Hastings Law Journal

Volume 2 | Issue 2 Article 5

1-1951

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JUDICIAL REVIEW OF RULINGS BY CALIFORNIA ADMINISTRATIVE AGENCIES

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In the absence of statutory provision for review, direct review is obtained through the prerogative writs of certiorari, mandamus, prohibition or injunction.

In the absence of statute, such judicial review of state agencies tends to be narrow in scope. As stated by the Kansas Supreme Court:

> "State courts of general jurisdiction have no appellate jurisdiction over official acts of boards or public officers where the latter do not transcend their statutory powers or act fraudulently. Their official acts cannot be challenged in court except where the legislature has made some special provision for judicial review."

Where there is such legislation, the scope of review under the writs is similar to that at common law, the statutes usually merely authorizing in bare terms the use of the writs, leaving the availability or scope for the courts to decide. Such provisions are usually construed as a restatement of the common law.

As stated in *State* v. *Jensen:*[1]

> "In reviewing the determinations of administrative boards, such as the optometry board, this court will inquire no further than to determine whether the board kept within its jurisdiction, whether it proceeded upon a proper theory of law, whether its action was arbitrary or oppressive, and whether the evidence affords a reasonable and substantial basis for the order sought to be reviewed."

In many states this is phrased in terms of the substantial evidence rule as it was stated by the Supreme Court in the Consolidated Edison case.[2]

Some state courts limit review even more narrowly than the substantial evidence rule, upholding the administrative findings when there is any evidence to support them. Under such a rule the court may examine the evidence only to determine the question of jurisdiction, not to weigh the conflicting evidence, but to determine whether the order appealed from is supported by any evidence and whether the body reviewed had jurisdiction to do the act complained of.

In many states statutory review provisions expressly provide for a trial *de novo* in the reviewing court although the review is often confined to the record made before the agency.

As expressed in the Consolidated Edison case, *supra,*

> "The trend is that it is a generally established rule of judicial policy, subject to sharp exception in a few of the states, that regardless of the breadth of review authorized by the statute, the courts are reluctant to go further than to decide questions of law and jurisdiction and to make sufficient examination of the facts to see that the order appealed from has some degree of support, variously characterized as 'substantial,' or 'sufficient,' 'adequate,' etc., in the evidence."

The major deficiency has been the lack of uniformity with regard to the procedure of obtaining review. Thus the section of judicial administration strongly urged that the method of judicial review of the determinations of state administrative tribunals should be prescribed in a single uniform statute. Such a procedure is provided for in the Model State Administrative Procedure Act. The general review procedure therein provided, however, does not supersede other express statutory review provisions applicable to specific agencies with statutory exceptions where the nature of

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[1](1939) 205 Minn. 410, 286 N. W. 305.

[2]Consolidated Edison Co. v. Labor Board (1938), 305 U. S. 197, 230, 59 S. Ct. 206, 83 L. Ed. 126.

particular agencies require them. This type of uniform procedure has been adopted in the states which have adopted statutes comparable to the Federal and Model State Administrative Procedure Acts. However, such statutes have been adopted in only a small minority of the states. Under such statutes, a uniform and simple mode of obtaining review is thus set up with regard to the administrative process as a whole within the state.

In California, there has been an evolutionary and sweeping change in the process of judicial review of administrative agencies.

In this state, as elsewhere, the most used writ had been that of certiorari, chiefly for the reason that it is error of law or fact that is most frequently alleged by aggrieved persons rather than judicial usurpation or refusal to act.

In 1936, in the case of *Standard Oil Company* v. *State Board of Equalization*,[3] a new doctrine was asserted and contrary to prior authority. A writ of certiorari was sought in the California Supreme Court to review a determination of the State Board of Equalization. The court denied the writ, holding that certiorari was not the correct procedure to examine the decisions of statewide administrative agencies. The court held that acts of state agencies are neither judicial nor quasi judicial, by what it held to be the proper interpretation of the separation of powers clause of the California Constitution, article III, paragraph I.[4]

"Article VI, paragraph I, gave no such power directly to state agencies, nor did it give to the legislature power to create state agencies with judicial powers. Hence, the decisions of state agencies could not be reviewed by certiorari because that writ extended only to review of judicial decisions."[4] The court held that certiorari could no longer be used to obtain the review of a decision of any administrative agency operating statewide.

In 1937 a similar decision was rendered in regard to the writ of prohibition.[5] It was held that these common-law writs could be used only to review or control inferior courts and no court could issue them to review or control state administrative agencies of statewide operation. The court held that these decisions applied only to boards of statewide jurisdiction, saying that local administrative boards and agencies could be regarded as genuine courts and these writs could still be used with respect to them.

The legal profession was in a quandry as the most used writs could no longer be applied.

