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THE ROLE OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURES COMMITTEE

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I. INTRODUCTION

We have had an Administrative Procedure Act in Florida since 1961. Some agencies of government have followed the requirements of that Act. Some agencies have adopted the position they were not subject to it, and this position has been sustained by the judiciary in certain cases. Some agencies have simply ignored the Act completely. Unfortunately, the people most affected by the Act have been the people of Florida. It has been confusing to these people why some agencies of government were subject to chapter 120 and others seemed not to be. Now we have a new Administrative Procedure Act (APA) which became totally effective on January 1, 1975. Certain provisions relating to the joint committee, creation of the Division of Administrative Hearings, and the section requiring adoption of model rules by the Administration Commission have been in effect since October 1, 1974. May I reaffirm here that the Act is fully effective as of the first day of January, 1975 and with little exception, *every agency* of the executive branch is subject to the provisions of the Act.

This committee, like all units of government, has as its basic purpose a contribution toward the goal of bringing better government to the people of Florida. In the accomplishment of this basic purpose, the committee has what may be a unique opportunity to be of direct service to all three branches of government. Its work will bring to the legislature a better understanding of the problems faced by the executive branch in implementing legislation. At the same time, it will provide valuable help to the administrative agencies by aiding them in their interpretation of legislative intent. Both these branches will benefit from the committee's assistance in resolving conflicts which sometimes arise. By contributing to the establishment of a fairer and more uniform system of administrative proceedings, the committee will help in reducing the case load of Florida's courts, thus providing valuable assistance to the judicial branch.

II. FUNCTION AND ORGANIZATION

The committee has three specific functions. First, it is to maintain

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continuous review of the statutory authority underlying each rule and to note when that authority is changed either by the legislature or the courts. So doing will help the executive branch keep its rules up to date, avoid lawsuits and serve to make the legislature aware of needed changes in the statutes. Second, the committee will review administrative matters in general as they relate to the Administrative Procedure Act, including specific problems relating to the implementation of the Act. Requests by agencies for exemption from the Act, although granted or denied by the Administrative Commission, are subject to the committee's review. The scope of the committee's review extends to the entire body of administrative rules regardless of when or how they were adopted. The third function is to review rules as they are adopted, which will have the dual effect of better informing the legislature so that problems may be dealt with, and of helping the agencies to better implement legislative intent by providing a source of ready reference.

The committee itself is organized according to the provisions of section 11.60, Florida Statutes,¹ which was passed as part of the Act. Basically, this statute provides for a six-man committee, three from each end of the hall. The chairmanship rotates between the houses yearly, with the vice chairman coming from the opposite house. All members are appointed by the presiding officers. The committee is empowered to adopt operational rules consistent with the rules of each house of the Legislature. The only staff positions designated by law are those of executive director and general counsel.

III. OPERATION OF THE COMMITTEE

In order to meet its statutory mandate to keep up with changes in the law requiring changes in rules, the committee will cooperate in developing a computer program which will list all the rules which depend on a given subsection of the statutes. Accordingly, when the committee learns of a change in the law, by following the history of legislation, by reading the statutory citator for court decisions, or otherwise, it can quickly determine which rules might be involved and check those rules against the change.

The committee is also generally charged with review of administrative rulemaking and adjudication functions, including requests for exemption from one or more of the APA requirements. In general, requests for exemption should be drawn as narrowly as possible, as the Act makes clear, and should be directed to the Administration

1. Fla. Laws 1974, ch. 74-310, § 2 (§ 11.60).

Commission, which has the power to grant temporary exemptions. By so doing, the agency will have the opportunity to make its case for exemption in a public forum. Once that case is made before the Administration Commission, it will be relatively simple for the committee to review the matter, and it should greatly simplify passage of legislation needed to provide the exemption.

Routine review of agency rules as they are adopted is spelled out in section 120.54(10).² There is no requirement that an agency submit a rule to the committee prior to publication of the rule text, nor is there any requirement to involve or inform the committee of any of the preliminary steps necessary to develop the proposed rule text. Similarly, there is no requirement that the committee make any comment on a proposed rule. The committee does not approve rules. If there is a problem in a rule, the committee may adopt an opinion detailing why it feels the proposed rule is not within the statutory authority. This opinion must be rendered prior to the time the rule becomes effective, so that there is no gap in coverage. The committee *cannot* prohibit an agency from adopting a rule with which the committee has found fault. If the agency wants to adopt the rule, it can do so and publish its reasons in the same issue of the Administrative Weekly which contains the committee opinion. The only requirement is that the agency act within 30 days of an adverse opinion.

IV. LEGISLATIVE EXPECTATIONS

In general, the legislature wrote the APA on the assumption that it would be implemented in good faith. The Act should help the executive branch clean up its organization and procedures, simply by forcing agencies to think about them.

The bulk of the Administrative Code should be reduced and redundancies eliminated because the agencies are having to revise their rules, and any revision should be able to eliminate a lot of unnecessary verbiage through simple editing. Thus, even though the APA will require some new matter, the net result should be a considerable reduction in the size of the Administrative Code. While the APA does not allow *adoption* by reference, it does permit *publication* by reference. Thus an agency wishing to adopt, for example, the Southern Standard Building Code as part of its rules need only file a copy when it formally adopts the rule, and publish it in the Administrative Code by reference. Any generally available standard material can be treated in the same manner. The Legislature specifically intended that

2. Fla. Laws 1974, ch. 74-310, § 1 (§ 120.54(10)).

each agency thoroughly revise its rules to cut down on redundancies and bulk, and that this job be done by October 1, 1975.

The committee and the legislature expect the agencies to cooperate in solving problems. Some agency people complain that the APA is complex and unworkable. The APA is complex, and conforming the statutes to its mandate is even more complex. The Division of Statutory Revision has been engaged in that task for four months. However, the APA is so flexible that virtually any problem in implementing it can be solved.

The committee is not intended as an adversary watchdog over the executive branch, even though it does have a broad mandate. The committee was intended to help oversee the process by which legislation is translated into reality through rules, because it was apparent that there were problems. The existence of a joint committee also gives agencies a place to go which contains representation from the entire legislature rather than from just one house. The committee was also intended to create in one place a systematized study of administrative problems as they relate to the legislature. Given the tremendous growth in the size and complexity of government in recent years, such work needs to be organized. Hence, cooperation in all areas of the committee's function is expected and necessary to accomplish the task of helping government help people.

V. CONCLUSION

There has been an outcry over abuses of the rulemaking process by state agencies. There have been cases where a piece of legislation failed in a session and was then placed in a rule almost verbatim. There have been situations where agency rules far exceed the statutory requirements. But that was yesterday. In the area of rulemaking there is a new day in Florida. The purpose of this committee is to make government responsive to the people, to give them an assurance of being heard, with regard to agency rules that can so vitally affect them.

The legislature passed this law without a dissenting vote. The Committee has pledged itself to spending all the time necessary to assure that the *full* legislative intent of this Act is carried out and President Barron³ and Speaker Tucker⁴ have also pledged themselves to this goal.

3. Dempsey J. Barron, President, Florida Senate, 1974-76.

4. Donald L. Tucker, Speaker, Florida House of Representatives, 1974-76.