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Rule Making Function of California Administrative Agencies

By J. ALBERT HUTCHINSON*

IN keeping with the scope of this series of papers, we will outline some fundamental considerations of California administrative law related to the rule making or quasi-legislative function of the licensing officers and bodies of the state, primarily as controlled by those sections of the Administrative Procedure Act¹ (A.P.A.) providing procedural principles for the adoption of administrative rules and regulations.² Our examination will be restricted to the state-wide licensing agencies created by general legislative enactment in the several codes, initiative enactments and constitutional provisions of this state.³ Consideration of rule making functions of the agencies operating under the acts of Congress is, therefore, omitted and local activities in this field are noted elsewhere in this issue.⁴

Definitions

Rule making, or the adoption of administrative regulations, in this field of governmental activity has been called quasi-legislative. This means, pragmatically, the interpretation, definition and further speci-

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¹ CAL. GOV. CODE §§ 11370-528.

² CAL. GOV. CODE §§ 11371-440.

³ The A.P.A. necessarily eliminates both federal agencies and local agencies operating under the "home-rule" provisions of article XI of the California Constitution and expressly limits its coverage. See CAL. GOV. CODE §§ 11371(a): "'State agency' does not include an agency in the judicial or legislative departments of the State Government." CAL. GOV. CODE § 11445: "Articles 4 and 5 of this chapter shall not apply to the Public Utilities Commission or the Industrial Accident Commission, and Articles 2 and 3 of this chapter shall apply only to the rules of procedure of said state agencies." Further, CAL. GOV. CODE §§ 11380(a), (b) provide that no filing need be made for any regulation which: "(1) Establishes or fixes rates, prices or tariffs. (2) Relates to the use of public works . . . (3) Is directed to a specifically named person or to a group of persons and does not apply generally throughout the State."

⁴ Dietz, *Local Adaptation of the California Administrative Procedure Act*, 15 HASTINGS L.J.—(1964) (this issue).

fication of legislative declarations of policy having general application to all persons similarly situated, as contrasted with the particular application of such legislative policies (independently, or as refined by interpretative regulation) to specific past transactions factually established. In short, administrative rules apply generally and prospectively to all transactions within their scope, as does legislation, whereas administrative adjudication like judicial adjudication applies only to established fact situations.⁵

Secondly, as used in the present context, such rules directly affect persons subject to the legislation as contrasted with "housekeeping" regulations not directly affecting "outsiders."⁶

The A.P.A. specifically avoids delegating or conferring additional or independent authority to adopt rules upon the affected agencies. It only defines the procedural requirements for adoption of rules in accordance with legislative delegations found in acts creating such agencies and defining their general powers. Hence the basic substantive authority for a particular rule must be found in the enabling statute or other source.⁷

⁵ See *Aylward v. State Board of Chiropractic Examiners*, 31 Cal 2d 833, 192 P.2d 929 (1948), in respect to the possibility of "administrative res judicata."

⁶ CAL. GOV. CODE § 11422(b).

The Act defines such quasi-legislative action in § 11371(b), (c):

(b) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure except one which relates only to the internal management of the state agencies. "Regulation" does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(c) "Order of repeal" means any resolution, order or other official act of a state agency which expressly repeals a regulation in whole or in part.

⁷ CAL. GOV. CODE § 11373:

Except as provided in section 11409, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any regulation. Each regulation adopted to be effective, must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

CAL. GOV. CODE § 11374:

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Any existing rules or regulations conflicting with this section are hereby repealed.

Procedural Requirements in Rule Making

Historically, public officers and public bodies have always exercised what has lately come to be known as rule making or quasi-legislative power, from the beginning of government through legislative act. Every statute, ordinance and congressional act inevitably calls for interpretation in application and such interpretation must, as a pragmatic necessity, be accomplished by the official body charged with enforcement of the legislation.⁸ In earlier times such interpretations were not reflected in any established record or even formal rules, and procedural requirements and restrictions upon administrative rule making were unknown. In this connection it will be recalled that the California legislature did not generally require that the rules or regulations of state administrative agencies be formalized or registered anywhere until the adoption of the amendments to the Government Code to this end.⁹ In order to implement such notoriety as could be accomplished by filing existing rules with the Secretary of State, the statute further provided that any rule not so filed would be deemed repealed. Even this modest beginning was rendered ineffectual until 1943 by the absence of appropriation for the codification and indexing of such rules created by the 1941 legislation.¹⁰ At that time there was no provision for publication of such rules as so filed and most administrative agencies did not make the rules adopted by them generally available to the public and to the persons directly affected in any usable form.

