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## The Legality of Administrative Rulings

Dicta Editorial Board

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by the Special Committee on Administrative Law of the American Bar Association and submitted to the House of Delegates of such association at its meeting last month in Philadelphia. That bill provides that whenever an administrative agency believes that a member of the bar has conducted himself in practice before it in a manner violative of recognized standards of professional ethics or conduct, such agency may bring the matter to the attention of the attorney general. If the attorney general finds reasonable grounds to believe such charge is true, he is required to file a proceeding against the member of the bar in the district court of the district where the latter resides, for the purpose of securing his suspension or disbarment. Such proceeding is to be conducted by the court in the same manner as other disciplinary proceedings against attorneys.

—N. Y. State Bar Service Letter.

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## THE LEGALITY OF ADMINISTRATIVE RULINGS

From recent case rulings it is apparent that certain rules and regulations promulgated by administrative departments are being sanctioned as law. The situation arises where a particular statute, or some section of it, has received an official, departmental interpretation as to meaning or applicability in connection with specific matters. Thenceforth, the construction placed upon the statute, in the form of an administrative ruling, is entitled to the same respect as a legislative enactment, unless or until a subsequent legislature takes affirmative action upon it.

In *Bedford v. Colorado Fuel & Iron*, 102 Colo. 538, 81 P. (2d) 752, (1938) was called to determine whether sales of certain tangible personal property were exempted under the Sales Tax Act, Ch. 230, S. L. 1937. Nearly two years before the case was decided the state treasurer had ruled that certain specific sales were taxable under Sec. 2 (n). In the meantime the legislature had re-enacted the sales tax law, making no change in the latter section. In its opinion the court said that "the legislature was presumptively aware of the construction theretofore given the previous statutes, and was satisfied therewith." It was stated further that "the re-enactment of the sales tax law, after rules of construction promulgated by the state treasurer had been in force for almost two years, in effect, amounted to a legislative confirmation of those rules."

Again in *First National Bank of Greeley, Colo. v. United States*, 86 Fed. (2d) 938, in a contest over the effect of an administrative ruling on requirements of capital stock tax returns, the Circuit Court of Appeals ruled that "repeated congressional revision of income tax statutes with knowledge of treasury regulations relating to taxation of income from sales of corporate property by liquidating receivers of trustees . . . is such

direct and convincing proof of legislative approval of regulation that it should not be overturned by the courts . . . unless clearly inconsistent with the statute."

The United States Supreme Court has also recently affirmed this proposition in *Haggar v. Helvering*, 60 S. Ct. 337, 308 U. S. 389, by stating that "Congress by re-enacting a section of a revenue act without change, approves and adopts a consistent administrative construction of it."

We submit the foregoing primarily to encourage the response of Association members as to the advisability of DICTA furnishing a brief resume each month of the more important administrative rulings.

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FRED E. NEEF Reports the

## ***Current Events of Bench and Bar***

### *Plan for Court Trial of Judges*

Armed with the approval of the American Bar Association. Chairman Hatton W. Sumners of the House judiciary committee is laying plans to get action, as soon as the new congress meets, on his bill to provide for court trial of federal judges on the question of good behavior.

### *New Ground for Divorce Urged by Vermont Bar*

Vermont divorce law liberalization through new grounds which would include living apart for three consecutive years by mutual consent was advocated by the Vermont Bar Association at its annual meeting.

The recommendation to increase divorce grounds, which was adopted and referred to the association's legislative committee for presentation to the legislature, provided that divorce should be granted "when a married person has lived apart from his or her spouse for three consecutive years without fault on the part of the libellant and the court finds that a resumption of marital relations is not reasonably probable."

### *Lawyers Pledge Fight on Nazi-Red Groups*

The Lawyers Club of Los Angeles will continue its fight against elements in the legal profession that are hostile to the American form of