

Approved January 26, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~ p.m. on January 21, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Peterson, Sebelius and Wagon

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Gordon L. Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Art Griggs, Department of Administration

The Chairman announced at this meeting the Committee would hear an update on S.B. 334--Kansas Administrative Procedure Act. Since the Judicial Council's Administrative Advisory Committee will be meeting Friday, January 22 to consider additional amendments to S.B. 334, the hearing and possible action on S.B. 334 has been rescheduled to Tuesday, January 26.

Matt Lynch presented an update on S.B. 334. He said the Advisory Committee was going to consider several issues at their meeting Friday, including summary proceedings and a number of issues the K.C.C. has raised in regard to the issuance and review of initial orders, (see Attachment I). The decision on whether S.B. 334 should be reprinted or whether the trailer bill, H.B. 2613 should be amended, has not yet been made. He said he would report back to the Committee Tuesday, January 26.

Art Griggs distributed a handout on the Kansas Administrative Procedures Act, as amended by S.B. 334, with Senate Committee amendments, (see Attachment II).

The Chairman appointed Representative Bideau, Chairman; Representative Buehler, Representative Douville, Representative Wagon and Representative Whiteman as a subcommittee on S.B. 264--Authorizing division of assets between spouses in determining eligibility for medical assistance.

The Committee meeting was adjourned.

The next meeting will be Monday, January 25, 1988, at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE Jan 21, 1988

HOUSE JUDICIARY

NAME

ORGANIZATION

ADDRESS

Jed Rackett

Anderson Conlee & Associates

Topeka

Joan Grummels

Intern, Rep. Whiteman

Lawrence

Cynthia Lutz

KASB

Topeka

~~Art~~ Art Briggs

Dept. of A.A.M.

Faith Loretto

Dept. of A.A.M.

Pam Scott

Ks Insurance Dept

David Cunningham

Board of Tax Appeals

Topeka

Deon Cotton

Dept Human Resources

Earl Nehring

Common Cause/Kansas

Topeka

Shirley McGovern

KCC

Topeka

Julene Miller

AG

"

Mark Stafford

AG

"

Matt Lynch

Judicial Council

"

Kenneth M. Wilke

KSBA

"

Jan Wenzel

Aide-Lep O'Neal

Hutchinson

REPORT OF THE KANSAS JUDICIAL COUNCIL
ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE
ON PROPOSAL NO. 15

On August 13, the Special Committee on Judiciary held a hearing on Proposal No. 15 - Evaluate the Feasibility of Further Expansion and Implementation of the Administrative Procedure Act. Representatives from a number of state agencies appeared at the hearing and voiced concerns with expansion of the Kansas Administrative Procedure Act (KAPA). Particular attention was given to fiscal impact statements submitted by state agencies in connection with 1987 Senate Bill 334, a bill which would significantly expand the application of KAPA. At the conclusion of the hearing, Chairman Wunsch requested that the Administrative Procedure Advisory Committee review the issues raised by the state agency representatives and report its recommendations on such issues at a future meeting of the Special Committee on Judiciary.

ADVISORY COMMITTEE RECOMMENDATIONS

The advisory committee recommends that K.S.A. 1986 Supp. 77-511, as amended in §5 of 1987 S.B. 334, be further amended to read as follows:

[] indicate deletions

0235 Sec. 5. K.S.A. 1986 Supp. 77-511 is hereby amended to read
0236 as follows: 77-511. (a) Except to the extent that the time limits in
0237 this subsection are inconsistent with limits established by an-
0238 other statute for any stage of the adjudicative proceedings, a state
0239 agency shall process an application for an order, other than a
0240 declaratory order, as follows:

0241 (1) Within 30 days after receipt of the application, the state
0242 agency shall ~~examine the application, notify the applicant of any~~
0243 ~~apparent errors or omissions and notify~~ the applicant of the
0244 name, official title, mailing address and telephone number of a
0245 state agency member or employee who may be contacted re-
0246 garding the application. ~~Failure to detect such errors or omis-~~
0247 ~~sions does not preclude the state agency from raising them at a~~
0248 later stage of the proceeding.

0249 (2) Within 90 days after receipt of ~~the~~ application ~~or of the~~
0250 response of the applicant to a timely request made by the state
0251 agency pursuant to paragraph (1) the state agency shall:

0252 (A) Approve or deny the application, in whole or in part, on
0253 the basis of emergency or summary ~~adjudicative~~ proceedings, if
0254 those proceedings are available under this act for disposition of
0255 the matter;

0256 (B) commence a formal ~~adjudicative~~ hearing or a conference
0257 ~~adjudicative~~ hearing in accordance with this act; or

acknowledge receipt thereof
and inform

As soon as practicable, the
state agency shall notify the
applicant of any apparent
errors or omissions.

When practicable,

a completed

Attachment I

0258 (C) issue an order and no. ~~the applicant of the right to~~ a hearing
0259 request ~~[an adjudicative proceeding]~~ pursuant to subsection (b) of
0260 K.S.A. 1986 Supp. 77-508 and amendments thereto; or
0261 (D) dispose of the application in accordance with K.S.A. 1985
0262 1986 Supp. 77-510 and amendments thereto.
0263 (b) Except to the extent that the time limits in this subsec- a hearing
0264 tion are inconsistent with limits established by another statute,
0265 a state agency shall process a request for ~~[an adjudicative pro-~~
0266 ~~ceeding]~~ pursuant to subsection (b) of K.S.A. 1986 Supp. 77-508
0267 and amendments thereto as follows:
0268 (1) Within 30 days after receipt of the request ~~and, if the~~ the state agency shall
0269 state agency has not previously done so, the state agency shall
0270 notify the applicant of the name, official title, mailing address
0271 and telephone number of a state agency member or employee
0272 who may be contacted regarding the request; and when practicable,
0273 (2) ~~within 90 days after receipt of the request the state~~
0274 agency shall:
0275 (A) ~~[Dispose of the matter, in whole or in part, on the basis of~~
0276 emergency or summary adjudicative proceedings, if those pro-
0277 ceedings are available under this act for disposition of the mat-
0278 ter;
0279 (B) ~~commence a formal or conference [adjudicative] hearing~~
0280 in accordance with this act; or (B)
0281 ~~[(C) dispose of the matter in accordance with K.S.A. 1986~~
0282 Supp. 77-510 and amendments thereto.
0283 (3) If the request for ~~[an adjudicative proceeding]~~ is in re- a hearing
0284 sponse to agency action under (2)(C) of subsection (a), the
0285 agency shall take one of the actions under subpart (2) of this
0286 subsection within 30 days: , if practicable
0287 (c) If a timely and sufficient application has been made for
0288 renewal of a license with reference to any activity of a continuing
0289 nature, the existing license does not expire until the state agency
0290 has taken final action upon the application for renewal or, if the
0291 state agency's action is unfavorable, until the last day for seeking
0292 judicial review of the state agency's action or a later date fixed by
0293 the reviewing court.

It was apparent at the August hearing that the timelines for processing an application for an order contained in K.S.A. 77-511 were of great concern to the state agencies. In fact, the bulk of the projected fiscal impacts submitted in connection with S.B. 334 were attributed to the provisions of this section.