The Judicial Council in its definitive study of administrative fact finding and adjudicative procedures did not reach the subject of rule making and made no recommendation for specific legislation on the subject of administrative rule making.¹¹ However, the council did recommend establishment of a procedural agency to continue the study of administrative agencies in response to which the legislature created the Division of Administrative Procedure in the Department of Business and Professional Standards.¹²

Presently, the basic and generally applicable requirements in the rule making function are set forth in sections 11420 through 11427 of the A.P.A.¹³ In each instance, the adoption procedure must also con-

⁸ See *Bank of Italy Nat'l Trust & Sav. Ass'n v. Johnson*, 7 Cal. App. 2d 463, 46 P.2d 244 (1935).

⁹ Cal. Stat. 1941, ch. 628.

¹⁰ Cal. Stat. 1943, ch. 1060.

¹¹ TENTH BIENNIAL REPORT, JUDICIAL COUNCIL OF CALIFORNIA (1944).

¹² Cal. Stat. 1945, chs. 111, 1134; Cal. Stat. 1947, chs. 1175, 1425.

¹³ CAL. GOV. CODE § 11420:

It is the purpose of this article to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regula-

form to any requirements of the substantive statute as well as to the Act.

The procedural requirements are primarily designed for the exercise of authority, delegated by substantive statutes, to "fill in the blanks" by the adoption of rules refining and applying such legislation, by the adoption of standards, and similar implementations of declared legislative policy. In the main, such substantive statutes are in exercise of the police power, but include the administration of benefits, taxation and other items of government interest. The provisions governing rule making do not contemplate administrative interpretation, as contrasted with implementation, of such substantive enactments, although, in practice, many rules appear designed only to spell out the administrative construction and interpretation of statutes. Conformance to the registration and procedural requirements of the Act in this context is in the public interest in giving publicity to such administrative interpretations, avoidance of uninformed declarations of administrative policy and the like. It must be recalled, however, that administrative construction of statutes is permissible and effectual only where the "construed" statute is uncertain, ambiguous or incomplete in statement and will be disregarded if the meaning of the statute is clear.¹⁴

Judicial Review of Administrative Rule Making

Rule making actions, formal and informal, are frequently challenged in license proceedings before the adopting agency and are reviewed in connection with the order made upon the administrative findings under section 1094.5 of the Code of Civil Procedure.¹⁵ As hereinafter noted, review by proceedings for a writ of mandate is generally inappropriate.

The only provision for judicial review of administrative rule making contained in the Act is found in section 11440.¹⁶ In the relatively

tions. Except as provided in section 11421, the provisions of this article are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this article repeals or diminishes additional requirements imposed by any such statute. The provisions of this article shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly.

¹⁴ See *Louis Stores, Inc. v. Department of Alcoholic Beverage Control*, 57 Cal. 2d 749, 22 Cal. Rptr. 14, 371 P.2d 758 (1962), and cases cited.

¹⁵ See *Duskin v. State Bd. of Dry Cleaners*, 58 Cal. 2d 155, 158, 166, 23 Cal. Rptr. 404, 373 P.2d 468 (1962).

¹⁶ CAL. GOV. CODE § 11440:

Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure and in

short time since the enactment of this provision of the Act, the scope of judicial review has not been fully delineated by decisional rulings upon standing to litigate, litigable interest in the rule under challenge, and the elements, or test, of a justiciable issue under this provision of the Act. Because the latter section expressly assimilates the provisions of the Code of Civil Procedure for declaratory judgment,¹⁷ it appears the principles applicable to declaratory relief in other situations will be applied to review of administrative rule making.¹⁸

The Supreme Court first considered section 11440 in *Chas. L. Harney, Inc. v. Contractors' State License Board*¹⁹ and made it clear that a licensee within the ambit of the statute implemented by the rule was entitled to a declaratory judgment upon a minimal factual showing. The regulation involved was a classification of specialty contractors, as provided by sections of the Business and Professions Code. The classification of the specialty contractors was not challenged; however, the regulation provided in effect that the activity of a specialized classification could not be carried on by a contractor who had not been qualified in such specialty. Harney was a general contractor and, it was conceded, could lawfully undertake a contract for the construction of an entire project embracing the field of activity of many specialties. The question presented was whether the classification rule properly prevented Harney from undertaking a contract to perform the work of a special classification, independent of a general contract under his general contractor's license.

