MAINE STATE LEGISLATURE

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COURTS

EDWARD M. ROBINSON
ADMINISTRATIVE COURT JUDGE

VF

STATE OF MAINE
ADMINISTRATIVE COURT
ANDROSCOGGIN COUNTY BUILDING
AUBURN, MAINE 04210

January 13, 1976

The Committee on State Government
State House
Augusta, Maine 04333

Dear Senator Curtis, Representative Cooney and Members of the Committee:

I am pleased to enclose herewith my report and recommendations, as requested.

Although many of the remarks in my report were stated to you orally at a recent session of the Committee, I considered that it may be helpful to you to have them in written, orderly fashion.

Of course, you are welcome to include any, or all, of the enclosed material in your report that may be of interest to you.

I shall be pleased to furnish further suggestions for your consideration, upon the first opportunity that my schedule may allow.

Thank you, once again, for your constructive work and helpful consideration in this important and complex area.

Sincerely,

Edward M. Robinson

Edward M. Robinson
Administrative Court Judge

EMR/p

Encl.

GENERAL BACKGROUND

In today's society, Administrative Law, in Maine as in all other states, is a broad and expanding field of law involving, inter alia, the regulatory and licensing powers of governmental agencies; the protection of the public health, safety, environment, welfare, and other public interests; the general economy; and the interests of the thousands of business, professional, trade and other occupational people, and their employees, who constitute a very large percentage of the members of the taxpaying public.

An all-inclusive, comprehensive review and revision of the entire body of Maine's administrative laws, in an immediate, one-step process, is neither feasible nor of urgent necessity. Rather, at this point, attention should first be given to those matters of emergency and top priority.

Of primary importance in the area of administrative law is the need for legislative amendments which would improve and expedite matters involving the rights, responsibilities, and livelihood of the large percentage of Maine's business, professional and occupational taxpayers, as well as their relationship to the health, safety and other interests of the general public.

Traditionally, in our court systems, attention has been focused upon: (1) the criminal area, in protecting the rights of persons accused of criminal violations by providing them with the due process of a fair hearing before an impartial court; and (2) the civil area, in providing an impartial court to redress civil wrongs and resolve disputes and claims between two or more litigants.

Additionally, in very recent years we have entered into a new era of awareness of the human rights of the individual. Considerable

federal and state legislation has been, and continues to be, enacted for the protection of the civil rights and equal opportunity of the individual, the minority groups, and the welfare recipients, as well as for the protection against various forms of discrimination and prejudice, etc., by means of providing the aggrieved persons with recourse to fair hearings before impartial judicial tribunals.

But, paradoxically, until a few years ago, that same provision for a fair hearing by an impartial court in cases involving business and occupational taxpayers whose license to earn a livelihood was placed in jeopardy, had been disregarded or overlooked. In stead, their cases were adjudged by their accusers. The issue of their guilt or innocence, and of their right to continue to support themselves and their families in their particular occupation, was decided by the state board or agency that had initiated the charges against them.

ADMINISTRATIVE COURT

Since 1957, successive sessions of the Maine Legislature have taken steps to correct this iniquity, resulting in the creation, in 1963, of the tribunal then known as the Office of the Administrative Hearing Commissioner. By the unanimous vote of the Legislature in 1973, this tribunal was elevated to the status of a state court, i.e., the Administrative Court.

Although there is an increasing number of federal and state administrative courts in existence today, the Maine Legislature may take justifiable pride in the fact that it was one of the earliest pioneers in this important area. It recognized the need, and assumed the necessary leadership, to create an impartial court for the purpose of protecting the rights of this large and important segment of our Maine citizens.

OPERATION

The Administrative Court is presided over by one Administrative Court Judge. All court proceedings are recorded by one court reporter

assigned to the judge, this reporter also functioning in the multi-capacity of court clerk, typist, secretary, office manager, etc. The total budget of the Administrative Court, including personal services and all other expenses, is $40,500 per year. In order to accommodate the citizens throughout the State, the court sits in the larger, central areas of Portland, Auburn, Augusta, Bangor and Presque Isle.

