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A Lawyers' Guide to OPA

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BY RONALD J. FOULIS,* MELVIN L. HERTZMAN,^o AND
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Continued from August Issue‡

Enforcement Actions

From time to time, lawyers will represent persons charged with violations of the Rationing Regulations. It may be helpful briefly to indicate and describe the several forms which such charges may take, and, in general, the procedure which is followed.

A device known as the "warning letter" sometimes, but not always, is used where circumstances indicate that a violation of a Ration Order is unintentional and without knowledge of the law. The "warning letter" calls attention to the violation and informs the person of the applicable law. Subsequent violations by one who has received a warning letter is more than likely to be wholeheartedly prosecuted.

It is sufficient only to mention suits to enjoin violations of a Ration Order and criminal prosecutions of violators. These follow the usual forms and procedures with which lawyers are already familiar.

The Ration Orders themselves contain their own "prohibitions and penalties," and, in addition, General Ration Order No. 8 sets forth certain uniform prohibitions and penalties which apply to all Ration Orders. Of special interest is section 2.10, which provides that "no person shall sell or otherwise transfer, and no person shall, in the course of trade or business, buy or receive any rationed commodity at a price in excess of the applicable price established for that commodity by the Office of Price Administration." This is very important, for it makes the sale or purchase of a rationed commodity in violation of a price regulation subject to administrative Suspension Order proceedings. While price violations

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Footnotes designated by letters have been prepared by Percy S. Morris, Chief Price Attorney, Denver District Office, Frank E. Hickey, Chief Rationing Attorney, Denver District Office, and Charles H. Queary, Chief Rent Attorney, Denver Defense-Rental Area, to indicate changes that have been made since the original article was prepared.

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‡This article is a product of collaboration among the authors, all of the St. Louis bar; however, Mr. Foulis is responsible for that portion ending with Part I, dealing with Price Control; Mr. Hertzman for Part II, dealing with Rent Control; and Mr. Tremayne for Part III, dealing with Rationing.

may be proceeded against under the Price Regulations themselves, the Price Acts omitted to establish an administrative procedure for the prosecution of violators, and thus enforcement under the Price Regulations is limited to court actions. Usually this is sufficient for major violations, but it is not possible to take every corner grocer into court who sells meat two cents over the ceiling price. Yet such violations as these, if sufficiently widespread, can break down an anti-inflation program as surely as do major violations. Section 2.10 provides an administrative enforcement technique for price violations in the sale or purchase of rationed commodities which, it is believed, will result in better compliance.

Procedural Regulation No. 4, on the issuance of Rationing Suspension Orders, effective February 6, 1943, superseded a temporary regulation on the same subject. This regulation prescribes the procedure for the issuance of Rationing Suspension Orders, and declares the procedure for appeals from Suspension Orders issued by War Price and Rationing Boards in the cases where Boards are empowered to issue them.

One Hearing Administrator, a Hearing Commissioner for each Region, and presiding officers appointed by the Hearing Commissioner, are provided for under the Regulation, and these officers conduct the Suspension Order hearings. Because this procedure is not well known, it may be profitable to describe it in some detail. Suspension Order proceedings may be instituted by the serving of a "Notice of Hearing" on the person charged with a violation, who is called the respondent, not less than three days prior to the date of hearing. Notices of Hearing are issued by the Regional Attorney, and, in addition to the time and place of the hearing, there is set forth a statement of the charges against respondent and a statement of the purposes for which the hearing is held. If the notice is served five or more days before the hearing date, it may provide that the hearing may be held only after respondent files with the Hearing Commissioner a request for the hearing and a statement of the general nature of his defense to the charges. If such action by the respondent is called for in the Notice of Hearing, but is not forthcoming no hearing need be held, the charges are deemed to be admitted for the purpose of the hearing, and the Regional Attorney may present evidence to the Hearing Commissioner, or presiding officer, relevant to the determination of the effective period of suspension of the respondent. In such cases and in other "default" cases, the respondent may, at any time prior to the tenth day after the service on him of a Suspension Order, file with the Hearing Commissioner a petition for the reopening of the proceedings, explaining why he believes the default should be excused. If

the Hearing Commissioner grants the petition, a time and place for a hearing is set, and the Suspension Order is stayed, or set aside.