The trial court had granted a judgment on the pleadings on the theory that Harney had not presented a justiciable issue since he had not claimed he even desired to undertake any specialty contract. The supreme court reversed, stating in part:

As we have seen, plaintiff as an interested party is entitled under section 11440 of the Government Code to obtain a judicial declaration as to the validity of rule 732 in accordance with the provisions of section 1060 of the Code of Civil Procedure which specifically authorizes a declaration of rights or duties "before there has been any breach of the obligation in respect to which said declaration is sought." . . . The Legislature, by enactment of section 11440, must

addition to any other ground which may exist, such regulation may be declared to be invalid for a substantial failure to comply with the provisions of this chapter or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of section 11421(b).

¹⁷ CAL. CODE CIV. PROC. §§ 1060-62a.

¹⁸ *Duke Molner Wholesale Liquor Co. v. Martin*, 180 Cal. App. 2d 873, 4 Cal. Rptr. 904 (1960).

¹⁹ 39 Cal. 2d 561, 247 P.2d 913 (1952).

have intended to permit persons affected by an administrative regulation to test its validity without having to enter into contracts with third persons in violation of its terms or to subject themselves to prosecution or disciplinary proceedings. (See Div. of Adm. Proc., 3d Biennial Report [1951] p. 18.)

Since the complaint is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is appropriate, it was error for the trial court to enter a judgment for defendants on the pleadings.²⁰

The full impact of the decision is pointed up by the minority opinion:

To allow Harney by its present pleading to obtain a determination as to the validity of the rule of the administrative agency in effect provides a convenient method for securing an advisory opinion from this court. This is beyond the scope of the statute and contrary to established judicial procedure.²¹

In view of the more recent rulings of the California Supreme Court²² it appears that a licensee may secure a declaration if he is a licensee subject to the license statute and would be affected by a rule refining the statute, and he is not, at least, required to allege conduct which has placed his license in jeopardy. Although it seems established that such a declaratory proceeding is not available to "review" an administrative adjudication,²³ there is no objection to joining a request for judicial review of administrative fact finding²⁴ with a cause of action for a declaratory judgment in the same complaint.

According to the general rule, an association of licensees²⁵ has no standing to litigate issues arising under statutes and administrative in-

²⁰ *Id.*, at 564-65, 247 P.2d at 915.

²¹ *Id.*, at 565, 247 P.2d at 915.

²² *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 31 Cal. Rptr. 800, 383 P.2d 152 (1963).

²³ *Hostetter v. Alderson*, 38 Cal. 2d 499, 500, 241 P.2d 230 (1952).

²⁴ CAL. CODE CIV. PROC. § 1094.5. See *International Ass'n of Firefighters v. City of Palo Alto*, 60 A.C. 246, 253, 32 Cal. Rptr. 842, 384 P.2d 170 (1963). Presently pending are two actions seeking such varieties of relief, in the alternative: *Keller St. Development Co. v. Department of Investment*, 1 Civil No. 21,365, and *Savelli v. Board of Medical Examiners*, 1 Civil No. 21,492.

²⁵ Such an association was joined as a co-plaintiff with Harney. A demurrer was sustained as to the association, but this ruling was not reserved in the case (*Chas. L. Harney, Inc. v. Contractors' State License Board*, 39 Cal. 2d 561, 247 P.2d 913 (1952)). No definite ruling on the precise point in relation to a license situation under section 11440 has been noticed.