Over the years, the Administrative Court has operated in an efficient and impartial manner in conducting hundreds of trials per year and rendering written decisions thereon with dispatch. All trials are conducted by the one judge, with evidence presented in accordance with prescribed court practices. Upon reviewing the evidence and the applicable law, the judge renders his written decision, stating his findings of fact and conclusions of law in each case.

JURISDICTION

Since its inception, the jurisdiction of the court has involved a vast number of various licenses, including:

(1) Some 5,000 liquor licenses (retailers, wholesalers and out-of-town brewers;)

(2) Some 4,500 public eating places and thousands of other businesses licensed under the Department of Human Services, including hotels, motels, trailer parks, camping grounds, nursing homes, hospitals, boarding homes, foster homes, day care centers, etc.

(3) All professional, business and trade licenses enumerated under the Administrative Code (T. 5, §2301); and

(4) Other areas of jurisdiction, including appeals from decisions of the State Tax Assessor under the "Elderly Householders Tax and Rent Refund Act", appeals from the decisions of various agencies, boards and commissions, etc.

ADDITIONAL IMPACT

By the very nature of its jurisdiction, the Administrative Court is an important factor in the economy of the state. Likewise,

it plays a serious role in the protection of the health, safety and other interests of the general public, as these may be affected by the operations of the various occupational activities under the jurisdiction of the court.

Of no small consequence, the Administrative Court deters an additional case load from the already over-burdened Superior and Supreme Courts. To date, an average of only three to five of its hundreds of decisions per year are appealed to the Superior Court. Of the thousands of written decisions which it has rendered since its initial creation in 1963, only one (1) of its decisions has been appealed to the Supreme Judicial Court (Board of Optometry vs. Small).

WORK LOAD

As with the other courts, the work load of the Administrative Court has increased in recent years. This is particularly true in the area of the more complex cases involving issues of first impression, which require considerable legal research in the interpretation and application of statutory law and of a myriad of rules and regulations of various agencies. Such cases, some involving lengthy trials, create an additional burden to the court's over-taxed time schedule, causing periodic unavoidable interruptions in the speedy hearing and deciding of the constant flow of numerous cases of a more routine nature, and in the rendering of decisions in pending cases.

In order to keep abreast of the number of cases brought before the court, the Administrative Court Judge has been compelled, not only to forego all earned vacations in the past three and one-half years, but to adopt a seven day work week in 1975, as well as evening hours. Nevertheless, in spite of his efforts and of having to forego family activities and consideration for his own general well-being, a backlog in the court's work load has now developed. It is fortunate that no serious illness or injury has befallen either the judge, or his staff member, as same would curtail the operation of the court.

Over the years, the number of judges in other Maine courts

has been gradually increased in order to help them cope with their expanded work loads. No such provision has been made for the Administrative Court. As a result, this court, too, has now reached a critical saturation point. It is imperative, therefore, that an associate judge be appointed at this time to the Administrative Court in order to permit it to continue to function in a manner consistent with the intent of the Legislature that created the court, and in a manner which will continue to best serve the citizens of this State.

RECOMMENDATIONS

Additional areas of administrative law (such as laws governing internal agency matters, the correcting of statutory vagaries and inconsistencies, etc.) will require attention at the next regular legislative session. However, the most urgent, pressing need requiring the immediate consideration of this special session is twofold: (1) to provide assistance to the Administrative Court through the authorization of an associate judge, and (2) to enact the following statutory amendments at this time:

#1. Amend T. 5, §2401 by adding an additional subsection providing for the appointment of an associate Administrative Court Judge who shall be responsible to the Administrative Court Judge; and providing that the Administrative Court Judge shall assign the associate judge to hold court where and when it is needed.

> The annual cost of the foregoing, including personal services of the associate judge and one staff member, and all other expenses, would be approximately $40,000 per annum.

#2. Amend T. 5, §2407 and T. 28, §401 by providing that the Administrative Court may suspend or revoke a license <u>or impose a fine</u>, which said fines shall be paid to the Administrative Court within a specified number of days; and providing that the Administrative Court Judge, in turn, shall pay said fines into the General Fund of the State Treasury monthly (or at other specified intervals).

