Chapter 13: Administrative Law

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§13.1. Standard for decision: Compliance with by administrator. Administrative boldness has again¹ been checked in Chicopee Co-operative Bank v. Board of Bank Incorporation,² where the administrative authority in a display of rashness had paid such little heed to the legislative design that the Supreme Judicial Court (all members sitting) very plainly warned it against further decisions that contravene the legislative policy.

Section 49 of General Laws, Chapter 170,³ authorizes a co-operative bank to convert itself into a federal savings and loan association provided, inter alia, it obtains approval for this action from the Board of Bank Incorporation.⁴ A condition precedent to such approval is a determination "... that public convenience and advantage will be promoted by such conversion. ..." The agency in a 2 to 1 decision (the bank commissioner dissented) made such a finding in this case.

The Chicopee Falls Co-operative Bank, located in the city of Chicopee in Hampden County, was chartered about forty years ago and is the smallest bank of its kind in the state, having assets of only $413,000. It is open only three days each week, from 9 A.M. to 1 P.M., and has one so-called "full-time" employee, who is in partial retirement; the directors are relatively inactive. The directors, having

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³ This statute was drafted by the author. "Any such [co-operative banking] corporation may convert itself into a federal savings and loan association ... subject to the following conditions: — (1) Such corporation shall give notice to the board of bank incorporation of its intention to so convert and shall apply to said board for its approval of such conversion, and if the board determines that public convenience and advantage will be promoted by such conversion, the board shall grant such approval. ..."
⁴ This board is composed of the Commissioner of Banks, State Treasurer, and Commissioner of Corporations and Taxation.
concluded that the bank's future was dim, decided to merge with the Union Federal Savings and Loan Association of Pittsfield in Berkshire County. In order to accomplish this merger, the bank petitioned the Board of Bank Incorporation for authority to convert to Chicopee Falls Federal Savings and Loan Association. It was freely admitted at the hearing that upon its conversion it would not conduct business under its new charter, but rather would immediately merge with the Union Federal and become a branch of the latter. This was to be accomplished in spite of the fact that a state bank could not maintain a branch across a county line. Thus the bank was, in effect, requesting authority to accomplish an objective forbidden to it as a co-operative bank, i.e., to do business across a county line. The agency based its finding on the advantages to be gained by way of the merger, there being little or no reference in its decision to the legislative standard of "convenience."

The Court, after stating that it must "... give due weight to the experience, technical competence and specialized knowledge of the agency, as well as the discretionary authority conferred upon it," wasted no time in focusing upon the crux of the issue. Justice Kirk stated it with his usual decisiveness: "It is our duty, nevertheless, to ensure that the board exercise only those powers given to it and that it adequately consider and apply the legislative policies entrusted to it."

The petitioners sought to set aside the decision on the grounds that it was (a) beyond the statutory authority given to the Board by General Laws, Chapter 170, Section 49; (b) contrary to declared legislative policy; (c) unsupported by substantial evidence; and (d) in violation of the adjudicatory hearing requirements of General Laws, Chapter 30A, Section 11(1). Any one of these points, if proven, could have sustained a reversal. While the attack on the Board's decision was on four fronts, the Court dealt only with the one that challenged the Board's statutory authority. The failure of the Board to distinguish between conversion, as authorized by the statute, and merger, which is not part of the statutory scheme, was fatal. The mere recitation of the statutory standard, to the effect that "public convenience and advantage" would be served by the eventual merger, could not provide a legislative design that was never contemplated.

Banking, in general, is a very sensitive and delicate subject because of its closeness to the economic development and contentment of so many people. For this reason the legislative concern is amply expressed in many "closely-knit and precisely drawn statutes" which do not lend themselves to loose interpretations either by those subject thereto or by those charged with their enforcement. No other subject of legislative expression lends itself so well to the parens patriae concept of state concern for its citizens. The Court made this clear by its interpretations of the legislative standard which was to govern the exercise of the administrative judgment. The Board was to approve a

5 G.L., c. 30A, §14(8).
petition for conversion only where "the public convenience and advantage will be promoted." This standard placed upon the Board the duty to determine, not what was necessarily good for the bank and its shareholders, but rather what was best for the banking system as a whole. The standard requires an affirmative showing by the applicant bank that the public interest will be better served by the change than without it, and that legislative policies, entrusted to the Board for observance, cannot be ignored.

