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I. INTRODUCTION

We have become accustomed to the concept, once thoroughly horrendous to most lawyers, that the dispensation of justice may be properly entrusted to those tribunals which, for want of a better term, we label administrative. In past years they were considered the illicit offspring of miscegenatious commingling of powers which, constitutionally, should have been kept in rigid segregation. In the last half century, this habit of thought has all but disappeared; our concern has been rather with the full acknowledgment and acceptance of these agencies into the family of makers and appliers of the law. We have undertaken to nurture and instruct them in the etiquette of the urbane administration of justice, and in the arts and the crafts of the prudent government of men and things. Notable products of this changed attitude are the various acts, federal and state, dealing with administrative procedure. Also, we must call to mind the many scholarly works on the general topic and specific phases of administrative law, and the acceptance of this subject as a special title in the encyclopedic searchbooks and the compendious digests of the law.

We have been less attentive to the multitude of administrative agencies which operate at the local level. No less ancient in their lineage—the existence of local agencies on these shores may be traced back to colonial days[1]—we have only to look about us to sense their importance in our lives. Inspectors of various sorts, zoning agencies of diverse degrees of authority, licensing officers, street authorities, personnel boards in the municipal government, and others must be taken into account as we go about our daily vocations. The literature of administrative law reform, however, for the most part, ignores the local agencies. When they are noted, obscurely and in connection with some point of the general law, the local nature of the tribunal is

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1. Pennsylvania examples are cited in M. MERRILL, CASES AND MATERIALS ON ADMINISTRATIVE LAW 8 (1954). For general treatments, see C. BRIDENBAUGH, CITIES IN THE WILDERNESS 55-93, 206-48, 364-407 (1938); E. GRIFFITH, HISTORY OF AMERICAN CITY GOVERNMENT 242-91 (1938).

glossed over. In most cases, these tribunals are excepted from the coverage of the state administrative procedure acts.[2] The reason generally given is that the local agencies cannot be expected to take the time and trouble to comply with sophisticated refinements of practice and procedure;[3] strangely enough, when the local agency can be found to be acting in fact as an instrumentality of the state, judges encounter no difficulty in holding the agency to these "refined" procedures.[4] The statutes or ordinances which do govern local administrative agencies are generally very sketchy and vague. When we look at the cases, however, we find the courts applying a rather sophisticated set of requirements to local administrative actions. One may well wonder whether a well-drawn code would not help rather than hinder the performance of those local bodies.[5]

It may be worth our while to see how the courts have dealt with local administrative agencies under the conditions now prevailing. Obviously, within the space here available, no exhaustive treatment of statutes or authorities is possible. Accordingly, this study is largely confined to the reported decisions of recent months, arranged in accordance with a topical order commonly employed in writing on the subject.

II. SOME BASIC CONSTITUTIONAL ISSUES

In a constitutional polity, based on a tripartite vesting of governmental powers—legislative, executive, judicial—it has become hackneyed to say that those agencies lodged in the executive department, which nevertheless make rules like legislatures and adjudicate like courts, occupy an anomalous position. Because the department of the government wherein they are sheltered has no tradition of continuously successful assertion of authority to enact or

2. *E.g.*, Johnson Products, Inc. v. City Council, 353 Mass. 540, 233 N.E.2d 316 (1968). *But see* Lee v. Civil Serv. Comm'n, 442 P.2d 61 (Hawaii, 1968), applying HAWAII REV. LAWS §6C-1 (Supp. 1965); Davis v. Wilson, 96 Ill. App. 2d 225, 238 N.E.2d 237 (1968), applying ILL. REV. STAT. ch. 110 § 264 (Smith-Hurd 1968); Glenn v. Board of County Comm'rs, 440 P.2d 1 (Wyo. 1968), applying WYO. STAT. ANN. § 9-276.19 (Supp. 1967). A broad definition of agency as "any administrative officer or body existing under the constitution or by-law and authorized by law to make rules or to adjudicate contested cases" has been the source for application of a state review act to municipal agencies. State *ex rel.* Police Retirement System v. Murphy, 359 Mo. 854, 224 S.W.2d 68 (1949), applying MO. ANN. STAT. § 536.010 (Supp. 1968).

3. See F. COOPER, STATE ADMINISTRATIVE LAW 97 (1965).

4. *E.g.*, Lewis v. City of Grand Rapids, 222 F. Supp. 349 (W.D. Mich. 1963).

5. See F. COOPER, *supra* note 3, at 98.

to judge,[6] we habitually say that there are no common law administrative powers of rule-making or of judgment, and that the agencies must find in statute all their authority to embark upon activity of that sort. Examples are found in recent decisions of determinations that both rule-making and adjudicative authority must be confined to the limits set by statute[7] and cannot be delegated to some other functionary.[8] For example without legislative permission, a city council may not vest in one of the municipal administrative bodies a power of adjudicative decision from which an appeal may be taken to a court.[9] All this surely is sound. It cannot be good social engineering to permit these subordinate bodies to rocket off into outer space. Their centrifugal impulses are very well developed, and need to be carefully restrained.

The constitutional requirement that legislative, executive and judicial powers be kept separate does not apply to the state in organizing its local units of government.[10] Nonetheless, the concept of separateness of function remains embedded in our political thought. Statutes are interpreted with that concept in mind.[11] Thus, while the inapplicability of the separation of powers as a constitutional principle may allow a local legislative body to be invested with administrative adjudicative authority,[12] when it acts under such an investiture, it is subject to the requirements of compliance with a prescribed, legislatively set standard.[13] The question of its compliance

6. *But see* Benton, *Administrative Subpoena Enforcement*, 41 TEXAS L. REV. 874 (1963).

7. Beynon v. City of Scranton, 212 Pa. Super. 526, 243 A.2d 190 (1968) (rule-making); Ziomek v. Bartimole, 156 Conn. 604, 244 A.2d 380 (1968) (adjudicative work).

8. South East Property Owners & Residents Ass'n v. City Plan Comm'n, 156 Conn. 587, 244 A.2d 394 (1968) (rule-making); Anderson v. Grand River Dam Auth., 446 P.2d 814 (Okla. 1968) (rule-making: certainly not delegable to private persons); Marquette Sav. & Loan Assoc. v. Village of Twin Lakes, 38 Wisc. 2d 310, 156 N.W.2d 425 (1968). Of course, a mere resort to other persons for information prior to action is not a delegation of discretion; Cooper v. Community School Corp., 232 N.E.2d 887 (Ind. 1968).

9. Eagle Thrifty Drugs & Mkts., Inc. v. Parent Teachers Ass'n 443 P.2d 608 (Nev. 1968), *overruled on rehearing as to another point*, 451 P.2d 713 (Nev. 1969).

10. Pressman v. D'Alesandro, 193 Md. 672, 69 A.2d 453 (1949); State *ex rel.* Simpson v. City of Mankato, 117 Minn. 458, 136 N.W. 264 (1912); Barnes v. City of Kirksville, 266 Mo. 270, 180 S.W. 545 (1915); Eggers v. Kenney, 15 N.J. 107, 104 A.2d 10 (1954).

11. Montano v. Lee, 401 F.2d 214 (2d Cir. 1968) (statute requiring bi-partisan political representation on boards, committees or similar bodies not applicable to eleetion of members of board of aldermen, a repository of local legislative power); Cheney v. Village 2 at New Hope, Inc., 429 Pa. 626, 241 A.2d 181 (1968) (council held not to have violated principle against abdication of legislative power or to have transgressed controlling statute).

12. RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968); Morton v. Township of Clark, 102 N.J. Super. 84, 245 A.2d 377 (1968).

13. J & M Realty Co. v. City of Norwalk, 156 Conn. 185, 239 A.2d 534 (1968); Town of

therewith is a fit topic for judicial review.[14] A local agency is also subject to the other legally enforcible standards of propriety applicable to adjudicative activity.[15] Conversely, when the municipal governing body decides whether an ordinance should be enacted, amended or repealed, it acts legislatively; appellate processes adapted to the review of "quasi-judicial" action accordingly are not available to challenge its action.[16] Relief, if available, can only be granted for exceeding statutory authority or upon unconstitutionality, all in accord with the established judicial remedies for unauthorized or unconstitutional legislative enactment.[17]

Other recent applications of the legislative-adjudicative dichotomy—an outgrowth of the separation of powers analysis—include statements that a hearing is not constitutionally requisite to the exercise of a legislative discretion;[18] that a city planning board, making recommendations to a municipal legislature itself, cannot be regarded as a legislative body because of its lack of ability to convert its recommendations into law;[19] that statutory provisions governing the enactment or amendment of zoning regulations have no bearing upon the decision of an action involving review of a judicial-type decision of a town board in granting an exception to a zoning ordinance.[20] Other illustrations include decisions recognizing the judicial status ("softened by a quasi") of boards which pass upon the dismissal of a municipal employee[21] or grant

Cheektowaga v. Amico, 58 Misc. 2d 103, 294 N.Y.S.2d 752 (Sup. Ct. 1968). *See* Young Men & Women's Hebrew Ass'n v. Borough Council, 429 Pa. 283, 240 A.2d 469 (1968) where the court suggests that a council, in passing on applications for conditional uses, possesses the attributes of a legislative body, but it clearly holds the council to compliance with the standard set by ordinance.

14. Town of Huntington v. Town Board, 57 Misc. 2d 821, 293 N.Y.S.2d 558 (Sup. Ct. 1968); Donnelly v. City of Fairview Park, 13 Ohio St. 2d 1, 233 N.E.2d 500 (1968); Beerman v. City of Kettering, 14 Ohio Misc. 144, 237 N.E.2d 641 (C.P. 1965); *cf.* Klein v. Village of La Grange, 93 Ill. App. 2d 318, 236 N.E.2d 351 (1968), holding, perhaps erroneously, that the village board's denial of a special use permit was non-appealable on the ground that denial was "legislative."

15. RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968).

16. Stein v. Erie County Comm'rs, 16 Ohio Misc. 155, 241 N.E. 2d 300 (C.P. 1968). *Contra,* City of Sand Springs v. Colliver, 434 P.2d 186 (Okla. 1967) (clearly proceeds upon erronerous reasoning).

17. Wilson v. Municipal Water Dist., 63 Cal. Rptr. 889 (Ct. App. 1968); City of The Village v. McCown, 446 P.2d 380 (Okla. 1968).

18. Chevy Chase Village v. Board of App., 249 Md. 334, 239 A.2d 740 (1968).

19. Rosenberg v. Planning Bd. 155 Conn. 636, 236 A.2d 895 (1967).

20. Town of Huntington v. Town Board, 57 Misc. 2d 821, 293 N.Y.S.2d 558 (Sup. Ct. 1968).

21. Civil Serv. Bd., v. Page, 2 N.C. App. 34, 162 S.E. 2d 644 (1968).

relief from the rigors of zoning according to principles established in a zoning ordinance.[22]

Thus, courts properly call the zoning administrators' attention to the fact that it is not their business to cure the alleged deficiencies of the ordinance, this being a matter for the body which possesses the amending function.[23]

Recently, the problem of classification seems to have stymied the Connecticut Supreme Court. The court was confronted with a contention that a planning and zoning commission had sinned procedurally in a hearing on a subdivision proposal. The court pointed out that the applicable statute[24] made the grant of a hearing entirely optional to the commission. The court then said:

> A municipal planning commission, in exercising its function of approving or disapproving any particular subdivision plan, is acting in an administrative capacity and does not function as a legislative, judicial or quasi-judicial agency, which would require it to observe the safeguards, ordinarily guaranteed to the applicants and the public, of a fair opportunity to cross-examine witnesses, to inspect documents presented, and to offer evidence in explanation or rebuttal and of the right to be fully apprised of the facts upon which action is to be taken . . . .[25]

Apparently, in the court's view, the board, in this type of proceeding, is neither fish, flesh, nor fowl. One hardly knows how to fit this decision, or, at least, the statements offered to support it, into customary administrative law concepts. As the opinion later recognizes, the board's function in passing upon the propriety of the proposal under the applicable statutes and ordinances was to compare the proposal with applicable legal standards.

It is difficult to understand why this function was not classified as adjudicative. Also to be borne in mind is the somewhat incomprehensible statement that the procedural niceties mentioned should have been honored had the board been functioning as a "legislative" agency. This, as we shall see, is not a generally held tenet. The court, in the later stages of the opinion, makes a pretty convincing case for the essential fairness of the procedure employed, and perhaps the best thing we can do is to treat the decision as an example of the application of the principle that even an adjudicative

22. Beach v. Board of Adjustment, 438 P.2d 617 (Wash. 1968).

23. Rosedale-Skinker Impr. Ass'n v. Board of Adjustment, 425 S.W.2d 929 (Mo. 1968); Lincoln Plastic Prod. Co. v. Zoning Bd. of Rev., 242 A.2d 301 (R.I. 1968).

