

Chapter 183

Administrative Procedures and Rules of State Agencies

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CASE CITATIONS: Oregon State Pharmaceutical Assn. v. State Pub. Welfare Comm., (1967) 248 Or 60, 432 P2d 296; Williams v. Joyce, (1971) 4 Or App 482, 479 P2d 513, Sup Ct review denied; Wright v. Bateson, (1971) 5 Or App 628, 485 P2d 641, Sup Ct review denied.

ATTY. GEN. OPINIONS: Regulations of State Board of Cosmetic Therapy covering merchandise sold in shops, 1966-68, p 356; authority of county board of health to adopt rules, (1969) Vol 34, p 433; Department of Environmental Quality certifying local activities compliance with federal standards, (1970) Vol 35, p 52; review of Insurance Division rule for nonresident agent license, (1970) Vol 35, p 165; rule concerning educational qualifications for the examination given by the Oregon State Board of Landscape Architect Examiners, (1971) Vol 35, p 779.

LAW REVIEW CITATIONS: 39 OLR 97-112; 40 OLR 62, 249-258; 41 OLR 118-127, 177-181; 44 OLR 127; 45 OLR 53; 46 OLR 346; 49 OLR 322-336, 394-411; 1 WLJ 233-287; 2 WLJ 474; 3 WLJ 290; 1 EL 51, 52.

183.310

CASE CITATIONS: Wampler v. Dept. of State Police (1960) 224 Or 439, 355 P2d 238; State v. Hudson House, Inc., (1962) 231 Or 164, 371 P2d 675; School District 7 v. Minkler, (1963) 236 Or 165, 387 P2d 567; Mohr v. State Bd. of Education, (1964) 236 Or 398, 388 P2d 463; Peterson v. State Farm Ins. Co., (1964) 238 Or 106, 393 P2d 651.

ATTY. GEN. OPINIONS: Fishing regulations on the Umpqua River, 1962-64, p 47; hearings on insurance agents' applications, 1964-66, p 284; applicability to an appeal from Mental Health Division decision regarding a federal grant, 1966-68, p 390.

LAW REVIEW CITATIONS: 39 OLR 100, 102, 107; 46 OLR 484; 1 WLJ 145, 187, 202, 225.

183.315

ATTY. GEN. OPINIONS: Applicability to an appeal from a Mental Health Division decision regarding a federal grant, 1966-68, p 390.

LAW REVIEW CITATIONS: 39 OLR 108, 109.

183.330

CASE CITATIONS: State v. Hudson House, Inc., (1962) 231 Or 164, 371 P2d 675; School Dist. 7 v. Weissenfluh, (1963) 236 Or 165, 387 P2d 567; Oregon State Pharmaceutical Assn. v. State Pub. Welfare Comm., (1967) 248 Or 60, 432 P2d 296.

ATTY. GEN. OPINIONS: Adoption procedure for State Bd.

of Auctioneers, 1958-60, p 230; validity of administrative rules of Board of Auctioneers not filed with Secretary of State, 1958-60, p 230; effective date of rule sooner than 10 days, 1958-60, p 282; effectiveness of rules on persons with and without actual knowledge before filing and publication, 1958-60, p 282; sufficiency of notice given by means other than bulletin, 1958-60, p 282; defining "duplicate original," 1960-62, p 300; fishing regulations on the Umpqua River, 1962-64, p 47; application to Oregon State Board of Pharmacy, 1962-64, p 422; adoption of rule on pharmacist internship qualification, 1962-64, p 467.

LAW REVIEW CITATIONS: 39 OLR 105, 106; 1 WLJ 152, 153, 225, 226, 234, 245, 246; 2 WLJ 474.

183.340

NOTES OF DECISIONS

Deposition may be taken of complaining witness in proceeding before a state board which adopts the Model Rules of Administrative Procedure. Bernard v. Board of Dental Examiners, (1970) 2 Or App 22, 465 P2d 917.

183.360

CASE CITATIONS: Eugene Stud & Veneer, Inc. v. State Bd. of Forestry, (1970) 3 Or App 20, 469 P2d 635.

LAW REVIEW CITATIONS: 39 OLR 106; 1 WLJ 226.

183.400

NOTES OF DECISIONS

The rule promulgated by the board was within the legislative grant of authority to the board. Angelos v. State Bd. of Dental Examiners, (1966) 244 Or 1, 414 P2d 335.

This section consents to a form of suit against the state. Oregon Newspaper Publishers Assn. v. Peterson, (1966) 244 Or 116, 415 P2d 21.

Plaintiff had standing to challenge the rule. Id.

Only questions of constitutionality, statutory authority and basic prerequisites of proof can be raised. Id.

The rule promulgated by the board was not within the legislative grant of authority to the board. Id.

FURTHER CITATIONS: State v. Hudson House, Inc., (1962) 231 Or 164, 371 P2d 675.

LAW REVIEW CITATIONS: 46 OLR 344-353, 483.

183.410

CASE CITATIONS: Bay v. State Bd. of Education, (1963) 233 Or 601, 378 P2d 558, 96 ALR2d 529.