The hearing must be conducted "in such a manner as will permit the presentation of evidence and argument to the fullest extent compatible with a fair and expeditious determination of issues raised in the hearing." To such end, it is provided that the respondent may be represented by his counsel, the rules of evidence shall not be controlling, there shall be afforded reasonable opportunity for cross-examination of witnesses, and the hearing shall be public. Although a stenographic report of the hearing is taken, transcription may be waived by the parties. Hearings conducted by a presiding officer are followed by his "advisory report" to the Hearing Commissioner. Briefs may be filed in support of, or in opposition to, the advisory report. If the hearing is conducted before the Hearing Commissioner, either party may likewise file briefs. If the Hearing Commissioner finds against the respondent, he may issue a Suspension Order which will prohibit the respondent from dealing in a rationed commodity, or rationed commodities, for a specified period of time. If he finds for the respondent, the proceedings are dismissed. A consent order may be agreed upon by the Regional Attorney and the respondent but must be approved by the Hearing Commissioner. The Hearing Administrator, after service of the Notice of Hearing and before service of the Suspension Order, may direct that the proceedings be brought before him, after which they shall be conducted in the same manner as before the Hearing Commissioner. The right of appeal from a Hearing Commissioner to the Hearing Administrator exists for either party within ten days of the issuance of the Suspension Order. It is taken by serving a Notice of Appeal on the Hearing Commissioner and the other party and by filing a copy of such notice and proof of service at the Office of the Hearing Administrator. The Hearing Administrator, on his own motion, may likewise review an order of the Hearing Commissioner. The Hearing Administrator may be petitioned to reconsider his action in the same way as an appeal from the action of the Hearing Commissioner is taken.

In some Ration Orders, Local Boards are given authority to issue what are, in effect, Suspension Orders. For example, Ration Order No. 5C (gasoline) authorizes Local Boards, for specified causes, to revoke

gasoline ration books and coupons.⁸ In such cases, the appeal which is allowed must be taken to the Hearing Commissioner instead of to the District Director, after which the proceedings are conducted in the same manner as if they had been instituted by a Notice of Hearing. This is only a brief summary of Procedural Regulation No. 4, and the reader is referred to the Regulation itself in the event his client is being proceeded against thereunder.

IV

How to Work With OPA*

STATE (DISTRICT) OFFICES

Colorado is served by one OPA office, which is located on the 6th and 7th floors of the Kittredge Building in Denver. In the past the Colorado office has been known as the Colorado State Office. Recently, however, the name of the office has been changed to the Denver District Office, but such office continues to have jurisdiction over the entire state and to have the same powers as before the change of name.

DEFENSE-RENTAL AREA OFFICES

There are five Defense-Rental Area offices in Colorado. The office of the Denver Defense-Rental Area is on the 7th floor of the Kittredge Building. The other defense-rental areas are Colorado Springs, La Junta, Pueblo and Leadville. The Leadville Defense-Rental Area office is operated as a branch of the Denver Defense-Rental Area office and the La Junta Defense-Rental Area office is operated as a branch of the Pueblo Defense-Rental Area office.

⁸A recent amendment to the Gasoline Regulations has broadened the power of local boards to revoke or suspend rations after a hearing. Local boards now have this power in all cases of consumer violations. All revocations or suspensions, however, without hearing, have been abolished excepting in a case where the Board has mistakenly issued a ration or mistakenly issued a greater ration than provided in the regulations, on the facts stated in the application, and a case where the Board has received a certification from the Office of Defense Transportation that the ration holder has violated ODT regulations. Special hearing officers in state and district offices have been provided to act for the boards in certain instances. Where the Board revokes or suspends the ration, an appeal lies to the Special Hearing Officer, whose decision is final. If the Special Hearing Officer has had original jurisdiction, an appeal lies from his order revoking or suspending a ration, to the Hearing Commissioner. The "Government" has no appeal from a decision adverse to it, whether rendered by a Board, a Hearing Officer, or a Hearing Commissioner. This is true in the case of an appeal from an adverse decision on an application. In that case, only the applicant may appeal.

