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# Louisiana's "New" Administrative Procedure Act

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The piggyback statute should prove to be a convenient aid to state taxpayers. However, to insure that the Act will withstand constitutional attack, the legislature should either provide for successive amending of the legislation to reflect changes in the Internal Revenue Code<sup>37</sup> or initiate a constitutional amendment allowing federal changes in the income tax laws to be automatically enacted into state law.<sup>38</sup>

*Herman Edgar Garner, Jr.*

#### LOUISIANA'S "NEW" ADMINISTRATIVE PROCEDURE ACT

##### *Regulation of Administrative Procedure Prior to 1967*

Prior to the adoption of the Louisiana Administrative Procedure Act (APA) of 1967,<sup>1</sup> broad statutory grants of power authorized each state agency to promulgate rules governing its adjudicative and rule-making functions. A party aggrieved by an agency decision or rule was afforded a state constitutional right to appeal the decision in district court, even in the absence of a specific statute providing therefor.<sup>2</sup> Methods of obtaining judicial review differed among the agencies<sup>3</sup> and the scope of review depended upon whether the statute creating the agency specifically required the agency to make a determination on a record after notice and hearing or simply authorized the agency to proceed, setting no guidelines as to the minimum protection to be afforded parties appearing before it.

If the statute provided for notice and hearing and determination

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based on the surrender of the taxing power by claiming that the state has merely turned to the federal guidelines for defining taxable income but has not allowed the federal government to "fix" or administer the tax. See *City Nat'l Bank v. Iowa State Tax Comm'n*, 102 N.W.2d 381 (Iowa 1960). However, such a distinction seems unwarranted since the federal definition of taxable income in fact determines the taxpayer's state tax liability.

37. The annual regular sessions of the legislature could facilitate the routine of ratifying amendments to the Internal Revenue Code. See LA. CONST. art. III, § 2(A).

38. This procedure has been followed in COLO. CONST. art. X, § 19; NEB. CONST. art. VIII, § 1-5; MO. CONST. art. X, § 4(D).

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1. LA. R.S. 49:951-67 (Supp. 1967), as amended.

2. La. Const. art. I, § 6 (1921): "All courts shall be open and every person for injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice administered without denial, partiality or unreasonable delay."

3. Two traditionally used methods for obtaining judicial review of an agency rule or decision were the writ of mandamus (LA. CODE CIV. P. arts. 3861-66) and the injunction (LA. CODE CIV. P. arts. 3601-13).

on an agency record, judicial review was confined to the record taken at the agency hearing and administrative decisions were reversed only if unsupported by substantial evidence.<sup>4</sup> However, when the statute failed to provide for notice and hearing, as was usually the case, judicial review was not confined to the record and the court exercised the full right to hear evidence and examine the conclusions reached by the agencies.<sup>5</sup> The review in these circumstances was a trial de novo in the district court.

### *General Scope of the 1967 Louisiana APA*

It seems clear that the intent of the redactors of the Louisiana APA was to replace the myriad of rules governing agency procedure with a comprehensive and uniform system<sup>6</sup> which would "apply to all agencies not specifically excepted and which would consist of a formulation of procedural safeguards."<sup>7</sup> The Louisiana APA was enacted in response to concern that the procedure used by many agencies having an "important impact on the economic and social welfare of the citizenry"<sup>8</sup> fell short of compliance with due process, and that although the right to judicial review was guaranteed, the delay and expense of litigation made appeal burdensome for the average citizen. Thus, the legislature established an elaborate procedural scheme for the orderly adjudication of claims which, by mandating notice and

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4. *Lewing v. DeSoto Parish School Bd.*, 238 La. 43, 113 So. 2d 462 (1959); *Barber v. Lake Charles Pipe & Supply Co.*, 148 So. 2d 326 (La. App. 3d Cir. 1963). See also Comment, 21 LA. L. REV. 402 (1961).

5. *Parker v. Board of Barber Examiners*, 84 So. 2d 80, 85-87 (La. App. 1st Cir. 1955).