24. CONN. GEN. STAT. REV. § 8-26 (Supp. 1968).

25. Forest Constr. Co. v. Planning & Zoning Comm'n, 155 Conn. 669, 674, 236 A.2d 917, 921 (1967).

hearing need not always be of the trial type. Probably we had just as well forget the unfortunate remarks about the peculiar nature of the board.

The classification of local agency activity has also been discussed in connection with a trio of decisions respecting delegation of authority to a local tribunal subject to the approval of a state administrative body;[26] the propriety of licensing requirements which exact from the licensee consent to inspections to check compliance with applicable ordinances;[27] and whether privilege attaches to a statement made at a hearing on an application for a zoning variance, as to alleged defamatory remarks contained therein.[28]

III. DELEGATION OF POWERS: THE PROBLEM OF STANDARDS

A. *Classification of Standards*

The principle that power delegated to an administrative agency must be subject to reasonably intelligible and directive standards is a generally accepted axiom of our public law. Constitutionally, it is regarded as based on the universally established distribution of governmental powers amongst three departments, legislative, executive and judicial, as well as on the basic guaranty against the deprivation of life, liberty or property without due process of law. While some distinguished scholars find restricted observance of and less utility in this principle, I have argued, elsewhere, the reasons which seem to me to make it a useful weapon in our armory of public law,[29] and in aid of its better application, I tentatively presented a classification of the cases according to the characteristics of the standards approved by the courts:[30] (1) specific prescriptions; (2) reasonably detailed portraiture of legislative purpose; (3) imprecise standards, applied to limited subject matter; (4) imprecise words, of acquired legal significance; (5)

26. Weinstein v. City of Newark, 100 N.J. Super. 199, 241 A.2d 478 (1968).

27. Belleville Chamber of Commerce v. Town of Belleville, 51 N.J. 153, 238 A.2d 181 (1968). This case must be viewed in light of Camara v. Municipal Court, 387 U.S. 523 (1967) and See v. City of Seattle, 387 U.S. 541 (1967). The opinion does not mention these decisions, although they were handed down at a sufficiently antecedent date to have been noticed.

28. J.D. Constr. Corp. v. Isaacs, 51 N.J. 263, 239 A.2d 657 (1968), holding that the question had been raised prematurely. On the general problem, see Garcia v. Hilton Hotels Int'l, 97 F. Supp. 5 (D.P.R. 1951); Magelo v. Roundup Coal Min. Co., 109 Mont. 293, 96 P.2d 932 (1939); Pacific Employers Ins. Co. v. Adams, 196 Okla. 597, 168 P.2d 105 (1946); Aransas Harbor Term. Ry. Co. v. Taber, 235 S.W. 841 (Tex. Com. App. 1921).

29. *See* Merrill, *Standards—A Safeguard For the Exercise of Delegated Power*, 47 NEB. L. REV. 469, 473-79 (1968).

30. *Id.* at 479-91.

imprecise words, aided by analogous statutes; (6) imprecise words, made specific by administrative action; (7) imprecise words used in connection with national preservation—war power and foreign relations. Of course, local administrative bodies should not be involved with the last category. As to the others, however, the recent decisions seem to present significant examples of the exercise and the application to the parochial tribunals of the general characteristics outlined above.

As a general rule, the exercise of general legislative power, even of a localized character, is not required to be subject to standards.[31] The obvious reason is that, in the American system of government, general legislative power will be vested in elective bodies. We rely on this selection, and in the legislator's recognition that the responsibility for policy planning is in his hands, for safeguard against irresponsible and abusive exercise of power. We must also recall that usually general legislative policy, concerned with application to broad classes of problems, is not fairly amenable to guidance through standards.

The constitutional need for standards extends equally to the exercise of delegated adjudicative power[32] as to administrative rule-making.[33] The local governing body, acting in an administrative capacity, may and must provide the standards for its own guidance if they have not been fixed by statute. Therefore, it may properly defer action upon an application for exercise of its administrative discretion, pending the provision of standards.[34] Whatever their

31. Wilson v. Hidden Valley Mun. Water Dist., 63 Cal. Rptr. 889 (Ct. App. 1967); Gino's of Maryland v. City of Baltimore, 250 Md. 621, 244 A.2d 218 (1968). *See* Blacker v. Wiethe, 16 Ohio St. 2d 65, 242 N.E.2d 655 (1968).

32. Walden v. Hart, 243 Ark. 650, 420 S.W.2d 868 (1967) (authorizattion to police chief to authorize or designate "emergency vehicles"); State *ex rel.* Allen v. Board of Pub. Instruction, 214 So. 2d 7 (Fla. App. 1968) (disciplinary procedures); Waterville Hotel Corp. v. Board of Zoning App., 241 A.2d 50 (Me. 1968) (major changes of use of land, buildings or structures subject to approval of Board of Zoning Appeals); Tillberg v. Township of Kearny, 103 N.J. Super. 324, 247 A.2d 161 (1968) (licenses not to be issued without approval of chief of police and town council); City of Tonawanda v. Tonawanda Theater Corp., 29 App. Div. 2d 217, 287 N.Y.S.2d 273 (1968) (all licenses to be procured from mayor at his discretion); Lawrence v. Calin, 244 A.2d 570 (R.I. 1968) (removal of officer must rest on substantial grounds).

33. Belleville Chamber of Commerce v. Town of Belleville, 51 N.J. 153, 238 A.2d 181 (1968) (vague standards for licensing rules); Longridge Builders, Inc. v. Planning Bd., 52 N.J. 348, 245 A.2d 336 (1968) (rules as to requirement of off-site improvements by developer); Novak v. Town of Poughkeepsie, 57 Misc. 2d 927, 293 N.Y.S.2d 780 (Sup. Ct. 1968) (applicant for plumbers license shall have qualifications deemed necessary by plumbing board).

34. City of Coral Gables v. Sakolsky, 215 So. 2d 329 (Fla. App. 1968).

source, the administrator is bound to follow the standard as established.[35]

A recent decision of the Arkansas Supreme Court,[36] otherwise alert to the need for standards, seems to have overlooked a proper occasion for their exercise. A city ordinance allowed a zoning board to locate specified land uses in a district from which they otherwise would be barred. Apparently, no guidelines were established for the exercise of this discretion. The court held this extremely broad provision adequate to allow the board to authorize an addition to an existing nonconforming structure of a type for which the ordinance would permit the establishment of a special use. Necessarily, this decision assumed the proposition that, despite the absence of guidelines, the original vesting of dispensing power was valid. It is difficult to justify that result. The language of the ordinance does not seem sufficiently limited to enable a court to divine where the line should be drawn in order to meet the legislative policy, within the third classification of standards recited above. Accordingly, one must put the decision in his collection of unsound adjudications and rely on other recent cases which have more accurately perceived the dangers of extremely vague gnomology.[37]

B. *Specific Standards*

How have the courts policed the problems of delegation, viewed in the light of the suggested classifications? Two recent decisions seem to uphold precise directions, fitting the first category above.[38] A third case which the court seemed to think involved the enforcement of detailed commands, may be more dubious. The latter litigation was over the refusal of New York City authorities to let the municipal

35. Ziomek v. Bartimole, 156 Conn. 604, 244 A.2d 380 (1968); RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968); Shell Oil Co. v. Zoning Bd. of App., 156 Conn. 66, 238 A.2d 426 (1968); Dolan v. Zoning Bd. of App., 156 Conn. 426, 242 A.2d 713 (1968); Rupp v. Lindsay, 57 Misc. 2d 946, 293 N.Y.S.2d 812 (Sup. Ct. 1968); Burke v. Zoning Bd. of Rev., 238 A.2d 50 (R.I. 1968).

36. Williams v. Kueknert, 243 Ark. 746, 421 S.W.2d 896 (1967).

37. Walden v. Hart, 243 Ark. 650, 420 S.W.2d 868 (1967) (want of any guidance); Waterville Hotel Corp. v. Board of Zoning App., 241 A.2d 50 (Me. 1968) ("public interest," "public health, safety and general welfare" too broad, as extending to the outer ambit of legislative discretion); Battaglia v. Planning Bd., 98 N.J. Super. 194, 236 A.2d 608 (1967) ("other special requirements").

38. Brush v. Zoning Bd. of App., 57 Misc. 2d 751, 293 N.Y.S.2d 387 (Sup. Ct. 1968) (specific and detailed standards for off-street parking); State *ex rel.* Marshall v. Civil Serv. Comm'n, 14 Ohio St. 2d 226, 237 N.E.2d 392 (1968) ("the guidelines governing what he may do are detailed . . . and such actions as he may take are subject to review and control").

stadium for the purpose of holding a rally for presidential candidate George Wallace. The purposes for which the stadium might be let were set forth thus:

> . . . for any purpose or purposes which is of such a nature as to furnish to, or foster or promote among, or provide for the benefit of, the people of the city, recreation, entertainment, amusement, education, enlightenment, cultural development or betterment, and improvement of trade and commerce, including professional, amateur and scholastic sports and athletic events, theatrical, musical or other entertainment presentations, and meetings, assemblages, conventions and exhibitions for any purpose, including meetings, assemblages, conventions and exhibitions held for business or trade purposes, and other events of *civic, community and general public interest*. . . . It is hereby declared that all of the purposes referred to in this subdivision b are for the benefit of the people of the city and for the improvement of their health, welfare, recreation, and prosperity, for the promotion of competitive sports for youth and the prevention of juvenile delinquency, and for the improvement of trade and commerce, and are hereby declared to be public purposes.[39]

The court ruled that in "excluding partisan political activity, the Commissioner has not acted in conformance with the standard promulgated to guide his discretion."[40] I think that my reaction would be the other way: that no meaningful standard had been "promulgated to guide his discretion." The statute prescribed letting for so many and such diverse objects that practically nothing was left out. The so-called standard is disturbingly like that *omnium-gatherum* which brought the National Industrial Recovery Act to grief.[41] In that analysis, the act well might fall for intrusting the administrator with too liberal a delegation. This rendition perhaps would have closed the stadium to all but the specifically enumerated sports, theatrical and business events. It would not have helped the promoters of the rally. Probably the best justification of the decision is to invoke the well-established principle of constitutional law that public places of assemblage must be open to peaceably expressed propaganda of whatever type.[42] Such a rationale would have avoided the problem of the definiteness of the standard by establishing the invalidity of the exclusion, even had it been specific.

C. *Legislative Purpose*

Category two is represented by cases which sustain guidelines for

39. Rupp v. Lindsay, 57 Misc. 2d 946, 948-49, 293 N.Y.S.2d 812, 816 (Sup. Ct. 1968) (emphasis added).

40. *Id.* at 949, 293 N.Y.S. 2d at 817.

41. *See* Schechter Corp. v. United States, 295 U.S. 495 (1935).

42. Hague v. CIO, 307 U.S. 496 (1939).

the removal of topsoil,[43] the establishment of setback requirements,[44] the protection of a municipal sewer system,[45] implementation of gun control codes,[46] excepted uses in zoning,[47] the provision of sinks in rental properties.[48] In one instance, the somewhat imprecise statement was confined within manageable bounds by resort to the canon of *ejusdem generis*.[49] In another instance, however, an invocation of a preambulatory statement in the statute itself seems not to have been permitted.[50] The decision seems unsound in that respect. If the preamble served to make the statutory purpose adequately clear, that should have sufficed; preambles are adequate aids for the interpretation of statutes.[51] Of course, if the matter in the statute is not sufficiently clear to remove uncertainty, the attempted invocation is fruitless.[52]

D. *Limited Subject Matter*

The third category raises the problem of the judicial ability to sense the legislative intent by reading the lawmakers' imprecise words in the light of the limited subject of the act, thereby coming to the conclusion that the meaning is clear.[53] Several of the cases examined seem to exemplify this principle.[54] One ruling, however, that

43. Koslow v. Municipal Council, 52 N.J. 441, 245 A.2d 729 (1968).

44. Westchester Reform Temple v. Brown, 22 N.Y. 2d 488, 239 N.E.2d 891 (1968) (avoid or minimize traffic hazards, impairment of use, enjoyment or value of property in surrounding areas, and deterioration of appearance of area).

45. Larsen Baking Co. v. City of New York, 30 App. Div. 2d 400, 292 N.Y.S.2d 145 (1968) (prevent discharge of harmful material into sewer system, protection of system and treatment process).