It has been common practice (both before and after the adoption of the Act) for associations of licensees to petition for rules and to participate in proceedings upon the consideration of rules proposed by other persons. Compare *Duke Molner Wholesale Liquor Co. v. Martin*, 180 Cal. App. 2d 763, 4 Cal. Rptr. 904 (1960).

terpretations of statutes applicable to its members.²⁶ Nevertheless it would appear that such associations would have standing to prosecute an action under A.P.A. section 11440 if they participated in the administrative proceedings, in view of the language of sections 11423-27 of the Act and the general rule that a litigant qualified to initiate an administrative proceeding has standing to seek review of the administrative decision.²⁷

Exhaustion of Administrative Remedies

The Act does not require the pursuit or exhaustion of administrative remedies, if any be available, as a condition to the judicial review of administrative rules. Section 11440 of the Act, the declaratory judgment provisions of the Code of Civil Procedure, and the decisions of the reviewing courts dealing with section 11440 negative the application in this field of the doctrine of exhaustion of administrative remedies as a condition to judicial review. Moreover, there is, generally speaking, no administrative "remedy" to be invoked in the usual situation, although an affected person would be free to petition for amendment or repeal of the questioned rule.²⁸

The adoption of the exhaustion principle would appear unsound and the likely result unfortunate. Usually, the affected person would have no actual knowledge of the rule, or that it affected him, in advance of the invocation of the rule in respect to his particular matter or interest. This situation would generally be true in the case of a rule applying conditions to admission to licensure or other privilege where a new applicant seeks to qualify long after the rule had been adopted.²⁹ In addition, the adoption of the principle would have the effect of impelling litigation by each interested person to test all questioned rules upon their adoption with a resultant increase in the case load in the trial courts.

Notice should be taken, however, of the case of *People v. Coit Ranch, Inc.*³⁰

²⁶ *Associated Boat Indus. v. Marshall*, 104 Cal. App. 2d 21, 23, 230 P.2d 379 (1951).

²⁷ See *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 130, 173 P.2d 545 (1946). Compare *Pitts v. Perluss*, 58 Cal. 2d 824, 828-29, 27 Cal. Rptr. 19, 377 P.2d 83 (1962). The latter decision suggests that status as a citizen or taxpayer may suffice to satisfy the condition of a litigable interest in the plaintiff in relation to a rule (22 CAL. ADM. CODE §§ 3254-1 to 3254(i)-2) adopted under the Unemployment Insurance Code sections 3254(i), 3257 and 3270.

²⁸ CAL. GOV. CODE §§ 11424-26.

²⁹ Compare *Duskin v. State Bd. of Dry Cleaners*, 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962).

³⁰ 204 Cal. App. 2d 52, 21 Cal. Rptr. 875 (1962). See discussion in text at footnote 42.

Scope of Review

The scope of review of the factual showing in support of the administrative rule cannot be said to have been fully delineated by the decisions of the reviewing courts.

In the nature of things, it is clear that the "evidence" which may be received before the administrative agency need not qualify as evidence admissible in judicial proceedings; and there is no express limitation upon receipt or use of evidence in quasi-legislative proceedings as is provided in the provisions of the Act dealing with fact finding proceedings³¹ nor has a direct holding that a rule may not be supported by hearsay alone been noted. The provisions for receipt of evidence and argument appear in section 11425.

In earlier cases the supreme court made it clear that the courts would not weigh the evidence before the administrative agency. In *Ray v. Parker*³² the court overruled the contention that evidence gathered by the agency's investigators and experts was received and relied upon in adopting the milk control and pricing rules. In *Pitts v. Perluss*,³³ the court reviewed the cases to date and summarized the applicable rules of decision as follows:

We conclude that in determining whether the director has acted arbitrarily or capriciously, this court does not inquire whether, if it had power to draft the regulation, it would have adopted some method or formula other than that promulgated by the director. The court does not substitute its judgment for that of the administrative body. The rendition of this regulation involved "highly technical matters requiring the assistance of skilled and trained experts and economists and the gathering and study of large amounts of statistical data and information." (*Ray v. Parker, supra*, 15 Cal. 2d 275, 311.) Under such circumstances, "courts should let administrative boards and officers work out their problems with as little judicial interference as possible." (*Ray v. Parker, supra*.) The substitution of the judgment of a court for that of the administrator in quasi-legislative matters would effectuate neither the legislative mandate nor sound social policy.

It is doubted that the factual support for a particular rule may be reviewed in a manner or degree different from the "review" of statutes alleged to be unsupported by facts open to consideration by a legislative body.³⁴

³¹ CAL. GOV. CODE § 11513(c).