6. Representative Joe Keogh, Chairman of the Interim Joint Legislative Committee on Formulation of Administration Rules of Procedure, stated that the purpose of the APA was "to establish a basic, streamlined system to replace the hundreds of rules and regulations in some 189 state agencies, commissions and boards. . . ." *Uniform Procedure Code to Be Introduced in Next Legislature*, *Morning Advocate* (Baton Rouge, La.), Dec. 13, 1965, at 10, col. 2. The Act, however, did not replace *all* agency procedures; only those procedures falling below the minimum due process standards established in the statute were intended to be supplemented. "The prime purpose [of the APA] was to provide procedural requirements for agencies which were set up with very little if any such requirements in the substantive statutes." Letter from Melvin Dakin to Robert H. Bowmar, Aug. 16, 1967, quoted in Louisiana Legislative Council Memorandum, April 16, 1974, at p.11 (on file in offices of *Louisiana Law Review*).

7. Dakin, *The Revised Model State Administrative Procedure Act — Critique and Commentary*, 25 LA. L. REV. 799, 800 (1965).

8. *Id.* at 801.

hearing<sup>9</sup> and other procedural safeguards,<sup>10</sup> in many ways elevated the administrative hearing to the level of a court proceeding. The Act also provides uniform standards for rule-making, designed to afford an opportunity to interested persons to submit data and information<sup>11</sup> and to insure proper publicity of a proposed agency rule before implementation.<sup>12</sup> A uniform method for obtaining judicial review of an agency rule,<sup>13</sup> decision<sup>14</sup> or declaratory order<sup>15</sup> is employed and the scope of judicial review of an agency decision is limited to an examination of the record taken at the administrative hearing,<sup>16</sup> permitting admission of new evidence only in special circumstances.<sup>17</sup>

Construing the Act in its entirety and as the progeny of the Federal Act<sup>18</sup> from which it is modeled, the Louisiana APA should be viewed as a legislative determination of the contours of minimal procedural due process, mandating compliance with its procedures to all agencies falling within its scope. However, the Louisiana APA does not include within its scope all agency process. The ambit of coverage

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9. LA. R.S. 49:955 (Supp. 1966): "In an adjudication all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice."

10. Parties appearing before an agency are given the right to subpoena witnesses (R.S. 49:956(5)); obtain depositions (R.S. 49:956(6)); cross-examine witnesses at the hearing (R.S. 49:956(5)); seek judicial review of an agency decision (R.S. 49:964) or rule (R.S. 49:963); obtain appellate review of the district court ruling (R.S. 49:965). The Act requires that the agency give full effect to the rules of privilege in admitting evidence (R.S. 49:956(1)) and that it make a full transcript of agency hearings, furnishing a copy to any requesting party (R.S. 49:955(F)). In addition, the agency is authorized to adopt rules of discovery appropriate to its proceedings (R.S. 49:955(F)).

11. LA. R.S. 49:953(A)(2) (Supp. 1967), as amended by La. Acts 1974, No. 284.

12. LA. R.S. 49:953(A)(1), 954 (Supp. 1967), as amended by La. Acts 1974, No. 284.

13. LA. R.S. 49:963 (Supp. 1967).

14. LA. R.S. 49:964 (Supp. 1967). The Act, however, reserves to parties the "utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law." LA. R.S. 49:964(A) (Supp. 1967). See Note, 43 TUL. L. REV. 854 (1969).

15. LA. R.S. 49:962 (Supp. 1967).

16. LA. R.S. 49:964(F) (Supp. 1967).

17. LA. R.S. 49:964(E) (Supp. 1967).

18. 5 U.S.C. §§ 551-59, 701-06, 3105, 3344, 5362, 7521 (1966). The Louisiana Act was fashioned after the Model State Administrative Procedure Act which in turn was based on the federal APA. See UNIFORM LAW COMMISSIONERS' REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT in HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS (1961). For an analysis of the Model State Administrative Procedure Act, see Dakin, *The Revised Model State Administrative Procedure Act—Critique and Commentary*, 25 LA. L. REV. 799 (1965). See also 1 F. COOPER, STATE ADMINISTRATIVE LAW (1965). The congressional purpose in adopting the federal APA was to provide comprehensive, standardized procedure embodying the guarantees of due process, to be imposed uniformly upon all agency process. See 92 CONG. REC. 2149-50 (1946). For history of the Federal Act, see K. DAVIS, ADMINISTRATIVE LAW TEXT § 1.04 (1958).

