

Pennsylvania Administrative Law

Administrative law refers to the regulations, statements of policy and adjudications by executive and independent agencies, boards and commissions located within the Commonwealth. Executive agencies are under the control of the Governor and are often headed by a cabinet member. Independent agencies are not under the Governor's control.

RESEARCHING PA ADMINISTRATIVE LAW

In Pennsylvania, administrative agency rules and regulations are published in the *Pennsylvania Code*:

- Online at **www.pacode.com**. Instructions for using the Code search and browse functions are contained at this site.
- Print (KFP 35.A2 P4)

Agency rules and regulations are updated weekly with proposed changes by in the *Pennsylvania Bulletin*:

- Online at **www.pabulletin.com** from 1996 to present.
- Print (KFP 35.A2 P4) in Harrisburg (Stacks) from 1995 forward and in Delaware (Treatises) current year and one previous year.
- Microfilm – Harrisburg has volume 1 (1970) through volume 25:1 (1995) and Delaware has volume 13 (1983) through volume 25:1 (1995). Microfilm ceased in 1995.

Agency-specific information can be found on the Internet through the Commonwealth's official Web page at **www.state.pa.us**. The exact information available online varies from agency to agency.

Detailed information on all parts of Pennsylvania government is published in the *Pennsylvania Manual*. (Print REF JK 3630. P4 or online at **www.dgs.state.pa.us** under Quick Links)

REGULATIONS

2 Pa.C.S. §102 (Administrative Law and Procedure) grants agencies the authority to promulgate *regulations* to carry out their statutory missions. As a general rule, the enabling law that establishes an agency also grants the agency this important power. Regulations are the primary means by which agencies take action; regulations have the force and effect of law to ensure compliance by the regulated entities or industries. The *Pennsylvania Bulletin* is a weekly publication of proposed rules and provides for public comments. Final regulations, comments and agency responses are published in the *Pennsylvania Code*.

STATEMENTS OF POLICY

Another regulatory tool used by agencies is the *Statement of Policy*. Unlike regulations, *Statements of Policy* are advisory and without the force and effect of law. They are designed to provide guidance by notifying the public of the agency's position on an important question or the agency's interpretation of its role. *Statements of Policy* are published in proposed form in the *Pennsylvania Bulletin* with final statements in the *Pennsylvania Code*.

ADMINISTRATIVE HEARINGS

An administrative hearing before the agency is held after notice of the time and place is published in the *Pennsylvania Bulletin*. The agency is represented by in-house counsel; the respondent is also permitted to have counsel. Proceedings in an administrative hearing differ from those in a civil or criminal trial. Administrative hearings are governed by the *Administrative Agency Law*, 2 Pa.C.S. §§501-508, 701-704, the *General Rules of Administrative Practice and Procedure*, 1 PA.CODE §§31.1-35.251, and the agency's own regulations.

Decisions rendered after administrative hearings are called adjudications and consist of findings of fact, conclusions of law and discussion. Few Commonwealth agencies publish their adjudications. Prior unpublished agency decisions may be persuasive but are not binding precedent.

An agency adjudication may be appealed to the agency head or board or directly to Commonwealth Court, depending on the agency's hearing system. For example, hearings at the Insurance Department are conducted by a Hearing Examiner, but the adjudication is issued directly by the Insurance Commissioner and may be appealed to Commonwealth Court. Hearings before state licensing boards housed in the Department of State are conducted before either a hearing examiner or the licensing board itself. Hearing examiner decisions, called "proposed reports," must be appealed to the board before an appeal may be taken to Commonwealth Court. Finally, some independent agencies have Administrative Law Judges whose decisions can be appealed directly to Commonwealth Court.

THE ROLE OF THE APPELLATE COURT

Adjudications and orders of Commonwealth agencies can be appealed as of right to Commonwealth Court, a court of both original and appellate jurisdiction set up to handle government matters. The Commonwealth Court follows the Pennsylvania Rules of Appellate Procedure as well as its own operating rules. The court's standard of review is limited to whether the agency committed an error of law or constitutional violation, or acted outside the scope of its authority. The court reviews the agency's findings of fact to see if they are supported by substantial evidence. 2 Pa.C.S. §704.

ADMINISTRATIVE LAW RESOURCES

There are several hornbooks dealing with federal administrative law. *Understanding Administrative Law* (RESERVE, KF 5402. F68 2000); *Administrative Law and Process in a Nutshell* (RESERVE, KF 5402.Z9 G4 1997); *BNA Administrative Practice Manual: A Guide to Agencies and the Regulatory Process* (KF 5406.A8 B32);; *Pike & Fischer Administrative Law* (KF 5401. A5163 3rd edition); *Administrative Law*, Hornbook Series, (RESERVE KF 5402.A8 2001); *Administrative Law and Process*, (KF5402.A8 2001)

The Pennsylvania Bar Institute (PBI) has published several administrative law texts for attorneys covering practice before specific agencies. The PBI books can be found in the Pennsylvania section of the law library after searching the online catalog..

The *Widener Law Journal* (K 27. I250) is published on the Harrisburg campus and includes the *Annual Survey of Pennsylvania Administrative Law*. Pennsylvania generates a uniquely large amount of administrative law, and this publication was created to provide an analytical and expository forum for addressing this often ignored area. With the publication of the Survey, the *Journal* is the only law review specifically focusing on administrative law in the Commonwealth of Pennsylvania. The Survey includes student-written analytical writing that examines Pennsylvania court decisions having a particularly significant impact on administrative law.

QUESTIONS?

Delaware Reference 302-477-2114

Harrisburg Reference 717-541-3934

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