183.415

CASE CITATIONS: White v. State Ind. Acc. Comm., (1961)

227 Or 306, 362 P2d 302; *Mohr v. State Bd. of Educ.*, (1964) 236 Or 398, 388 P2d 463.

ATTY. GEN. OPINIONS: Tape recording hearings, 1960-62, p 333; hearings on insurance agents' applications, 1964-66, p 284.

183.430

CASE CITATIONS: *Wright v. State Ins. Commr.*, (1969) 252 Or 283, 449 P2d 419.

ATTY. GEN. OPINIONS: Authority to refuse to renew license, 1958-60, p 34; denying license upon proper application, 1958-60, p 85; construing authority to suspend a license without a hearing, 1964-66, p 109; application to an insurance association license renewal, 1966-68, p 524.

183.440

NOTES OF DECISIONS

Testimony of complaining witness in license revocation proceeding is of such general relevance as to entitle accused to a subpoena for such witness. *Bernard v. Board of Dental Examiners (dictum)*, (1970) 2 Or App 22, 465 P2d 917.

LAW REVIEW CITATIONS: 40 OLR 62; 1 WLJ 155.

183.460

ATTY. GEN. OPINIONS: Preparation of proposed decision by hearing agent, 1960-62, p 328.

183.470

CASE CITATIONS: *Wright v. State Ins. Commr.*, (1969) 252 Or 283, 449 P2d 419; *Butler v. Ins. Dept.*, (1971) 92 Or App Adv Sh 1810, 487 P2d 103.

183.480

NOTES OF DECISIONS

The administrative fact-finding agency is required to make clear and complete findings of basic fact, so that the reviewing court can determine whether (1) the basic facts are supported by evidence, and (2) whether the required ultimate fact can be reasonably inferred from the basic facts. *Wright v. State Ins. Commr.*, (1969) 252 Or 283, 449 P2d 419; *Bernard v. Board of Dental Examiners*, (1970) 2 Or App 22, 465 P2d 917.

Jurisdiction for judicial review of State Police trial board

decisions is provided by ORS 181.350 and is excepted from this Act. *Wampler v. Dept. of State Police*, (1960) 224 Or 439, 355 P2d 238.

Prior to the 1971 amendment jurisdiction for judicial review of State Real Estate Commissioner hearings was excepted from the Administrative Procedures Act. *State v. Standridge*, (1960) 224 Or 334, 355 P2d 1114.

Courts will not review the orders of public administrative bodies that have failed to comply with statutes requiring findings of fact and conclusions of law but will hold orders made without meeting these requirements void. *Mitchell Bros. Truck Lines v. Hill*, (1961) 227 Or 474, 363 P2d 49.

A ruling by an administrative quasi-judicial body which is subject by statute to review in the circuit court cannot be preserved from review through invoking the doctrine of res judicata. *Holmes v. State Ind. Acc. Commr.*, (1961) 227 Or 562, 362 P2d 371, 363 P2d 563.

Whether or not a conclusion of a board is clearly wrong depends upon whether a review of the entire record discloses any facts from which the conclusion could be reached by reasonable minds. *Bay v. State Bd. of Educ.*, (1963) 233 Or 601, 378 P2d 558, 96 ALR 2d 529.

The reviewing court is not granted power to weigh the evidence and substitute its judgment as to the preponderance thereof for that of the agency. *Id.*

The extent of judicial review is dependent upon legislative direction in the Unemployment Compensation Act. *Baker v. Cameron*, (1965) 240 Or 354, 401 P2d 691.

To justify taking evidence, the alleged irregularity must be one of an arbitrary or capricious action or one which would tend to invalidate the proceeding. *Barclay v. State Bd. of Educ.*, (1966) 244 Or 294, 417 P2d 986.

The Administrative Procedures Act has no application to the Occupational Disease Law. *Lawton v. State Acc. Ins. Fund*, (1971) 5 Or App 539, 485 P2d 1104.

FURTHER CITATIONS: *State v. Hudson House, Inc.*, (1962) 231 Or 164, 371 P2d 675; *Mohr v. State Bd. of Educ.*, (1964) 236 Or 398, 388 P2d 463; *Buell v. State Ind. Acc. Commr.*, (1964) 238 Or 492, 395 P2d 442; *Oregon Newspaper Publishers Assn. v. Peterson*, (1966) 244 Or 116, 415 P2d 21; *Hayden Island, Inc. v. Dept. of Environmental Quality*, (1970) 4 OTR 69, aff'd, 258 Or 597, 484 P2d 1106; *Butler v. Ins. Dept.*, (1971) 92 Or App Adv Sh 1810, 487 P2d 103.

ATTY. GEN. OPINIONS: Applicability to an appeal from a Mental Health Division decision regarding a federal grant, 1966-68, p 390.

LAW REVIEW CITATIONS: 39 OLR 107; 41 OLR 177-181; 46 OLR 351, 352, 484; 50 OLR 91; 1 WLJ 159.