§13.2. Judicial review: Finality of administrative decision. The Supreme Judicial Court will not accept an appeal from an interlocutory decree which remands a matter to the administrative agency for a new hearing, and merely terming such a decree "final" does not make it a final one.

In *Marlborough Hospital v. Commissioner of Public Welfare*¹ the petitioner sought judicial review in the Superior Court of a decision of the respondent commission sustaining the city of Marlborough in its refusal to pay certain hospital costs to the petitioner. The lower court found that the hospital had not had a fair hearing under the governing statute,² and that the decision of the administrative authority was not supported by substantial evidence as required by General Laws, Chapter 30A, Section 14. The lower court, however, did not make a final decision, in that it remanded the issue to the agency for a new hearing. The court had a right to do this.³

The petitioner here on appeal asserted that the case should not be remanded and that the Supreme Judicial Court had the power to review the matter under General Laws, Chapter 30A, Section 14.⁴ The Court side-stepped the issue here by its insistence that under its rules it could consider only final decrees.

§13.3. Rules and regulations: Public notice and hearing requirement. *Massachusetts General Hospital v. Commissioner of Public Welfare*¹ pointed up the difference between an administrative regulation which implements a law an agency must enforce or administer²

³ Id., c. 30A, §14(8), states: "The court may ... remand the matter for further proceedings before the agency. ..."
⁴ Under this section the court has the power to review "proceedings ... determinations ... and orders or decrees issued in the superior court ... in the same manner and to the same extent as in equity suits, so far as the provisions governing equity suits are applicable. The court may by rule vary the procedure ... upon a finding that the review by the court will thereby be made more simple, speedy and effective."

² G.L., c. 30A, §1(5). " ’Regulation’ includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect adopted by an agency to implement or interpret the law enforced or administered by it."
and one which does not directly affect the rights of the public, but only the agency's internal management.\(^3\)

In this case the respondent had adopted a rule, without notice and hearing, that bills for hospital costs must be submitted to the city within three months after the services have been rendered. The services here in question had been administered to a disabled person, under General Laws, Chapter 118D. The petitioner argued that it was entitled to reimbursement on the ground that the time given in the rule was unreasonable. The Supreme Judicial Court brushed aside this question and went directly to the legality of the regulation. It reversed a Superior Court decree for the respondent because the regulation, being one which affected the public, could not be adopted without notice and hearing as required by General Laws, Chapter 39A, Section 2.

§13.4 Right to hearing upon review: Waiver. The disposition of a matter subject to an adjudicatory hearing under the Administrative Procedure Act was under review in *Brockton Hospital Co. v. Commissioner of Public Welfare.*\(^1\) General Laws, Chapter 118, Section 21 provides: "Any person aggrieved by the failure of any town to grant medical assistance . . . shall have a right to a fair hearing, after due notice, upon appeal to the department in the manner and form prescribed by the department. . . ." The petitioner was denied a claim by the Whitman Board of Public Welfare and availed itself of its right to appeal to the state Commissioner of Public Welfare. The department rule gave an election to the hospital. It could have a hearing before a referee or have its case reviewed by the department without a hearing. It selected the latter avenue and upon a subsequent denial of its claim by the department it sought relief by a petition for judicial review under the Administrative Procedure Act.\(^2\) The Supreme Judicial Court sustained the decree of the lower court, which held that the hospital had waived its right to a hearing by its election. The Court also resorted to Section 10 of the Administrative Procedure Act to shed additional light upon this type of administrative action. Because Section 10 authorizes the agency to "vary the procedures" prescribed in the act if the parties agree, it acted lawfully when it did so by a review of the matter without a hearing, because the petitioner had agreed to it.\(^3\)

\(^3\) Ibid. "... regulations concerning only the internal management or discipline of the adopting agency or any other agency and not directly affecting the rights of or the procedures available to the public or that portion of the public affected by the agency's activities . . ."

