THE ADMINISTRATIVE ORDERS AND PROCEDURES ARTICLE OF THE STATE OF INDIANA

The single most important statute governing administrative law in Indiana is the Administrative Orders and Procedures Article, I.C. 4-21.5-1 et seq. The Administrative Adjudication Act was repealed effective July 1, 1987. The Administrative Orders and Procedures Article replaces the Administrative Adjudication Act. Although the procedures required by the Administrative Orders and Procedures Article remain primarily the same as under the Administrative Adjudication Act, the Administrative Orders and Procedures Article adopted a new format and a few new provisions. This Chapter will focus on the new Administrative Orders and Procedures Article but will be supplemented by case law interpreting the Administrative Adjudication Act where applicable.

This essay will examine that relationship between the Administrative Orders and Procedures Article and state agencies by first discussing the Administrative Orders and Procedures Article. This essay will then track a line of Indiana court decisions which establish a trend of increasing influence of the Administrative Adjudication Act on state tax agencies. Finally, analysis will be provided on how the relationship could be improved, as well as any new changes that the new Administrative Orders and Procedures Article may bring.

The Administrative Orders and Procedures Article is divided into six chapters: (1) definitions, (2) applicability of the article, (3) adjudicative proceedings, (4) special proceedings, (5) judicial review and (6) civil enforcement. Articles which affect tax-related agencies will be briefly discussed and compared to the comparable provisions in the Administrative Adjudication Act.

The Administrative Orders and Procedures Article defines 14 terms as used throughout the Article. This is an improvement over the six definitions provided under the Administrative Adjudication Act. However, a few of the definitions under the Administrative Orders and Procedures Article are unnecessarily circular. For example, "administrative law judge" is defined as "an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding." See I.C. 4-21.5-1-2. This scarcely appears to be an improvement over the definition in the Administrative Adjudication Act: "an individual or panel of individuals appointed by the ultimate authority of an agency to conduct an adjudicatory hearing and perform all functions related to the hearing." I.C. 4-22-1-2.1 repealed effective July 1, 1987.

Chapter two of the Administrative Orders and Procedures Article sets forth minimum procedural rights and duties for state agencies. See I.C. 4-21.5-2-1. It applies to "an agency, except to the extent that a statute clearly and specifically provides otherwise." See I.C. 4-21.5-2-3. State tax agencies are specifically excluded from the article in I.C. 4-21.5-2-4; among these exclusions are the Department of State Revenue and the State Board of Tax Commissioners. This is consistent with their exclusion under the Administrative Adjudication Act.

It should be noted that the Administrative Adjudication Act included a statement of the purpose of the Act which was "to establish a uniform method of administrative adjudication by all agencies of the State of Indiana . . . " See I.C. 4-22-1-1, repealed effective July 1, 1987. Thus, only state agencies were bound by the Administrative Adjudication Act; county and local (taxing) authorities were not. However, the Administrative Orders and Procedure Article does not contain a statement of the purpose nor does the article expressly limit the article's applicability to statewide agencies. However, presumably the Administrative Orders and Procedures Article, like the predecessor the Administrative Adjudication Act, applies only to state agencies for two reasons. First, the term "agency" is defined as "any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article." See I.C. 4-21.5-1-3. Furthermore, the Administrative Orders and Procedures Article has been described as a refinement of the old Administrative Adjudication Act and not a radical departure from the act. Thus, the conclusion can be drawn that the Administrative Orders and Procedures Article, like the Administrative Adjudication Act, is inapplicable to both state and local tax-related agencies.

The procedures and the standards of judicial review required under the Administrative Orders and Procedures Article are substantially equivalent to those of the Administrative Adjudication Act. Thus, case law interpreting the relationship between the Administrative Adjudication Act and taxing agencies is crucial to an understanding of the relationship between these agencies and the Administrative Orders and Procedures Article. These cases are set forth below with citations to the current Article noted.

From the time the Administrative Adjudication Act was enacted in 1947 until the late 1970's, the two major state tax agencies, the Indiana Department of State Revenue and the State Board of Tax Commissioners, were not all that concerned with the Administrative Adjudication Act, since section two of the Administrative Adjudication Act exempted them from the Administrative Adjudication Act's administrative law hearing requirements. More specifically, those requirements include the requirement that the agency prepare and certify a transcript of " . . . testimony adduced and exhibits admitted together with the notice, all pleadings, exceptions, motions, requests and
papers filed, other than briefs or arguments of law . . .", I.C. 4-22-1-9, and the requirement that the agency make written findings of fact. See I.C. 4-21.5-3-33, formerly I.C. 4-22-1-9 and I.C. 4-22-1-10. The existing case law tended to support the tax commissioners' position, with the 1974 case of State Board of Tax Commissioners v. Stokely-Van Camp, 161 Ind. App. 627, 317 N.E. 2d 182 (1974), being a prime example.

