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INTRODUCTION TO THIS ISSUE OF DICTA ON ADMINISTRATIVE LAW AND PROCEDURE IN COLORADO

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In Colorado, as in most other states and until recently the national government, legislative and executive inattention and misunderstanding of administrative organization and procedure have resulted in the creation of a mass of little independent administrative agencies with wide variations in the procedures by which the work of the agencies is performed. Confusion and uncertainty among professional lawyers and laymen is the inevitable result.

During a recent school term,[1] the seminar in administrative law at the University of Denver College of Law, undertook to examine the organization and procedures for administration in Colorado. While limitations on time would not permit complete or exhaustive study, the reports of the students, some of which are presented in this issue of *Dicta* should be instructive to both lawyer and legislator.

Most apparent conclusion to be drawn from the materials is that for each new police regulation or tax enacted by the legislature, it has created a new agency of government to administer the law. And the legislature has included in each act some procedural requirements to govern the agency. Reference to the list of external control agencies (whose functions directly affect the public) on pp. 456-460 quickly reveals the number [2] of agencies with statewide jurisdiction which make rules and hold hearings—in lieu, usually, of a day in court. Perhaps such multiplication of agencies is necessary. But the lawyer who scans the diverse provisions for notice, subpoena power, authority to administer oaths and take testimony, and time and method of getting judicial review of agency decisions, soon entertains a suspicion that such diversity is in great measure unnecessary.

But only part of the problem meets the eye in the chart, for few statutes delineating agency procedure specify the nature of the pleadings, manner of conducting the hearings, or the applicable rules of evidence. Moreover, only the larger agencies have published rules, to the great mystification of the lawyer accustomed to well-established and ascertainable rules of procedure for conducting business before a court. Some of the pitfalls and uncertainties which lie in wait for the practitioner before administrative agencies are set out in the following articles.

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[1] Summer term, 1952.

[2] It is not pretended that all agencies are listed. Economy of both time and space dictated omission of a number of agencies, separate divisions of major agencies (such as the Department of Revenue), or additional functions of listed agencies for which different procedures are prescribed.

One is tempted to be critical of laws—and of those who make them—when the confusion in administrative practice and procedure is brought into focus. But this and the accompanying materials can be of greatest service to the lawyer and citizen simply by attesting to the present need for reform. Other jurisdictions [3] have led the way out of similar conditions. The success and benefits of standardizing administrative procedure in such jurisdictions are overdue in Colorado.

NOTICE AND OPPORTUNITY TO BE HEARD

ARTHUR BURKE and STEPHEN REED *

When considering the problem of notice and opportunity to be heard in rule making sessions of administrative agencies, a preliminary determination must be made of whether the hearing is, in reality, a legislative or a *quasi* judicial hearing.

A *quasi* judicial hearing must be preceded by notice and affected parties must be afforded an opportunity to be heard. On the other hand, in the absence of a statutory requirement, it is not necessary to give notice to affected parties in a *quasi* legislative hearing. "And it [an Administrative Agency] is no more required to give previous notice of an intent to make a regulation or to grant a hearing on the merits of the regulation to be adopted than is the legislature in exercising its lawmaking functions." [1] The determination of whether a hearing is *quasi* judicial or *quasi* legislative is of primary importance. To fail to give notice and opportunity to be heard in *quasi* judicial hearings would be fatal error and ground for vacating any determination made at this hearing. On the other hand, a hearing *quasi* legislative in character requires no notice.

As a general statement, it may safely be said that in hearings which are *quasi* judicial in nature the findings go to a particular activity in the past. In addition, they are of specific applicability. "Adjudication is the imposition of a specific duty *in personam*, or of a liability, or the granting of a right or status which is dependent on a previous right or duty determined to exist or to have existed, or by way of redress or punishment for its violation." [2] It is immediately seen that there is a necessity for notice and opportunity to be heard. Where an agency is to investigate the activities of a particular individual or group of individuals and the result of the hearing is going to be of specific applicability to

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[3] Federal Administrative Procedure Act, Public Law No. 404, 79th Congress; *Administrative Procedure Act—Legislative History*, Senate Document No. 278, 79th Congress; "A Symposium on State Administrative Procedure", 33 *Iowa L. Rev.*, 372, (1948); Heady, F., *Administrative Procedure Legislation in the States* (1952).

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[1] Morgan v. U. S., 298 U. S. 468.

[2] Morgan v. U. S., 304 U. S. 1, 82.