\(^1\) 346 Mass. 742, 196 N.E.2d 186 (1964).
\(^2\) G.L., c. 30A, §14.
\(^3\) Id. §10, provides: "In conducting adjudicatory proceedings . . . agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies may . . . (2) make informal disposition of any adjudicatory proceeding by stipulation . . . ; (3) limit the issues to be heard or vary
§13.5. Administrative adjudication: Review. The action of an administrative authority, rendered after notice and hearing, is quasi-judicial, and if no other remedy is available certiorari will lie to review such finding. In *MacDonald v. Board of Health of Braintree*\(^1\) the plaintiff sought relief by certiorari on the following facts: In January he had obtained an option to purchase certain land in Braintree and a few days later had petitioned the defendant for assignment of the real estate as a site for a refuse disposal incinerator under General Laws, Chapter 111, Section 150A. The petition was allowed. Thereafter, consultant engineering work was begun and subsequently completed about May 1. On that date the Board notified him that it would hold a public hearing under Section 150A because of objections to the use of the site for such purpose. On May 3 the hearing was held and the Board voted unanimously to rescind its prior approval, on the ground that the operation of an incinerator would constitute “a nuisance and a danger to the public health.”

The Board contended that because its action was a purely administrative one certiorari would not lie. The Supreme Judicial Court agreed that the writ was an improper remedy because an adequate one\(^2\) was available through a petition in equity.\(^3\) It also made a precise point here in noting that the rescission after notice and hearing was a quasi-judicial act. If there had been no adequate remedy available to the petitioner his relief would have been by certiorari.

§13.6. Administrative adjudication: Standards of review. The time-tested rule which holds that a court may not substitute its view for that of an administrative body when it is supported by substantial evidence and is without error of law, was given a further test during the 1964 *Survey* year in *Martin v. Director of the Division of Employment Security*.\(^1\) The plaintiff filed a claim for benefits on the ground that she had been laid off by her employer. The director, and the review board which upheld him, found on credible evidence that the claimant had in fact left her employment on her own decision to care for personal matters. Upon a denial of benefits she availed herself of her additional statutory remedy and appealed to the district court.\(^2\) The district court appears to have found, among other things, that the review board’s decision was not supported by substantial evidence and the procedures prescribed by section eleven, if the parties agree to such limitation or variation.”

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\(^1\) 1347 Mass. 76, 196 N.E.2d 646 (1964).


\(^3\) G.L., c. 111, §150A, states in part as follows: “The superior court shall have jurisdiction in equity to enforce the provisions of this section upon the petition of any person aggrieved.”

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\(^1\) 1347 Mass. 264, 197 N.E.2d 594 (1964).

\(^2\) Appeal is provided under G.L., c. 151A, §42.
that it was arbitrary and capricious, based upon the statutory standards contained in the state Administrative Procedure Act.³

The Supreme Judicial Court, upon appeal by the defendant,⁴ reversed the lower court on the ground that the board is the sole judge of the credibility of the evidence.

This case is important because of the Court's reiteration of the proper position of the administrative authority in the legislative design. The enactment of the Administrative Procedure Act was purposeful; it sought to place Massachusetts in the stream of modern theories of agency deliberation and adjudication. The Martin case adds prominence and substance to the role of the administrative authority in the growing field of administrative law.

§13.7. Administrative adjudication: Power to make. When there has been acceptance by a Plan E government of a statute¹ authorizing the creation of a retirement board, the board's powers may not thereafter be assumed by the city manager and council even though they otherwise control the finances of the city. In City Manager of Medford v. Retirement Board of Medford² the respondent board granted certain applications for retirement annuities and requested the city manager to seek appropriations to pay them. The petitioners sought declaratory relief on the ground that they retained supervision over such pensions³ and that the retirement board had no responsibility in the matter. The Court held that the city's acceptance of the legislative act had vested the power of decision in such cases in the retirement board.