The court began intimating in 1937 and in 1939 that the Legislature might come to the rescue and furthermore that all the Legislature could do in regard to this was to provide original proceedings in the Superior Court to give complete retrial—a trial *de novo*.[6] But such action was not forthcoming.

Lawyers now turned to the writ of mandamus. In *Drummey* v. *State Board*,[7] it was held that when a board revokes a license, the licensee may apply to a Superior Court for a writ of mandamus to get a new decision on disputed issues of fact. It held that mandate was the only remedy available to those aggrieved by such administrative rulings. It was still not decided whether respondent was entitled to a trial *de novo* or merely an independent judgment on the facts. The Laisne case,[8] *infra*, temporarily

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[3](1936) 6 C. 2d 557, 59 P. 2d 119.
[4]"Certiorarified Mandamus," by Ralph Kleps, Stanford Law Review (Feb. 1950), 2 Stanford Law Review 285.
[5]Whitten v. Calif. Board of Optometry (1937), 8 C. 2d 444, 65 P. 2d 1296.
[6]15 So. Cal. Law Review, 391; McDonough v. Goodcell, 13 C. 2d 741, 91 P. 2d 1035.
[7]Drummey v. State Board of Funeral Directors (1939), 13 C. 2d 75, 87 P. 2d 848.
[8](1942) 19 C. 2d 831, 123 P. 2d 457.

settled that issue by holding that he was entitled to a trial *de novo*. In *Bodinson Manufacturing Company* v. *California Employment Commission*.[9] the court held that the commission's decision was erroneous as a matter of law and should be annulled. There was no dispute on the facts. Formerly such a writ would have been obtained by certiorari. The court said in effect that in the absence of any other remedy, mandamus must be made to serve the purpose. The opinion of Chief Justice Gibson pointed out that it would be highly improper for this court to substitute its opinion for that of an administrative agency on matters which were properly entrusted to the agency to decide. It thus appeared that under the writ of mandamus, the traditional powers of review were again coming to the fore.

The Laisne case[8] was now pending. It held that decisions of statewide administrative agencies would be retried *de novo* in the Superior Court the same as if no administrative hearing had ever been held. It held that without a trial *de novo* there would be an unconstitutional exercise of judicial power, and that statewide administrative bodies cannot exercise judicial powers and consequently cannot be empowered to make final determinations of questions of fact. It was thus held that certiorari, which was the writ used to review decisions of judicial bodies, was not an allowable means of review and that prohibition would not issue against such a body. The appropriate remedy was said to be mandamus.

These departures from traditional practices were greatly criticized in dissenting opinions. Professor McGovney wrote that the dissenting opinion of Chief Justice Gibson ranks with the ablest opinions to be found in the reports of any court.[10] In this dissenting opinion Justices Edmonds and Traynor concurred. The majority decision in this case left the legal profession in a state of confusion as to what administrative decisions would be reviewed and what would not.

Then began a series of judicial decisions which qualified the decision of the Laisne case, and clarified the issues to a great extent.

The trial *de novo* has been characterized as a qualified trial *de novo* in which the record of proceedings before the board is essential. In a mandamus proceeding to review the action of an administrative board, the evidence before the board is competent and should be considered with other evidence in the case. Also, the trial *de novo* is not unqualified or unlimited like that in appeal from a justice court,[11] although in a mandamus proceeding to review an order of a statewide administrative board, the trial court is authorized to exercise an independent judgment on the evidence.[12]

The trial *de novo* also was said not to be a matter of right but within the discretion of the reviewing court.[13]

The right to a trial *de novo* has been held inapplicable to proceedings where no vested right is affected by the board's order as where the aggrieved party is not a person whose existing professional or business license has been suspended or revoked, but is an unlicensed person whose application for a license has been denied.[14, 15]

Where upon an application for a permit to conduct a bail bond business, the evidence is conflicting, but there is sufficient factual basis for the conclusion of the insurance commissioner, it cannot be held that he acted arbitrarily or otherwise abused his discretionary power in denying the permit.[14]

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[9]Bodinson Mfg. Co. v. Calif. Employment Commission (1941), 17 C. 2d 321, 325; 109 P. 2d 935.
[10]15 So. Cal. Law Review, 391 (June 1942).
[11]Dare v. Board of Medical Examiners (1943), 21 C. 2d 790, 136 P. 2d 304.
[12]Moran v. Board of Medical Examiners (1948), 32 C. 2d 301, 137 P. 2d 425.
[13]Sipper v. Urban (1943), 22 C. 2d 138, 137 P. 2d 425.
[14]McDonough v. Goodcell (1939), 13 C. 2d 741, 91 P. 2d 1035.
[15]McDonough v. Garrison (1945), 68 C. A. 2d 318, 330; 156 P. 2d 983.