Almost all of the tax-related decisions involving the Administrative Adjudication Act concern real or personal property taxes, and usually the assessment procedures used by the tax agency are challenged. In the Stone City Plaza case, Stone City Plaza, Inc. owned a shopping center which the Lawrence County Board of Review assessed at $296,470.00 for real property tax purposes. Stone City contended that the assessment should have been at $215,000.00, and appealed to the State Board of Tax Commissioners. An administrative hearing was conducted by James McClary, the State Board of Tax Commissioner's hearing officer, following which the State Board of Tax Commissioners made a final assessment of $269,680.00. Stone City appealed to the Lawrence Circuit Court, and at trial the State Board of Tax Commissioners opened the defense by calling the hearing officer, James McClary, to the witness stand. Stone City objected, arguing that since McClary did not fill out the Statement of Facts portion of his report form, and since the Board failed to make findings of fact, the trial would be unfair to allow McClary to testify. The State Board of Tax Commissioners contended that by excluding McClary's testimony, the trial court heard only one side of the case, the taxpayer's. The trial court refused to allow the hearing officer to testify, and the State Board of Tax Commissioners appealed. See Stone City Plaza, 317 N.E. 2d at 183.

The Indiana Court of Appeals, First District, ruled in favor of the State Board of Tax Commissioners, stating that McClary, even though serving in the capacity of a hearing officer, was a competent witness to present relevant evidence, thus he should have been allowed to testify. What was most interesting about this case was the court's mention of the Administrative Adjudication Act. The court stated that sections nine and ten of the Administrative Adjudication Act require the agency involved to provide a transcript of the record, including testimony and exhibits, and to make informal findings of fact. However, the court allowed the hearing officer to testify even though he failed to comply with the Administrative Adjudication Act, because, "the State Board of Tax Commissioners is excluded from the operation of the statute by the terms of the Administrative Adjudication Act itself." See Stone City Plaza, 317 N.E.2d at 185.

Beginning in 1979, significant changes occurred in the relationship between the Administrative Adjudication Act and state tax agencies. These developments were derived from a series of Indiana court decisions, to be discussed in chronological order, which evidence a clear trend toward increasing application of the Administrative Adjudication Act to state tax agencies, at least indirectly if not directly.

The trend began in 1979 with the case of Stokely-Van Camp, Inc. v. State Board of Tax Commissioners, 182 Ind. App. 91, 394 N.E.2d 209 (1979) (see also, King, Taxation, 1980 Survey of Recent Developments in Indiana Law, 14 Ind. L. Rev. 523, 541-42 (1981)), and was decided by the same court which had decided State Board of Tax Commissioners v. Stone City Plaza, Inc. five years earlier, the Indiana Court of Appeals, First District. The Stokely-Van Camp case involved the State Board of Tax Commissioner's review of the business personal property assessment of Stokely-Van Camp, Inc. in various counties throughout Indiana. The State Board of Tax Commissioners ruled against Stokely-Van Camp; however, no written findings of fact or reasons were given by the State Board of Tax Commissioners for its determination. The sole issue on appeal was whether written findings, similar to those in section nine of the Administrative Adjudication Act, were necessary by the State Board of Tax Commissioners after a hearing before it. See Stokely-Van Camp, 394 N.E.2d at 210.

The court first noted that the statute under which the State Board of Tax Commissioners was conducting the Board's reassessment does not explicitly require that written findings be made, and that the State Board of Tax Commissioners was specifically excluded from the reporting requirements of the Administrative Adjudication Act. Nevertheless, the court of appeals remanded the case to the trial court with instructions to remand the case to the Board for written findings in support of the State Board of Tax Commissioner's final determination. The Stokely-Van Camp case was a very important decision because the court emphatically ruled that although the State Board of Tax Commissioners had been specifically excluded from the Administrative Adjudication Act, the Board should still have made written findings in support of the Board's order. Although the court did not formally reverse its Stone City Plaza decision, the court, for all practical purposes, did just that. In support of the court's decision, the court stated that:

The practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative consideration, helping parties plan their cases for re-hearings and judicial review, and keeping agencies within their jurisdiction.
See Stokely-Van Camp, 394 N.E.2d at 211 (quoting K. Davis, Administrative Law Text, §16.03 (2d. ed. 1972)).