In its present form, K.S.A. 77-511 imposes two basic requirements on state agencies following receipt of an application for an order. Within 30 days, the agency must notify the applicant of the agency employee who may be contacted regarding the application and any apparent errors or omissions contained in the application. Within 90 days, the agency must (A) approve or deny the application on the basis of emergency or summary

proceedings (if those proceedings are available), (B) commence a formal or conference hearing or (C) inform the applicant that there is no right to a proceeding and the agency is not going to provide one.

Apparently, some agencies interpret the provision relating to the detection of apparent errors and omissions as requiring a detailed, and sometimes technical, examination of every application, a task which they view as impractical given the present staff available. The advisory committee views this provision as addressing the form, rather than the substance, of an application. It requires the detection of obvious deficiencies rather than an evaluation of the merits of an application. However, the advisory committee sees no significant harm in recommending that, within 30 days, the state agency need only acknowledge receipt of an application. Notification of apparent errors and omissions in an application would be required "as soon as practicable."

The provision requiring further action on an application within 90 days was also viewed as impractical by state agencies for certain high-volume functions or functions necessarily requiring a longer time period for processing. The advisory committee recommends further agency action be required within 90 days only when practicable. In essence, the 90-day time period would be reduced to a guideline.

The advisory committee recommends that K.S.A. 1986 Supp. 77-513 and 77-537 be amended in the manner contained in §§4 and 5 of 1987 House Bill 2613 as follows:

0161 Sec. 4. K.S.A. 1986 Supp. 77-513 is hereby amended to read
0162 as follows: 77-513. All adjudicative proceedings shall be formal hearings
0163 [adjudicative proceedings] and shall be governed by K.S.A. ~~1985~~
0164 1986 Supp. 77-513 through 77-532, and amendments thereto,
0165 except as otherwise provided by:
0166 (a) A statute other than this act;
0167 (b) ~~a rule and regulation that adopts the procedures for the~~
0168 ~~conference adjudicative hearing or summary adjudicative pro-~~
0169 ~~ceeding in accordance with the standards provided in this act for~~
0170 ~~those proceedings; K.S.A. 1986 Supp. 77-533 through 77-535,~~
0171 ~~and amendments thereto, pertaining to conference~~ [adjudicative]
0172 ~~hearings;~~
0173 (c) K.S.A. 1986 Supp. 77-537 through 77-541, and amend-
0174 ~~ments thereto, pertaining to summary~~ [adjudicative] proceedings;
0175 (d) K.S.A. ~~1985~~ 1986 Supp. 77-536 and amendments
0176 thereto pertaining to emergency [adjudicative] proceedings; or
0177 ~~(d)~~ (e) the act for judicial review and civil enforcement of
0178 agency actions.

0179 Sec. 5. K.S.A. 1986 Supp. 77-537 is hereby amended to read
0180 as follows: 77-537. A state agency may use summary[adjudicative]
0181 proceedings if:
0182 (a) The use of those proceedings in the circumstances does
0183 not violate any provision of law;
0184 (b) the protection of the public interest does not require the
0185 state agency to give notice and an opportunity to participate to
0186 persons other than the parties; and
0187 (c) ~~the matter is entirely within one or more categories for~~
0188 ~~which the state agency by rule and regulation has adopted this~~
0189 ~~section and K.S.A. 1985 Supp. 77-538 to 77-541, inclusive. a~~
0190 ~~statute does not require a hearing or the opportunity for a~~
0191 ~~hearing on the matter.~~

The concern has been expressed that an expanded administrative procedure act will result in an increased number of trial-type hearings in areas where such hearings are not required under present law. This concern is based on the fact that KAPA presently requires the use of formal hearings unless conference hearings, summary proceedings or emergency proceedings are available under the act (K.S.A. 77-513). The less formal procedures of conference hearings and summary proceedings are available only if the state agency adopts a rule and regulation identifying matters subject to such procedures. The failure to identify matters as appropriate for the more informal procedures results in the provisions for formal hearings applying in such areas.

The advisory committee recommendation would result in the general availability of conference hearings and summary proceedings without the necessity of adopting a rule and regulation. Unless there is a statutory or due process right to a formal hearing, the more informal procedures could be utilized.

The advisory committee recommends that legislation expanding the application of the administrative procedure act have an effective date of July 1, 1989. The advisory committee has consistently recommended a delayed effective date for any expansion legislation to provide an additional year and legislative session to allow further review and necessary corrections. The advisory committee anticipates using the additional time granted by a delayed effective date to review with state agency representatives the proposed amendments to specific hearing statutes and any other issues which may arise.

The advisory committee also recommends one, minor change in the terminology utilized by the act. The act presently refers to four types of adjudicative proceedings: formal adjudicative proceedings (sometimes referred to as formal adjudicative hearings), conference adjudicative hearings, summary adjudicative proceedings and emergency adjudicative proceedings. The advisory committee recommends that these proceedings be redesignated as formal hearings, conference hearings, summary proceedings and emergency proceedings. Not only would this change avoid repetition of the cumbersome word "adjudicative", it would also clarify that a "hearing" is only required in the context of formal and conference proceedings.

OTHER ISSUES

There are still a number of issues under consideration by the advisory committee for which the committee is not prepared to make a recommendation at this time. The advisory committee will continue to meet for the purpose of addressing these matters. Principal among the remaining issues are the following:

Summary Proceedings. As noted previously, the advisory committee recommends the general availability of summary proceedings without the necessity of adopting a rule and regulation. However, the advisory committee recognizes that there is a need for further clarity as to the nature and requirements of summary proceedings.

Legislative-Type Hearings. The advisory committee is currently reviewing a number of agency hearing statutes which appear to involve "legislative" as opposed to "adjudicative" matters. The general position of the advisory committee is that legislative-type matters are not appropriate for inclusion under KAPA. This issue raises the question as to whether or not further clarification is necessary as to the relationship between legislative-type hearings and KAPA. Also related is the issue raised by Chairman Wunsch as to the implications of making reference to KAPA in the specific hearing statutes amended in S.B. 334.

Initial Orders/Presiding Officers. The Corporation Commission has raised a number of issues in regard to the issuance and review of initial orders. For the most part, the advisory committee believes that these matters can be satisfactorily addressed through continued discussions with the KCC.

CONCLUSION

It is the opinion of the advisory committee that the recommendations contained in this report address the major concerns raised by the state agencies, particularly in regard to projected fiscal impact. At the same time, the advisory committee recognizes that the overall quality of the act will likely benefit from continued consideration of a number of issues. It is the intent of the advisory committee to pursue such issues and make recommendations thereon to legislative committees which may consider expansion of the administrative procedure act during the 1988 session.