This amendment, applicable to all business and occupational

licensees, would provide additional State revenue which would partially, at least, defray the costs of the additional judge and the operation of the court. In addition to the revenue from fines imposed, the State would also benefit financially from some reduction in the loss of tax revenue from those licensees whose business activities may not be under suspension for periods of time, as a result of paying a suitable fine in lieu of a license suspension.

However, some guidelines in determining the amount of the fines, including minimum and maximum sums, should be prescribed, with a limit as to the number of times in a given period a licensee may be eligible to pay a fine in lieu of a suspension. See T. 28, §401.6 (P.L. 1975, c.362) which provides that beer and wine wholesalers and brewers, upon receiving a license suspension, may make "an offer in compromise" asking the court to consider, instead, a fine based upon a formula of 50% of the average per diem gross profit multiplied by the number of days of the license suspension; containing minimum and maximum sums and limiting a licensee's eligibilty for the "offer in compromise" to only one offense in a given year.

The court should be given the discretion to impose a fine or suspension, depending upon the nature and seriousness of the violation, and of determining whether to impose a fine of a specified sum or to accept "an offer in compromise" based upon a formula.

Again, the court's discretion is required in that certain violations of an occupation or business licensee could be of a nature which constitute a danger to the public health, safety or welfare and would demand that the license be suspended or revoked.

#3. Amend the third section of T. 5, §2403.1 in order to provide that "the copy of the complaint must be served at least seven days (rather than 15 days) before the time provided for the hearing."

A seven day notice would provide speedier hearings for all parties concerned and would be sufficient notice in most cases. In instances where the parties or counsel require additional time for preparation, the court has the authority to grant a continuance or to extend the hearing date. In liquor complaints, T. 28, §401.1 requires only a seven day notice, which has proved to be sufficient in most cases over the years - and the court has granted additional time for trial preparation when required.

#4. Amend T. 5, §2407.2 and T. 28, §401.1 which presently require the Administrative Court Judge to issue a written decision in each case, containing his findings of fact and conclusions of law. Said sections should be amended to provide that the judge may, at the conclusion of a hearing, state his decision and disposition of the case orally from the bench, on the record, or take the case under advisement and issue a written decision at a later date.

Although most trials would require a written decision, there are a number of cases where the facts are undisputed or conclusive from the evidence. In some instances, the State and the licensee stipulate to the facts and recommend a mutually agreed upon penalty for the court's consideration. In many of these instances, an oral decision from the bench would more speedily serve the interests of the parties concerned and spare the court the time-consuming taks of reviewing the evidence and the law in a written decision.

#5. The second setence of §2407.2 of T. 5 states: "There shall be no suspension ordered by the Administrative Court Judge until a date at least two weeks after the date of the notification of the decision and order, and if the aggrieved party, during the two week period, shall appeal the Administrative Court Judge's decision to the Superior Court, then no suspension shall take effect until after hearing by the Superior Court."

Said sentence should be amended by adding at the end thereof: "except that when, in the sound judicial judgment of the Administrative Court Judge, he determines that the violation in question constitutes an immediate and serious hazard to the public health or safety, he may order that the appropriate license suspension or revocation commence immediately, or prior to the two week waiting period, and remain in effect, upon appeal, pending the disposition of the Superior Court."

Occasional instances may arise, involving serious insanitary conditions or dangerous practices, for example, on the part of a licensee whereby the public health is placed in immediate jeopardy. In these special instances, the public should not be exposed to prolonged danger by permitting a hazardous condition to exist over the aforesaid waiting periods.

The Legislature has already recognized the possibility of a licensee's act jeopardizing the public health and safety by providing, in T. 5, §2404, that an emergency hearing may be held on short notice when it is shown that an "emergency exists which makes immediate action imperative." However, an emergency hearing regarding a dangerous condition is an exercise in futility if, after the hearing, the condition cannot be terminated at once but must be allowed to continue over a prolonged period of time.