In further support of the court's decision to require written findings, the court noted that similar holdings had been made in Indiana for zoning boards, (See Carlton v. Board of Zoning Appeals, 252 Ind. 56, 245 N.E.2d 337 (1969)), for employee merit boards, (See Yunker v. Porter County Sheriff's Merit Board, 178 Ind. App. 364, 382 N.E.2d 977 (1978)), for industrial boards, (See Delaware Machinery & Tool Co. v. Yates, 158 Ind. App. 167, 301 N.E.2d 857 (1973)), and in dictum for all administrative agencies (See, Hawley v. South Bend Department of Redevelopment, 270 Ind. 109, 383 N.E.2d 333 (1978)).

Two years after the court decided the Stokely-Van Camp case, the Indiana Court of Appeals, First District was again involved in a key decision concerning the Administrative Adjudication Act and state tax agencies. In State Board of Tax Commissioners v. Gatling Gun Club, 420 N.E.2d 1324 (Ind. Ct. App. 1981), the Gatling Gun Club was a not-for-profit corporation filing an application with the Auditor of Marion County for a one hundred percent property tax exemption, based on charitable and educational grounds. The club's claim was denied, and they filed a petition for review by the State Board of Tax Commissioners. Subsequently, the State Board of Tax Commissioners held a hearing and denied the property tax exemption. The club petitioned the Hendricks Circuit Court, and won a judgment.

The significant feature of this case on appeal was the similarity between the arguments set forth by the State Board of Tax Commissioners and the language of the Administrative Adjudication Act. Section 18 of the Administrative Adjudication Act, I.C. 4-22-1-18, provides that when a court judicially reviews an agency's final order, the court shall not try the case de novo, but shall only consider the facts as determined in the agency's record filed with the court. See I.C. 4-21.5-5-11. That same section further provides that a court may only set aside the agency's determination if the determination is "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law . . . . . " See I.C. 4-21.5-5-14. The Board in Gatling Gun Club complained that the Hendricks Circuit Court permitted five people to testify who did not testify at the hearing before the State Board of Tax Commissioners hearing officer, and allowed two exhibits to be introduced into evidence which were not presented at the prior hearing. The State Board of Tax Commissioners argued that judicial review of administrative agency action is limited to a review of evidence considered by or presented to the agency, for the issue is whether, based on the evidence presented to the agency, the agency acted arbitrarily, capriciously, illegally, or abused the agency's discretion. See Gatling Gun Club, 420 N.E.2d at 1326. Sound familiar?

The court of appeals agreed with the State Board of Tax Commissioners, holding that:

Even where the Administrative Adjudication Act is inapplicable and another statute expressly provides for an appeal de novo, the reviewing court must go no further than to examine the propriety of the agency's facts as the agency found them and the propriety of the agency's order in light of the facts found. The reviewing court may not simply review and reweigh the evidence without giving weight to the agency's findings.

See Gatling Gun Club, 420 N.E.2d at 1328.

Thus, the Gatling Gun Club decision was important because a state taxation agency which was exempt from the Administrative Adjudication Act argued in favor of, and the Court of Appeals adopted, a standard of judicial review for that agency's determinations which is almost identical with the judicial review language in the Administrative Adjudication Act.

During the same 1981 term in a different court, the Indiana Court of Appeals, Third Circuit, there was another Indiana decision involving judicial review of State Tax Board assessments. In State Board of Tax Commissioners v. South Shore Marina, 422 N.E.2d 723 (Ind. Ct. App. 1981) (see also, Boyd, Taxation 1982. Survey of Recent Developments in Indiana Law, 16 Ind. L. Rev. 355, 367-70 (1983)), the plaintiff, South Shore Marina, was assessed property taxes on approximately fifty boats located on the Marina's property. The Marina contested the assessment, claiming that the Marina merely rented space to boat owners, and thus had no ownership or possessory interest in the boats. At a hearing, the State Board of Tax Commissioners requested a list of the boats and their owners, but South Shore refused. The State Board of Tax Commissioners upheld the assessment, but the trial court, as the trial court so often does in state and local tax cases, entered judgment for the taxpayer and vacated the State Board of Tax Commissioners assessment on the boats. See South Shore Marina, 422 N.E.2d at 726.