Kansas Administrative Procedures Act
As Amended by S.B. 334, with Senate Committee Amendments

- K.S.A. 77-501 Titles
- 77-502 Definitions
- 77-503 Application and Construction
- 77-504 Waivers
- 77-505 Informal Settlements
- 77-506 Conversion of Proceedings
- 77-507 Effective Date of Act
- 77-508 Use of Adjudicative Proceedings
- 77-509 When Proceeding Required; Commencement
- 77-510 Denial of Proceeding
- 77-511 Time Limits; Expiration of Limits
- 77-512 Orders Affecting Licensure; Requirements
- 77-513 Formal Proceedings
- 77-514 Presiding Officer
- 77-515 Participation and Representation
- 77-516 Prehearing Conference; Availability and Notice
- 77-517 Procedure for Prehearing Conference
- 77-518 Notice of Hearings
- 77-519 Pleading, Motions, Briefs
- 77-520 Default
- 77-521 Intervention
- 77-522 Subpoenas and Discovery
- 77-523 Hearing Procedure
- 77-524 Evidence; Official Notice
- 77-525 Ex Parte Communications
- 77-526 Final Order; Initial Order
- 77-527 Review of Initial Order; Exceptions
- 77-528 Stay
- 77-529 Reconsideration
- 77-530 Effectiveness of Orders
- 77-531 Service of Orders
- 77-532 Agency Record
- 77-533 Conference Adjudicative Hearing; Applicability
- 77-534 Conference Adjudicative Hearing; Procedure
- 77-535 Conference Adjudicative Hearing; Disclosure
- 77-536 Emergency Adjudicative Hearings
- 77-537 Summary Adjudicative Proceedings
- 77-538 Procedure
- 77-539 Agency Review of Order
- 77-540 Procedure
- 77-541 Agency Record of Summary Adjudicative Proceedings
- 77-542 Authority for Regulations

77-501. Title. K.S.A. 1985 Supp. 77-501 through 77-541 shall be known and may be cited as the Kansas administrative procedure act.

History: L. 1984, ch. 313, § 1; July 1, 1985.

Definitions

0077 Section 1. K.S.A. 1986 Supp. 77-502 is hereby amended to
0078 read as follows: 77-502. As used in this act:

0079 (a) "State agency" means any officer, department, bureau,
0080 division, board, authority, agency, commission or institution of
0081 this state, except the judicial and legislative branches of state
0082 government and political subdivisions of the state, which is
0083 authorized by law to administer, enforce or interpret any law of
0084 this state.

0085 (b) "Agency head" means an individual or body of individu-
0086 als in whom the ultimate legal authority of the state agency is
0087 vested by any provision of law.

0088 (c) "License" means a franchise, permit, certification, ap-
0089 proval, registration, charter or similar form of authorization re-
0090 quired by law for a person to engage in a profession or occupa-
0091 tion.

0092 (d) "Order" means a state agency action ~~which pertains to a~~
0093 ~~license and is of particular applicability to a person that deter-~~
0094 ~~mines the legal rights, duties, privileges, immunities or other~~
0095 ~~legal interest of one or more specific persons.~~

0096 (e) "Party to state agency proceedings," or "party" in context
0097 so indicating, means:

0098 (1) A person to whom an order is specifically directed; or

0099 (2) a person named as a party to a state agency proceeding or
0100 allowed to intervene or participate as a party in the proceeding.

0101 (f) "Person" means an individual, partnership, corporation,
0102 association, political subdivision or unit thereof or public or
0103 private organization or entity of any character, and includes
0104 another state agency.

0105 (g) "Political subdivision" means political or taxing subdivi-
0106 sions of the state, including boards, commissions, authorities,
0107 councils, committees, subcommittees and other subordinate
0108 groups or administrative units thereof, receiving or expending
0109 and supported in whole or in part by public funds.

Application and Construction

0110 Sec. 2. K.S.A. 1986 Supp. 77-503 is hereby amended to read
0111 as follows: 77-503. (a) This act applies ~~only to the extent that~~
0112 ~~other statutes expressly provide that the provisions of this act~~
0113 ~~govern proceedings under those statutes to all orders and to all~~
0114 ~~adjudicative proceedings thereon not expressly exempted by~~
0115 ~~statute.~~

0116 (b) This act creates only procedural rights and imposes only
0117 procedural duties. They are in addition to those created and
0118 imposed by other statutes.

0119 (c) *This act does not apply to:*

0120 (1) *Orders under the workmen's compensation act other*
0121 *than orders of the commissioner of insurance;*

0122 (2) *orders under the employment security act;*

0123 (3) *orders of the mined-land conservation and reclamation*
0124 *board;*

0125 (4) *orders of the director or division of vehicles concerning*
0126 *(A) drivers' licenses; and driving privileges ~~or~~; and (B) suspen-*
0127 *sions of vehicle registrations as provided in K.S.A. 40-3104 and*
0128 *40-3108 and amendments thereto;*

0129 (5) *orders of state educational institutions and the state*
0130 *board of regents other than orders relating to the granting of*
0131 *licenses; and*

0132 (6) *orders under K.S.A. 72-972 through 72-975, and amend-*
0133 *ments thereto; and*

0134 (7) *orders of the Kansas parole board.*

77-504. Waiver. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this act.

History: L. 1984, ch. 313, § 4; July 1, 1985.

77-505. Informal settlements. Nothing in this act shall preclude informal settlement of matters that may make unnecessary more elaborate proceedings under this act.

History: L. 1984, ch. 313, § 5; July 1, 1985.

77-5 Effective date of act. This act shall take effect on July 1, 1985, and does not govern adjudicative proceedings pending on that date. Subject to K.S.A. 1985 Supp. 77-503, this act governs all state agency adjudicative proceedings commenced after that date. This act also governs state agency adjudicative proceedings conducted on a remand from a court or another state agency after the effective date of this act.

History: L. 1984, ch. 313, § 7; July 1, 1985.

77-506. Conversion of proceedings. (a) At any point in a state agency proceeding

the presiding officer or other state agency official responsible for the proceeding:

(1) May convert the proceeding to another type of state agency proceeding provided for by this act if the conversion is appropriate, is in the public interest and does not substantially prejudice the rights of any party; and

(2) if required by any provision of law, shall convert the proceeding to another type of state agency proceeding provided for by this act.

(b) A conversion of a proceeding of one type to a proceeding of another type may be effected only upon notice to all parties to the original proceeding.

(c) If the presiding officer or other state agency official responsible for the original proceeding would not have authority over the new proceeding to which it is to be converted, that officer or official, in accordance with state agency procedure, shall secure the appointment of a successor to preside over or be responsible for the new proceeding.

(d) The record of the original state agency proceeding may be used in the new state agency proceeding.

(e) After a proceeding is converted from one type to another, the presiding officer or other state agency official responsible for the new proceeding shall:

(1) Give such additional notice to parties or other persons as is necessary to satisfy the requirements of this act pertaining to those proceedings;

(2) dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the requirements of this act pertaining to the new proceedings; and

(3) conduct or cause to be conducted any additional proceedings necessary to satisfy the requirements of this act pertaining to those proceedings.

History: L. 1984, ch. 313, § 6; July 1, 1985.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57, 63 (1985).