³² 15 Cal. 2d 275, 310-11, 101 P.2d 665 (1940).

³³ 58 Cal. 2d 824, 834-35, 27 Cal. Rptr. 19, 25-26, 377 P.2d 83, 89-90 (1962).

³⁴ See *Blumenthal v. Board of Medical Examiners*, 57 Cal. 2d 228, 234-35, 18 Cal. Rptr. 501, 368 P.2d 101 (1962), and cases cited, which said in part:

We do not believe that the Legislature could reasonably have concluded that training as a dispensing optician acquired in a physician's office, in a

It has been held that parties interested in quasi-legislative proceedings may not complain of denial of procedural due process because the administrative agency refused other participants the opportunity of inspection of factual data considered by it in adopting tax rates.³⁵

It thus eventuates that the opportunities for the review of factual support of administrative rule making, in the light of general presumptions are virtually nonexistent—unless there is no possibility of factual support in any conceivable circumstance.

This leaves for examination the other considerations to be judicially determined in actions challenging the validity of administrative rules.

In general, it may be said that in the judicial review of administrative rules the courts will take into account³⁶ all the considerations examined in reviewing statutes, such as constitutionality, permissible interpretations and the like. In addition, the court will consider the ambiguity or uncertainty of the statute sought to be implemented by the rule, whether the delegation is too broad, *i.e.*, without adequate standards, or is otherwise improper, and will apply the express limitations of the A.P.A.³⁷ While section 11440 provides that a rule "may

college, university, or other educational institution, in the armed services, or in another state not requiring a license of persons dispensing optical goods, would tend to perpetuate the ethical abuses that have prevailed in this profession, and that such training acquired as an apprentice in a licensed dispensing establishment, or experience acquired by virtue of having been licensed in another state, would lead to the elimination of these abuses. There is a complete absence of any relationship between the experience requirements sought to be imposed and the legislative effort to correct ethical abuses in the profession. . . .

The conclusion is inescapable that the experience necessary to qualify a person to dispense optical goods, whatever level of expertise is demanded, is obtainable in a variety of ways. By prescribing that such experience may be obtained in only two ways, neither of which may reasonably be thought to be superior to others, subdivision (a) contravenes the constitutional requirement that regulatory legislation avoid arbitrary and unreasonable classifications.

See also: *Accounting Corp. of America v. State Bd. of Accountancy*, 34 Cal. 2d 186, 208 P.2d 984 (1949); *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.*, 40 Cal. 2d 436, 254 P.2d 29 (1953).

³⁵ *Franchise Tax Bd. v. Superior Court*, 36 Cal. 2d 538, 225 P.2d 905 (1950).

³⁶ See the annotations to section 11440 in the republication of the Act prepared by the Office of Administrative Procedure, Department of General Services, 1963, at page 20.

³⁷ CAL. GOV. CODE § 11373-74:

11373. Each regulation adopted, to be effective, must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

11374. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is

be declared invalid for a substantial failure to comply with the provisions of this chapter" no definitive ruling of invalidity on this ground has been noticed.

Notwithstanding the express "repeal" of "conflicting" rules,³⁸ many of the licensing agencies have continued, amended and readopted rules antedating the enactment of the Act, without conforming to the procedural requirements of the Act. For example, many licensing agencies have been delegated the authority to "approve" courses of study, schools of instruction, and the like. Some of such "approval" actions, positive and negative, were taken years or even decades before the 1941 "repeal" and subsequent enactment of the Act, but continue to be applied without "complying" with the Act.³⁹

One of the difficulties in judicial review of administrative rules is that, more often than otherwise, the review of rule making is indirect and incidental to the review of administrative fact finding proceedings wherein the administrative determination, either express or by implication, effectuates an administrative rule, interpretation or implementation which is neither registered nor adopted in accordance with the Act.⁴⁰

In *People v. Coit Ranch*,⁴¹ the plaintiff brought an action to enforce collection of advertising assessments under a marketing order of the Director of Agriculture. The applicable code provided for the content of marketing orders and provided that such orders should contain "no other provisions than those specified by category and effect." Notwithstanding, the particular marketing order contained a provision for a "petition for hearing" before the director respecting any action taken under the order.