46. Grimm v. City of New York, 56 Misc. 2d 525, 289 N.Y.S.2d 358 (Sup. Ct. 1968).

47. Jackson v. Board of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968). This decision is aided by the court's notion that public interest is a word of judicial art under Category Four, and, more reasonably, by the fact that the standard was to be administratively implemented, which bring's into play the sageguard involved in Category Six.

48. Westgate Hotel, Inc. v. Krumbiegel, 39 Wisc. 2d 108, 158 N.W.2d 362 (1968) (sink of a size and design adequate for the purpose of washing eating and drinking utensils, located in a kitchen properly connected with a cold water line and a hot water line).

49. Battaglia v. Planning Bd., 98 N.J. Super. 194, 236 A.2d 608 (App. Div. 1967).

50. Waterville Hotel Corp. v. Board of Zoning App. 241 A.2d 50 (Me. 1968).

51. Prewitt v. Warfield, 203 Ark. 137, 156 S.W. 2d 238 (1941).

52. Tillberg v. Township of Kearny, 103 N.J. Super. 324, 247 A.2d 161 (Law Div. 1968) (no standards provided for grant of license; provision for revocation on grounds of due cause does not remedy the defect).

53. See Merrill, *supra* note 29, at 482.

54. Nelson v. Board of Examiners, 21 N.Y.2d 408, 235 N.E.2d 433, 288 N.Y.S.2d 454 (1968) (constitutional provision that appointments and promotions "shall be made according to merit and fitness, to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive" held to authorize subjective type of test concerning practical

"dilapidation" is too general a test for determining when a building should be abated as a fire hazard or as a hazard to human life, safety, health or public welfare,[55] seems unwarrantably strict under this test. Surely, any intelligent judge or administrator could determine when a structure was so dilapidated as to pose a threat to the interests named. In addition, the legislative intent to promote physical safety of persons and property is clear. A combination of narrow subject and administrative implementation (Category Six) clearly is advantageous.[56]

In many cases, where the legislation contains no stated principle, courts have been willing to resort to an unexpressed but clearly apparent standard, based upon the narrowness and the obvious purpose of the statute in order to save the delegation of power.[57] The Supreme Court of Alabama resorted to this tactic to save an ordinance exacting permits for holding a parade or public demonstration, apparently at the sole discretion of the authorities.[58] The Supreme Court of the United States recently reversed this determination,[59] referring to the Alabama action as "a remarkable job of plastic surgery." The job was no more remarkable, however, than some which the Court has sanctioned.[60] Probably, its decision is but one more example of its growing impatience with broad terms which lend themselves to encroachments upon liberty of expression in various forms.[61] I would regard it as something of a tragedy for our constitutional law if this were to lead to an across-the-board repudiation of the unexpressed-but-clearly-apparent-standard technique.

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abilities of teacher); Parolisi v. Board of Examiners, 55 Misc. 2d 546, 285 N.Y.S.2d 936 (Sup. Ct. 1967) (same provision held to authorize adoption of standards for health and physical fitness of teachers, to the extent that they are relevant to performance of duty); Brush v. Zoning Bd. of App., 57 Misc. 2d 751, 293 N.Y.S.2d 387 (Sup. Ct. 1968) (off-street parking requirements, subject to approval of board); Tarver v. City Comm'n, 72 Wash. 2d 726, 435 P.2d 531 (1967) (in determining whether a taxi driver is "trustworthy," has a "good reputation," and is "morally responsible" in a license revocation proceeding, evidence will be confined to facts bearing relevance to fitness for occupation).

55. City of Saginaw v. Budd, 381 Mich. 173, 160 N.W.2d 906 (1968).

56. Forest Constr. Co. v. Planning and Zoning Comm'n, 155 Conn. 669, 236 A.2d 917 (1967).

57. *See* Merrill, *supra* note 29, at 482-86.

58. Shuttlesworth v. City of Birmingham, 281 Ala. 542, 206 So. 2d 348 (1967).

59. Shuttlesworth v. City of Birmingham, 89 S. Ct. 935 (1969).

60. Douglas v. Noble, 261 U.S. 165 (1923); New York *ex rel.* Lieberman v. Van De Carr, 199 U.S. 552 (1905); Crowley v. Christenson, 137 U.S. 86 (1890).

61. See Merrill, *supra* note 29, at 486.

E. *Legally Significant Words*

Category Four embraces those cases wherein imprecise words, through long continued use, have acquired so established a meaning in legalese that the judges, feeling perfectly at home with them, are willing to permit their use as standards. "Cause" or "good cause" as a ground for discharging or otherwise disciplining a public employee is such a term. The judges feel that they can confine its application to causes bearing some reasonable relation to fitness for the employment, thereby eliminating or reducing the chance of oppressive use of the disciplinary procedure.[62] "Public interest" appears to have been given a somewhat similar role in one case.[63] Factors which would place the ordinance in harmony with categories two and four as well were present, and the decision properly seems attributable to the combined safeguards. Otherwise, "public interest," standing alone, smacks too much of the broad policy choices available only to those possessed of general legislative power to be acceptable as a guide for administrators.[64] In this connection, note a recent and interesting interpretation narrowing the broad concept of "immorality," as a ground for the discharge of a school teacher, to such immoral conduct as is inimical to the welfare of the school community as distinguished from private acts or expressions.[65] This represents an additional refinement, reducing the possibility of oppression from the employment of words imprecise in popular context, although they may have a long history of practical employment in judicial decision.

F. *Analogous Statutes*

The fifth category involves resort to analogous statutory provisions to aid the search for legislative intent in the administration of imprecise words. It assumes, of course, that our lawmakers carry in mind what they have done before in the field. This assumption is not unreasonable. It embodies the practice of careful draftsmen, if not the habit of legislators as a body. Of course, the rejoinder may be

62. Coursey v. Board of Fire and Police Comm'rs, 90 Ill. App. 2d 31, 234 N.E.2d 339 (1967); Senese v. Civil Serv. Comm'n, 88 Ill. App. 2d 172, 232 N.E.2d 256 (1967); Hale v. Board of Educ., 13 Ohio St. 2d 92, 234 N.E.2d 583 (1968).

63. Jackson v. Board of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

64. State *ex rel* Makris v. Superior Court, 113 Wash. 296, 193 P. 845 (1920).

65. Jarvella v. Board of Educ.,12 Ohio Misc. 288, 233 N.E.2d 143 (C.P. 1967). As a horrible example of undue judicial latitudinarianism, compare the extension of the concept of immorality to embrace political activity by school teachers, when directed against the superintendent and the school board, in Watts v. Seward School Bd., 395 P.2d 372 (Alaska 1964).

that a really careful draftsman would express specifically what he intended to bring over from the past. But the pressures of composition being what they are, all authors, at times, fall into the error of assuming that their basic assumptions will be clear to those who read their product. Consequently, I think that judicial resort to analogous legislation to furnish a clue to necessary standards is justifiable.

For the period under examination, only two cases, even remotely, are referable to this category. The first resorted to an authorized requirement of the state health department to assist in fleshing out the standard of undue hardship as a basis for the grant of a zoning variance.[66] The other referred to provisions of state and city plumbing codes to sustain a standard for the approval of kitchen sinks which the court already had declared sufficient.[67] The particularistic nature of local legislation, which rarely meshes with other enactments, at least at the regional level, may account for the paucity of examples of category five.

G. *Specific Administrative Action*

The sixth category involves the necessary particularization of legislative imprecision through administrative application, subject to various procedural safeguards which protect against adventurism and free wheeling.[68] Recent decisions concerning local administrative agencies afford examples of the application of this category to such standards as "the efficiency of the [police] service;"[69] "undue" or "unnecessary" hardships as a basis for relaxation of zoning restrictions;[70] "public necessity,"[71] "public convenience and welfare,"[72] or "public interest"[73] with respect to zoning relaxation; "cause" as a basis for disciplinary proceedings against a public employee.[74]

66. Williams v. Kueknert, 243 Ark. 746, 421 S.W.2d 896 (1967).

67. Westgate Hotel, Inc.v. Krumbiegel, 39 Wisc. 2d 108, 158 N.W.2d 362 (1968).

68. For more detailed discussion of the use and nature of this category, see Merrill, *supra* note 29, at 487-89.

69. O'Bryant v. Theobald, 421 S.W.2d 571 (Ky. 1967).

70. Rosedale-Skinker Impr. Ass'n v. Board of Adjustment, 425 S.W.2d 929 (Mo. 1968); Beerman v. City of Kettering, *aff'd on technical grounds*, 13 Ohio St. 2d 149, 235 N.E.2d 231 (1968).

71. Pioneer Trust and Sav. Bank v. County of McHenry, 89 Ill. 2d 257, 232 N.E.2d 816 (1967), *rev'd on other grounds*, 101 Ill. App.2d 230, 241 N.E.2d 454 (1968).

72. Nani v. Zoning Bd. of Rev., 242 A.2d 403 (R.I. 1968).

73. Jackson v. Board of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968).

74. Coursey v. Board of Fire and Police Comm'rs, 90 Ill. App. 2d 31, 234 N.E.2d 339 (1967).

For all its utility, caution should be urged in reliance on this type of analysis to get over the problem of legislative abdication in the vesting of delegated powers. For one thing, it may be ineffective against the overriding concern of courts to prevent undue restraint upon liberty of portrayal of thought, even in the somewhat unlikely guise of the movies.[75] Also, the more general the terms employed, the more arduous and less satisfactory is the judicial supervision which forms the real effectiveness of the application of this doctrine of standards. Professor Davis, it will be recalled, considers the procedural safeguard element as the real source of protection against administrative arbitrariness.[76] But procedural safeguards can be applied effectively only as there is some objective with reference to which the procedure is to be exercised. An overly vague objective makes for either the evolution of rules of thumb in judicial administration or for whimsical diversity in result. The typical zoning ordinances, with their prescription of "practical difficulty" and of "hardship," variously described, furnish us with examples in plenty. On the one hand, there is the tendency to evolve rules of thumb, such as that the hardship cannot be self-imposed;[77] that the inability to make as much money as one would like is no hardship;[78] that the hardship must be related to the physical characteristics of the land;[79] or the New York notion that it is a "hardship" if the owner is not free to gain as much as he can, without restraint for the public good.[80] On the other hand, these loose provisions may provoke extended debate.[81] One also finds cases in which, apparently, the reviewing court sustains[82] or reverses[83] the decisions of the zoning authorities as the merits of the particular

75. Burton v. Municipal Court, 68 Cal. Rptr. 721, 441 P.2d 281 (Cal. 1968).

76. See 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE 106, 111, 148, 149, 151 (1958).

77. Sherman v. Gustafson, 28 App. Div. 2d 1082, 285 N.Y.S.2d 255 (1967); Stratford Arms, Inc. v. Zoning Bd. of Adjustment, 429 Pa. 132, 239 A.2d 325 (1968).

78. Shell Oil Co. v. Zoning Bd. of App., 156 Conn. 66, 238 A.2d 426 (1968); Helfrich v. Mongelli, 248 Md. 498, 237 A.2d 454 (1968).

79. Isko v. Planning Bd., 51 N.J. 162, 238 A.2d 457 (1968).

80. Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417, 239 N.E.2d 713, 293 N.Y.S.2d 75 (1968); *cf.* Pioneer Trust & Sav. Bank v. County of McHenry, 41 Ill. 2d 77, 241 N.E.2d 454 (1968).

81. *Compare* Pioneer Trust and Sav. Bank v. County of McHenry, 89 Ill. App. 2d 257, 232 N.E.2d 816 (1967), *rev'd on other grounds*, 101 Ill. App. 2d 230, 241 N.E.2d 454 (1968), *with* Nani v. Zoning Bd. of Rev., 242 A.2d 403 (R.I. 1968).

82. Rosedale-Skinker Impr. Ass'n v. Board of Adjustment, 425 S.W.2d 929 (Mo. 1968); Fiore v. Zoning Bd. of App., 21 N.Y.2d 393, 235 N.E.2d 121, 288 N.Y.S.2d 62 (1968).

