at 247. *See* COLO. REV. STAT. ANN. §§ 26-1-101 to -126 (1973).

[45] 528 P.2d at 248.

[46] Davis, *supra* note 26, at 182-83.

"party," and justified this through acknowledgment of the amendments, such a decision would have restored the APA to its fullest meaning and would have relieved the confusion as to the status of political subdivisions under the APA.

Even assuming that the court was determined to reach the result it did, it could have done so by using one of two alternative arguments. The court could have distinguished *Dolores County* and held that a county is a "person" and a "party," but denied standing to Otero County on the basis that it was not sufficiently "affected or aggrieved." Since those terms, unlike "person" and "party," are not defined by the statute, judicial interpretation of them would be more appropriate. This solution has been used by courts in other jurisdictions to deny judicial review,[47] and would have been less damaging to the integrity of the APA.

Additionally, one section of the statute, evidently overlooked, could have resolved the issue. According to the amended section dealing with applicability of the APA, the act applies to agencies of statewide territorial jurisdiction and to

> every other agency to which it is made to apply by specific statutory reference; but, where there is a *conflict* between this article and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.[48]

Since the court in *Otero County* thoroughly analyzed the subordinate role of the county in the state's comprehensive scheme for providing social services, the court could have concluded that there was a "conflict" between the APA and the Colorado Social Services Code, and, therefore, that the latter should prevail. Although this is an imprecise interpretation of the "conflicts clause," it is one which has been followed in previous Colorado decisions,[49] and thus would have done no further harm to the APA.

---

[47] Board of Educ. v. Town of Islip, 15 App. Div. 2d 789, 224 N.Y.S.2d 699 (2d Dept. 1962); King v. Stark County, 72 N.D. 717, 10 N.W.2d 877 (1943).

[48] APA § 24-4-107 (emphasis added).

[49] Comment, *The Colorado Administrative Procedure Act—Colo. Rev. Stat. Ann.* § 3-16-6; *Application—A Matter of Construction*, 51 DENVER L.J. 275, 276 (1974). Neither North Kiowa-Bijou Management Dist. v. Ground Water Comm'n, 180 Colo. 313, 505 P.2d 377 (1973), nor Public Util. Comm'n v. District Ct., 180 Colo. 388, 505 P.2d 1300 (1973), lays out a direct "conflict" between the provisions of the organic statutes and the APA. From the language of *North Kiowa* that "the Code has no applicability where a specific statutory provision relating to a specific agency provides a scheme for the administrative

Because neither of the suggested alternatives was chosen, and, therefore, counties and other political subdivisions have been denied the opportunity to challenge agency decisions, the remaining remedy is to amend the definition of "person" to include "political subdivisions." Local governments would thus automatically have standing if they were sufficiently aggrieved. Several states explicitly include "political subdivisions" within their definitions of "person,"[50] as does the Revised Model State Act.[51] Colorado's definition parallels the Model Act except for this inclusion. The legislators may have assumed this would be superfluous, because other sections of the statute would preclude any finding that political subdivisions are "agencies." Nonetheless, only an amendment would make that determination unequivocal, allowing no room for further judicial interpretation.

CONCLUSION

Both *Dolores County* and *Otero County* leave much to be desired in terms of a clear, rational interpretation of the APA. Even if *Dolores County* can be attributed to inadvertent error on the part of counsel, *Otero County*, in which the amendments were presented, can not be similarly dismissed. The decision is thus more suggestive of avoidance of the statutory mandate than of any serious effort to interpret it.

Whatever reasons the court may have had for these decisions, they cannot outweigh the gravity of denying standing to counties which are adversely affected by agency actions. Since it is probable that no citizen will be sufficiently aggrieved in a personal capacity, agency decisions will go virtually unchallenged. In addition, the court's interpretations of "person" and "party" will affect any action brought in the future under the judicial review provision of the APA. The court's failure to choose any of the

---

control of the agency," it appears that the court has determined that there is a "conflict" whenever another statute provides a "comprehensive scheme" of administration. *See* 180 Colo. at 317, 505 P.2d at 379.

[50] IND. CODE § 4-22-1-2 (1971); MASS. GEN. LAWS ANN. ch. 30A, § (4) (1966); MICH. COMP. LAWS ANN. § 24.205(4) (Supp. 1974-75); PENN. STAT. ANN. tit. 71, § 1710.1(d) (1962).

[51] MODEL STATE ADMINISTRATIVE PROCEDURE ACT (1946): "'[P]erson' means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency." *Id.* § 1(6).

available alternatives is a clear indication that relief from the effects of these decisions must come from the legislature.

Susan E. Ertle