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Comparative Procedural Practices of Colorado Administrative Agencies

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amine the witnesses and to present, if desired, evidence in rebuttal and may not be founded upon *ex parte* examination. "The fundamental right to a fair hearing is determined from the character of the proceedings."²⁸ It is denied in such cases as permit unsworn testimony, deny cross examination, or promulgate orders on the basis of facts not received in evidence.

Experience in the conduct of all types of procedure indicates the value of cross examination as an aid in separating the gold from the dross of testimony. The adverse party always has a more active interest in narrowing the facts than does the presiding tribunal, and is usually armed with some information not known to the tribunal as an aid in cross examination. To deny this right is to deny fair hearing and to impede rather than assist the agencies in determining facts.

If, in any hearing, rules of evidence are disregarded, they are not necessarily violated. Lawyers usually aid commissions without raising questions of admissibility of evidence and aid tribunals in correctly appraising any kind of evidence received. While cross examination is used for particular purposes, nevertheless it materially aids in the ascertainment of the truth because it brings out the remaining and qualifying circumstances of testimony given on direct examination. "Confrontation and the right to cross examine, explain or refute are necessary."²⁹

The Colorado courts have in the past, and should continue in the future to protect the essential rights of cross examination and rebuttal before administrative agencies in order that all the elements of a fair proceeding may be maintained.

COMPARATIVE PROCEDURAL PRACTICES OF COLORADO ADMINISTRATIVE AGENCIES

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of the Nevada Bar

On the following pages are charts that indicate the number and variety of agencies through which the State of Colorado operates its state government. These charts are not intended to be nor are they a compilation of all state agencies but are rather a study of those agencies that deal directly with the people (external in nature). The state operates many other agencies whose duties are purely of an internal nature and whose only concern is carrying on the functions of government as such. These latter agencies are not herein considered.

Due to the complexity of our state government, it is imperative that many of its necessary functions be delegated to agencies

²⁸ *The Extent to Which Fact-Finding Boards Should Be Bound By the Rules of Evidence*, 24 A. B. A. 630, 633 (1934).

²⁹ *Gauthier v. Penobscot Chemical Fiber Co.*, 113 A. 28 (1921).

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that are charged with the responsibility of carrying out particular phases of the state's powers. Our changing economy both on a national and regional level dictates that new agencies be created as the occasion demands and inversely that obsolete agencies must be abandoned.

Even a casual glance at the following charts discloses the enormous amount of variance among the several agencies as to their powers, procedural practices, and especially in the appeal provisions. Many of the agencies have been given broad general powers by the legislature without a delineation of procedures to be followed.

It is the purpose of this analysis to exemplify the confusion, waste of time, energy, and effort, not to mention the expense of the present practices and procedures of many of these state agencies that are currently being operated under antiquated methods of the nineteen twenties.

A study of the practice and procedures of one agency has been completed through the cooperation of that agency to indicate the variety of procedures under which separate departments of the same agency are forced to operate due to the various state statutes involved. The Department of Revenue is the agency under consideration. It was created by the Administrative Act of 1941 for the purpose of placing under one department of government the responsibility for collection of state funds. Although many licenses and other taxes are collected by this agency, the study of the three major items of sales tax, income tax, and motor fuel tax is sufficient for the purpose of this analysis. The present procedures and practices of this agency in the collection and administration of these taxes will be discussed.

There is diversity from the initial step of each of the three divisions in sending a notice of a deficiency in the amount of tax due. The income tax letter is entitled "Notice of Deficiency." The sales and use tax letter is entitled "Deficiency Assessment" and the motor fuel tax letter is "Notice and Demand." The income tax notice contains the requirement that a protest to the notice of deficiency must be filed in duplicate within thirty days from the date of the letter. The sales and use tax letter contains the statement that the amounts claimed to be due to the state will become due and payable ten days from the date of the letter. The motor fuel tax letter contains a ten day period for filing a protest. The state legislature in 1951 attempted to iron out some of the discrepancies by Senate Bill No. 141 which was intended to change the motor fuel tax so as to conform more closely to the law of the income tax.