The provision for the immediate suspension of a license should be used sparingly and only in a situation where the court finds the public health and safety would be placed in immediate danger.

#6. The sixth sentence of §403 of T. 28, providing for a stay of operation of a liquor license suspension in the event an appeal is filed with the Superior Court within seven days, is vague and confusing. As

a result, some attorneys have mistakenly failed to file their appeal within the required seven day period but have merely notified the Administrative Court within that period of their intention to file an appeal on some future date.

The substitution of the following language is suggested in order to clarify the procedure required by the subject provision:

"The operation of a suspension or revocation of a license imposed by the Administrative Court shall be suspended, pending judgment of the Superior Court, provided that the licensee files an appeal in the Superior Court, and notifies the Administrative Court that the appeal has been filed, within seven days of the sending of the decision of the Administrative Court by registered or certified mail to the address given by the licensee at the time of his application for a license."

> The apparent legislative intent, in requiring the appeal to be filed within seven days in order to suspend the operation of a penalty, is to discourage frivolous appeals filed mainly for the purpose of delaying the commencement date of the penalty.

#7. T. 28, §153, as enacted by P. L. 1975, c. 256, relating to Special Agency Liquor Stores requires an amendment regarding appeal procedure. The first sentence of the last paragraph of the Act provides: "Any applicant aggrieved by a decision made by the Bureau of Alcoholic Beverages may appeal to the Administrative Court Judge in accordance with Title 5, Chapters 301-307."

However, Chapters 301 to 307, inter alia, relate to hearings on complaints brought by agencies against licensees and do not contain the procedure for the appeal of an agency decision to the Administrative Court. Such appellate procedure is set forth in various statutory provisions governing each particular agency. Chapter 307 prescribes only the procedure for appealing the Administrative Court's decision to the Superior Court and Supreme Court.

The following amendment of the first sentence of the last paragraph of the Act is recommended:

"Any applicant aggrieved by a decision made by the Bureau of Alcoholic Beverages may appeal the decision to the Administrative Court

by means of filing a complaint with the Administrative Court Judge, designated in Title 5, Chapters 301-307, and serving a copy of the complaint upon the Bureau, within 15 days of the sending of the decision of the Bureau by registered or certified mail to the mailing address given by the applicant in his application for a special agency store permit.

In order to avoid any misunderstanding concerning the creation of the special agency stores, it may be advisable to further amend the Act in order to clarify the intent of the Legislature as regards the following questions:

(a) May more than one agency store be established in the same municipality or unorganized territory?

(b) In municipalities which have a State store, and it is determined by the Bureau that the establishment of an agency store would be more profitable to the State than the continuation of the costs of operating the existing State store, may the Bureau close the State store and establish one or more agency stores in that municipality?

(c) If the answer to (b) is "yes," is there any limitation as to the population of a municipality in which an agency store may be substituted for an existing State store, or may the State stores in any and all of the cities and towns be closed and a number of agency stores be licensed in place thereof?

A further report, presently in progress, covering various other areas of administrative law, will be submitted im ample time for more convenient consideration at the next regular legislative session.

The following are examples of only some of the various matters presently under consideration:

1. Providing for uniformity in the appeal procedure upon the denial of a license by the various agencies enumerated under the Administrative Code. At present, the statutes provide that a person denied a license by some agencies may appeal to the Administrative Court, that persons aggrieved by other agencies may appeal to the Superior Court, while, as regards further agencies, no appellate court is designated.

2. The correction of vagaries, inconsistencies, omissions and conflicts in certain statutory language applicable to some of the licensing agencies, boards and commissions.

3. A review of the individual statutory provisions authorizing the rule making authority of various agencies, in order to insure that each of said enabling statutory provisions contains sufficient guidelines so as not to render an agency's rules and regulations invalid because of a wrongful delegation of legislative authority.

4. Consideration of placing other occupational licensees under the Administrative Code in order that actions involving the suspension of their occupational licenses may be heard by an impartial court, rather than by the agency or board that charges the licensee with a violation.