In the enforcement action the trial court found as a fact that the advertising program which was to be financed with the assessments sought to be collected, consisted in material part of false and misleading statements (elsewhere subject to prosecution as crimes). Although the trial court found the purpose of such assessments was payment for such false and misleading advertising, the defendant was denied relief on the ground that the marketing order (without statutory authority) provided for an atypical and unauthorized "review" by the delegatee

valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. . . .

³⁸ Cal. Stat. 1941, ch. 628; CAL. GOV. CODE §§ 11374, 11383.

³⁹ Compare *Akopiantz v. Board of Medical Examiners*, 190 Cal. App. 2d 81, 11 Cal. Rptr. 810 (1961).

⁴⁰ Compare *Duskin v. State Bd. of Dry Cleaners*, 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962).

⁴¹ 204 Cal. App. 2d 52, 21 Cal. Rptr. 875 (1962).

of the Director of Agriculture of the order approving the false advertising program.

This is the first instance of a denial of a valid defense on the ground of failure to exhaust administrative remedies as condition to judicial review of administrative rule making. In this connection it should be noted that the "administrative remedy" was not provided by statute—but only as an unauthorized provision in the marketing order itself.⁴²

It is doubted that the dilatory plea of failure to exhaust an administrative remedy, actually extant, will be generally accepted as a means of avoiding judicial review of administrative rules under section 11440. It would seem that a qualified litigant would be accorded an appropriate declaration without regard to, even in respect to, the validity of the rule—and, in all events, in respect to the unauthorized administrative "remedy" itself.

The final, and most important, function of judicial review of administrative rule making is the determination of "constitutionality" of the legislative-administrative regulatory scheme. Actually, a rule cannot be "unconstitutional." An invalid "rule" is simply *ultra vires*, unauthorized and void. However, an application of a statute by a rule or otherwise which violates constitutional limitations renders the statute unconstitutional and, if the statute does not by its terms prescribe the challenged interpretation, or application, the statute is constitutionally defective in lacking adequate standards for the control of the attempted delegation of an administrative authority.⁴³

⁴² Compare *Duskin v. State Bd. of Dry Cleaners*, 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962); *Blumenthal v. Board of Medical Examiners*, 57 Cal. 2d 228, 18 Cal. Rptr. 501, 368 P.2d 101 (1962), and cases cited.

⁴³ See *Duskin v. State Bd. of Dry Cleaners*, 58 Cal. 2d 155, 23 Cal. Rptr. 404, 373 P.2d 468 (1962); *Blumenthal v. Board of Medical Examiners*, 57 Cal. 2d 228, 18 Cal. Rptr. 501, 368 P.2d 101 (1962).

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In view of the statutory basis of administrative rule making in California, publications directly focused upon the subject are not extensive; in the last few decades, however, the volume of writing on administrative law generally has been extensive.

The May, 1956, issue of *California Law Review*, devoted to California administrative law, contains an exhaustive bibliography of relevant material published to its date. 44 CALIF. L. REV. 378-86 (1956).

The Office of Administrative Procedure republishes annually the Administrative Procedure Act containing annotations to cases and comment directly related to the Act; publishes a monthly bulletin summarizing current decisions involving the Act, related statutes and judicial review of administration action in the state, current and proposed legislation related to the Act, current filings for inclusion in the California Administrative Code—and published comment; the latter materials are indexed annually and are

summarized in the office's biennial reports to the Governor and the legislature. These publications are available through request to the Office of Administrative Procedure at modest cost.

The 1961 spring issue of *Law and Contemporary Problems*, Duke University School of Law, was devoted to Administrative Regulation. 26 LAW & CONTEMP. PROB. 179-346 (1961).

The *Administrative Law Review*, dealing with current developments in administrative law and emphasizing activities of federal agencies and the Congress, is published by the Administrative Law section of The American Bar Association, three volumes per year.

1-4 DAVIS, ADMINISTRATIVE LAW TREATISE chs. 2, 5-6 (1958).

The writer prepared papers on the functions of two of the affected California agencies: *Enforcement of California Food and Drug Acts*, 5 FOOD DRUG COSM. L.J. 387 (1950); and *The Alcoholic Beverage Control Administration of the State Board of Equalization*, 20 CAL. S. BAR J. 59 (1945).