83. Burke v. Zoning Bd. of Rev., 238 A.2d 50 (R.I. 1968); Tidewater Util. Corp. v. City of Norfolk, 208 Va. 705, 160 S.E.2d 799 (1968).

situation appeal to it.[84] An outstanding example is a New Jersey Supreme Court decision that a variance should be granted unless a binding offer has been made to the owner to buy the lot from him at its fair market value, not less than a specified amount.[85] How this result can be harmonized with the concept of the administration of justice according to law is a task which I do not attempt to perform. Other cases, however, discuss the impropriety of such substitution of the reviewing court's judgment for that of the agency reviewed.[86]

IV. INVESTIGATIVE, GENERAL ADMINISTRATIVE AND RULE MAKING AUTHORITY

A variety of decisions fall within the rubric of investigative, general administrative, and rule making authority. For example, a Massachusetts decision sustained the authority of a city finance commission to investigate the conduct of the financial affairs of the city.[87] Another case, dealing with the performance of executive functions, adjudged that a notice that a probationary appointment would not be made permanent was given in the proper manner.[88] A third example, from Connecticut, emphasized that an executive function, such as the administration of an examination entrusted to a board, must be performed by that body.[89] The principle, of course, applies to all collegiately organized agencies.[90] Most of the current case law in this grouping however, treats of the delegated power to prescribe norms of conduct or, in other words, that which we term rule making.

Obviously, when this power exists, it usually will be vested in a body designated by appropriate statute or ordinance—a body which may initiate action on its own motion. The established custom of the country, in addition to the constitutionally guaranteed right of petition, permits any citizen to invoke the exercise of this authority.

84. Beerman v. City of Kettering, 14 Ohio. Misc. 144, 237 N.E.2d 641 (C.P. 1965), in which the court held the administrative agency's denial of a permit not to be unreasonable and then held that the denial of a variance for the same purpose was not supported by the preponderance of substantial, reliable and probative evidence.

85. Gougeon v. Board of Adjustment, 52 N.J. 212, 245 A.2d 7 (1968).

86. Eschinger v. Bus, 250 Md. 112, 242 A.2d 502 (1968); Paramore v. Brown, 448 P.2d 699 (Nev. 1968).

87. Finance Comm'n v. Basile, 236 N.E.2d 520 (Mass. 1968).

88. Balsinger v. Borough of Zelienopole, 429 Pa. 355, 240 A.2d 807 (1968).

89. Ziomek v. Bartimole, 156 Conn. 604, 244 A.2d 380 (1968).

90. School Dist. No. 39 v. Shelton, 26 Okla. 229, 109 P. 67 (1910); Nason v. Directors of Poor, 126 Pa. 445, 17 A. 616 (1889).

Statutes frequently so provide. However, the right should not be used with vexatious repetition, as a recent decision attests.[91]

If a quorum is available, absent express legislative command, vacancies in the membership of the rule making body do not impair its ability to act.[92] If the agency has both rule making and executive powers, the former may be exercised only in open legislative session, rather than in an executive meeting.[93]

By its very nature, and certainly in the absence of express statutory provision, a "rule" must be formulated in writing.[94] Obviously, rules must yield to a higher law; thus a rule made by a local agency is subordinate to a lawfully promulgated rule of a superior state agency.[95]

Rule making procedure frequently is prescribed by statute.[96] A common requirement is opportunity for a public hearing with due notice.[97] Notice is sufficient if it reasonably apprises the public of the action proposed; detailed description is unnecessary.[98] A meeting duly announced in a notice for a specified time and place is not invalidated by publicly announced recess to a more commodious, nearby hall, necessary to accommodate the crowd in attendance.[99]

In accordance with the norms of the general administrative law,[100] a local agency rule-making hearing, unless governing statutes specifically so command,[101] is not adversary in character and need not be marked by formalities of evidential presentation and rebuttal.[102]

91. Eagle Thrifty Drugs & Markets, Inc. v. Parent Teachers Ass'n, 443 P.2d 608 (Nev. 1968). On rehearing, this decision was overruled, 451 P.2d 713 (Nev. 1969). The result is sound analytically, but regretable practically.

92. Smith v. City of Fort Dodge, 160 N.W.2d 492 (Iowa 1968).

93. Scull v. Citizens League, 249 Md. 271, 239 A.2d 92 (Ct. App. 1968).

94. People v. Fisher, 56 Misc. 2d 1021, 290 N.Y.S.2d 1008 (Justice Ct. 1968).

95. Board of Supervisors v. State Dep't of Social Servs., 58 Misc. 2d 45, 294 N.Y.S.2d 734 (Sup. Ct. 1968).

96. The meaning of statute, as used here, may include municipal ordinance. Sibarco Stations, Inc. v. Town Bd., 29 App. Div. 2d 907, 288 N.Y.S.2d 8 (1968).

97. When a prescription is applicable only for "major" changes, a nice question of statutory construction is raised. *See* Smith v. City of Fort Dodge, 160 N.W.2d 492 (Iowa 1968).

98. Dupont v. Planning and Zoning Comm'n, 156 Conn. 213, 240 A.2d 899 (1968); Passero v. Zoning Comm'n, 155 Conn. 511, 235 A.2d 660 (1967); Blackburn v. Norman Estates, Inc., 232 N.E.2d 442 (Ohio C.P. 1967).

99. Dupont v. Planning and Zoning Comm'n, 156 Conn. 213, 240 A.2d 899 (1968).

100. *E.g.*, Franchise Tax Bd. v. Superior Ct., 36 Cal. 2d 538, 225 P.2d 905 (1950); Montgomery County v. Public Serv. Comm'n, 203 Md. 79, 98 A.2d 15 (Ct. App. 1953); H.F. Wilcox Oil & Gas Co. v. State, 162 Okla. 89, 19 P.2d 347.

101. Willapoint Oysters, Inc. v. Ewing, 174 F.2d 676 (9th Cir. 1949).

102. County of Nassau v. Metropolitan Transp. Authority, 57 Misc. 2d 1025, 293 N.Y.S.2d 1017 (Sup. Ct. 1968); Desloge v. County of St. Louis, 431 S.W. 2d 126 (Mo. 1968).

Delaware, as to zoning rules, seems to rule contrariwise.[103] In any event, the person complaining of defects in the hearing should be required to point out wherein he has been harmed.[104]

Concordantly with the great weight of authority,[105] the analogy to legislation makes inapplicable to a rule making proceeding, even at the local level, the constitutional concept that due process of law vitiates proceedings before a tribunal on which a biased or financially interested party sits.[106]

Again in analogy to legislation, there probably is no time limit on the response of a rule making authority to a petition for action. It is possible that something could be done to rectify an inordinate delay on the established principle that mandamus may be used to compel the exercise of jurisdiction, but the complainant must be able to show that more than a reasonable time within which action should have been taken has elapsed.[107]

Once promulgated, the principle that all persons are charged with notice of legislative enactments is applied to administrative rules.[108] This principle has been extended to the requirements of local administrative bodies.[109]

V. ADJUDICATIVE FUNCTIONS

A. *The Right to a Hearing*

The established constitutional principle that due process of law requires that a hearing be given, upon adequate notice, before interests of life, liberty, or property are infringed upon by administrative

103. Allen v. Donovan, 239 A.2d 227 (Del. Sup. Ct. 1968); Daniel D. Rappa, Inc. v. Hanson, 42 Del. Ch. 273, 209 A.2d 163 (Sup. Ct. 1965). The origin of the doctrine seems to rest in dicta, Shellburne, Inc. v. Roberts, 224 A.2d 250 (Del. Sup. Ct. 1966); McQuail v. Shell Oil Co., 40 Del. Ch. 396, 183 A.2d 572 (1962).

104. Desloge v. County of St. Louis, 431 S.W.2d 126 (Mo. 1968).

105. Miami Laundry Co. v. Florida Dry Cleaning & Laundry Bd., 134 Fla. 1, 183 So. 759 (1938); Downs v. Mayor & Common Council, 116 N.J.L. 511, 185 A. 15 (Err. & App. 1936); Sparks v. State, 72 Okla. Cr. 283, 115 P.2d 277 (Ct. Cr. App. 1941); *cf.* Blankenship v. City of Richmond, 188 Va. 97, 49 S.E.2d 321 (1948). *Compare* Johnson v. Michigan Milk Marketing Bd., 295 Mich. 644, 295 N.W., 346 (1940); People v. Murphy, 364 Mich. 363, 110 N.W.2d 805 (1961).

106. County of Nassau v. Metropolitan Transp. Auth., 57 Misc. 2d 1025, 293 N.Y.S.2d 1017 (Sup. Ct. 1968).Of course, this principle applies to the enactment of ordinances by a municipal legislature. City of Miami Beach v. Schauer, 104 So.2d 129 (D. Ct. App. Fla. 1958).

107. City of Coral Gables v. Sakolsky, 215 So.2d 329 (D. Ct.App. Fla. 1968).

108. *See* 3 M. MERRILL, NOTICE § 1118 (1952).

109. Southern Life & Health Ins. Co. v. Morgan, 21 Ala. App. 5, 105 So. 161, *cert. denied*, 213 Ala. 413, 105 So. 168 (1925).

adjudicatory action applies to local tribunals quite as much as to those of national or statewide jurisdiction. There are certain exceptions, of course, such as the need for prompt action to safeguard such important interests as the public health, safety, security or welfare. The most recent decisions on such agencies, however, have recognized less defensible exemptions, such as that an officer having no guaranty of tenure may be fired summarily[110] or that some disreputable occupations lie outside the pale of due process.[111] Of course, the right to hearing may be granted expressly by statute,[112] affording a basis for the nullity of the proceedings if it is denied.[113]

Hearing may be waived at the election of the respondent; waiver may be signified by a failure to demand it within a fixed time after notification of the proposed action is given,[114] and there is authority that a concession of the existence of the conditions justifying the order that was entered has a similar effect.[115] A purported action without hearing is cured by a hearing accorded in fact before the action is made final.[116] Applicable statutes[117] and the jurisdictional ordinances of the municipality[118] itself must be followed faithfully in determining the basis for hearings to which these enactments apply. The respondent may terminate the hearing by a dismissal; the voluntary resignation of a public employee by agreement in settlement of a proceeding for his removal is such a termination.[119] The repeal of an ordinance under which an administrative proceeding was commenced terminates the proceeding, in the absence of a savings clause.[120]

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110. Ocean-Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div. 2d 447, 294 N.Y.S.2d 134 (1968).

111. Barlotta v. Jefferson Parish Council, 212 So. 2d 220 (La. App. 1968). For a critique of this heresy, from another viewpoint, see M. MERRILL, CASES AND MATERIALS ON ADMINISTRATIVE LAW 56 (1954).

112. City of New Haven v. Le Fever, 238 N.E.2d 487 (Ind. App. 1968) (removal of officer); J.D. Constr. Corp. v. Isaacs, 51 N.J. 263, 239 A.2d 657 (1968).

113. State *ex rel.* Linger v. Board of Educ., 163 S.E.2d 790 (W. Va. 1968) (right to hearing implied from teachers's right to notice of recommended assignment).

114. Beckwith v. School Administrative Dist. No. 2, 243 A.2d 62 (Me. 1968).

115. Newbury Disposal, Inc. v. Newbury Tp. Trustees, 15 Ohio St. 2d 113, 238 N.E.2d 779 (1968).

116. Snider v. School Dist. R-1, 442 P.2d 429 (Colo. 1968).

117. Finn v. Planning and Zoning Comm'n, 156 Conn, 540, 244 A.2d 391 (1968); City of New Haven v. Le Fever, 238 N.E.2d 487, (Ind. App. 1968); Verrill v. Daley, 126 Vt. 444, 236 A.2d 238 (1967).

118. *See* Fitzgerald v. Salt Lake County, 449 P.2d 653 (Utah 1969).

119. Cedar v. Commissioner of Educ., 30 App. Div. 2d 882, 291 N.Y.S.2d 719 (1968).

120. Kent v. Zoning Bd. of Rev., 236 A.2d 124 (R.I. 1967).

B. *Notice*

The concept of due process requires notice to the party to be affected by administrative adjudication. Normally, this notice accomplishes two purposes: it notifies the respondent that proceedings have been brought which he should defend;[121] and it gives him information concerning the issues that are tendered as the basis for the claimed relief.[122] Charges not specified[123] or not adequately indicated[124] cannot be made the basis for a determination. However, allowance of time for adequate defense will cure deficiencies in the charge.[125]

Service of the notice obviously is essential to the proper performance of both its functions. If governing law is silent, the inference is that it must be personal—formally brought to the respondent in some way.[126] However, by statute, a variety of substitutes may be employed.[127] The constitutional touchstone, as to all, is that, where interests of life, liberty or property are at stake, the method that, under the circumstances, offers the best chance of reaching the noticee be employed.[128] The reports examined in the preparation of this article reveal but one decision touching on the subject, and that decision merely sustained the propriety of use of a Sunday newspaper to satisfy a statutory direction for published notice not containing a specification respecting a particular day of the week.[129] One would expect to see the courts continue their custom of applying to local tribunals the same requirements that they impose upon agencies of more generalized jurisdiction, since there seems to be nothing either in the more restricted competence or in the more limited resources of the

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121. Will v. City of Herington, 201 Kan. 627, 443 P.2d 667 (1968); J.D. Constr. Corp. v. Isaacs, 51 N. J. 263, 239 A.2d 657 (1968).