SENATE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON STATE GOVERNMENT

January 15, 1976

The Honorable Armand Dufresne, Jr.
Chief Justice Supreme Judicial Court
142 Federal Street
Portland, Maine 04112

Dear Justice Dufresne:

The Joint Standing Committee on State Government is studying the operation of the Administrative Court and Administrative Court procedures. We will be introducing legislation to add an Associate Judge and support personnel to that Court. In order to provide for the most effecient use of courtroom space, personnel and other facilities, we have considered having administrative details handled by the State Court Administrator who serves at your pleasure. We would appreciate it if at your convenience you would give us your opinion on the feasibility and desireability of such a step.

Sincerely,

Ted Curtis
Senator Ted Curtis

Leighton Cooney
Representative Leighton Cooney

HG/sym

STATE OF MAINE
SUPREME JUDICIAL COURT
AUBURN, MAINE 04210

ARMAND A. DUFRESNE, JR.
CHIEF JUSTICE

January 22, 1976

Senator Theodore S. Curtis, Jr.
Chairman, Committee on State Government
State House
Augusta, Maine 04330

Dear Senator Curtis:

I acknowledge receipt of your letter of January 15th from the Committee on State Government countersigned by Representative Leighton Cooney advising me of the study conducted by the Committee of the operation of the so-called Administrative Court and Administrative Court procedures. I was greatly surprised at the suggestion that legislation will be introduced to add an "Associate Judge" and support personnel to that Court.

The cause of my surprise was that none of my colleagues on the Supreme Judicial Court and none of the Justices and Judges on the Superior or District Court level whom I was able to contact had ever heard of a need in any part of the State of such an additional "Judge" on the "Administrative Court," especially at a time of economic distress such as we are in.

However that might be, the inquiry which the Committee addressed to me was whether it would be feasible and desirable for my State Court Administrator to handle the administrative details of such "Court" in order to provide for the most efficient use of courtroom space, personnel and other facilities.

I must respectfully suggest that, not only it would not be feasible or desirable, but would be improper to intermesh into the judicial apparatus a segment of the Executive Branch of Government.

It is not feasible or desirable, because my administrative personnel, which has not been on board for six months yet, has all it can do to implement the new structural procedures in the Superior Court. The old modus operandi in the Superior Court has been in effect for years and the infusion of modern procedures to meet the present needs of society cannot be accomplished overnight. Furthermore, the Superior Court and District Court system is in need of court room space itself. We need court rooms in Portland, Augusta, Houlton, Ellsworth, Rockland, and possibly a Supreme Court complex in Augusta. However, in the present economic crunch, we know that we must plan for the future and not expect perhaps immediate implementation in all areas at the same time.

I respectfully advise that it would be impossible for my administrative agents to take on at this time another "court."

Furthermore, I most respectfully believe that it would be highly improper to bring into the Judiciary an adjunct apparatus attached to Regulatory Agencies, which belong to the Executive Branch of Government, as other States in the country so recognize.

As you undoubtedly know, the Administrative Court Judge is the former Hearing Examiner for the State Liquor Commission (P.L. 1957, c. 410) and the former Hearing Examiner for certain other Regulatory Commissions (P.L. 1961, c. 394), combined into the position of Administrative Hearing Commissioner (P.L. 1963, c. 412) in 1963 to cut down the expense and save approximately $10,000 for the biennium. The powers of the present Administrative Court Judge are the same as those possessed by the former Hearing Examiner or Commissioner.

The change of names by emergency legislation in 1973 on the ground that the labels "Administrative Hearing Office" and "Administrative Hearing Commissioner" were vague and confusing did not, I would respectfully submit, turn a State Officer in the Executive Branch of Government into a member of the Judicial Department.

I have been candid in my answer to your inquiry, but wish to be most helpful to your Committee whenever the occasion arises.

Of course, it must be understood that this is not an official "Advisory Opinion."

With best wishes,

Respectfully yours,

Armand A. Dufresne, Jr.

Armand A. Dufresne, Jr.
Chief Justice

AAD,Jr./at