Chapter 13: Administrative Law

George N. Welch
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§13.1. General. The decisions of the Supreme Judicial Court involving administrative law were neither numerous nor particularly suggestive during the 1958 Survey year, nor were there any important statutory developments. A significant conclusion, negative in character, may be drawn from this paucity of reviewable material. In view of the great number of state administrative agencies actually operating, it is notable that no substantial controversies, procedural-wise at least, have arisen. Whether the process is operating at its best cannot be determined from such a premise; but, however efficiently it might be working, it is working.

A. ADMINISTRATIVE PROCEDURE ACT

§13.2. Adjudicatory proceeding. The precise definition of the term "adjudicatory proceeding" found in the State Administrative Procedure Act 1 was sharpened by the decision in Natick Trust Co. v. Board of Bank Incorporation. 2 Under authority of G.L., c. 172, §45, as amended, a Waltham trust company sought the approval of the Board of Bank Incorporation 3 for establishment of a branch office in Natick, which approval was granted. Since no statutory method of judicial review was provided in the banking statute, the review provisions of the APA were invoked by trust companies claiming to be aggrieved by the decision of the board. 4 The Superior Court enter-

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The author wishes to acknowledge the research and other assistance given him by Raymond V. Picard of the Board of Student Editors of the Annual Survey.


3 G.L., c. 26, §5.

4 General Laws, c. 30A, §14 states in part: "Any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding ... shall be entitled to a judicial review thereof. ... Where no statutory form of judicial review or appeal is provided, or where the only statutory form of review is by extraordinary writ, judicial review shall be obtained by means of a petition for review, as follows: ..."
tained the petition and affirmed the board’s decision dismissing the appeal. The Supreme Judicial Court held this to be error, Section 14 being unavailable in this case as a mode of review. The Chief Justice, speaking for the Court, found there was no “adjudicatory proceeding,” which is the only type of case in which Section 14 can be used. The petitioning parties were given no right to a hearing by the statute nor did they have a constitutional right to one. One of these rights must exist under the APA definition of adjudicatory proceeding. The determination that banking facilities in a community were inadequate so that another banking office might be permitted to open was regarded as one of governmental policy and political in nature. The statute made the board the sole arbiter of this question.

The Court, however, ignored the defective choice of review, as it has done in the past, and found that, had the petition been before it properly seeking a writ of certiorari, the petitioners still could not prevail on the merits.

The case is basically similar to Hayeck v. Metropolitan District Commission, which was discussed in the 1957 Annual Survey. If the lack of a hearing results in abuses, the General Court may supply the remedy of a hearing. Judicial review is still available under petition for writs of certiorari or mandamus, although the scope of review thereunder is limited. But the nature of the problem in the National Trust Co. case, as in the Hayeck case, is, as the Court recognized, very closely involved with the immediate needs of a community and prospects for community development, and an administrative agency is peculiarly well adapted to sense these needs.

§13.3. Petition for judicial review. The Administrative Procedure Act supplied the mode of review in the case of Baruffaldi v. Contributory Retirement Appeal Board. The widow of a municipal employee who died of a heart attack sought death benefits under the contributory retirement system set up by Chapter 32 of the General Laws. No method of judicial review of the appeal board’s decision was provided by the statute. Thus APA §14 provided the exclusive mode of review and was used by the widow in seeking a reversal of the board decision denying death benefits. Apparently there was no opposition to the use of APA §14 nor is there basis for any. The decision was a state agency’s “adjudicatory proceeding,” as required by the statute.

The Supreme Judicial Court reversed the Superior Court’s decision affirming the board’s denial of death benefits. The opinion pointed

2 G.L., c. 32, §§9, 16(4).
3 See §13.2 supra, note 3.
4 G.L., c. 30A, §§1(1), 14.

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out that the denial of benefits was based on a misconstruction of the statutory term "personal injury." Thus the review was of an error of law, properly within the scope of review defined by Section 14(8) of the APA.

The obvious significance of the case lies in the broad technical meaning of "personal injury," as developed by the courts in applying the workmen's compensation statute, being engrafted onto the state employee compensation system statute. It is also important, however, that the uncontested use of APA §14 constitutes a tacit recognition of its usefulness in fulfilling the need of review for administrative action.

B. Other Developments

§13.4. Zoning: Delegation of power to grant exceptions. The exercise of the power to grant exceptions is limited by G.L., c. 40A, §4, which states: "The board of appeals established under section fourteen . . . or the city council . . . or the selectmen, . . . as such ordinance or by-law may provide, may, in appropriate cases and subject to appropriate conditions and safeguards, grant to an applicant a special permit . . . ." In the case of Coolidge v. Planning Board of North Andover1 a zoning by-law was rejected as an attempt to circumvent the statute. By the terms of the by-law, a building permit for the construction of a motel in any zoning district could be obtained from the building inspector when the latter has received the planning board's written approval of the site plan after a public hearing held before that body. The planning board was to consider all facts relevant to health, safety, welfare and beauty of the neighborhood and of the impact that the proposed motel would have thereon. The approval might be conditioned upon such reasonable restrictions as the planning board saw fit to impose. The Supreme Judicial Court declared that the by-law delegated the zoning power to the planning board and thereby overruled the town's contention that the by-law merely conferred administrative supervisory powers consistent with the duties of the planning board and of the building inspector.