0135 Sec. 3. K.S.A. 1986 Supp. 77-508 is hereby amended to read
0136 as follows: 77-508. (a) *Except as provided by this section, an*
0137 *adjudicative proceeding shall be the process for formulating and*
0138 *issuing an order; unless the order is a decision:*
0139 *(a) To issue or not to issue a complaint, summons or similar*
0140 *accusation;*
0141 *(b) to initiate or not to initiate an investigation, prosecution*
0142 *or other proceeding before the state agency, another agency or a*
0143 *court; or*
0144 *(c) under K.S.A. 1985 Supp. 77-510, not to conduct an ad-*
0145 *judicative proceeding.*
0146 *(b) Unless prohibited by law, a state agency may issue an*
0147 *order subject to the right of a person to whom the order is*
0148 *directed to request in writing an appropriate adjudicative pro-*
0149 *ceeding within 15 days after service of the order. The order shall*
0150 *inform the person to whom it is directed of the right to request*
0151 *an adjudicative proceeding and the time and manner for making*
0152 *such request. The state agency may extend the time for re-*
0153 *questing an adjudicative proceeding for good cause shown. If an*
0154 *adjudicative proceeding is not requested, the order shall become*
0155 *effective upon the expiration of the time for requesting an*
0156 *adjudicative proceeding. If an adjudicative proceeding is re-*
0157 *quested, any order resulting from the proceeding shall become*
0158 *effective in accordance with the provisions of this act. This*
0159 *subsection does not preclude a state agency from taking imme-*
0160 *diatate action to protect the public interest in accordance with*
0161 *K.S.A. 1986 Supp. 77-536 and amendments thereto.*
0162 *(c) The following state agency actions, whether or not in-*
0163 *cluded within the definition of order, shall not require an*
0164 *adjudicative proceeding under this act:*
0165 *(1) A decision to issue or not to issue a complaint, summons*
0166 *or similar accusation or a determination as to whether or not*
0167 *probable cause exists for crediting a complaint;*
0168 *(2) a decision to initiate or not to initiate an investigation,*
0169 *prosecution or other proceeding before the state agency, an-*
0170 *other agency or a court;*
0171 *(3) a decision under K.S.A. 1986 Supp. 77-510 and amend-*
0172 *ments thereto not to conduct an adjudicative proceeding;*
0173 *(4) decisions pertaining to contracts, obtaining materials or*
0174 *services, or awarding grants;*
0175 *(5) management decisions pertaining to internal agency*
0176 *policy and procedure, personnel matters other than orders of*
0177 *the state civil service board, or the budget process;*

Use of adjudicative proceedings (continued)

- 0178 (6) decisions pursuant to K.S.A. 45-215 et seq., and amend-
0179 ments thereto, pertaining to disclosure or copying of public
0180 records;
- 0181 (7) decisions pursuant to K.S.A. 75-4317 et seq., and amend-
0182 ments thereto, pertaining to access to meetings of public bodies;
- 0183 (8) approval of plans, specifications or other matters pre-
0184 liminary to the granting of a license or permit;
- 0185 (9) decisions regarding management, discipline or release of
0186 persons in the custody of the secretary of corrections or com-
0187 mitted to a state youth center;
- 0188 (10) ~~decisions relating to parole or revocation of parole;~~
- 0189 (11) decisions relating to the admission, treatment, condi-
0190 tional release or discharge of persons at state psychiatric hos-
0191 pitals or state institutions for the mentally retarded;
- 0192 ~~(12)~~ (11) decisions regarding public improvement need, de-
0193 sign or location;
- 0194 ~~(13)~~ (12) decisions as to the specifications governing the
0195 nature and quality of materials to be used in any public im-
0196 provement project or the plans and specifications governing the
0197 design of any such project prior to the time the contract for any
0198 such project is awarded; and
- 0199 ~~(14)~~ (13) other agency actions exempted by statute.

0200 Sec. 4. K.S.A. 1986 Supp. 77-509 is hereby amended to read
0201 as follows: 77-509. (a) A state agency may provide an adjudicative
0202 proceeding at any time with respect to an order within the
0203 agency's jurisdiction.
0204 (b) A state agency shall provide *an opportunity for an ad-*
0205 *judicative proceeding with respect to an order upon the written*
0206 *application of any person, unless:*
0207 (1) The state agency lacks jurisdiction of the subject matter;
0208 (2) resolution of the matter requires the state agency to exer-
0209 cise discretion within the scope of *subsection (c) of K.S.A. 1985*
0210 *1986 Supp. 77-508 and amendments thereto;*
0211 (3) a statute vests the state agency with discretion to conduct
0212 or not to conduct an adjudicative proceeding ~~before issuing an~~
0213 ~~order~~ to resolve the matter and, in the exercise of that discretion,
0214 the state agency has determined not to conduct an adjudicative
0215 proceeding;
0216 (4) resolution of the matter does not require the state agency
0217 to issue an order that determines the applicant's legal rights,
0218 duties, privileges, immunities or other legal interests;
0219 (5) the matter was not timely submitted to the state agency;
0220 or
0221 (6) the matter was not submitted in a form substantially
0222 complying with any applicable provision of law.
0223 (c) An adjudicative proceeding commences when the state
0224 agency or a presiding officer:
0225 (1) Notifies a party that a prehearing conference, hearing or
0226 other stage of an adjudicative proceeding will be conducted; or
0227 (2) begins to take action on a matter that appropriately may
0228 be determined by an adjudicative proceeding, unless this action
0229 is:
0230 (A) An investigation for the purpose of determining whether
0231 an adjudicative proceeding should be conducted; or
0232 (B) a decision which, under *subsection (c) of K.S.A. 1985*
0233 *1986 Supp. 77-508 and amendments thereto, the state agency*
0234 *may make without conducting an adjudicative proceeding.*

77-510. Denial of proceeding. If pursuant to subsection (b) of K.S.A. 1985 Supp. 77-509, a state agency decides not to conduct an adjudicative proceeding in response to an application, the state agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the state agency's reasons and of any administrative review available to the applicant.

History: L. 1984, ch. 313, § 10; July 1, 1985.

Time limits; expiration of license

0235 Sec. 5. K.S.A. 1986 Supp. 77-511 is hereby amended to read
0236 as follows: 77-511. (a) Except to the extent that the time limits in
0237 this subsection are inconsistent with limits established by an-
0238 other statute for any stage of the adjudicative proceedings, a state
0239 agency shall process an application for an order, other than a
0240 declaratory order, as follows:

0241 (1) Within 30 days after receipt of the application, the state
0242 agency shall examine the application, notify the applicant of any
0243 apparent errors or omissions and notify the applicant of the
0244 name, official title, mailing address and telephone number of a
0245 state agency member or employee who may be contacted re-
0246 garding the application. Failure to detect such errors or omis-
0247 sions does not preclude the state agency from raising them at a
0248 later stage of the proceeding.

0249 (2) Within 90 days after receipt of the application or of the
0250 response of the applicant to a timely request made by the state
0251 agency pursuant to paragraph (1), the state agency shall:

0252 (A) Approve or deny the application, in whole or in part, on
0253 the basis of emergency or summary adjudicative proceedings, if
0254 those proceedings are available under this act for disposition of
0255 the matter;

0256 (B) commence a formal adjudicative hearing or a conference
0257 adjudicative hearing in accordance with this act; ~~or~~

0258 (C) *issue an order and notify the applicant of the right to*
0259 *request an adjudicative proceeding pursuant to subsection (b) of*
0260 *K.S.A. 1986 Supp. 77-508 and amendments thereto; or*

0261 (D) dispose of the application in accordance with K.S.A. ~~1985~~
0262 *1986 Supp. 77-510 and amendments thereto.*

0263 (b) *Except to the extent that the time limits in this subsec-*
0264 *tion are inconsistent with limits established by another statute,*
0265 *a state agency shall process a request for an adjudicative pro-*
0266 *ceeding pursuant to subsection (b) of K.S.A. 1986 Supp. 77-508*
0267 *and amendments thereto as follows:*