is limited initially by the Act's definition of "agency."<sup>19</sup> Once a determination is made that a state entity is an "agency" within the definition, the next inquiry concerns the type of agency process involved—adjudication or rule-making. If the agency conduct in question is the formulation of an "agency statement of general applicability and future effect that implements, interprets, or prescribes substantive law or policy or prescribes the procedure or practice requirements of the agency,"<sup>20</sup> the conduct is regulated by the Act's rule-making provisions.<sup>21</sup> If, on the other hand, the agency action is classified as adjudication,<sup>22</sup> an additional step must be taken before concluding that the Act applies: it must be found that the decision or order rendered is "required by constitution or statute to be determined on the record after notice and opportunity for agency hearing."<sup>23</sup>

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19. LA. R.S. 49:951(2) (Supp. 1967), as amended by La. Acts 1974, No. 284: "'Agency' means each state board, commission, department, or officer authorized by law to make rules or to formulate and issue decisions and orders except the legislature or any branch, committee, or officer thereof and the courts." This definition has its source in REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 10 (1961). See Dakin, *The Revised Model State Administrative Procedure Act—Critique and Commentary*, 25 LA. L. REV. 799, 801-02 (1965). See also text at notes 30-33 *infra*.

20. LA. R.S. 49:951(6) (Supp. 1967). See generally 1 K. DAVIS, ADMINISTRATIVE LAW TEXT §§ 6.01-.10 (1958) (rule-making under the Federal APA); U. LAVERY, FEDERAL ADMINISTRATIVE LAW §§ 61-75 (1952).

21. Although there is no specific exemption, it can be implied in Louisiana that agencies are exempt from the requirements of the Louisiana APA rule-making procedures of R.S. 49:953-54 when adopting rules of practice pursuant to R.S. 49:952. This would be in accord with the Federal APA, 5 U.S.C. § 553(b)(3)(A) (1966) which specifically provides: "Except where notice and hearing is required by statute, this subsection shall not apply — to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice. . . ." See Reich, *Rule-Making Under the Administrative Procedure Act*, in THE FEDERAL ADMINISTRATIVE PROCEDURE ACT AND THE ADMINISTRATIVE AGENCIES 495 (G. Warren ed. 1947).

Agency process need not be held in abeyance pending the adoption and filing of rules of practice pursuant to R.S. 49:952; further, the applicability of the Louisiana APA to adjudication and rule-making prior to the filing of rules of practice is not affected. Thus, the effectiveness of the Act upon agency process cannot be forestalled by a delay in adopting and filing rules of practice under R.S. 49:952.

22. LA. R.S. 49:951(1) (Supp. 1967): "'Adjudication' means agency process for the formulation of a decision or order." Adjudication under the Act includes non-revenue licensing. LA. R.S. 49:951(3) (Supp. 1967).

23. LA. R.S. 49:951(3) (Supp. 1967). The federal APA also limits the applicability of its adjudication requirements to those cases where adjudication is "required by statute to be determined on the record after opportunity for an agency hearing. . . ." 5 U.S.C. § 554(a) (1966). See U. LAVERY, FEDERAL ADMINISTRATIVE LAW § 23, at 7 (1952); Netterville, *The Administrative Procedure Act: A Study in Interpretation*, 20 GEO. WASH. L. REV. 1, 34 (1951).

