

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1626

H. P. 1249

House of Representatives, March 26, 1973

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Dunleavy of Presque Isle.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT to Change the Administrative Hearing Commission  
to an Administrative Court.**

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, §§ 2401 - 2407, repealed and replaced. Sections 2401 to 2407 of Title 5 of the Revised Statutes, as last repealed and replaced by chapter 507 of the public laws of 1969, and as amended, are repealed and the following enacted in place thereof:

§ 2401. Administrative Court

There shall be an Administrative Court under the supervision of the Administrative Court Judge. The Administrative Court is a court of record with a seal established by the Administrative Court Judge.

1. Appointment of Administrative Court Judge. The Administrative Court Judge shall be appointed by the Governor, with the advice and consent of the Council. He shall hold office for a term of 7 years and until his successor has been appointed and qualified.

2. Qualifications of Administrative Court Judge. The Administrative Court Judge must be a member of the bar of the State. He shall devote full time to his judicial duties. He shall not practice law during his term of office, nor shall he during such term be the partner or associate of any person in the practice of law.

3. Salary. The Administrative Court Judge shall receive an annual compensation, an amount which is \$1,500 less than that of a Superior Court Justice. He shall be entitled to actual and necessary expenses in the performance of his duties. He may employ necessary clerical assistance.

4. **Hearing.** Upon receipt of a written complaint from an agency, the Administrative Court Judge shall conduct a hearing on the applicable facts and law as governed by the Administrative Code. The Administrative Court Judge may subpoena and examine witnesses in accordance with section 2406. He shall issue a written decision containing his findings of fact and conclusions of law in each case. Hearings on all matters before the Administrative Court shall be held at the Kennebec County Courthouse in Augusta, unless a different place is designated by the Administrative Court Judge.

5. **Disqualification of Administrative Court Judge.** Whenever the Administrative Court Judge has a personal or financial interest, directly or indirectly, in a case which is before him, he shall disqualify himself from hearing that case.

The Administrative Court Judge shall give written notice of same to the parties to the action and shall file a copy of the notice in the docket of the case.

The moving party shall, within 10 days thereafter, commence an action by filing or refiling his complaint in the District Court. Jurisdiction is granted to the District Court to hear and determine such matters and to enter such rulings and orders as the nature of the case may require. The case shall be heard in the District Court in accordance with the Administrative Code and the District Court Judge hearing the case shall render a written decision thereon. The court reporter from the Office of the Administrative Court Judge shall transcribe the testimony as in cases before the judge. An aggrieved party may appeal from the decision of the District Court Judge to the Superior Court as is provided in the Administrative Code, chapters 301 to 307.

6. **Retirement.** Title 4, section 103, applicable to Justices of the Superior Court and to Judges of the District Court, is made applicable to the Administrative Court Judge.

§ 2402. **Petition for declaratory rulings by Administrative Court Judge**

On petition of any interested party, the Administrative Court Judge shall issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by an agency.

1. **Effect of declaratory ruling.** A declaratory ruling is binding with respect to the state of facts alleged, unless it is altered or set aside by the court. The ruling is subject to review in the Superior Court in the manner provided for appeal of decisions in contested cases.

2. **Form of petition.** The Administrative Court Judge shall prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition.

§ 2403. **Procedure in contested cases**

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice.

1. **Complaint filed.** On commencement of any contested case, a written complaint must be filed with the Administrative Court Judge. A copy of the

complaint containing a notice of hearing must be served on the defendant either by personal delivery in hand, by leaving it with a person of suitable age or discretion at his dwelling place or usual place of abode, or by sending it by registered mail to his last known address. The copy of the complaint must be served at least 15 days before the time specified for the hearing, except as provided in section 2404. The notice of hearing must inform the defendant of the time and place of hearing, the time limit for filing an answer to the complaint and the consequences of his failure to do so. The complaint must contain a conclusion indicating the violation of a statute or rule and citing the statute or rule violated.

2. Witnesses sworn. At the hearing before any testimony is received, the Administrative Court Judge shall swear in the witnesses.

3. Official record. The Administrative Court Judge shall prepare an official record, including testimony and exhibits, in each contested case, but he need not have a transcript of the testimony prepared unless required for rehearing or appeal. The record of the hearing may be taken by stenographic notes or by mechanical recording.

4. Disposition by agreement. On approval of the Administrative Court Judge, disposition of any contested case may be made by agreement or consent decree.

5. Rules of procedure. The Administrative Court Judge shall adopt and may amend or repeal rules of procedure in contested cases, including forms which he deems appropriate.

#### § 2404. Emergency hearings

The Administrative Court Judge may require that a hearing be held in a contested case in less than 15 days after service of the complaint if either party on ex parte motion is able to show that an emergency exists which makes immediate action imperative. The moving party shall give the opposing party reasonable notice of the advanced hearing date.

#### § 2405. Rules of evidence

The rules of evidence as applied in the trial of civil cases shall be observed in the Administrative Court.

#### § 2406. Subpoenas by Administrative Court Judge

At the request of a party in a contested case, the Administrative Court Judge shall issue subpoenas for the attendance of witnesses or for the production of documents. He may issue subpoenas on his own motion. A subpoena shall be issued in the name of the State and shall be under the seal of the Court.

1. Failure to obey subpoena. A person who fails to obey the subpoena of the Administrative Court Judge without adequate excuse is in contempt of court and shall be punished as provided in Title 16, section 102.

#### § 2406-A. Discovery

The rules of discovery which apply to the Superior Court apply also to the Administrative Court.

**§ 2407. Decisions**

After hearing, on default, or by agreement of the parties, the Administrative Court Judge may suspend, revoke or modify the license of any party properly served with process, or if the applicable law so provides, he may order issuance of a license to an applicant according to the terms of the applicable law.

1. **Written decision.** Each decision adverse to a party to the proceeding rendered by the Administrative Court Judge in a contested case must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact consist of a concise statement of the conclusions on each contested issue of fact.

2. **Notification of the decision and order; suspension.** The Administrative Court Judge shall notify the parties to the proceeding of the result of the hearing by sending a copy of the decision to each party or his attorney of record by certified mail, return receipt requested. There shall be no suspension ordered by the Administrative Court Judge until a date at least 2 weeks after the date of the notification of the decision and order, and if the aggrieved party, during the 2-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 said Superior Court.

**STATEMENT OF FACT**

The field of administrative law is expanding rapidly. There is a need for more formal procedures in order to protect the rights of litigants and licensees in administrative matters and an Administrative Court could best provide the objectivity, due process and intelligent decision-making so necessary to the administration of justice to all parties.