The court of appeals ruled for the State Board of Tax Commissioners, holding that the trial court erred in the court's standard of judicial review. The court used language that was very similar to that used by the First District in the Gatling Gun Club case. The court stated that "Judicial review of an administrative is limited to whether the agency possessed jurisdiction over the subject matter, and whether the agency's decision was made pursuant to proper procedures, was based upon substantial evidence, was not arbitrary or capricious, and was not in violation of any
constitutional, statutory, or legal principal." See South Shore Marina, 422 N.E.2d at 727.

There were two important footnotes in the South Shore Marina case. In one, the court said that, "The State Board of Tax Commissioners is not under the Administrative Adjudication Act. The above stated standard of review, however, is substantially equivalent to that under the Administrative Adjudication Act." See Id. at 727, n.2 (cites omitted) (emphasis added). In the other footnote, the court noted that the result in this case did not mean that a taxpayer must automatically supply the information sought by the Board; rather, according to the court, the result means that a taxpayer's refusal must be based on legitimate grounds. See Id. at 730-31, n.4.

The most recent decision involving the relationship between the Administrative Adjudication Act and state tax agencies is the 1984 case of State Board of Tax Commissioners v. Smith, 463 N.E.2d 493 (Ind. Ct. App. 1984). In Smith, a group of taxpayers challenged the validity of an equalization order issued by the State Board of Tax Commissioners. The equalization order, if effective, would restore assessed real estate values to the amounts originally assessed by the Jennings County Township Trustees, and would nullify the trustee's unanimous decision to reduce the assessments by approximately thirty percent. See Smith, 463 N.E.2d at 494. The trial court once again ruled in favor of the taxpayers, and the State Board of Tax Commissioners appealed.

The main issue on appeal again centered around judicial review of administrative agency determinations, and although a different court was involved, the Indiana Court of Appeals, Fourth District, the result was the same. The court quoted the standard of judicial review from the South Shore Marina case, and agreed with the State Board of Tax Commissioners that the trial court arrived at the court's findings by erroneously examining the State Board of Tax Commissioners decision on the merits and thus failed to accord any weight to the State Board of Tax Commissioners previous findings. In a footnote, the court noted that, "The Administrative Adjudication Act does not extend to the State Board of Tax Commissioners but the above standard of review is closely analogous to that provided under the Administration Adjudication Act and has been consistently applied to decisions of the State Board of Tax Commissioners." See Smith, 463 N.E.2d at 495, n.2.

As earlier noted, prior to 1979 the state tax agencies paid little attention to the Administrative Adjudication Act since they were apparently excluded from its requirements. After the cases of Stokely-Van Camp, Gatling Gun Club, South Shore Marina, and Smith, such can no longer be true. Even though the Stone City Plaza decision stubbornly remains, a clear trend has been established by these more recent decisions. While the specific requirements of the Administrative Orders and Procedures may not yet apply to state tax agencies, the courts have consistently recognized that the agencies and the reviewing courts will be subject to basic administrative law requirements which are substantially equivalent to those promulgated under the Administrative Adjudication Act and now under the Administrative Orders and Procedures Article.

To eliminate future lawsuits of the same nature as the ones described in this essay, the Indiana Department of State Revenue and the State Board of Tax Commissioners should revise their hearing procedures and specifically require that a transcript be produced and written findings of fact be made in every proceeding. Such a requirement may even be necessary even though the procedure would be more time consuming and expensive, for if these agencies are going to continue to advance the argument that judicial review is limited to a review of the evidence presented to the court, then the agencies are going to have to produce a substantial record for the courts to review.

A more complete record of hearing proceedings will likely benefit the taxpayer. With the current situation, the taxpayer loses almost every case that is appealed to the courts, because the courts are restricted to reviewing the tax agency's record, which often consists of little or no written evidence. The courts, crippled by a lack of available evidence, are forced into upholding the agency's prior determination. The taxpayer would at least be given a fighting chance if the courts were reviewing a detailed record of the prior proceedings.

In conclusion, the relationship between the Administrative Adjudication Act and state tax agencies was rather confusing, in that agencies which were supposedly exempt from the Act were held to the Act's requirements. The Indiana legislature, in enacting the new Administrative Orders and Procedures Article, neglected an opportunity to clear up the confusion. The legislature could have either eliminated the exemption in the Article for the state taxing agencies or could have set forth specific guidelines for those agencies to utilize. Instead, these agencies remain in an unresolved state, today with the added uncertainty of having a new set of rules in the Administrative Orders and Procedures Article which they are not bound by but very likely will be held to.