Thus, even if an entity within the Act's definition of "agency" adjudicates disputes between parties, unless there is a statutory requirement, apart from the Louisiana APA, that the agency provide notice and hearing or unless a court determines that due process demands that notice and hearing be afforded in the particular case, the provisions of the Louisiana APA do not apply.<sup>24</sup> For example, in *Bank of Abbeville v. Sehart*<sup>25</sup> plaintiff banks requested a formal hearing before the State Banking Commission to contest the issuance of a certificate of authority to another bank in the same locality. When the request was denied, plaintiffs sought review claiming a right to a hearing under the provisions of the Louisiana APA.<sup>26</sup> The First Circuit Court of Appeal, finding that the statute governing the Bank Commissioner's licensing authority did not mandate notice or hearing,<sup>27</sup> declared that the Louisiana APA provisions were inapplicable.<sup>28</sup> Further, the court found no due process denial because plaintiffs were granted an informal hearing in the Bank Commissioner's office.<sup>29</sup>

### *Agency Exemptions*

The 1967 Louisiana APA exempted from its provisions an unusually large number of agencies—some of them among the state's

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24. If there is no statutory requirement for notice and hearing, an inquiry must be made to determine if due process requires that an opportunity for a hearing be afforded. If a judicial determination is made that due process requires notice and hearing the agency falls within the scope of LA. R.S. 49:951(3) (Supp. 1967). See *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950) (interpreting the federal APA). For a discussion of the constitutional requirement of notice and hearing as applied by state courts, see F. COOPER, *STATE ADMINISTRATIVE LAW* §§ 135-59 (1965).

25. 246 So. 2d 382 (La. App. 1st Cir. 1971).

26. LA. R.S. 49:955 (Supp. 1966).

27. 246 So. 2d at 384. The procedure required to be employed by the Bank Commissioner in granting or denying a license is set out in LA. R.S. 6:241 (1950) which states: "Before issuing a certificate of authority to any banking association or savings bank, the commissioner shall examine the qualifications, responsibility, and standing of the persons organizing the association or bank. If he finds that the public interest will not be subserved by permitting such persons to organize the association or bank, he shall refuse to issue the certificate."

28. In his dissent, Judge Landry, relying on the Louisiana APA's broad definition of "agency" and the purpose for the enactment of the Louisiana APA, would have held the Act applicable. *Id.* at 386. Such a sweeping interpretation of the scope of the Louisiana APA does not seem to reflect the intent of the redactors. See *The Work of the Louisiana Appellate Courts for the 1970-1971 Term—Administrative Regulation: Law and Procedure*, 32 LA. L. REV. 271, 286-87 (1971).

29. 246 So. 2d at 382. The petitioners in *Sehart* were asserting the right to be free from competition, which is not a constitutionally protected right. *But see Whitney Nat'l Bank v. Bank of New Orleans & Trust Co.*, 323 F.2d 290 (D.C. Cir. 1963).

largest and most influential<sup>30</sup>—apparently with no consistent pattern or scheme underlying the exemptions.<sup>31</sup> In addition to these agencies, which were exempted by excluding them from the definition of “agency,”<sup>32</sup> the State Bond Commission and the Atchafalaya Basin Division, created subsequent to the enactment of the Louisiana APA, were exempted from its provisions by special statutes.<sup>33</sup>

The 1974 amendment of the Louisiana APA redefined “agency” to include “each state board, commission, department, or officer authorized by law to make rules or to formulate and issue decisions and orders except the legislature or any branch, committee, or officer thereof and the courts.”<sup>34</sup> The amendment clearly was intended to bring within the scope of the Louisiana APA those agencies exempted by the original Act. Moreover, the 1974 amendment was accompanied with a general repealer clause,<sup>35</sup> declaring null all laws in conflict with its provisions. Although these enactments, construed together, seem

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30. See LOUISIANA PUBLIC AFFAIRS RESEARCH COUNCIL, LOUISIANA STATE AGENCIES HANDBOOK (1969).