Either certiorari or mandamus may be used to review the determination of local administrative boards. Whichever writ is used, the scope of review is the same, and where such a board has failed to pass on a factual issue, the proper procedure is to refer the problem back to the board, it being error for the Superior Court to try the issue *de novo*. While the Superior Court in reviewing the determination of a statewide board may grant a qualified trial *de novo*, where such board has not acted, or has refused to grant a hearing, the court has no power to try *de novo* the factual issue, the determination of which is conferred on the board, but is limited to ordering the board to act if an abuse of discretion is shown to exist.[16, 17, 18]

The above decisions, although clarifying the issues, still left some uncertainty as to the procedure.

In 1945, the Administrative Procedure Act was passed, which provides that judicial review may be had by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure.[19, 20]

In 1945 the Legislature acted on the recommendation of the Judicial Council of California and enacted section 1094.5 of the Code of Civil Procedure. It provides that where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision the inquiry shall extend to the question of whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, if the order or decision is not supported by the findings, or if the findings are not supported by the evidence.

Where it is claimed that the findings are not supported by the evidence in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; and in all other cases abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

Today in California, our Supreme Court has devised three separate procedures of review.[21]

1. Certiorari, or limited review if judicial functions are involved.
2. Mandamus, having the same limited review as certiorari, but available whether or not judicial functions are involved.
3. Writ of mandamus requiring plenary review and allowing the lower court to reweigh the evidence presented to the administrative board, and under some conditions to receive new evidence.

Thus, certiorari or mandamus can be used in case of local boards or state agencies with less than statewide jurisdiction as such agencies are not subject to the decisions of the Standard Oil and Drummey cases. Such agencies are granted judicial functions on the grounds that local government units are not subject to the separation of powers clause of the Constitution.

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[16]Walker v. City of San Gabriel (1942), 20 C. 2d 879, 129 P. 2d 349.
[17]Ware v. Retirement Board (1944), 65 C. A. 2d 781, 151 P. 2d 549.
[18]Grief v. Dullea, 66 C. A. 2d 986, 153 P. 2d 581.
[19]Govt. Code, section 11523.
[20]Code Civ. Proc., section 1094.5.
[21]"Certiorarified Mandamus," by Ralph N. Kleps, *loc. cit.*

Certain agencies of statewide jurisdiction are also exempt from the decisions of the Standard Oil and Drummey cases. Those cases recognized the special status of the Public Utilities Commission and the Industrial Accident Commission because a constitutional amendment, rather than a statute, is the foundation of their powers. Just as with local agencies, these agencies have been likened to the courts and the power conferred on them has been called judicial in nature.[22]

The new mandamus procedure is not used with these agencies because of the exclusive nature of the procedure for judicial review which is written into their statutes under the Legislature's constitutionally authorized plenary power with regard to them. These agencies are reviewable only in the appellate courts of the state and upon a type of statutory writ of review.

Other statewide agencies have certain powers granted by the Constitution or by the Legislature pursuant to constitutional authority. It is possible these may come within the category of local administrative agencies and that certiorari would thus lie to review decisions of these bodies.[22]

Another class of agency is one whose decisions do not involve vested rights (as in *McDonough* v. *Goodcell*).[23] These are also exempted from the doctrine of the Standard Oil and Drummey cases. As to the finality of administrative action, these agencies fall in the same category as that of local administrative agencies or those whose powers stem from the Constitution. Thus the new mandamus procedure with a limited review will probably continue to be the exclusive means for reviewing those administrative decisions which are found not to involve issues of vested rights.[24]

Our Legislature now has provided for different types of review of administrative hearings dependent upon the classification within which the agency falls.

The key problem then, both as to type of hearing and as to the selection of the proper writ, is one of classification of the agencies according to type. It might appear that quite a problem would thus exist. In regard to classification of the agencies as to type, the problem has been answered to a great extent by judicial determination. In any event, the problem is more apparent than real in regard to selection of the writ, as the scope of mandamus has been widened to include all types of review except the review of decisions of such agencies as the Public Utilities Commission and the Industrial Accident Commission.

The writ of mandamus has become the all-inclusive procedure for the review of administrative agencies in California, although the writ of certiorari exists as an alternative procedure which is applicable in certain types of cases as indicated above. Although the situation was confusing for a time, California has finally developed through the evolutionary process of statute and judicial determination, adequate provisions for extensive judicial review which should work smoothly and efficiently and place this state well to the fore in this most important aspect of administrative law.

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[22] *Ibid.*

[23] (1939) 13 C. 2d 741, 91 P. 2d 1035.

[24] "Certiorarified Mandamus," Stanford Law Review (Feb. 1950), 2 Stanford Law Review, 285.