From this original point of discrepancy the breach against uniformity continues to widen. Assuming that a protest within the prescribed period has been made by the taxpayer, his next step would be determined by the particular tax involved and will vary with the type of tax in dispute. Under the income tax law,

this protest entitles the taxpayer to a formal hearing before the Director of Revenue although there are usually one or two informal hearings with the supervisor of the income tax division in an attempt to settle the dispute at that level if possible. If the Director's decision is adverse to the taxpayer, he has the right to appeal the decision to the district court for the county in which the taxpayer resides which then hears the case *de novo*. Under the sales and use tax law, the Director has the authority to hold hearings and to make findings of fact as to taxes due. The taxpayer may appeal only to the district court for the City and County of Denver which does not try the case *de novo* but reviews the findings of the Director by writ of *certiorari*. In the case of a motor fuel tax deficiency the statutes do not provide for any hearings by the Director although in actual practice informal hearings are held. The taxpayer, in order to have his side of the controversy heard, must bring an action in the district court within thirty days from the date of the notice of deficiency. The same director of the same agency must use these different methods to accomplish the same end. Likewise a taxpayer must analyze the necessary procedures to follow as each tax problem occurs in order to make a valid protest of the assessment and protect his interest.

Further useless differentiation is incorporated in the distraint and sale proceedings that the agency must abide by in the forced collection of taxes due the state. Currently there is no statute of limitation on the collection of deficient motor fuel taxes. The sales tax statute of limitation was added to the original act a few years ago, while the income tax statute has had such a provision for many years.

The situation continues to become progressively worse as new legislation creates new agencies or adds other duties to the current agencies. For example, if a severance tax were to be passed by the legislature during this next session, it would necessarily have to draft a complete law in all details for its administration and enforcement. The new tax law must include procedures for hearings, powers to be given the collection agency, distraint and sale provisions, and appeal procedures. No doubt this new tax law and its procedures would differ from those already considered here and therefore would add to the entanglement and confusion.

Colorado has an urgent need for a long overdue Uniform Enforcement Code applicable to all state agencies which have external functions to perform. Not only should it outline the procedures for enforcement so as to simplify the work of the state agencies and taxpayers, but such a code would be a direct saving of the legislature's time and effort in the enactment of new legislation.

The reader should bear in mind that the three taxes used for the purposes of illustrating this need are administered by the same state agency. A study of the following chart will show how these differences are multiplied in the comparison of entirely separate agencies.

COLORADO ADMINISTRATIVE

STATE AGENCY	'35 C.S.A. (Chapter)	Functions: (Quasi-Legis. or Quasi-Jud.)
Aeronautics Comm.	17	Both
Banking Comm'r.	18	Quasi-Legis.
.....Interest and Money Lenders.....	88	Both
Building and Loan Comm'r.....	25	Both
Civil Service Comm.....	36	Both
Game and Fish Comm.....	73	Both
Director, Game and Fish Dept.....	73	Quasi-Jud.
Industrial Comm.	97	Both
.....Factory and Boiler Insp'rs.....	97, Art. 2	Quasi-Jud.
.....Labor Peace Act.....	97, Art. 2	Both
.....Wage Claim Court.....	97, Art. 6	Quasi-Jud.
.....Workmen's Compensation Act.....	97, Art. 7	Both
Dept. of Employment Security.....	167A	Both
Insurance Comm'r.	87	Both
Board of Land Comm'rs.....	134	Both
Bureau of Mines.....	110	Both
Oil and Gas Conservation Comm.....	118	Both
Pub. Utilities Comm. (Carriers).....	16	Both
.....in re: Public Utility Rates.....	137	Both
Dept. of Public Welfare.....	119	Both
Board of Public Welfare.....	141	Both
Relief Commission	141	Quasi-Legis.
Sec. of St.—Collection Agency Bd.....	37	Both
.....Intoxicating Liquors	89	Both
.....Ore Buyers' License.....	110	Quasi-Legis.
Abstractors' Bd. of Examiners.....	2	Both
Accountancy Examining Bd.....	2A	Both
Bd. of Barber Examiners.....	19	Both
Bd. of Examiners of Basic Sciences.....	109	Both
Chiropractors' Examining Bd.....	34	Both
Bd. of Dental Examiners.....	52	Both
Bd. of Funeral Directors & Embalm.....	60	Both
Bd. of Medical Examiners.....	109	Both
Motor Vehicle Dept.....	16	Both
Bd. of Optometric Examiners.....	120	Both
Board of Pharmacy.....	58	Both
Real Estate Brokers' Exam. Bd.....	15	Both
Bd. of Veterinary Examiners.....	171	Quasi-Jud.
Agricultural Comm.	5	Both
Comm'r. of Agriculture.....	106	Both
Dairy Com'r.	49	Both
Director of Markets	15	Both
Dept. of Health.....	78	Both
Board of Health.....	78	Quasi-Jud.
Colo. Tax Comm.....	142	Both
Director of Revenue (Income Tax).....	84A	Both
.....(Sales Tax)	144	Both
.....(Motor Fuels Tax).....	16	Both
Motor Vehicle Dealers' Adm.....	78, L. '45	Both
Inheritance Tax Comm'r.....	85	Both
Bd. of Standards of Child Care.....	33	Both