31. The bill as originally introduced contained no exemptions except those pertaining to the courts and the legislature, with special provisions for the Public Welfare Department to meet its needs for confidentiality. However, “[i]n committee hearings, it developed that the bill would be opposed by the Mineral Board, Department of Conservation, Department of Hospitals, and the Department of Revenue because they had just completed drafting rules of procedure which had been agreed upon with affected parties; they felt that the new act, as an unknown quantity, would inject too many uncertainties into situations which they had just gotten settled and they requested their exclusion until they could study the situation. The Department of Labor . . . and Department of Welfare have . . . extensive procedural provisions required under Federal law with no problem of insufficient due process being accorded and their request for exclusion was again primarily one of gaining time. . . . The Highway Department’s concern was over the effect which the rule-making procedures might have on the formulation of traffic regulations on the highways. . . .” Letter from Melvin Dakin, *supra* note 6, at p. 10.

32. LA. R.S. 49:951(2) (Supp. 1967) (as it appeared prior to Act 284 of 1974) provided in pertinent part: “‘Agency’ means each state board, commission, department, officer authorized by law to make rules or to formulate and issue decisions and orders except . . . (c) The Department of Public Welfare, Department of Conservation, Department of Revenue, Division of Employment Security, Department of Labor, the Department of Hospitals and the State Mineral Board, and the Department of Highways.”

33. LA. R.S. 39:1402.1 (Supp. 1972) provides: “The State Bond Commission in exercising its powers, duties and functions may establish such rules and procedures as will enable it to properly and expeditiously exercise such powers, duties and functions, and shall not be subject to the provisions of R.S. 49:951 to 49:966 inclusive.” LA. R.S. 38:2359 (Supp. 1972) regulating the Atchafalaya Basin Division hearings provides: “The provisions of the Administrative Proceedings (sic) Act shall not be applicable.”

34. LA. R.S. 49:951(2) (Supp. 1967), as amended by La. Acts 1974, No. 284,

35. La. Acts 1974, No. 284 § 5.

to abrogate the special exemptions formerly given to the State Bond Commission and the Atchafalaya Basin Division, there is some indication that those agencies may claim that the special statutes are still in force.<sup>36</sup>

In an opinion sought by the Bond Commission,<sup>37</sup> the State Attorney General concluded that the special exemption given to the Commission was not affected by the 1974 amendments, pointing out that no express repeal of the special exempting statute was enacted and that courts have "unanimously disregarded"<sup>38</sup> general repealer clauses as mere surplusage. The Attorney General thus declared the repealer should not be construed as voiding the special statutes. Even conceding the proposition that repealer clauses are superfluous because the legislature is presumed to intend repeal of all laws in conflict with its most recent enactment, the change in the definition of "agency" to include all state entities with adjudicative and rule-making power coupled with an *express general* repeal of all prior conflicting laws strongly indicates that the legislature did not intend to continue the special statutory exemptions. Moreover, it seems that if the 1974 legislature had intended to continue the exclusion of the State Bond Commission and the Atchafalaya Basin Division from the Louisiana APA, a special provision, similar to section 967<sup>39</sup> which exempts certain agencies from the APA's adjudication procedure, would have been drafted. Since a special exemption was not included,<sup>40</sup> a forceful argument can be made that the repealer clause

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36. Interview with Edgar Colthorp, Director of the Department of State Register, Division of Administration, in Baton Rouge, October, 1974.

37. See LA. OP. ATTY. GEN. NO. 74-1246 (Sept. 17, 1974).

38. *Id.* at p. 4.

39. LA. R.S. 49:967 (Supp. 1974): "Chapter 13 of title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Department of Revenue, the Department of Employment Security, the Department of Highways and the Board of Tax Appeals, except that the provisions of R.S. 49:951(2), (4), (5), (6) and (7), 952, 953, 954 and 954.1 shall be applicable to such departments and said Board." These agencies are exempt from the Louisiana APA adjudication provisions, but rule-making regulations are applicable.

40. The legislature failed to adopt section 3 of the 1974 *proposed* Louisiana APA amendments which would have amended the special statute exempting the State Bond Commission as follows: "The State Bond Commission in exercising its powers, duties and functions may establish such rules and procedures as will enable it properly and expeditiously to exercise such powers, duties and functions." La. H.B. 613, 37th Reg. Sess. (1974). This part of the bill was deleted, however, in the House Committee. *Id.*, House Committee on Judiciary (B), No. 11. No definite conclusion can be drawn from this deletion as it is susceptible of two possible interpretations: First, the legislature intended to maintain the status quo as regards the State Bond Commission and for this reason refused to pass section 3; second, the legislature intended to do away

should be given full effect; thus, the State Bond Commission and the Atchafalaya Basin Division should be governed by the Louisiana APA.