0268 (1) *Within 30 days after receipt of the request and, if the*
0269 *state agency has not previously done so, the state agency shall*
0270 *notify the applicant of the name, official title, mailing address*
0271 *and telephone number of a state agency member or employee*
0272 *who may be contacted regarding the request; and*

0273 (2) *within 90 days after receipt of the request the state*
0274 *agency shall:*

0275 (A) *Dispose of the matter, in whole or in part, on the basis of*
0276 *emergency or summary adjudicative proceedings, if those pro-*

0277 *ceedings are available under this act for disposition of the mat-*
0278 *ter;*
0279 (B) *commence a formal or conference adjudicative hearing*
0280 *in accordance with this act; or*
0281 (C) *dispose of the matter in accordance with K.S.A. 1986*
0282 *Supp. 77-510 and amendments thereto.*
0283 (3) *If the request for an adjudicative proceeding is in re-*
0284 *sponse to agency action under (2)(C) of subsection (a), the*
0285 *agency shall take one of the actions under subpart (2) of this*
0286 *subsection within 30 days.*
0287 (c) *If a timely and sufficient application has been made for*
0288 *renewal of a license with reference to any activity of a continuing*
0289 *nature, the existing license does not expire until the state agency*
0290 *has taken final action upon the application for renewal or, if the*
0291 *state agency's action is unfavorable, until the last day for seeking*
0292 *judicial review of the state agency's action or a later date fixed by*
0293 *the reviewing court.*

77-512. Orders affecting licensure; requirements. A state agency may not revoke, suspend, modify, annul, withdraw, refuse to renew, or amend a license unless the state agency first gives notice and an opportunity for the applicant to be heard in an appropriate adjudicative proceeding in accordance with this act or other statute. This section does not preclude a state agency from (a) taking immediate action to protect the public interest in accordance with K.S.A. 1985 Supp. 77-536, or (b) adopting rules and regulations, otherwise within the scope of its authority, pertaining to a class of licensees, including rules and regulations affecting the existing licenses of a class of licensees.

History: L. 1984, ch. 313, § 12; July 1, 1985.

FORMAL PROCEEDINGS

77-513. Formal proceedings; when required. All adjudicative proceedings shall be formal adjudicative proceedings and shall be governed by K.S.A. 1985 Supp.

77-513 through 77-532, and amendments thereto, except as otherwise provided by:

- (a) A statute other than this act;
- (b) a rule and regulation that adopts the procedures for the conference adjudicative hearing or summary adjudicative proceeding in accordance with the standards provided in this act for those proceedings;
- (c) K.S.A. 1985 Supp. 77-536 and amendments thereto pertaining to emergency adjudicative proceedings; or
- (d) the act for judicial review and civil enforcement of agency actions.

History: L. 1984, ch. 313, § 13; L. 1986, ch. 362, § 3; July 1.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57 (1985).

77-514. Presiding officer. (a) The agency head or one or more other persons designated by the agency head may be the presiding officer.

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(c) Any party may petition for the disqualification of a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(d) A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(f) A state agency may enter into agreements with another state agency to provide hearing officers to conduct proceedings under this act or for other agency proceedings.

History: L. 1984, ch. 313, § 14; July 1, 1985.

77-515. Participation and representation. (a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be represented at the party's own expense by counsel or, if permitted by law, other representative.

(c) A state agency may require a corporation or other artificial person to participate by counsel.

History: L. 1984, ch. 313, § 15; L. 1986, ch. 362, § 4; July 1.

77-516. Prehearing conference; availability; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted:

(a) The state agency may assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by K.S.A. 1985 Supp. 77-514 concerning the selection of a presiding officer for a hearing.

(b) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(c) The notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing address and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the prehearing conference;

(5) a statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(6) the name, official title, mailing address and telephone number of the presiding officer for the prehearing conference;

(7) a statement that at the prehearing conference the proceeding, without further notice, may be converted into a conference adjudicative hearing or a summary adjudicative proceeding for disposition of the matter as provided by this act; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudica-

tive proceeding may be held in default under this act.

(d) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

History: L. 1984, ch. 313, § 16; July 1, 1985.

77-517. Prehearing conference; procedure; prehearing order. (a) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(b) The presiding officer shall conduct the prehearing conference, as may be appropriate, to deal with such matters as conversion of the proceeding to another type, exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders and protective orders and such other matters as will promote the orderly and prompt conduct of the hearing. The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(c) If a prehearing conference is not held, the presiding officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

History: L. 1984, ch. 313, § 17; July 1, 1985.

Notice of hearing

0294 Sec. 6. K.S.A. 1986 Supp. 77-518 is hereby amended to read
0295 as follows: 77-518. (a) The state agency shall set the time and
0296 place of the hearing and give reasonable written notice at least
0297 10 days prior to the hearing to all parties and to all persons who
0298 have filed written petitions to intervene in the matter. Service of
0299 notices shall be made in accordance with K.S.A. ~~1985~~ 1986 Supp.
0300 77-531 *and amendments thereto*.
0301 (b) The notice shall include a copy of any prehearing order
0302 rendered in the matter.
0303 (c) To the extent not included in a prehearing order accom-
0304 panying it, the notice shall include:
0305 (1) The names and mailing addresses of all parties and other
0306 persons to whom notice is being given by the presiding officer;
0307 (2) the name, official title, mailing address and telephone
0308 number of any counsel or employee who has been designated to
0309 appear for the state agency;
0310 (3) the official file or other reference number, the name of the
0311 proceeding and a general description of the subject matter;
0312 (4) a statement of the time, place and nature of the hearing;
0313 (5) a statement of the legal authority and jurisdiction under
0314 which the hearing is to be held;
0315 (6) the name, official title, mailing address and telephone
0316 number of the presiding officer;
0317 (7) a statement of the issues involved and, to the extent
0318 known to the presiding officer, of the matters asserted by the
0319 parties; and
0320 (8) a statement that a party who fails to attend or participate
0321 in a prehearing conference, hearing or other stage of an adjudi-
0322 cative proceeding may be held in default under this act.
0323 (d) The notice may include any other matters the presiding
0324 officer considers desirable to expedite the proceedings.
0325 (e) The state agency shall *give cause* notice to *be given to*
0326 persons entitled to notice under any provision of law who have
0327 not been given notice under subsection (a). *Notice under this*
0328 *subsection shall be given in the manner specified by such*
0329 *provision of law or, if no such manner is specified, in a manner*
0330 *to be determined by the agency. If a person other than the*
0331 *agency is directed to give notice under this subsection, the*
0332 *agency shall require that the person furnish proof that the*
0333 *notice has been given.* Notice under this subsection may include
0334 all types of information provided in subsections (a) through (d) or
0335 may consist of a brief statement indicating the subject matter,
0336 parties, time, place and nature of the hearing, manner in which
0337 copies of the notice to the parties may be inspected and copied
0338 and name and telephone number of the presiding officer.

77-519. Pleadings, motions, briefs; service. (a) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions and objections.

(b) The presiding officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law and proposed initial or final orders.

(c) A party shall serve copies of any filed item on all parties, by mail or any other means prescribed by state agency rule and regulation.