*This subdivision of the article in the MISSOURI BAR JOURNAL has been rewritten by the three Colorado OPA attorneys named in footnote *a* on the first page of this article. It closely follows the wording of the subdivision as it appeared in the original article with such changes only as were necessary to make the contents of the subdivision applicable to Colorado instead of to Missouri.

LOCAL WAR PRICE AND RATIONING BOARDS

In each county of the state is located at least one War Price and Rationing Board which operates under the general guidance and jurisdiction of the District Office. Many of the counties have more than one board. Three counties have four boards each. In the City and County of Denver there is only one board, but it is so organized as to distribute its work among a large number of groups. The members of the boards are volunteer workers appointed from outstanding citizens of their community. Each board is furnished with a full-time executive secretary and clerical assistance. The boards administer the rationing regulations in their counties and perform certain limited functions in connection with the administration of price regulations.

REGIONAL OFFICE

There are eight regional OPA offices in the United States. Colorado is located in the Seventh Region, the headquarters of which are located in the Kittredge Building in Denver, Colorado. The other states in this region are Idaho, Montana, New Mexico, Utah and Wyoming. Certain statements required by regulations must be filed with the Regional Office and some applications for adjustment are required to be filed with that office.

WASHINGTON, D. C.

The national office of OPA is located in Washington, D. C. All OPA matters are under the jurisdiction of this office except as delegated to the field offices.

WHOM TO SEE REGARDING MATTERS ARISING IN
CONNECTION WITH THE PRICE REGULATIONS

The district offices are organized along the following lines. Each district office is administered by a Director, who is the chief executive or administrative officer to whom the heads of the following departments are answerable:

The Chief Attorney is the administrative head of the legal department, which consists of the following branches: The Enforcement

Division, the Price Division, the Rationing Division, and the Rent Division. These divisions are headed respectively by the Chief Enforcement Attorney, the Chief Price Attorney, the Chief Rationing Attorney, and the Chief Rent Attorney.

The Chief Price Officer is the administrative head of the Price Division. In this department are found specialists in various lines of business and economics. The functions of the department are to advise persons affected by the price regulations of the existence of the regulations and to study the effect and operation of the regulations.

The Chief Rationing Officer is the administrative head of the Rationing Division. His functions are similar in the administration of the rationing regulations to those of the Chief Price Officer in the administration of price regulations.

The Rent Director is the administrative head of the Rent Division. His functions are similar to those of the Chief Price Officer and the Chief Rationing Officer.

In all matters relating to price regulations, questions should be directed to either the Chief Price Officer or the Chief Price Attorney, depending upon the nature of the information desired. Copies of the regulations may be secured from either department. Interpretations can be secured only from the Chief Price Attorney, whereas questions involving adjustment of prices or matters involving the impact of regulations upon business should be taken up with the Chief Price Officer.

In the case of rationing regulations, copies of the regulations can be secured from the Local War Price and Rationing Boards. The Local Board is prepared to give information concerning the operation of these regulations. All questions involving interpretation of the regulations should be directed to the Chief Rationing Attorney, whereas matters involving the operation of the rationing regulations and their effect on persons subject to them should be directed to the Chief Rationing Officer.

All matters arising under the rent regulations should be submitted to the appropriate Defense-Rental Area Office. Questions involving interpretation of the rent regulations should be directed to the Chief Rent Attorney in the appropriate Defense-Rental Area Office.

Do not hesitate in any matter to take problems to the appropriate OPA office. These offices are designed to serve the public and you will receive a prompt reply to all requests for information or other assistance.