It appears the Public Service Commission may also be claiming an exemption<sup>41</sup> on the basis of Article 4, § 21(B) of the 1974 Constitution which authorizes the Commission to "adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties. . . ." One possible interpretation of the provision is that it is a separate constitutional delegation of power to the Commission to make rules governing procedure, and places the rules adopted by the agency on par with a constitutional provision, subject only to due process limitations. However, a more likely construction of section 21(B) is that it is simply a broad delegation of authority to the Commission to promulgate reasonable substantive rules; in fact, it is quite similar to statutory provisions applicable to several other agencies.<sup>42</sup> Such delegations of authority are entirely consistent with section 951(2) of the Louisiana APA which defines agency as "each commission . . . authorized by law, to make rules or to formulate and issue decisions." Since the Public Service Commission is an agency created by the constitution, it is an agency created by law and thus arguably within the scope of the Louisiana APA.

Although there is no statutory exclusion, state parole boards traditionally are excluded from administrative procedure statutes under the rationale that parole is merely a privilege and that boards should be free to exercise their discretion in granting or denying parole.<sup>43</sup> Louisiana accepted this traditional approach in *Smith v. Dunn*,<sup>44</sup> decided after adoption of the Louisiana APA. In *Smith*, relators complained that they were denied parole and were not given the reasons therefor. Relying on section 958<sup>45</sup> of the Louisiana APA, they

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entirely with the exemption by enacting the repealer clause and thus defeated section 3 to avoid any qualification on the applicability of the APA to the Bond Commission.

41. Interview with Edgar Colthorp, Director of the Department of State Register, Division of Administration, in Baton Rouge, October, 1974.

42. See, e.g., LA. R.S. 3:3 (1894): "The Commissioner of Agriculture and Immigration shall direct the department and shall make all necessary rules and regulations for the purpose of carrying out the intention of this Chapter."; LA. R.S. 37:2153(A) (Supp. 1956): "The board [of contractors] shall have the power to make by-laws, rules and regulations for the proper administration of this Chapter . . . . The board is hereby vested with the authority requisite and necessary to carry out the intent of the provisions of this Chapter."

43. See *Simon v. United States*, 269 F. Supp. 738 (E.D. La. 1967); Cf. 1 F. COOPER, STATE ADMINISTRATIVE LAW 153 (1965).

44. 263 La. 599, 268 So. 2d 670 (1972).

45. LA. R.S. 49:958 (Supp. 1967) provides in pertinent part: "A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in

contended that the Board was required to give reasons for the denial. The Louisiana supreme court held that the State Parole Board was not an "agency" within the meaning of the Louisiana APA, noting that statutory rules governing Parole Board procedure and the provisions of the Louisiana APA were "so conflicting as to be irreconcilable."<sup>46</sup> Although the court determined that the Parole Board was "not the sort of agency or board contemplated as subject to the law on general administrative procedure,"<sup>47</sup> there may be constitutional reasons for requiring compliance with the minimum standards embodied therein. The issue of the constitutionality of the procedure employed was not specifically raised in *Smith*, but was raised in a subsequent case on writs to the Louisiana supreme court.<sup>48</sup> Although the majority denied writs on the strength of *Smith v. Dunn*, Justice Barham, the author of *Smith*, noted in dissent: "The constitutional issue is specifically raised and in my opinion it is a very serious issue. . . . *Smith v. Dunn* does not control."<sup>49</sup>

The majority decision in *Smith* can hardly be criticized since a determination of which provisions of the Louisiana APA should apply to the Parole Board and which should not is best left to the legislature. An amendment to the Louisiana APA making *some* of its provisions applicable to the Parole Board, comparable to section 967,<sup>50</sup> would provide definite standards in vital areas of Parole Board procedures and answer any due process objections.