Default

0339 Sec. 7. K.S.A. 1986 Supp. 77-520 is hereby amended to read
0340 as follows: 77-520. (a) If a party fails to attend or participate in a
0341 prehearing conference, hearing or other stage of an adjudicative
0342 proceeding, the presiding officer may serve upon all parties
0343 written notice of a proposed default order, including a statement
0344 of the grounds.

0345 (b) Within seven days after service of a proposed default
0346 order, the party against whom it was issued may file a written
0347 motion requesting that the proposed default order be vacated
0348 and stating the grounds relied upon. During the time within
0349 which a party may file a written motion under this subsection,
0350 the presiding officer may adjourn the proceedings or conduct
0351 them without the participation of the party against whom a
0352 proposed default order was issued, having due regard for the
0353 interests of justice and the orderly and prompt conduct of the
0354 proceedings.

0355 (c) Unless vacated by the presiding officer, the proposed
0356 default order shall become effective after expiration of the time
0357 within which the party may file a written motion under subsec-
0358 tion (b).

0359 (d) After a default order becomes effective, the presiding
0360 officer shall conduct any further proceedings necessary to com-
0361 plete the adjudication without the participation of the party in
0362 default and shall determine all issues in the adjudication, in-
0363 cluding those affecting the defaulting party. *The presiding of-*
0364 *ficer in lieu of determining the issues affecting the defaulting*
0365 *party may, unless otherwise prohibited by law, dismiss such*
0366 *party's application for an adjudicative proceeding.*

77-521. Intervention. (a) The presiding officer shall grant a petition for intervention if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding of-

ficer's notice of the hearing, at least three days before the hearing;

(2) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and

(3) the presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(b) The presiding officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervener's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervener's participation to designated issues in which the intervener has a particular interest demonstrated by the petition;

(2) limiting the intervener's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) requiring two or more interveners to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

(d) The presiding officer, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying or modifying intervention to the petitioner for intervention and to all parties.

History: L. 1984, ch. 313, § 21; July 1, 1985.

0367 Sec. 8. K.S.A. 1986 Supp. 77-522 is hereby amended to read
0368 as follows: 77-522. (a) *In addition to rights to discovery, the*
0369 *issuance of subpoenas and the production of items granted by*
0370 *other statutes, the presiding officer may issue subpoenas, dis-*
0371 *covery orders and protective orders in accordance with the rules*
0372 *of civil procedure. Discovery may be limited to the issues before*
0373 *the agency for determination.*
0374 (b) Subpoenas and orders issued ~~under this section~~ *by the*
0375 *presiding officer* may be enforced pursuant to the provisions of
0376 the act for judicial review and civil enforcement of agency
0377 actions.

Hearing procedure

0378 Sec. 9. K.S.A. 1986 Supp. 77-523 is hereby amended to read
0379 as follows: 77-523. At a hearing:
0380 (a) The presiding officer shall regulate the course of the
0381 proceedings.
0382 (b) To the extent necessary for full disclosure of all relevant
0383 facts and issues, the presiding officer shall afford to all parties the
0384 opportunity to respond, present evidence and argument, conduct
0385 cross-examination and submit rebuttal evidence, except as re-
0386 stricted by a limited grant of intervention or by the prehearing
0387 order.
0388 (c) The presiding officer may, *and when required by statute*
0389 *shall*, give nonparties an opportunity to present oral or written
0390 statements. If the presiding officer proposes to consider a state-
0391 ment by a nonparty, the presiding officer shall give all parties an
0392 opportunity to challenge or rebut it and, on motion of any party,
0393 the presiding officer shall require the statement to be given
0394 under oath or affirmation.
0395 (d) The presiding officer may conduct all or part of the
0396 hearing by telephone or other electronic means, if each partici-
0397 pant in the hearing has an opportunity to participate in the entire
0398 proceeding while it is taking place.
0399 (e) The presiding officer shall cause the hearing to be re-
0400 corded at the state agency's expense. The state agency is not
0401 required, at its expense, to prepare a transcript, unless required
0402 to do so by a provision of law. Any party, at the party's expense
0403 and subject to such reasonable conditions as the state agency
0404 may establish, may cause a person other than the state agency to
0405 prepare a transcript from the state agency's record, or cause
0406 additional recordings to be made during the hearing.
0407 (f) The hearing is open to public observation, except for the
0408 parts that the presiding officer states to be closed pursuant to a
0409 provision of law expressly authorizing closure.

77-524. Evidence; official notice. (a) A presiding officer need not be bound by technical rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.

(b) All testimony of parties and witnesses shall be made under oath or affirmation and the presiding officer shall have the power to administer an oath or affirmation for that purpose.

(c) Statements presented by nonparties in accordance with paragraph (c) of K.S.A. 1985 Supp. 77-523 may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(f) Official notice may be taken of (1) any matter that could be judicially noticed in the courts of this state, (2) the record of other proceedings before the state agency, (3) technical or scientific matters within the state agency's specialized knowledge, and (4) codes of standards that have been adopted by an agency of the United States, of this state or of another state or by a nationally recognized organization or association. Parties shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the matters or material so noticed.

History: L. 1984, ch. 313, § 24; July 1, 1985.

Exparte communications

0410 Sec. 10. K.S.A. 1986 Supp. 77-525 is hereby amended to read
0411 as follows: 77-525. (a) A presiding officer serving in an adjudica-
0412 tive proceeding may not communicate, directly or indirectly,
0413 regarding any issue in the proceeding while the proceeding is
0414 pending, with any party or participant, with any person who has
0415 a direct or indirect interest in the outcome of the proceeding or
0416 with any person who presided at a previous stage of the pro-
0417 ceeding, without notice and opportunity for all parties to par-
0418 ticipate in the communication.

0419 (b) A member of a multimember panel of presiding officers
0420 may communicate with other members of the panel regarding a
0421 matter pending before the panel, and any presiding officer may
0422 receive aid from staff assistants if the assistants do not:

0423 (1) Receive *ex parte* communications of a type that the pre-
0424 siding officer would be prohibited from receiving; or

0425 (2) furnish, augment, diminish or modify the evidence in the
0426 record.

0427 (c) Unless required for the disposition of *ex parte* matters
0428 specifically authorized by statute, no party to an adjudicative
0429 proceeding, and no person who has a direct or indirect interest in
0430 the outcome of the proceeding or who presided at a previous
0431 stage of the proceeding, may directly or indirectly communicate
0432 in connection with any issue in that proceeding, while the
0433 proceeding is pending, with any person serving as presiding
0434 officer unless notice and an opportunity are given all parties to
0435 participate in the communication.

0436 (d) If, before serving as presiding officer in an adjudicative
0437 proceeding, a person receives an *ex parte* communication of a
0438 type that could not properly be received while serving, the
0439 person, promptly after starting to serve, shall disclose the com-
0440 munication in the manner prescribed in subsection (e).

0441 (e) A presiding officer who receives an *ex parte* communica-
0442 tion in violation of this section shall place on the record of the
0443 pending matter all written communications received, all written
0444 responses to the communications and a memorandum stating the
0445 substance of all oral communications received, all responses
0446 made and the identity of each person from whom the presiding
0447 officer received an *ex parte* communication and shall advise all
0448 parties that these matters have been placed on the record. Any
0449 party desiring to rebut the *ex parte* communication must be
0450 allowed to do so, upon requesting the opportunity for rebuttal
0451 within 10 days after notice of the communication.