AGENCIES AND PROCEDURES

Hearings Recorded?	Procedural Rule Making Power?	Conducts Hearings?	Notice Required?	Power of Subpoena?
Yes	Yes	Yes	15 days	Yes
.....	.....	.....	10 days	.....
Yes	Yes	Yes	10 days	.....
Yes	Yes	Yes	due notice	Yes
Yes	Yes	Yes	due notice	Yes
Yes	Yes	Yes	20 days	.....
.....
Yes	Yes	Yes	40 days	Yes
.....	.....	Yes	10 days	.....
Yes	.....	Yes	10 days	Yes
.....	Yes	.....	newspaper	Yes
Yes	Yes	Yes	reasonable	Yes
Yes	Yes	Yes	11 days	Yes
Yes	Yes	Yes	varies	Yes
Yes	Yes	Yes	"duly advise"	.....
.....	Yes	Yes	due notice	Yes
Yes	Yes	Yes	10 days	Yes
Yes	Yes	Yes	20 days	Yes
Yes	Yes	Yes	10 days	Yes
.....	.....	Yes	reasonable	Yes
.....	.....	Yes	.....	.....
.....
Yes	Yes	Yes	20 days	.....
.....	Yes	Yes	.....	Yes
Yes	.....	Yes	30 days	.....
Yes	Yes	Yes	30 days	Yes*
Yes	Yes	Yes	due notice	Yes
Yes	Yes	Yes	15 days	.....
Yes	Yes	Yes	due notice	.....
Yes	Yes	Yes	30 days	Yes
Yes	Yes	Yes	due notice	Yes
.....	Yes	Yes	30 days	Yes
No	Yes	Yes	30 days	Yes
Yes	.....	Yes	30 days	Yes
Yes	Yes	Yes	10 days	Yes
Yes	Yes	Yes	reasonable	.....
Yes	Yes	Yes	"notice required"	Yes*
Yes	Yes	Yes	.....	.....
Yes	Yes	Yes	varies	Yes
Yes	Yes	Yes	varies	Yes
Yes	Yes	.....	.....	.....
Yes	.....	Yes	10 days	.....
.....	Yes	Yes	.....	Yes
.....	.....	Yes	.....	Yes
Yes	Yes	Yes	"notice required"	Yes
Yes	Yes	Yes	30 days	Yes
Yes	Yes	Yes	10 days	Yes
.....
Yes	Yes	Yes	20 days	Yes
.....	.....	.....	"adequate"	Yes
.....	.....	Yes	"notice required"	.....

*Through District Court.