It is still not clear in Louisiana, even after the 1974 amendments, whether municipal and parish boards are exempt from the Act.<sup>51</sup>

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the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. . . ."

46. 263 La. at 602, 268 So. 2d at 671. For example, the Louisiana APA requires that agencies shall make available for public inspection rules and decisions and provides appellate review of an adverse decision or rule. The Parole Board, on the other hand, is required by law to keep confidential records and there is no right of appeal from a decision granting or denying parole.

47. 263 La. at 604, 268 So. 2d at 701.

48. State *ex rel.* Ryan *v.* Sowers, *writ denied*, 271 So. 2d 532 (La. 1973).

49. *Id.*

50. See note 39 *supra*.

51. LA. R.S. 49:951(2) (Supp. 1967), as amended by La. Acts 1974, No. 284, defining "agency" as "each state board, commission, department or officer" may be read as restricting the Act's applicability to agencies operating at the state level, thereby exempting municipal and parish boards. *But see* *Tafaro's Inv. Co. v. Division of Housing Improvement*, 261 La. 183, 259 So. 2d 57 (1972), where a New Orleans city ordinance required that notice and hearing be afforded property owners before authorizing the Division of Housing Improvement to contract for repairs on owners' property at owners' expense. An argument could be made here for bringing the municipal

Such an exemption would be in accord with the majority of the states.<sup>52</sup>

*Louisiana Administrative Code and Register*

Another weakness of the 1967 Act was its failure to provide an effective enforcement agency to implement its filing provisions. Former section 954 provided that each agency *shall* file its rules in the office of the Secretary of State. Despite its mandatory nature, few agencies complied with the dictates of this provision<sup>53</sup> and the Secretary of State claimed that he had neither the funds nor the power to implement the Louisiana APA.<sup>54</sup>

The 1974 amendment attempts to remedy these problems by creating a centralized filing system<sup>55</sup> under the direction and control of the Division of Administration rather than the Secretary of State.<sup>56</sup> In addition, the Division of Administration is authorized to promulgate and enforce interagency rules for its implementation.<sup>57</sup> Funding for the publication and distribution of the Louisiana Administrative Code and Register will be obtained from the Administrative Services revolving fund<sup>58</sup> and self-generated funds.<sup>59</sup>

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agency under the force of the Louisiana APA since there is a legal requirement for notice and opportunity for hearing.

52. It is generally held that these boards possessing limited geographical jurisdiction are not "agencies" within the meaning of state administrative procedure statutes. See 1 F. COOPER, *STATE ADMINISTRATIVE LAW* 106 (1965). He notes, however, contrary results in Connecticut and Massachusetts. See *Fowler v. Town of Enfield*, 138 Conn. 521, 86 A.2d 662 (1952); *Hayeck v. Metropolitan Dist. Comm'n*, 335 Mass. 372, 140 N.E.2d 210 (1957).

53. From 1967 to 1974 only twenty-seven of over 250 agencies filed with the Secretary of State and, of the twenty-seven, three were exempt from filing requirements under the APA. See *Possible Implementation of a State Register in Louisiana*, Louisiana Legislative Council Memorandum, April 2, 1974.

54. *Id.*

55. LA. R.S. 49:954.1 (Supp. 1974) provides for the establishment of the Louisiana Administrative Code and Register.

56. Implementation of the Code and Register was placed under the Department of State Register, created by Executive Order 73, which became effective September 1, 1974. The task of the agency is "to assimilate and edit the various source documents necessary for the State Register and Administrative Code and provide those same documents to the Division of Administration for publication and distribution." State of Louisiana, Executive Dep't, Executive Order No. 73, on file in offices of *Louisiana Law Review*.

57. LA. R.S. 49:954.1(G) (Supp. 1974).

58. LA. R.S. 49:954.1(D) (Supp. 1974).

59. LA. R.S. 49:954.1(D) (Supp. 1974). Funds will be generated by selling yearly subscriptions to the Register which will be published on the 20th of each month.