122. City of New Haven v. LeFever, 238 N.E.2d 487 (Ind. Ct. App. 1968); Will v. City of Herington, 201 Kan. 627, 443 P.2d 667 (1968); Glenn v. Board of County Comm'rs, 440 P.2d 1 (Wyo. 1968) (under model state administrative procedure act).

123. Nordstrom v. Hansford, 435 P.2d 397 (Colo. 1967).

124. Melikian v. Berman, 58 Misc. 2d 178, 294 N.Y.S.2d 783 (Sup. Ct. 1968).

125. *Cf.* Civil Serv. Bd. v. Page, 2 N.C. App. 34, 162 S.E.2d 644 (1968). A characterization of an act, by a witness, is not the interjection of a new charge based on the characterization, where all the agency action is directed at the original charge. Bennett v. Price, 446 P.2d 419 (Colo. 1968).

126. For a general review, *see* 1 M. MERRILL, NOTICE §§ 600-26 (1952).

127. For discussion, *see* 1 & 2 M. MERRILL, NOTICE §§ 627-44 (mail) 645-93 (publication) 694-713 (posting) (1952).

128. The basic decision for modern law is Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), dealing with process, not notice, but the principle is the same.

129. Oeth v. Felty, 421 S.W.2d 860 (Ky. 1967).

local administrators to call for modification. Finally, it should be observed that statutes sometimes require notice to persons who might not come within the range of constitutional entitlement thereto.[130]

With respect to the second function of the notice in disciplinary proceedings—information as to the nature of the issues to be presented—the charges should be specific as to essentials.[131] However, such minor faults as including an accusation of "general inefficiency" along with specifications of particular defaults whereon the hearing centered[132] or making a multiplicity of irrelevant charges,[133] are harmless. One holding that rejects "stale" charges of misconduct probably is attributable to the court's belief that, in the particular instance, persecution rather than prosecution was involved.[134]

C. *The Nature of the Hearing*

Statutory provisions often determine who shall institute proceedings. The two decisions on this topic relating to local agencies stand for liberality in the construction and application of these provisions.[135] Concerning the general source of procedural requirements, however, one court has evinced a rather technical attitude in holding that a statute governing revocation of a license does not cover the action of the agency in declining to renew a license for the conduct of an established business.[136]

The nature of the hearing to be accorded is governed by the nature of the proceedings. Even in actions essentially adjudicative, the

130. J.D. Constr. Corp. v. Isaacs, 51 N.J. 263, 239 A.2d 657 (1968), affords one example of the enforcement of such a requirement. In Jeffrey v. Platting Bd. of Rev., 239 A.2d 731 (R.I. 1968), the court denied the necessity of notification of a hearing on the sufficiency of a plat, as to persons not specified in the statute.

131. State Tenure Comm'n v. Board of Educ., 282 Ala. 658, 213 So. 2d 823 (1968); City of San Antonio v. Poulos, 422 S.W.2d 140 (Tex. 1967). The respondent's clearly apparent understanding of the charges rebuts his claim of vagueness and ambiguity in form. O'Bryant v. Theobald, 421 S.W.2d 571 (Ky. 1967).

132. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968).

133. Lantini v. Daniels, 247 A.2d 298 (R.I. 1968).

134. State Tenure Comm'n v. Board of Educ., 282 Ala. 658, 213 So. 2d 823 (1968).

135. Fleming v. Myers, 15 Ohio Misc. 205, 240 N.E.2d 511 (C.P. 1968) (county commissioners, as superior officers over department of welfare, could initiate proceedings to dismiss an employee for cause, although statute places county director of welfare in "full charge" of the department); Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968) (minor variation in procedure).

136. State *ex rel.* Ruffalo v. Common Council, 38 Wis. 2d 518, 157 N.W.2d 568 (1968). *But cf.* Walker v. City of Clinton, 244 Iowa 1099, 59 N.W.2d 785 (1953); Gilchrist v. Bierring, 234 Iowa 899, 14 N.W.2d 724 (1944).

whole panoply of a trial-type hearing is not always demanded.[137] In quite a number of the cases examined on this proposition, the courts were content to avoid analysis by unsatisfactorily and arbitrarily characterizing the proceedings as "legislative" or "quasi-legislative."[138] In most of these cases it seemed that the task performed by the agency was essentially adjudicative in the sense that it involved application of legal norms to the interests of individuals. The true teaching of these decisions, it seems to me, is that the nature of adjudication may be adapted to the object of the investigation and the objectives to be accomplished, with "[d]ue regard to the nature of the proceeding and the individual right affected by it."[139] For some, an informal consultation may be adequate.[140] In others, more formality may be necessary, yet the hearing still may be of the town meeting, informal discussion, question and answer type, without formal posing of issues, presentation of evidence and like accoutrements of judicial-type hearings.[141] In others, legislative history and statutory language may combine to compel a more searching trial-type hearing than, at first blush, the nature of the investigation might appear to entail.[142] Obviously, express statutory direction as to procedure must be heeded.[143] If the laws permit the agency to formulate procedural rules

137. United States v. Nugent, 346 U.S. 1 (1953) (exigencies of raising armed forces may modify nature of hearing given on classification of registrants); Madora v. Board of Educ., 386 F.2d 778 (2d Cir. 1967) (pupil suspension; representation by counsel).

138. Katz v. Brandon, 156 Conn. 521, 245 A.2d 579 (1968) (determination to take property by eminent domain and to fix damages); Chevy Chase Village v. Board of App., 249 Md. 334, 239 A.2d 740 (1968) (dictum, as to application for building permit); State *ex rel.* Ruffalo v. Common Council, 38 Wis. 2d 518, 157 N.W.2d 568 (1968) (grant of liquor license; testimony under oath, cross examination). In one case holding that adversary trial-type incidents, such as cross-examination of witnesses, inspection of documents, and presentation of evidence on one's own part, along with disclosure of basis on which action is taken, are not required in subdivision plan approval, the court justified its position on the ground that the action was neither legislative, judicial nor quasi-judicial. Forest Constr. Co. v. Planning and Zoning Comm'n, 155 Conn. 669, 236 A.2d 917 (1967).

139. Katz v. Brandon, 156 Conn. 521, 245 A.2d 579 (1968).

140. Madora v. Board of Educ., 386 F.2d 778 (2d Cir. 1967) (suspension of school student); Municipal Housing Auth. v. Meade, 58 Misc. 2d 25, 294 N.Y.S.2d 606 (Yonkers City Ct. 1968) (public housing authority's notice of reasons for seeking tenant's eviction and latter's opportunity for reply).

141. Forest Constr. Co. v. Planning and Zoning Comm'n, 155 Conn. 669, 236 A.2d 917 (1967); Katz v. Brandon, 156 Conn. 521, 245 A.2d 579 (1968); Chevy Chase Village v. Board of App., 249 Md. 334, 239 A.2d 740 (1968).

142. Jeffersonville Redev. Comm'n v. City of Jeffersonville, 229 N.E.2d 825 (Ind. 1967), *cited with approval*, Derloshon v. City of Fort Wayne, 234 N.E.2d 269 (Ind. 1968).

143. Murphy v. Police Bd., 94 Ill. App. 2d 153, 236 N.E.2d 344 (1968) (foreign decisions under differently worded statutes have little authority in applying local statutes; amendment

of its own, the rules must be observed[144] unless it has also been accorded permission to waive them.[145] Generally the view is that adjudication may proceed "with all deliberate speed," but if a statute specifies the period wherein decision must be achieved, the agency may not extend this limit by the device of creating preliminary applications of a sort unknown to the enactment.[146]

Parties to a proceeding must have the necessary standing.[147] Under some zoning statutes, standing is achieved by filing a written protest against action under consideration.[148] The equivalent of a special appearance has been recognized without specific statutory command. When a building inspector erroneously ruled that a special permit was necessary for certain construction the court held that application for the permit did not waive the question of the applicant's right to operate without a permit.[149] Also, without enactment, and solely as the consequence of its authorization to hear, an agency may consider interdependent proposals together, though it may act separately upon them.[150]

D. *Conditions which Disqualify an Administrator*

In general, one of the more troublesome problems of administrative law arises out of the due process requirement in proceedings involving interests of liberty or property that adjudicators must not be prejudiced by conditions so destructive of their impartiality as to

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permitting hearing to be conducted by one member of board is procedural and applies to validate such a hearing in a pending proceeding); Rotenberry v. Renfro, 214 So. 2d 275 (Miss. 1968) (separation of issues required by statute); Isko v. Planning Bd. 51 N.J. 162, 238 A.2d 457 (1968) (neeessary recommendations, preliminary to adjudieation, must be made); Nichol v. Planning Bd., 28 App. Div. 2d 1077, 285 N.Y.S.2d 647 (1967) (prescribed information on application for building permit; lack vitiates effect of application); Sheldon v. Stabile, 57 Misc. 2d 407, 293 N.Y.S.2d 3 (Sup. Ct. 1968) (removal proceedings must comply with law). Delay and silence, while action is taken in reliance on administrative decision, may estop one from seeking a rehearing in reliance on a procedural defect. Oeth v. Felty, 421 S.W.2d 860 (Ky. 1967).

144. Williams v. Mayor & Bd. of Aldermen, 118 Ga. App. 271, 163 S.E.2d 239 (1968).

145. Garner v. Lumberton Independent School Dist., 430 S.W.2d 418 (Tex. Civ. App. 1968). A rule made obsolete by statutory change loses binding quality even though not formally repealed or waived. Nelson v. Board of Examiners, 21 N.Y.2d 408, 235 N.E.2d 433 (1968), *following*, Goldberg v. Board of Examiners, 28 App. Div. 2d 533, 279 N.Y.S.2d 427 (1967).

146. Finn v. Planning and Zoning Comm'n, 156 Conn. 540, 244 A.2d 391 (1968).

147. Packham v. Zoning Bd. of Rev., 238 A.2d 387 (R.I. 1968) (necessity that applicant for zoning exception have some right, title or interest in land).

148. Baxter v. Board of App., 248 Md. 111, 235 A.2d 536 (1967).

149. Colonial Sand & Stone Co. v. Johnston, 20 N.Y.2d 964, 233 N.E.2d 858, 286 N.Y.S.2d 855 (1967).

150. Norris v. Planning and Zoning Comm'n, 156 Conn. 592, 244 A.2d 378 (1968).

prevent a fair hearing. The matter is rarely covered in state administrative procedural acts, and both versions of the Model State Administrative Procedure Act omit any reference thereto. As a result, courts are confronted with the necessity of developing, with no more specific guideline than the concept of due process, not only the definition of a disqualifying condition, but also the remedy which can be afforded when one faces or has faced a disqualified administrator.[151]

Obviously, as to the problem of the disqualified administrator at the local agency level, in view of the sketchy form of most of the legal framework under which local agencies operate, the odds are against the existence of much in the way of statutory guidelines. This assumption is confirmed by a number of recent cases touching upon the problem area in one form or another. In few cases was a statute of any aid in arriving at a solution.

The first problem is defining the grounds of disqualification. If the statute prescribes a qualification or a manner of appointment, and it is disobeyed, the case is simple. The improperly designated adjudicator is disqualified and the hearing conducted by him, or by a college of which he is a necessary member, is vitiated.[152] In one case, however, harmless error was invoked to save the decision where the respondent had expressly agreed to proceed before the tribunal and the basic facts were not in dispute.[153] In a few other instances, statutory grounds of disqualification existed in terms applicable to the local tribunals involved.[154] This is not true if, as is frequently the case, the agency, or some member thereof, is asked to make a preliminary investigation to determine whether, prima facie, enough factual foundation exists so that a proceeding should be instituted. This preliminary investigation and tentative conclusion is not a circumstance compelling disqualification.[155] Similarly, a prior

151. See Merrill, *Oklahoma's New Administrative Procedure Act*, 17 OKLA. L. REV. 1, 33 (1964), for a discussion of the general situation. Note FLA. STAT. ANN. § 120.09 (Supp. 1969) which does contain a procedure that can be made applicable to local agencies. State *ex rel.* Allen v. Board of Pub. Instruction, 214 So. 2d 7 (Fla. Ct. App. 1968).