§13.8. Administrative adjudication: Statement of reasons. New York Central Railroad Co. v. Department of Public Utilities¹ was a case on appeal from a decision of the respondent denying the petitioner's request for an exemption of certain land in Framingham from the application of a town zoning law.² It is a proper subject for this

³ Id., c. 30A, §14(8), reads in part as follows: "The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party have been prejudiced because the agency decision is . . . (e) Unsupported by substantial evidence; or (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law."

⁴ Id., c. 151A, §42.

§13.7. ¹ G.L., c. 32, §89.
³ Those involving noncontributing premiums were at issue.

² G.L., c. 40A, reads: "A building . . . or land used or to be used by a public service corporation may be exempted from the operation of a zoning . . . by-law if, upon petition of the corporation, the department of public utilities shall, after public notice and hearing, decide that the present or proposed situation of the building . . . or land . . . is reasonably necessary for the convenience or welfare of the public." See City of Medford v. Marinucci Bros. & Co., 344 Mass. 50, 58,
chapter because of the direction given the administrative agency, and because it constitutes still another instance of disregard of the Supreme Judicial Court's well-known and determined position that administrative bodies must comply with the legislative design laid down in the Administrative Procedure Act when dealing with important adjudicatory matters. The Court has been applying pressure in this sphere for so long that it is difficult to understand how the more experienced and sophisticated boards and commissions fail, so often, to comprehend its directives.

The basic determination for the Department in this case was whether the public convenience and welfare would be served by granting the petition. This was the first time the Court had met this issue as it applies to General Laws, Chapter 40A, Section 10. For precedent it referred to its action in a case interpreting a comparable statute. After pointing to the fact that the legislature had given the state department, rather than the local zoning board, the power to exempt a utility from a local zoning by-law, it stated:

This fact indicates that the Legislature intended a broad and balanced consideration of all aspects of the general public interest and welfare and not merely examination of the local and individual interests which might be affected. . . . We hold that in considering an application by a railroad for an exemption under §10, the department is empowered and required, not only to consider the effect of a new facility upon the local community and upon persons living near by, but also to weigh the public effects of the requested exemption in the State as a whole and upon the territory served by the applicant.

After giving this guidance to the commission, the Court stated that its scope of review was limited in this case. It was chiefly concerned with whether the decision was based upon error of law, supported by substantial evidence, or whether it was arbitrary or capricious. To make a determination of these issues of law, the administrative conclusion had to contain "a statement of reasons for the decision including determination of each issue of fact or law necessary to the decision." In the present case the findings of fact, stated the Court, "... are inadequate although the evidence was sufficient to enable the

3 G.L., c. 30A.
6 G.L., c. 30A, §14(8)(c), (e), (g).
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department to make definite findings upon most of the relevant issues. Because there was no way of knowing what facts were found and whether correct principles of law were applied, the case was returned for more complete subsidiary findings by the agency. The failure to make adequate subsidiary findings is fatal. An administrative decision cannot stand upon loose statements which seek to justify an ultimate finding which, in turn, purports to satisfy the legislative standard.

§13.9. Legislative standards: Administrative interpretation. Cleary v. Cardullo's, Inc. is a continuation of the controversy which was partially dealt with by the Supreme Judicial Court in 1962. The respondent here sought to transfer a liquor license, which he had purchased, from its original locus to one which the petitioner claimed was unlawful. While the petitioner launched a four-pronged attack through his bill, the crucial point was the claim that the new site for the license was within five hundred feet of a church.

The case is of interest because of the recognition it gives to the responsibility of the administrative body to discern the statutory intent in the first instance vis-à-vis the responsibility of the trial court to make such interpretation. If the administrative interpretation is violative of the legislative purpose, the court will, of course, exercise its duty of statutory interpretation.