0462 (h) This section shall not apply to adjudicative proceedings
0463 before:

0464 (1) the state corporation commission concerning any rate,
0465 joint rate, toll, charge or classification or schedule of charges, or
0466 any rule or regulation or practice pertaining to the service of
0467 rates of a public utility or common carrier. Such proceedings
0468 shall be subject to the provisions of section 355-;

0469 (2) the commissioner of insurance concerning any rate, or
0470 any rule, regulation or practice pertaining to the rates over
0471 which the commissioner has jurisdiction or adjudicative pro-
0472 ceedings held pursuant to the Kansas insurance holding compa-
0473 nies act. Such proceedings shall be subject to the provisions of
0474 section 356; and

0475 (3) the director of taxation. Such proceedings shall be sub-
0476 ject to the provisions of section 357.

0452 (f) If necessary to eliminate the effect of an *ex parte* commu-
0453 nication received in violation of this section, a presiding officer
0454 who receives the communication may be disqualified and the
0455 portions of the record pertaining to the communication may be
0456 sealed by protective order.

0457 (g) The state agency shall, and any party may, report any
0458 willful violation of this section to appropriate authorities for any
0459 disciplinary proceedings provided by law. In addition, each state
0460 agency, by rule and regulation, may provide for appropriate
0461 sanctions, including default, for any violations of this section.

77-526. Final order; initial order. (a) If the presiding officer is the agency head, the presiding officer shall render a final order.

(b) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 1985 Supp. 77-527 or unless otherwise required by law to be finally determined by the agency head.

(c) A final order or initial order shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(e) If a substitute presiding officer is appointed pursuant to K.S.A. 1985 Supp. 77-514, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(f) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, on the agency head in the manner prescribed by K.S.A. 1985 Supp. 77-531.

History: L. 1984, ch. 313, § 26; July 1, 1985.

Law Review and Bar Journal References:
"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 60 (1985).

0477 Sec. 11. K.S.A. 1986 Supp. 77-527 is hereby amended to read
0478 as follows: 77-527. (a) The agency head, upon its own motion
0479 may, and upon petition by any party or when required by law
0480 shall, review an initial order, except to the extent that:

0481 (1) A provision of law precludes or limits state agency review
0482 of the initial order; or

0483 (2) the agency head (A) determines to review some but not all
0484 issues, or not to exercise any review, (B) delegates its authority to
0485 review the initial order to one or more persons, *unless such*
0486 *delegation is expressly prohibited by law*, or (C) authorizes one
0487 or more persons to review the initial order, subject to further
0488 review by the agency head.

0489 (b) A petition for review of an initial order must be filed with
0490 the agency head, or with any person designated for this purpose
0491 by rule and regulation of the state agency, within 15 days after
0492 service of the initial order. If the agency head on its own motion
0493 decides to review an initial order, the agency head shall give
0494 written notice of its intention to review the initial order within
0495 15 days after its service. *If the agency head determines not to*
0496 *review an initial order in response to a petition for review, the*
0497 *agency head shall, within 20 days after filing of the petition for*
0498 *review, serve on each party an order stating that review will not*
0499 *be exercised.*

0500 (c) The petition for review shall state its basis. If the agency
0501 head on its own motion gives notice of its intent to review an
0502 initial order, the agency head shall identify the issues that it
0503 intends to review.

0504 (d) In reviewing an initial order, the agency head *or designee*
0505 shall exercise all the decision-making power that the agency
0506 head *or designee* would have had to render a final order had the
0507 agency head *or designee* presided over the hearing, except to the
0508 extent that the issues subject to review are limited by a provision
0509 of law or by the agency head *or designee* upon notice to all
0510 parties.

0511 (e) The agency head *or designee* shall afford each party an
0512 opportunity to present briefs and may afford each party an
0513 opportunity to present oral argument.

0514 (f) The agency head ~~may~~ *or designee shall* render a final
0515 order disposing of the proceeding or ~~may~~ remand the matter for
0516 further proceedings with instructions to the person who ren-
0517 dered the initial order. Upon remanding a matter, the agency
0518 head *or designee* may order such temporary relief as is autho-
0519 rized and appropriate.

Review of initial order (continued)

0520 (g) A final order or an order remanding the matter for further
0521 proceedings shall be rendered in writing and served within 30
0522 days after receipt of briefs and oral argument unless that period
0523 is waived or extended with the written consent of all parties or
0524 for good cause shown.

0525 (h) A final order or an order remanding the matter for further
0526 proceedings under this section shall identify any difference
0527 between this order and the initial order and shall include, or
0528 incorporate by express reference to the initial order, all the
0529 matters required by subsection (c) of K.S.A. ~~1985~~ 1986 Supp.
0530 77-526 and amendments thereto.

0531 (i) The agency head shall cause copies of the final order or
0532 order remanding the matter for further proceedings to be served
0533 on each party in the manner prescribed by K.S.A. ~~1985~~ 1986
0534 Supp. 77-531 and amendments thereto.

0535 (j) A final order rendered on review of an initial order is
0536 subject to review in accordance with the act for judicial review
0537 and civil enforcement of agency actions. An initial order which
0538 has not been reviewed under this section is not subject to
0539 judicial review unless a provision of law precluded administra-
0540 tive review of the initial order or the agency head determined
0541 not to review the initial order in response to a petition for
0542 administrative review.

77-528. Stay. A party may submit to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head may take action on the petition for stay, either before or after the effective date of the initial or final order.

Reconsideration

0543 Sec. 12. K.S.A. 1986 Supp. 77-529 is hereby amended to read
0544 as follows: 77-529. ~~Unless otherwise provided by statute or rule~~
0545 ~~and regulation:~~ (a) Any party, within 15 days after service of a
0546 final order, may file a petition for reconsideration with the
0547 agency head, stating the specific grounds upon which relief is
0548 requested. The filing of the petition is not a prerequisite for
0549 seeking administrative or judicial review *except as provided in*
0550 *K.S.A. 44-1010 and 44-1115, and amendments thereto concern-*
0551 *ing orders of the commission on civil rights and, K.S.A. 1986*
0552 *Supp. 55-606 and 66-118b, and amendments thereto concerning*
0553 *orders of the corporation commission and K.S.A. 1986 Supp.*
0554 *74-2426 and amendments thereto concerning orders of the board*
0555 *of tax appeals.*

0556 (b) The agency head shall render a written order denying the
0557 petition, granting the petition and dissolving or modifying the
0558 final order, or granting the petition and setting the matter for
0559 further proceedings. The petition may be granted, in whole or in
0560 part, only if the agency head states, in the written order, findings
0561 of fact, conclusions of law and policy reasons for the decision if it
0562 is an exercise of the state agency's discretion, to justify the order.
0563 The petition is deemed to have been denied if the agency head
0564 does not dispose of it within 20 days after the filing of the
0565 petition.

