



1944

## The Administrative Procedure Bills

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### Recommended Citation

Thormodsgard, O. H. (1944) "The Administrative Procedure Bills," *North Dakota Law Review*. Vol. 21 : No. 3 , Article 5.

Available at: <https://commons.und.edu/ndlr/vol21/iss3/5>

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## THE ADMINISTRATIVE PROCEDURE BILLS

By Dean O. H. Thormodsgard

The governmental problems which face us today do not involve the amendment or construction of the Constitution of the United States or the Constitution of the state of North Dakota. One of the many problems is that of assuring justice through the administrative agencies which have become a part of our governmental structure. Such justice may be accomplished through adequate organization and judicial review.

The American Bar Association has for over a decade taken a vital interest in the subject of administrative law and especially in the field of administrative procedure. A Special Committee on Administrative Law of the American Bar Association was created in May, 1933, by the Executive Committee of the Association. The occasion for the appointment of the Committee was due to the growth of administrative agencies during the depression years. The program of this Committee was described in the following words: "Nor will the Committee venture any attempt to duplicate the valuable studies now being carried on in the various specialized fields. It hopes, rather by making use of this and other material to be of service in a study of the practical operation of the various types of administrative machinery (particularly on the quasi-judicial side), and of the various methods of review, to the ends that generally-recognized defects may be remedied and avoided in the future and that generally-recognized principles may be given effects." See—58 A.B.A. Rep. (1933) 407-427 at 411-412.

In 1934 the Committee gave a report. The main portion of the report is expressed as follows: "Judicial functions of federal administrative tribunals should be divorced from their legislative and executive functions and should be placed

(a) preferably in a federal administrative court with appropriate branches and divisions including an appellate division or, failing that,

(b) in an appropriate number of independent tribunals." See—59 A.B.A. (1934) 539-564 at 539. The Committee asked the convention for authority to appear before the Congress to urge legislation.

In 1935 the Committee on Administrative Law made no report. It noted the passage of the Federal Register Act which it had suggested. It spoke in support of the Logan Bill (S 213). 60 A.B.A. Rep. (1935) 136-143.

In 1936 the Committee on Administrative Law made a lengthy report in support of a federal administrative court. Part of it is as follows: "(2) Resolved, That the Association approves in principle, the establishment of a federal administrative court. Without approving or disapproving the provisions of any pending bills dealing with the subject; and express its opinion that such court should have the following features:" . . . For

specific features see 61 A.B.A. Rep. (1936) 720-794. The report also included an excellent statement as to the constitutional limitations upon the scope of judicial review. In 23 A.B.A.J. (1937) 186, there is an article by Robert M. Cooper entitled "Federal Administrative Law" which gives an excellent analysis of the Logan Bill.

In 1937, the Special Committee on Administrative Law presented an extensive report. See—62 A.B.A. Rep. (1937) 789-850. This Committee came forward with a different plan than it did in 1936. It gave up the plan of having an administrative court, in that a great deal of hostility had been developed against such a plan by members of The American Bar Association and especially by government lawyers. These groups did not favor the "consolidation of existing legislative tribunals, particularly the court of claims, custom court, court of and patent appeals, with the Board of Tax Appeals to form the nucleus of a large court with the jurisdiction of all the consolidated tribunals and with considerable additional jurisdiction over controversies for which there is now no existing method of judicial review." 62 A.B.A. Rep. (1937) at 806.

The 1937 Committee proposed that the "heads of departments, independent establishments, boards, commissions, and other agencies of the United States shall issue rules and regulations implementing both adjective and substantive terms of the statutes they are required to administer," and that these rules and regulations were to be issued after notice and an opportunity to be heard and after approval to be published in the Federal Register. In each department, a departmental board of review should be appointed by the head of that department. The recommendations included that the board should consist of three members, one of which shall be a lawyer. The recommendation also provided that the record made before the board should be the record for judicial review. The Committee drafted a bill embodying the above proposals among many others. A copy of the Bill is printed in 62 A.B.A. Rep. (1937) 846-850. A Comment on the proposed bill was written by Colonel McGuire, Chairman of the Committee on Administrative Law. His Comment was published in 23 A.B.A.J. (1937) pp. 609-612. A revised draft of this bill was submitted to and approved by the Board of Governors. This draft was submitted to the Congress and introduced in Congress under the name of the Walter-Logan Bill. See—63 A.B.A. Rep. (1938) 334. The draft, however, was not accepted by the House of Delegates at its annual meeting in 1938. It again referred the Bill to the Special Committee on Administrative Law. 63 A.B.A. Rep. (1938) 156. The Committee once more reported the draft Bill with minor changes to the House of Delegates at its January meeting in 1939 and this time secured the approval of the House of Delegates. 64 A.B.A. Rep. (1939) at 518; 25 A.B.A.J. (1939) 93-102. This approved draft was submitted to the Committee of the Judiciary of the United States Senate. The Bill was introduced in the Senate as S 915 and in the House of Representatives

as HR 6324. Its popular name was the Walter-Logan Bill. The Walter-Logan Bill passed the House of Representatives by a vote of 282 to 97 on April 18, 1940. The same bill passed the Senate in December, 1940. The Bill was vetoed by the President on December 18, 1940. One of the many reasons given for the veto was that the Attorney General's Committee on Administrative Procedure had not submitted its report and that no administrative procedure bill should be enacted into law until such a report had been made. 66 A.B.A. Rep. (1941) 439-454 at 448.

On December 14, 1938, Attorney General Cummins had recommended to President Roosevelt that he "should request the Congress to authorize the Attorney General to appoint a Commission to investigate and consider the whole problem of federal administrative procedure." Acting upon this suggestion, the President requested Attorney General Murphy on February 16, 1939, to appoint a Committee to make a comprehensive study and to investigate the "need for procedural reform in the field of administrative law." Upon appointment, the Committee of six members with a staff of experts investigated nearly all of the important federal administrative agencies. The Committee restricted its study to "agencies which in a substantial way affect private interest by their power to make rules and regulations or by their power of adjudication in particular cases." The agencies to which the Committee investigated were: The Department of Agriculture, The Department of Commerce, The Department of Interior, The Department of Justice, The Department of Labor, The Post Office Department, The Department of State, Department of the Treasury, The War Department, The Commodity Exchange Commission, The Federal Communication Commission, The Federal Deposit Insurance Corporation, The Federal Home Loan Bank Board, The Federal Power Commission, The Federal Reserve System, The Federal Security Agency, The Federal Trade Commission, The Interstate Commerce Commission, The National Labor Relation Board, The National Mediation Board, The National Railway Adjustment Board, The Railroad Retirement Board, The Securities and Exchange Commission, The United States Board of Tax Appeals, The United States Employees Compensation Commission, The United States Maritime Commission, The United States Tariff Commission and The Veterans Administration. The committee and its staff made a comprehensive survey. The reports prepared by this group were published in twenty-seven monographs. The Committee itself prepared a special report in January, 1941. This report "describes the origin and development of the administrative process, the basic necessities of organization and procedure, the method of informal and formal adjudication, rule-making procedure, and judicial review." Senate Document No. 8 (1941) — Administrative Procedure in Government Agencies.

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