In this case the agency, the Alcoholic Beverages Control Commission, had interpreted the provisions of General Laws, Chapter 138, Section 16C, relating to the method by which the five-hundred foot distance was to be measured, but the Superior Court judge excluded testimony offered by the secretary of the Alcoholic Beverages Control Commission on this point and then proceeded to make its interpretation of the meaning of the statute.

The Supreme Judicial Court remanded the case, stating that "... the details of legislative policy, not spelt out in the statute, may appropriately be determined, at least in the first instance, by an agency charged with administration of the statute. ... It may well be in a better position than a court to determine what measurement method,


3 The first unnumbered paragraph of G.L., c. 138, §16C, reads: "Premises, except those of an innholder, located within five hundred feet, measured along public ways, of a church or school shall not be licensed for the sale of alcoholic beverages; but this provision shall not apply to the transfer of a license from premises located within the said distance to other premises located therein, if it is transferred to a location not less remote from the nearest church or school than its former location." By Acts of 1954, c. 569, §3, Section 16C took effect on January 1, 1956, and under Section 2 of the act it was not to "apply to premises which, prior to the effective date of this act, or prior to the establishment of a church or school within five hundred feet thereof, were licensed for the sale of alcoholic beverages."
consistent with the statutory language, will best carry out the legisla-
tive purpose."4

In remanding the case, the Court made it clear that the trial judge
was to apply any regulation issued by the Alcoholic Beverages Control
Commission within thirty days after rescript, provided it did not con-
flict with the statute. If the regulation was not promulgated within
that time, then the judge was to hear such oral evidence "... not con-
trary to the plain language of §16C, as he may be satisfied establishes
a substantial, uniform, and long continued administrative interpreta-
tion of §16C by (a) consistent application of that interpretation in
cases before the ABC, or (b) ABC's published or generally circulated
rulings."5

There was, however, an implicit warning in the Court's decision
which indicated that the agency should issue a regulation governing
the determination since the ambiguity inherent in statutory language
appropriately should be clarified by a regulation rather than by less
formal means.

§13.10. Review of adjudication: Effect of prior administrative in-
action. When an administrative authority has neglected to enforce
the legislative will, the action cannot diminish or forfeit the right of
the public to have the controlling statute properly administered.1
This principle was reiterated in New City Hotel Co. v. Alcoholic
Beverages Control Commission.2 In this case the petitioner, having
lost his hotel through an eminent domain proceeding, renewed his
innkeeper's liquor license for six succeeding years. Each renewal was
granted with the approbation of the Alcoholic Beverages Control Com-
mission after the original grant by the Worcester Licensing Commission,
in spite of the clear statutory prescription which limited his right of
renewal to only four years.3 It was the petitioner's contention that an
action by the ABC in the sixth year, which resulted in his losing the
license (for which he could not reapply because existing innkeepers'
liquor licenses were then in excess of the quota), was based upon
error of law. The Supreme Judicial Court held that there can be no
development from the statutory four-year period open to the petitioner


5 Id. at 639, 198 N.E.2d at 287.

§13.10. 1 Ferrante v. Board of Appeals of Northampton, 345 Mass. 158, 163, 186


3 G.L., c. 138, §23B, reads in part as follows: "Any holder of a license issued
under this chapter to do business on certain premises which are subsequently taken
by public authority and who is required to remove his business from such premises
shall not thereby be deprived of his license. Such licensee may apply to the local
licensing authorities for a transfer of the license to another location, and in the
event that a suitable location is not available which is approved by the licensing
authorities, said license shall be reserved for the licensee until such time as a
suitable location is approved, but in no event shall such license be reserved for a
period longer than four years from the date of taking." (Emphasis supplied.)
to permit relocation. If he is unable to do so he must lose his license. And, under established principles, there can be no relief given because the Commission incorrectly gave its approval for the two additional years. This action went beyond the scope of the legislative delegation and could not confer rights not contemplated by the statute.