

MAINE STATE LEGISLATURE

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CHAPTER 305

HEARINGS

Sec.

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§ 2401. Administrative Hearing Office

The Administrative Hearing Office, as heretofore established, shall be under the supervision of the Administrative Hearing Commissioner.

1. Appointment of Hearing Commissioner. The Hearing Commissioner, as heretofore appointed, shall be appointed by the Governor, with the advice and consent of the Council, for a term of 4 years and until his successor is appointed and sworn.

2. Qualification of Hearing Commissioner. The Hearing Commissioner must be an attorney at law admitted to practice before the courts of the State of Maine.

3. Compensation of Hearing Commissioner. The Hearing Commissioner shall receive an annual compensation of \$8,000 and shall be entitled to actual and necessary expenses in the performance of his duties. He may employ necessary clerical assistance.

4. Hearings. On receipt of a written complaint from an agency, the Hearing Commissioner shall conduct a hearing on the applicable facts and law and governed by this code. The Hearing Commissioner may subpoena and examine witnesses in accordance with chapters 301 to 307. He shall issue a written decision containing his findings of fact and conclusions of law in each case.

1961, c. 394, § 1; 1963, c. 412, § 10.

§ 2402. Petition for declaratory rulings by Hearing Commissioner

On petition of any interested party, the Hearing Commissioner 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 Hearing Commissioner shall prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition.

1961, c. 394, § 1; 1963, c. 412, § 10.

§ 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 Hearing Commissioner. 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 30 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 Hearing Commissioner shall swear in the witnesses.

3. Official record. The Hearing Commissioner 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 Hearing Commissioner, disposition of any contested case may be made by agreement or consent decree.

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

1961, c. 394, § 1; 1963, c. 412, § 11.

§ 2404. Emergency hearings

The Hearing Commissioner may require that a hearing be held in a contested case in less than 30 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.

1961, c. 394, § 1; 1963, c. 412, § 13.

§ 2405. Rules of evidence

The rules of evidence as applied in the trial of civil cases in the State shall be observed whenever practicable, except that this section shall not apply to hearings under Title 28.

1. Exception. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence which is not ordinarily admissible may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

2. Certain evidence excluded. The Hearing Commissioner shall exclude irrelevant, immaterial and unduly repetitious evidence.

3. Rules of privilege. The Hearing Commissioner shall give effect to rules of privilege recognized by law.

4. Cross-examination. A party may cross-examine the opposing party, a witness for the opposing party or a hostile witness.

5. Judicial notice. The Hearing Commissioner may take judicial notice of facts so noticed by the Superior Court. Facts judicially noticed shall be stated in the decision issued by the Hearing Commissioner.

1961, c. 394, § 1; 1963, c. 412, § 13; c. 414, § 163.

§ 2406. Subpoenas by Hearing Commissioner

At the request of a party in a contested case, the Hearing Commissioner shall issue subpoenas for the attendance of witness-

es or for the production of documents. He may issue subpoenas on his own motion.

1. Failure to obey subpoena. A person who fails to obey the subpoena of the Hearing Commissioner may be punished as for contempt of court on application to the Superior Court by the Hearing Commissioner or by the party requesting issuance of the subpoena.

1961, c. 394, § 1; 1963, c. 412, § 13.

§ 2407. Decisions

After hearing, on default, or by agreement of the parties, the Hearing Commissioner 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. He may take any other action with relation to the party which could have been taken before the enactment of this code by the agency involved in the hearing.

1. Decision rendered by Hearing Commissioner. Each decision adverse to a party to the proceeding rendered by the Hearing Commissioner 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. The Hearing Commissioner 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 registered mail, return receipt requested.

1961, c. 394, § 1; 1963, c. 412, § 13.