COLORADO ADMINISTRATIVE

State Agency	Power to Give Oaths and Take Testimony	Period for Appeal
Aeronautics Comm.	Both	20 days
Banking Comm'r. ....	.....	20 "
.....Interest and Money Lenders.....	Both	60 "
Building and Loan Comm'r.....	Both	.....
Civil Service Comm.....	Both	.....
Game and Fish Comm.....	.....	After final order
Director, Game and Fish Dept.....	.....	20 days
Industrial Comm.	Both	60 "
.....Factory and Boiler Insp'rs.....	.....	.....
.....Labor Peace Act.....	Both	30 "
.....Wage Claim Court.....	.....	.....
.....Workmen's Compensation Act.....	Both	15 "
Dept. of Employment Security.....	Both	20 "
Insurance Comm'r.	Both	varies
Board of Land Comm'rs.....	Both	.....
Bureau of Mines.....	Take Testimony	.....
Oil and Gas Conservation Comm.....	Take Testimony	90 days
Pub. Utilities Comm. (Carriers).....	Both	.....
.....in re: Public Utility Rates.....	Both	30 "
Dept. of Public Welfare.....	Both	.....
Board of Public Welfare.....	.....	.....
Relief Commission .....	.....	.....
Sec. of St.—Collection Agency Bd.....	.....	.....
.....Intoxicating Liquors	Give Oaths	.....
.....Ore Buyers' License.....	Take Testimony	.....
Abstractors' Bd. of Examiners.....	Both	10 "
Accountancy Examining Bd.....	Both	.....
Bd. of Barber Examiners.....	.....	30 "
Bd. of Examiners of Basic Sciences.....	.....	.....
Chiropractors' Examining Bd.....	Both	.....
Bd. of Dental Examiners.....	Both	.....
Bd. of Funeral Directors & Embalm.....	Both	30 "
Bd. of Medical Examiners.....	Both	.....
Motor Vehicle Dept.....	Both	30 "
Bd. of Optometric Examiners.....	Both	.....
Board of Pharmacy.....	.....	.....
Real Estate Brokers' Exam. Bd.....	Both	10 "
Bd. of Veterinary Examiners.....	Take Testimony	.....
Agricultural Comm.	Both	.....
Comm'r. of Agriculture.....	Both	.....
Dairy Comm'r. ....	.....	.....
Director of Markets.....	.....	.....
Dept. of Health.....	Both	90 "
Board of Health.....	Both	90 "
Colo. Tax Comm.....	Both	.....
Director of Revenue (Income Tax).....	Both	30 "
.....(Sales Tax).....	Both	20 "
.....(Motor Fuel Tax).....	.....	.....
Motor Vehicle Dealers' Adm.....	Both	10 "
Inheritance Tax Comm'r.....	Both	10 "
Bd. of Standards of Child Care.....	.....	.....

AGENCIES AND PROCEDURES

Method of Appeal

To district court.
 To district court, for a restraining order.
 To district court, by the person aggrieved.
 To a Governor's Board if license is refused.
 To Supreme Court by certiorari.
 For refusal to grant license, by certiorari to district court.
 For suspension or revocation of license, to Comm. to review initial order.
 To the Comm., then to the district court of place of injury.
 To three arbitrators in county in which appeal arises.
 To district court in which the party resides, or to a mediation board
 To the Commission, then to the proper district court.
 To Commission, then to Denver dist. court or dist. court in place of injury.
 To proper district court, but appeal "may" be taken to Commission first.
 Most unusual type appeal is de novo review by Denver district court.

.....
 De novo trial before Justice of Peace, county, or district courts.
 To district court de novo.
 To district court.
 To district court or Comm.; rehearing by Comm. optional within 10 days.

.....
 Certiorari to any court of competent jurisdiction.
 De novo to dist. court; appeal suspends revocation until court decision.
 De novo to district court.
 To any court of competent jurisdiction.
 To district court.
 Certiorari to district court of City and County of Denver.
 To district court.

.....
 De novo to district court where licensee resides, then to Supreme Court.
 To district court; agency may review prior findings upon request.
 To district and county courts.
 De novo to "courts".
 To the Board, for reinstatement.
 To district court.

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 To proper county and district courts.
 To district court of county of residence, or to Denver district court.

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 To Comm. from county assessor before review can be had in courts.
 To district court of county in which taxpayer resides, de novo.
 Certiorari to district court in Denver, then to the Supreme Court.
 Action must be filed within 30 days in dist. court in order to contest levy.
 Original action in district court.
 To district court of proper county, or to Supreme Court by writ of error.
 Appeal to proper court.