152. Nordstrom v. Hansford, 435 P.2d 397 (Colo. 1968).

153. Independent School Dist. No. 316 v. Eckert, 161 N.W.2d 692 (Minn. 1968).

154. RK Corp. v. City of Norwalk, 242 A.2d 781 (Conn. 1968) (city commission acted in capacity which court held to be same as planning commission; CONN. GEN. STAT. ANN. § 8-21 (1966) (forbade member of planning commission to be interested directly or indirectly in matter before commission); State *ex rel.* Allen v. Board of Pub. Instruction, 214 So. 2d 7 (Fla. Ct. App. 1968).

155. Fleming v. Myers, 15 Ohio Misc. 205, 240 N.E.2d 511 (C.P. 1968); Jarvella v. Board of Educ., 12 Ohio Misc. 288, 233 N.E.2d 143 (C.P. 1967); *cf.* Wilson v. Municipal Water Dist., 63 Cal. Rptr. 889 (Ct. App. 1968).

acquaintance with some facets of the matter to be decided, not bearing on the point at issue, does not disqualify the adjudicator.[156]

The rule typically is stated that an interest which will disqualify an adjudicator must be a direct, personal, pecuniary interest.[157] By statute, at least, the interest may be an indirect interest through one's spouse.[158] Close relationship to a party or counsel in the matter disqualifies an adjudicator without need of statute;[159] indeed, one case, in effect, applied this principle when a member of the tribunal's appointing authority appeared before the tribunal on behalf of a relative and other parties.[160]

The possession of "vital information" bearing specifically upon the issues by a hearing officer who refused either to disqualify or to give testimony in the matter has been held to vitiate the proceeding.[161] This decision is also probably related to the rule forbidding adjudication to rest upon the tribunal's personal knowledge, not made a part of the record, although the court may have regarded such conduct as an indication that the officer had prejudged the issues.

The second problem of disqualification is the nature of available remedies. Ideally, there should be a regularized procedure created by statute, whereby the claimed disqualification could be raised as soon as it was discovered. Such procedure is rare, however, even among statewide agencies, and it is almost unknown in respect to local agencies. In Florida, a statute has been given application to county boards of education, but only on the theory that they are state agencies.[162] The statutory language seems broad enough to include municipal agencies, but the court did not rest its decision on that basis. In Connecticut, there is a specific remedy provision limited to zoning matters.[163] In the absence of a statutory remedy no recourse is available unless participation of the disqualified official is held to vitiate the determination.[164] Of course, in the absence of statute

156. Katz v. Brandon, 156 Conn. 521, 245 A.2d 579 (1968); Atherton v. City of Concord, 245 A.2d 387 (N.H. 1968).

157. *E.g.*, Atherton v. City of Concord, 245 A.2d 387 (N.H. 1968).

158. RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968).

159. Kremer v. City of Plainfield, 101 N.J. Super. 346, 244 A.2d 335 (1968). The court relies heavily on the duty resting specifically on judges, by statute and by rule of court.

160. Barky v. Nick, 11 Mich. App. 381, 161 N.W.2d 445 (1968).

161. Cross v. Pearsall, 29 App. Div. 2d 553, 286 N.Y.S.2d 136 (1967).

162. State *ex rel.* Allen v. Board of Pub. Instruction, 214 So. 2d 7 (Fla. Ct. App. 1968).

163. *Cf.* RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968).

164. *Id.*; Barky v. Nick, 11 Mich. App. 381, 161 N.W.2d 445 (1968); Kremer v. City of Plainfield, 101 N.J Super. 346, 244 A.2d 335 (1968); Cross v. Pearsall, 29 App. Div. 2d 553, 286 N.Y.S.2d 136 (1967).

allowing the recusation of a member simply by filing an affidavit, merely charging the existence of disqualification, without proof, will not suffice to gain relief of any sort.[165] A spurious "rule of necessity," refusing to attach nullity if the officer's recusal would destroy the tribunal, is now widely used, such as in a recent case denying an attack on the grant of a special use permit to a corporation in which members of the administrative board owned stock.[166] At least one other case seems to conflict with this view,[167] and it would seem preferable to hold invalid, as a denial of due process of law, a statutory scheme that makes no adequate provision for disqualification and replacement in such situations.[168] Where there is an unperformed duty to recuse, a writ of prohibition against further proceeding is an appropriate remedy.[169]

E. *Conduct of the Hearing*

Most general administrative procedure acts and a large proportion of the statutes organizing administrative bodies on a statewide basis will contain more or less extensive provisions governing the conduct of the hearing, once it gets under way. For reasons already explained, however, there are few instances in which these aids are available in respect to the local administrative agencies. Occasionally, a zoning law or a governmental personnel statute will contain a provision relating to the conduct of proceedings. For the most part, however, the courts can only infer the rules from a grant of authority to decide, or to conduct a hearing, supported by the ever-abiding foundation of due process of law. Despite this general lack of procedural specification, the courts seem to have little difficulty in policing the conduct of hearings and in supervising their end products, the administrative orders. The cases surveyed indicate that the results reached do not depart greatly from the principles which govern the conduct of the statewide agencies in the absence of specific statute.

The basic proposition, resting on the principle of due process, is that the hearing must be fundamentally fair.[170] Occasionally, this principle seems to be disparaged, as by a decision to "technically construe" the requirement that one may not complain of the denial of

165. Jarvella v. Board of Educ., 12 Ohio Misc. 288, 233 N.E.2d 143 (C.P. 1967).
166. Gonsalves v. City of Dairy Valley, 71 Cal. Rptr. 255 (Ct. App. 1968).
167. Barky v. Nick, 11 Mich. App. 381, 161 N.W.2d 445 (1968).
168. *See* Merrill, *supra* note 151 at 34.
169. State *ex rel.* Allen v. Board of Pub. Instruction, 214 So. 2d 7 (Fla. Ct. App. 1968).
170. Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).

a continuance unless he has placed in the record a formal and proper motion seeking the extension.[171] Other courts have been liberal, allowing adjustment for the size of the chambers wherein the contest is to be heard and the number of attendants desiring to be present.[172] Absent statutory authority, an administrative agency's right to disallow a petitioner to withdraw his application without leave was once denied in a federal *cause celebre*.[173] However, as to a request to transfer a liquor license, this right has now been affirmed.[174] Even the commencement of a session at one in the morning that eventually lasted five hours has been held not an abuse of discretion, in the absence of proof of harm by the objecting party.[175]

Local agency power to compel testimonial and other evidence, in aid of investigation and adjudicative functions, did not bring much grist to the judicial mill during the period under investigation. The most obvious reason is that legislatures rarely confer this power on parochial functionaries, and judges are reluctant to read it into grants of authority simply to investigate or decide.[176] When conferred by enactment, the courts today tend to enforce the power ungrudgingly,[177] subject to such restrictions as seem necessary to prevent oppressive use.[178] There is no apparent tendency to distinguish between local and statewide agencies.

The somewhat related question of the availability of discovery procedures,[179] in the absence of enacted law, has not received much attention in the cases surveyed. The only two decisions found relate to alleged unfairness in not making available to a respondent in disciplinary proceedings material in the agencies' possession. In each instance, the court, with apparent reason, found that no unfairness had been demonstrated.[180]

F. *Evidence*

Normally, as one might expect, adjudication must be based upon evidence.[181] With such a truism, it is surprising how many cases

171. Williams v. Mayor & Bd. of Aldermen, 118 Ga. App. 271, 163 S.E.2d 239 (1968).
172. Gibson v. Board of Zoning App., 250 Md. 292, 242 A.2d 137 (1968).
173. Jones v. SEC, 298 U.S. 1 (1936).
174. Beacon Restaurant, Inc. v. Adamo, 241 A.2d 291 (R.I. 1968).
175. Williams v. Mayor & Bd. of Aldermen, 118 Ga. App. 271, 163 S.E.2d 239 (1968).
176. *See* Jewell v. McCann, 95 Ohio St. 191, 166 N.E. 42 (1917).
177. Finance Comm'n v. Basile, 236 N.E.2d 520 (Mass. 1968).
178. Weintraub v. Fraiman, 30 App. Div. 2d 784, 291 N.Y.S.2d 438 (Sup. Ct. 1968).
179. *See* 1 F. COOPER, STATE ADMINISTRATIVE LAW 316-21 (1967).
180. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968); Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).
181. Raposo v. Zoning Bd. of Review, 243 A.2d 99 (R.I. 1968). A brief is not "evidence". Civil Serv. Bd. v. Page, 2 N.C. App. 34, 162 S.E.2d 644 (1968).

involve reversals of agencies for default in this regard.[182] Generally, these cases involve merely overlooking a want of proof on some relatively narrow, though essential point.[183] An adjunct to the necessity for taking evidence is the opportunity for reasonable cross-examination in appropriate situations,[184] regardless of whether statutes or rules make any provision on the subject.[185] This right may be waived by a failure to demand the opportunity.[186] The burden of proof is upon the one seeking action, whether the agency[187] or a "suitor."[188]

Closely related to this problem of burden of proof in the persuasional sense are the questions of the kind of evidenee the agencies may consider and the propriety of so-called official notice—something that goes beyond the bounds of conventional judicial notice.[189] Broadly speaking, in the absence of statute, three rules have developed.[190] First, agencies must follow the rules of admissibility developed for trials at common law. Second, agencies are not bound to follow the common law, but may admit and credit whatever qualifies as that "on which responsible persons are accustomed to rely in serious affairs."[191] This is the so-called

182. *See* Box v. Board of Bldg. Standards and Bldg. App., 15 Ohio Misc. 17, 238 N.E.2d 578 (1968); Pellini v. Zoning Bd. of Rev., 238 A.2d 744 (R.I. 1968); Iannuccillo v. Zoning Bd. of Rev., 236 A.2d 253 (R.I. 1967).

183. Nordstrom v. Hansford, 435 P.2d 397 (Colo. 1968); Cutright v. Civil Serv. Comm'n, 90 Ill. App. 2d 289, 232 N.E.2d 312 (1967); Brady v. City of New York, 22 N.Y.2d 601, 241 N.E.2d 236, 294 N.Y.S.2d 215 (1968).

184. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968) (not unreasonable to restrict cross-examination on collateral issues). Where the hearing is of the town meeting type, formal opportunity for cross-examination is not required, if those interested and their counsel are given opportunity to sound off at length and to have their questions answered. Katz v. Brandon, 156 Conn. 521, 245 A.2d 579 (1968). One court has denied the necessity of cross-examination by applying to the adjudication the epithet "legislative", State *ex rel.* Ruffalo v. Common Council, 38 Wis. 2d 518, 157 N.W.2d 568 (1968).

185. Wadell v. Board of Zoning App., 136 Conn. 1, 68 A.2d 152 (1949); Westminister Corp. v. Zoning Bd. of Rev., 238 A.2d 353 (R.I. 1968); City of Spartanburg v. Parris, 161 S.E. 2d 228 (S.C. 1968).

186. Gibson v. Board of Zoning App., 250 Md., 292, 242 A.2d 137 (1968).

187. State Tenure Comm'n v. Board of Educ., 213 So. 2d 823 (Ala. 1968); Box v. Board of Bldg. Standards & Bldg. App., 15 Ohio Misc. 17, 238 N.E.2d 578 (1968).

188. Dolan v. Zoning Bd. of App., 156 Conn. 426, 242 A.2d 713 (1968); Reagan v. Heintz, 246 A.2d 710 (Del. Super. Ct. 1968); Pioneer Trust & Sav. Bank v. County of McHenry, 89 Ill. App. 2d 257, 232 N.E.2d 816 (1967), *rev'd on other grounds*, 101 Ill. App. 2d 230, 241 N.E.2d 454 (1968); Board of County Comm'rs v. Luria, 249 Md. 1, 238 A.2d 108 (1968); Coronet Homes, Inc. v. McKenzie, 439 P.2d 219 (Nev. 1968); Raposo v. Zoning Bd. of Rev., 243 A.2d 99 (R.I. 1968); Iannuccillo v. Zoning Bd. of Rev., 236 A.2d 253 (R.I. 1967).

189. *See* 1 F. COOPER, STATE ADMINISTRATIVE LAW 404 (1965); Gellhorn, *Official Notice in Administrative Adjudication*, 20 TEX. L. REV. 131 (1931).

190. For a more detailed survey of the authorities, see Merrill, *Hearing and Believing: What Shall We Tell the Administrative Agencies?* 45 MINN. L. REV. 525 (1961).

191. See NLRB v. Remington Rand, Inc., 94 F.2d 862, 873 (2d Cir. 1938).

"substantial evidence" or in better terms, the "convincing evidence" rule. Finally, there is the pseudo-liberal rule that any evidence may be accepted, but that each necessary finding of fact must be supported by some "residuum" of common law competent evidence, however fragile a smidgen it may be.