0566 An order under this section shall be served on the parties in
0567 the manner prescribed by K.S.A. ~~1985~~ 1986 Supp. 77-531 and
0568 *amendments thereto.*

Effectiveness of order

0569 Sec. 13. K.S.A. 1986 Supp. 77-530 is hereby amended to read
0570 as follows: 77-530. (a) *Unless a later date is stated in a final*
0571 *order or a stay is granted*, a final order is effective upon service
0573 (b) *Unless a later date is stated in an initial order or a stay is*
0574 *granted*, an initial order shall become effective and shall become
0575 the final order: (1) *When the initial order is served, if adminis-*
0576 *trative review is unavailable; (2) when the agency head serves*
0577 *an order stating, after a petition for review has been filed, that*
0578 *review will not be exercised; or (3) 30 days after service if no*
0579 *party has filed a petition for review by the agency head, the*
0580 *agency head has not given written notice of its intention to*
0581 *exercise review and a final determination by the agency head is*
0582 *not otherwise required by law.*
0583 (c) This section does not preclude a state agency from taking
0584 immediate action to protect the public interest in accordance
0585 with K.S.A. 1985 1986 Supp. 77-536 and amendments thereto.

77-531. Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. Delivery of a copy of an order or notice means handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

History: L. 1984, ch. 313, § 31; July 1, 1985.

77-532. Record. (a) A state agency shall maintain an official record of each formal adjudicative proceeding.

(b) The state agency record consists only of:

- (1) Notices of all proceedings;
- (2) any prehearing order;
- (3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (4) evidence received or considered;
- (5) a statement of matters officially noticed;
- (6) proffers of proof and objections and rulings thereon;
- (7) proposed findings, requested orders and exceptions;
- (8) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
- (9) any final order, initial order, or order on reconsideration; and
- (10) staff memoranda or data submitted to the presiding officer.

(c) Except to the extent that this act or another statute provides otherwise, the state agency record, excluding matters under paragraph (10) of subsection (b), constitutes the exclusive basis for state agency action in formal adjudicative proceedings and for judicial review thereof.

History: L. 1984, ch. 313, § 32; July 1, 1985.

CONFERENCE HEARING

77-533. When. A conference adjudicative hearing may be used if its use in the circumstances does not violate any provision of law and where there is:

- (a) A matter in which there is no disputed issue of material fact; or
- (b) a matter in which there is a disputed issue of material fact and the parties agree to a conference adjudicative hearing.

History: L. 1984, ch. 313, § 33; July 1, 1985.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 57, 62 (1985).

77-534. Procedure. The procedures of this act pertaining to formal adjudicative hearings apply to a conference adjudicative hearing, except to the following extent:

(a) If a matter is initiated as a conference adjudicative hearing, no prehearing conference may be held.

(b) The provisions of K.S.A. 1985 Supp. 77-522 do not apply to conference adjudicative hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and discovery orders, but do apply to conference adjudicative hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

(c) Paragraphs (a), (b) and (c) of K.S.A. 1985 Supp. 77-523 do not apply; but (1) the presiding officer shall regulate the course of the proceedings; (2) only the parties may testify and present written exhibits; and (3) the parties may offer comments on the issues.

History: L. 1984, ch. 313, § 34; July 1, 1985.

77-535. Disclosure of material or essential facts. (a) If during a conference adjudicative hearing the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal adjudicative hearing, but if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the presiding officer may require the party to indicate that confidential facts, allegations or sources are involved, but not to disclose the confidential facts, allegations or sources.

(b) If during a conference adjudicative hearing a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain those facts if the proceeding were converted to a formal adjudicative hearing.

History: L. 1984, ch. 313, § 35; July 1, 1985.

EMERGENCY PROCEEDINGS

77-536. When; procedure. (a) A state agency may use emergency adjudicative proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.

(b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

(c) The state agency shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the state agency's decision to take the specific action and the determination of: (1) An immediate danger or (2) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(d) The state agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(e) After issuing an order pursuant to this section, the state agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency adjudicative proceedings under subsection (a).

(f) The state agency record consists of any documents regarding the matter that were considered or prepared by the state agency. The state agency shall maintain these documents as its official record.

(g) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for state agency action in emergency adjudicative proceedings or for judicial review thereof.

History: L. 1984, ch. 313, § 36; July 1, 1985.

SUMMARY PROCEEDINGS

77-537. When. A state agency may use summary adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties; and

(c) the matter is entirely within one or more categories for which the state agency by rule and regulation has adopted this section and K.S.A. 1985 Supp. 77-538 to 77-541, inclusive.

History: L. 1984, ch. 313, § 37; July 1, 1985.

77-538. Procedure. (a) In summary adjudicative proceedings, the agency head, or a person designated by the agency head, may be the presiding officer.

(b) The presiding officer, at the time any unfavorable action is taken, shall give each party a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the action, and a notice of any available administrative review.

(c) The state agency shall forthwith serve each party with a copy of the order in a summary adjudicative proceeding in the manner prescribed by K.S.A. 1985 Supp. 77-531. The order shall include at least a statement of the state agency's action and a notice of any available administrative review.

History: L. 1984, ch. 313, § 38; July 1, 1985.

77-539. Agency review of order. Unless prohibited by any provision of law, a state agency, on its own motion, may conduct administrative review of an order resulting from summary adjudicative proceedings and shall conduct this review upon the written request of a party if the state agency receives the request within 15 days after service under subsection (c) of K.S.A. 1985 Supp. 77-538.

History: L. 1984, ch. 313, § 39; July 1, 1985.

77-540. Same; procedure. (a) A state agency need not furnish notification of the pendency of administrative review of an order resulting from summary adjudicative proceedings to any person who did not request the review, but the state agency may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(b) The reviewing officer, in the discretion of the agency head, may be any person who could have presided at the summary adjudicative proceeding, but the reviewing officer shall be one who is authorized to grant appropriate relief upon review.

(c) The reviewing officer shall give each party an opportunity to explain the party's view of the matter unless the party's view is apparent from the written materials in the file submitted to the reviewing officer. The reviewing officer shall make any inquiries necessary to ascertain whether the proceeding must be converted to a conference adjudicative hearing or a formal adjudicative hearing.

(d) The reviewing officer may render an order disposing of the proceeding in any manner that was available to the presiding officer at the summary adjudicative proceeding or the reviewing officer may remand the matter for further proceedings, with or without conversion to a conference adjudicative hearing or a formal adjudicative hearing.

(e) An order under this section shall be served on the parties in the manner prescribed by K.S.A. 1985 Supp. 77-531.

(f) A request for administrative review of an order resulting from a summary adjudicative proceeding is deemed to have been denied if the reviewing officer does not dispose of the matter or remand it for further proceedings within 15 days after the request is submitted.

History: L. 1984, ch. 313, § 40; July 1, 1985.

Law Review and Bar Journal References:

"The New Kansas Administrative Procedure and Judicial Review Acts," David L. Ryan, 54 J.K.B.A. 53, 63 (1985).

77-541. Record. The state agency record for a summary adjudicative proceeding consists of any documents regarding the matter that were considered or prepared by the presiding officer for the summary adjudicative proceeding or by the reviewing officer for any review. The state agency shall maintain these documents as its official record.

History: L. 1984, ch. 313, § 41; July 1, 1985.

Authority for regulations

0586 New Sec. 14. State agencies are hereby authorized to
0587 promulgate rules and regulations pursuant to K.S.A. 77-415 *et*
0588 *seq.* and amendments thereto that adopt the procedures for the
0589 conference adjudicative hearing or summary adjudicative pro-
0590 ceeding and such rules and regulations shall be in accordance
0591 with the standards provided in the Kansas administrative pro-
0592 cedure act for those proceedings.