The case came up by way of appeal from the Superior Court's affirmance of the planning board's decision approving a motel permit. In reversing, the Supreme Judicial Court stated that the discretionary area of judgment vested in the planning board by the by-law was the same as is encompassed in the power to make exceptions to the zoning plan.2 Since Section 4 clearly sets out that only the board of appeals, city council or selectmen may exercise this power, no other body may be granted it.3 The by-law being invalid, permits granted under it are similarly void.

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1 See §19.9 infra.


3 The decision in the Coolidge case, once it was determined by the Court that the power delegated to the planning board was the power to permit an exception under
The decision was a necessary one since the ordinance, as construed to cover the grant of permits for exceptions, was in conflict with the statute. No other result could have been countenanced without disregarding the legislative language and the purpose deducible therefrom.

§13.5. Judicial review procedure on zoning appeals. The case of Rodenstein v. Board of Appeal of Boston\(^1\) illustrates the de novo review procedure in zoning cases that has developed as a result of prior Supreme Judicial Court decisions. The scope of judicial review of decisions of boards of appeals that grant or deny variances received careful treatment in earlier Annual Surveys.\(^2\) When the board of appeals grants a variance, the Superior Court in reviewing the grant under G.L., c. 40A, §21, must carefully examine all the facts independently and make a finding, based on this examination, which indicates the exceptional circumstances that alone will justify the granting of a variance.\(^3\) This procedure stands in sharp contrast to the factors and presumptions that may properly be the basis of the Superior Court’s decision on review of a board of appeals’ denial of an application for a variance. The Superior Court still must make independent findings of fact,\(^4\) since it is a de novo review, but the board’s decision is not to be overruled unless palpably and plainly wrong, since it is the board’s function, not the court’s, to grant variances.\(^5\)

In the Rodenstein case the Boston board granted an application for a variance that permitted parking of 30 pleasure automobiles on part of a large lot in a residential district. Certain restrictions on signs, the method of rentals, fences, and access were imposed as conditions of the allowance. The Superior Court, in affirming the board action, made a “Memorandum of Finding and Order for Decree.”\(^6\) Plans and photographs of the locus accompanied the memorandum on appeal.

the zoning statute, was easy to predict. In Colabufalo v. Board of Appeal of Newton, 336 Mass. 213, 143 N.E.2d 536 (1957), commented on in 1957 Ann. Surv. Mass. Law §§11.2, 29.6, the Supreme Judicial Court held null the attempt by a city council to grant a variance. The statute, G.L., c. 40A, §15(3), governing the grant of a variance, gives the power exclusively to boards of appeals. This strict reading of the statute is essential if a proper zoning system is to be maintained.

3 1956 Ann. Surv. Mass. Law §13.2; see Blackman v. Board of Appeals of Barnstable, 334 Mass. 446, 156 N.E.2d 198 (1956); Atherton v. Board of Appeals of Bourne, 334 Mass. 451, 136 N.E.2d 201 (1956). The Rodenstein case, since it involved the Boston zoning law, was not decided under Chapter 40A but under Acts of 1941, c. 373. The scope of review by the Superior Court is, however, exactly the same under both statutes.

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Certain of the judge's findings as to the appearance and description of the locus and surrounding conditions, the prior granting of two variances permitting a gas station and limited parking on the larger part of the same lot, and the need for off-street parking in the highly congested residential area, were similar to those of the board. The judge, however, reported in addition that the land was largely a rock formation called "pudding stone" which, on the basis of expert evidence, was held to render the land, investment-wise, unsuitable for residential development, and also that the proposed use would be a benefit necessary for future as well as present community progress.

The Supreme Judicial Court, after quoting extensively from the memorandum, briefly disposed of the merits. The prior variances made the further one here sought of minor consequence. The "pudding stone" formation on the locus made it an unusual piece of land which could not be reasonably used for any purpose other than a parking lot.

The completeness of the findings of fact contained in the Superior Court's memorandum was obviously a result of the wide scope of judicial review imposed by the earlier decisions of the Supreme Judicial Court in cases in which the board of appeals granted variances. Judging from the brief manner in which the Court disposed of this case, it apparently was well satisfied with the trial court's handling of the de novo review aspects of this case.

After a review of all the available precedents relating to the manner in which the planning boards and boards of appeals and other administrative agencies coming under the aegis of the Administrative Procedure Act perform their functions, it is clear that the electorate, the courts and all concerned should be eternally vigilant to prevent administrative boards, elected or appointed, from exercising authority and powers which have not been specifically delegated to them. Some instances in which the General Court has intervened to remedy arbitrary or capricious acts on the part of local boards of appeals or planning boards, or have clarified their powers and duties, are contained in the laws enacted by the legislature during this 1958 Survey year. This observation is equally applicable to the subdivision control law and the administration thereof by local boards. As an illustration of the manner in which the General Court sometimes reacts to arbitrary or capricious acts on the part of administrative boards, Acts of 1958, c. 94 provides for the abolition of the West Brookfield Planning Board, subject to acceptance at the annual town meeting.

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10 See note 3 supra.
11 No attempt will be made by this writer to criticize the extent to which this procedure detracts from the raison d'etre of the board of appeals. For a discussion recommending the discard of de novo review in variance appeals cases and offering a substitute method in harmony with APA, see 1955 Ann. Surv. Mass. Law §13.2.