As discussed earlier, rarely are there statutory provisions applicable to local agencies, and no decisions turning on provisions of this sort have been found in the materials examined for this article.[192] Of course, in those jurisdictions enacting one of the two versions of the Model State Administrative Procedure Act to apply to local agencies, its provisions governing evidence will apply. The reported cases, however, do not shed clear light on what happens in the absence of statute. Missouri appears to approve the residuum rule.[193] Results in Illinois,[194] Maryland,[195] Massachusetts,[196] Rhode Island,[197] and perhaps Louisiana [198] appear consistent with the convincing evidence rule. There seems no intimation that the rules applicable to local agencies should differ from those governing tribunals of statewide competence.

Generally, the courts seem insistent that testimony be under oath.[199] Quite a number of cases concerned minutiae such as the latitude with which the trier of fact may weigh the failure to produce

192. According to one case, a charter provision that the zoning board shall not be bound by technical rules of evidence is declaratory only, since the same rule would obtain even without legislation. Neuman v. City of Baltimore, 251 Md. 92, 246 A.2d 583 (1968).

193. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968) (improper to admit hearsay but reception doesn't call for reversal, if sufficient competent evidence to sustain decision).

194. Western Pride Builders v. City of Berwyn, 240 N.E.2d 269 (Ill. Ct. App. 1968) (statement in letter).

195. Neuman v. City of Baltimore, 251 Md. 92, 246 A.2d 583 (1968) (landlord's hearsay repetition of statment of tenant as to locale from which patronage came); Montgomery County Council v. Shiental, 249 Md. 194, 238 A.2d 912 (1968) (reporting of zoning body's technical staff has probative value).

196. Johnson Products, Inc. v. City Council, 353 Mass. 540, 233 N.E.2d 316 (1968) (view, exhibits, common knowledge in community).

197. Pellini v. Zoning Bd. of Rev., 238 A.2d 744 (R.I. 1968). In repelling unsworn statement of counsel as evidence, court seems to recognize that evidence having "probative force" would be proper. Note also the liberality as to official notice in Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).

198. Barlotta v. Jefferson Parish Council, 212 So. 2d 220 (La. App. Ct. 1968) (denial of liquor license may be on such investigation as council deems necessary).

199. Bowler's Inc. v. Liquor Control Comm'n, 97 Ill. App. 2d 403, 240 N.E.2d 369 (1968) (also questionable whether presented as testimony); Box v. Board of Bldg. Standards & Bldg. App. 15 Ohio Misc. 17, 238 N.E.2d 578 (1968); Pellini v. Zoning Bd. of Rev., 238 A.2d 744 (R.I. 1968); *But cf.* Barlotta v. Jefferson Parish Council, 212 So. 2d 220 (La. Ct. App. 1968); Johnson Products, Inc. v. City Council, 353 Mass. 540. 233 N.E. 2d 316 (1968).

an available material witness,[200] or the application of general evidence statutes, such as the Uniform Business Records as Evidence Act.[201] The propriety of expert opinion evidence is often questioned as dependent upon the witnesses proven expertise[202] or lack thereof[203] or upon the background of specific factual data relevant to the case at bar which forms the basis for expert testimony.[204] Whether the subject is one upon which the view of an expert is needed has also been raised.[205]

G. *Official Notice*

Several cases have questioned the extent to which official notice may be employed such as in resort to matters not of record, as a basis for decision. The due process ideal of procedural fairness requires that, before the proceeding is closed, all the information which could be used as a basis for decision should be publicly introduced as part of the material before the tribunal.[206] Otherwise, affected parties would have no real opportunity to present all the possible arguments in their favor, and to have these arguments considered by the tribunal. Of course, for any matter about which there should be no substantial dispute, short-cutting proof by the use of judicial notice has always been proper.[207] In addition, with or without the benefit of statute, courts generally permit administrative agencies to notice officially matters of specialized learning related to the field in which the particular agency operates. Obviously, however, the exercise of this privilege should also be called to the attention of affected parties, so they may have an opportunity to make such representations as may seem helpful. Provided the above conditions are observed, an agency may take official notice of views by the agency,[208] information accrued to it at prior stages of the

200. Lantini v. Daniels, 247 A.2d 298 (R.I. 1968).

201. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968).

202. Lantini v. Daniels, 247 A.2d 298 (R.I. 1968)(general practitioner may testify as to psychiatric matters).

203. Burke v. Zoning Bd. of Rev., 238 A.2d 50 (R.I. 1968).

204. Coupe v. Zoning Bd. of Rev., 241 A.2d 821 (R.I. 1968).

205. Forest Constr. Co. v. Planning and Zoning Comm'n, 155 Conn. 669, 236 A.2d 917 (1967).

206. *Cf.* Norris v. Planning and Zoning Comm'n, 156 Conn. 592, 244 A.2d 378 (1968); Dolan v. Zoning Bd. of App., 156 Conn. 426, 242 A.2d 713 (1968); Allen v. Donovan, 239 A.2d 227 (Del. 1968); Newbrand v. City of Yonkers, 285 N.Y. 164, 33 N.E.2d 75 (1941).

207. *Cf.* UNIFORM RULES OF EVIDENCE 10-12.

208. Johnson Products, Inc. v. City Council, 353 Mass. 540, 233 N.E.2d 316 (1968).

proceedings,[209] the rules or ordinances under which it functions,[210] and even matters of common knowledge in the community wherein it operates.[211]

One is hard put, however, to justify decisions which seem to uphold secret receipt of post hearing evidence, unless the material received can be treated as merely supplemental to that which the persons affected already have had the opportunity to meet.[212] Resort to the agency's undisclosed knowledge can never be condoned.[213] Resort to notice of the agency's files and the information therein may be the duty as well as the privilege of the agency, in so far as this resort is essential to the adequate performance of its duty of decision.[214] It has been ruled, upon what seems very sound reasoning, that the rules or ordinances governing an agency, properly noticed by it, also are subject to notice by a reviewing court, despite the fact the same rules or ordinances might not have been eligible for notice in a judicially initiated proceeding.[215]

H. *Findings and Adjudication*

The decision of the tribunal should be based on the evidential and other qualified material before it. An unauthorized stipulation by an attorney cannot serve as such a basis.[216] Obviously, opportunity must be given for the presentation of a record adequate for judicial review.[217] In the absence of specific enactment,[218] however, the clear trend is to hold that stenographic records of the proceedings need not be prepared;[219] it is sufficient if an adequate summation is made

209. Forest Constr. Co. v. Planning and Zoning Comm'n, 155 Conn. 669, 236 A.2d 917 (1967).

210. Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).

211. Johnson Products, Inc. v. City Council, 353 Mass. 540, 233 N.E.2d 316 (1968).

212. *See* Hawkes v. Town Plan and Zoning Comm'n, 156 Conn. 207, 240 A.2d 914 (1968).

213. *See* Barlotta v. Jefferson Parish Council, 212 So. 2d 220 (La. Ct. App. 1968).

214. Brady v. City of New York, 22 N.Y.2d 601, 241 N.E.2d 236, 294 N.Y.S.2d 215 (1968).

215. *See* Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).

216. Rossi v. School Comm'n, 237 N.E.2d 680 (Mass. 1968).

217. *See* State *ex rel.* Ruffalo v. Common Council, 38 Wis. 2d 518, 157 N.W.2d 568 (1968).

218. Iannuccillo v. Zoning Bd. of Rev., 4 Conn. Cir. Ct. 516, 236 A.2d 353 (1967), and Wallace v. Murphy, 21 N.Y.2d 433, 235 N.E.2d 759, 288 N.Y.S. 2d 613 (1968), afford examples of decisions under such statutes.

219. *See* Dipietro v. City of Nashua, 246 A.2d 695 (N.H. 1968); Nelson v. Board of Exam'rs of Bd. of Educ., 21 N.Y.2d 408, 235 N.E.2d 433, 288 N.Y.S.2d 454 (1968).

available.[220] Indeed, since no record need be prepared, the burden of furnishing one may be placed on the party seeking review.[221] The existence of two records, one a full transcript of the proceedings and the other a "re-cap" in summary form, is not so confusing or impeditive of review as to vitiate the proceedings.[222]

As a means to effective review of agency action and to implement the standards imposed for agency guidance, our administrative law lays great weight upon the need for the expression of findings upon all essential issues of fact. This procedure is invoked whether required by statute or not.[223] As to local tribunals, for example, decisions were rested on the Model Administrative Procedure Act,[224] on specific provisions of governing statutes or ordinances,[225] or on the basic inference from the jurisdiction to hear and decide.[226] Moreover, to insure that the objective behind the requirement of findings is achieved, decisions require that the findings be specific[227] and definite.[228] A mere parroting of the language of the statutory standard[229] is insufficient,[230] or is a general conclusion,[231] unless the issue is so narrow that such a general statement adequately depicts the

220. *See* Nelson v. Board of Exam'rs of Bd. of Educ., 221 N.Y.2d 408, 235 N.E.2d 433, 288 N.Y.S.2d 454 (1968).

221. Iannuccillo v. Zoning Bd. of Rev., 4 Conn. Cir. Ct. 516, 236 A.2d 353 (1967); *In re* Gruber, 89 Okla. 148, 214 P. 690 (1923). *But see* Johnson v. Village of Cohasset, 263 Minn. 425, 116 N.W. 2d 692 (1962).

222. First Nat'l Bank v. Sheehan, 57 Misc. 2d 311, 292 N.Y.S. 2d 733 (Sup. Ct.), *aff'd*, 30 App. Div. 2d 912, 292 N.Y.S.2d 741 (1968).

223. *See* 2 COOPER, STATE ADMINISTRATIVE LAW 465-72 (1965).

224. *See* Glenn v. Board of County Comm'rs, 440 P.2d 1 (Wyo. 1968).

225. Moss v. Board of Zoning Adjustment, 68 Cal. Rptr. 320 (Ct. App. 1968); Harrington Glen, Inc. v. Municipal Bd. of Adjustment, 52 N.J. 22, 243 A.2d 233 (1968).

226. J & M Realty Co. v. City of Norwalk, 156 Conn. 185, 239 A.2d 534 (1968); Vahle v. Zoning Bd. of App., 97 Ill. App. 2d 165, 239 N.E.2d 865 (1968); Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968).

227. Hooper v. Goldstein, 241 A.2d 809 (R.I. 1968) (six charges, amounting to accusation of but one wrongful act; finding of guilty of one and not guilty of remainder does not show adequately what tribunal determined).

228. *See* Nani v. Zoning Bd. of Rev., 242 A.2d 403 (R.I. 1968) (failure to resolve evidentiary conflict); Bonitati Bros. v. Zoning Bd. of Rev., 242 A.2d 692 (R.I. 1968) (failure to show relationship between proposed use and increased traffic congestion or hazards).

229. The importance of definite standards is highlighted by the recent "cigarette dialogue." Banzhaf v. FCC, 405 F.2d 1082 (D.C. Cir. 1968).

230. Harrington Glen, Inc. v. Municipal Bd. of Adjustment, 52 N.J. 22, 243 A.2d 233 (1968). *Contra*, Carlton v. Board of Zoning App., 235 N.E.2d 503 (Ind. Ct. App.), allowing the use of a printed form parroting the several elements of the standards for granting variances, with blanks for marks indicating assent or dissent. A strong dissenting opinion is much the better reasoned.

231. RK Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781 (1968).

ground of the administrative decision.[232] A motion that findings be prepared is obviously not equivalent to findings.[233]

The findings must respond to all the issues posed.[234] In some instances, however, judges are able to declare a finding implicit if no other confusing issues are present and the decision would be impossible without the finding implied.[235] However, this technique involves a dangerous laxity that should be invoked with great caution. These local tribunals, so often staffed by laymen prone to strut in their little brief authority, tend to confuse their emotions with their powers. It is highly desirable that they be required to keep constantly in mind the limits wherein they are to operate.[236] Some cases, unfortunately, allow extremely sloppy findings to pass judicial scrutiny.[237] Of course, only those findings appropriate to the statutory standard are required.[238]

In some instances, enacted law requires adjudication within a specified time after the conclusion of a hearing. Properly, it is suggested, such a requirement has been held to be directory, only, so that a determination made after the lapse of more than the specified period is not open to attack on the ground of delay.[239] It is suggested that, likewise, mandamus should not lie to compel a decision within the time limit or immediately following its expiration. If the legislature really wants to insure that the adjudication will terminate in one way or another by a date certain, it should so state in express language.[240]

Decision should be the product of a regularly convened meeting of the agency, not of an informal discussion.[241] In the absence of

232. O'Bryant v. Theobald, 421 S.W.2d 571 (Ky. 1967) ("charges . . . are sustained"); Independent School Dist. No. 316 v. Eckert, 161 N.W.2d 692 (Minn. 1968) (only one ground charged, all evidence related to single event, facts not in dispute).

233. Moss v. Board of Zoning Adjustment, 68 Cal. Rptr. 320 (Ct. App. 1968).

234. Aubinoe v. Lewis, 250 Md. 645, 244 A.2d 879 (1968); Gougeon v. Board of Adjustment, 52 N.J. 212, 245 A.2d 7 (1968); Bonitati Bros. v. Zoning Bd. of Rev., 242 A.2d 692 (R.I. 1968); Glenn v. Board of County Comm'rs, 440 P.2d 1 (Wyo. 1968).

235. Thayer v. Baybutt, 29 App. Div. 2d 486, 289 N.Y.S.2d 281 (1968); Pomerantz v. Lehmann, 55 Misc. 2d 315. 285 N.Y.S.2d 188 (Sup. Ct. 1967).

236. Blanchard v. Police Dept., 210 So. 2d 585 (La. App. 1968).

237. First Nat'l Bank v. Sheehan, 30 App. Div. 2d 912, 292 N.Y.S.2d 741 (1968); Smith v. Zoning Bd. of Rev., 241 A.2d 288 (R.I. 1968).

238. Gonsalves v. Dairy Valley, 71 Cal. Rptr. 255 (Ct. App. 1968); First Nat'l Bank v. Sheehan, 30 App. Div. 2d 912, 292 N.Y.S.2d 741 (1968).

239. Donohue v. Zoning Bd. of App., 155 Conn. 550, 235 A.2d 643 (1967).

240. *See Report of Committee on Administrative Law Procedure*, 23 OKLA. BAR ASS'N J. 1551, 1560 (1952) (§ 19 of draft).

241. Ziomek v. Bartimole, 156 Conn. 604, 244 A.2d 380 (1968).

express provision, a majority of a quorum of a collegiately organized tribunal may render a decision.[242] Some statutes, especially in zoning matters, probably to counteract the tendency of zoning bodies to act either politically or emotionally, require decision by an extraordinary vote.[243] One recent case illustrates the working of a statute[244] which, rightly or wrongly, has been construed to require decision, not only by a full tribunal,[245] but by persons who have personally heard the evidence.[246] The result, somewhat similar to that prescribed by the revised model state administrative procedure act,[247] may be sound policy; it hardly follows from the legislative language: "an auxiliary or sixth member of said board . . . who shall sit as an active member when and if a member of said board is unable to serve at any time, upon request of the chairman of said board."[248] The order is not vitiated by minor errors in the transcript of the hearing.[249] However, all essential parts of the order must appear therein with clarity; an incorporation by reference does not suffice.[250] The order must conform to the statutory vesting of authority;[251] if it does so conform, it is sufficient.[252]

1. *Rehearing and Review*

Quite a number of decisions have dealt with the problem of agency authority to reconsider or to rehear action in adjudicative matters. So long as there has been no final vote, the agency is free to alter any tentative accord to which it may have arrived.[253] If a

242. Bray v. Barry, 91 R.I. 34, 160 A.2d 577 (1960); Endeavor-Oxford Union Free High School District v. Walters, 270 Wis. 561, 72 N.W.2d 535 (1955).

243. Real Properties, Inc. v. Board of Appeal, 311 Mass. 430, 42 N.E.2d 499 (1942).

244. R.I. GEN. LAWS ANN. § 45-24-14 (1956).

245. Kent v. Zoning Bd. of Rev., 229 A.2d 769 (R.I. 1967).

246. Coderre v. Zoning Bd. of Rev., 239 A.2d 729 (R.I. 1968).

247. National Conference of Commissioners on Uniform State Laws, Revised Model State Administrative Procedure Act § 11 (1961).

248. R.I. GEN. LAWS ANN. § 45-24-14 (1956).

249. First Nat'l Bank v. Sheehan, 30 App. Div. 2d 912, 292 N.Y.S.2d 741 (1968) (transcript did not show chairman voting; his name appeared in resolution).

250. Suburban Club of Larkfield, Inc. v. Town of Huntington, 57 Misc. 2d 1051, 294 N.Y.S.2d 4 (Sup. Ct. 1968).

251. McCallister v. Priest, 422 S.W.2d 650 (Mo. 1968) (limit of power to reassignment and reduction in rank as distinguished from dismissal).

252. Caruso v. Planning Bd., 238 N.E.2d 872 (Mass. 1968) (waiver of substantive rules); Jeffrey v. Planning Bd. of Rev., 239 A.2d 731 (R.I. 1968) (waiver of substantive rules).

253. Toffolon v. Zoning Bd. of App., 155 Conn. 558, 236 A.2d 96 (1967). Three levels of administrative authority were involved in Garner v. Lumberton Independent School Dist., 430 S.W.2d 418 (Tex. Civ. App. 1968).

decision has been achieved, however, the cases display the same diversity of view presented by the general law as to "inherent" authority of an agency incident to the power to grant a rehearing; some cases affirm the power,[254] others deny it.[255] Express enactment may grant the authority[256] or may indicate the intent that action, once taken, shall be final.[257] Other statutes may allow the reopening upon a showing of changed circumstances.[258] Under some statutes a formal motion for rehearing is prerequisite to a grant thereof.[259] In any event, rehearing is available only while the matter still is within the administrative power; the institution of an action seeking judicial review terminates the right to grant rehearing.[260] If an adjudicative order is annulled, the agency[261] has authority to proceed, within its jurisdiction, as though there had been no action.

The device of an administrative review of the decisions of a lower tribunal, frequently used in federal and state structures, occasionally is found at the local level. It is quite common, of course, in zoning matters where review boards, variously characterized, are used to consider appeals from the decisions of building inspectors, and like functionaries.[262] Always, the foundation for the reviewing authority must lie in enacted law.[263] Review is limited to the matters covered by the enactment.[264] Such provisions do not apply to a failure to perform a ministerial duty, such as accordance of a hearing.[265] Where it is so provided, the review must be accorded on the basis of the record before the subordinate administrator;[266] otherwise, the review is by a hearing

254. Mackler v. Board of Educ., 16 N.J. 362, 108 A.2d 854 (1954); Handlon v. Town of Belleville, 4 N.J. 99, 71 A.2d 624 (1950).

255. Klaren v. Board of Fire and Police Comm'rs, 240 N.E. 2d 535 (Ill. Ct. App. 1968); Meredith v. Sears, 427 S.W.2d 813 (Ky. 1968).

256. Mendozza v. Board of Zoning App., 30 App. Div. 2d 863, 292 N.Y.S.2d 723 (1968); Boeing Co. v. King County, 449 P.2d 404 (Wash. 1969).

257. Morton v. Mayor, 102 N.J. Super. 84, 245 A.2d 377 (1968). The court reads more into the legislative language than this author should have found.

258. Rosedale-Skinker Improvement Ass'n v. Board of Adjustment, 425 S.W.2d 929 (Mo. 1968).

259. Dipietro v. City of Nashua, 246 A.2d 695 (N.H. 1968).

260. Morton v. Mayor, 102 N.J. Super. 84, 245 A.2d 377 (1968).

261. Moss v. Board of Zoning Adjustment, 68 Cal. Rptr. 320 (Ct. App. 1968).

262. Western Pride Builders, Inc., v. City of Berwyn, 240 N.E.2d 269 (Ill. Ct. App. 1968); Board of Zoning App. v. Stevens, 233 N.E.2d 672 (Ind. Ct. App. 1968).

263. Board of Educ. v. State Bd. of Educ., 443 P.2d 502 (N.M. Ct. App. 1968); Mauran v. Zoning Bd. of Rev., 247 A.2d 853 (R.I. 1968).

264. O'Bryant v. Theobald, 421 S.W.2d 571 (Ky. 1967); Lunter v. Laudeman, 246 A.2d 540 (Md. 1968); H.A. Steen Indus. v. Cavanaugh, 430 Pa. 10, 241 A.2d 771 (1968).

265. Beacon Restaurant v. Adamo, 241 A.2d 291 (R.I. 1968).

266. J.D. Constr. Corp. v. Isaacs, 51 N.J. 263, 239 A.2d 657 (1968).

de novo, at least in the weighing of the evidence.[267] The reviewing authority may modify, affirm or reverse, the determination below, under properly drawn statutes.[268] Administrative review of rule making by local agencies is accorded under the statutes of at least one state.[269]

The courts are quite rightly of the opinion that, in the absence of statute, there is certainly no right to rely upon the advice of a local official as to how to obtain review or other statutory relief.[270] Such advice cannot be the source of estoppel against application of the social interest expressed through enacted statutes and ordinances.[271] In only one instance, during the period examined, has a contrary ruling been discovered.[272] The elements of public policy mentioned render it impossible to approve the decision.

VI. CONCLUSION

This concludes our survey of the current decisions which shed light upon the position of the local administrative agencies. The one topic of substance left uncovered is judicial supervision and review. Many considerations have united to preclude treatment here. The problems are manifold, exhaustive and variant, requiring far more space than should be added to this article. Also, statutory provisions differ from state to state and within individual states, and decisions would have to be compared with and geared to these statutes to an extent that could not profitably be attempted here. Extensive localized studies of materials in the several states probably would be far more profitable than a discussion based on a limited survey of the decisions nationwide.

What conclusions may we draw from our survey? Perhaps the most significant conclusion is that, absent specific statutory directives, judicially imposed requirements for the conduct of local administrative bodies do not vary markedly from those applied to agencies of statewide jurisdiction.

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267. Metropolitan Dade County v. Corozzo, 212 So. 2d 891 (Fla. Ct. App. 1968); Bowler's Inc. v. Illinois Liquor Control Comm'n, 97 Ill. App. 2d 403, 240 N.E.2d 369 (1968); Lorena Independent School Dist. No. 907, v. Rosenthal Common School Dist. No. 007, 421 S.W.2d 491 (Tex. Civ. App. 1967).

268. Trotman v. Hoberman, 50 Misc. 2d 915, 290 N.Y.S.2d 680 (Sup. Ct. 1968).

269. Burton v. State App. Bd., 38 Wisc. 2d 294, 156 N.W.2d 386 (1968).

270. Davis v. Wilson, 96 Ill. App. 2d 225, 238 N.E.2d 237 (1968). *See also* Olds v. DeMarco, 94 Ill. App. 2d 443, 237 N.E.2d 354 (1968).

271. Bankus v. City of Brookings, 449 P.2d 646 (Ore. 1969); Stratford Arms, Inc. v. Zoning Bd. of Adjustment, 429 Pa. 132, 239 A.2d 325 (1968); Segaloff v. City of Newport News, 209 Va. 259, 163 S.E.2d 135 (1968); Village of Wind Point v. Halverson, 38 Wisc. 2d 1, 155 N.W.2d 654 (1968).

272. Tillberg v. Township of Kearny, 103 N.J. Super. 324, 247 A.2d 161 (1968).

We have found it increasingly desirable, both procedurally and substantively, to tighten the supervision of the agencies of statewide competence. Perhaps we should do the same for the local agencies. If the courts are going to hold local agencies to the same requirements as the state agencies whenever the statutes are silent or obscure, the local agencies cannot be disadvantaged seriously by having like requirements imposed legislatively. A corresponding observation seems apt with respect to cities which, by constitutional home rule or by legislative largesse, are accorded substantial freedom in their handling of local matters. They, too, should give attention to the problem of bettering the framework of the law within which administrative action is taken. The problem need not be solved in lonely isolation. Most states have organizations of city governments that afford sophisticated programs for common deliberation, for the interchange of information, even for cooperative effort. It should be possible, therefore, to work out better structures for the organization and procedure for our local agencies. Too, this would advance the interests of uniformity, an important desideratum in these days of wide-ranging enterprise and mobility of people.

Another reflection is that the cases, as would be expected, involve "trouble" situations, those instances wherein someone has taken sufficient exception to what has been done to bring the matter into court and to pursue his claim to the point that it gets into the reported decisions. Obviously, the material thus brought to light, though it seems to bulk large, is only the tip of the iceberg of local administrative action. Hence, I suspect that much is done informally in manners that do not at all comport with the standards which the courts enforce when the trouble situations are brought to their attention. In many instances, this haphazard, extra legal conduct probably works out to the mutual advantage of everyone involved. However, one cannot get rid of the uneasy feeling that, all too often, people may lose out on what is their due simply because they do not know the law or because they do not think it would be worth while to protest legally. Hence, along with tightening the guides for our administrators, we should educate them in what they should do to accord administrative justice, and indoctrinate in them the desire to accord it.