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Administrative Decisions

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Horace Bagley, Towner

The committee last named was continued upon motion at the annual meeting.

Devils Lake was selected as the place for holding the 1930 annual meeting, but no tentative dates were fixed. F. J. Traynor was made general chairman of the program committee.

ADMINISTRATIVE DECISIONS

For a number of years the provisions of various acts, which make final the action of administrative bureaus and commissions, generally or on questions of fact, have been under fire. Not only those whose opposition is basic, who argue that it is a violation of American principles, but even those who favored, and sometimes fathered, these deliberate death-dealing attacks upon judicial interference, have come to view with considerable alarm some of the results of lay application of these provisions. Some have gone so far as to urge that the courts "assume" jurisdiction, and judicially review the acts of such

boards, notwithstanding such a legislative pronouncement as this, for example: "The bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final."

We are among those who have insisted, continuously, and sometimes rather strenuously, that such provisions are un-American, and that there should be substituted a right of review and we favored "review" rather than "appeal." But it has also been our contention—the argument being thus far ineffective and uneffective—that administrative procedure may and should be so organized that administrative action would be appealable under the foregoing provision as it now stands. As a member of one of these bureaus, we hold it to be the duty of such bureaus to use extraordinary legislative grants of power in such a way that ultimate justice may be approximated, and are firmly convinced that if such power were so exercised there would be fewer requests that the judiciary "assume" jurisdiction or that the legislature amend the law.

Of course, no wide-open policy should be inaugurated. There must come a time in every case when the gate should be closed through limitation provisions. But whenever and wherever reasonable and reasoning men might differ, the gate should be left open as long as fairminded application of common-sense practices will permit, under the law. We believe it should be done; we think it can be done; we hope it may be done before we retire as a member of one of such administrative bureaus.

It is our conviction that Section 18 of the Compensation Act, to use that law again for an example, was inserted for the particular purpose of doing the sort of justice that should be the aim of all right-minded men. That Section reads: "If the original claim for compensation has been made within the time specified in Section 15 the bureau may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation."

Having been authorized and empowered to make decisions that are final, such bureaus ought to have the disposition to review their own decisions, *upon their own motion,* and to frame their findings and conclusions, originally and upon such review, in such a way that an "appealable order or award" may be entered, especially whenever the record discloses conflicting or incomplete facts—the ultimate aim, of course, always being a final equitable decision rather than arbitrary or technical support of a previous "non-appealable order," which may or may not be equitable.

Using their extraordinary grants of power in such a way, it is our judgment, ultimate justice will be more nearly approximated, and there will be few, if any, requests that the judiciary "assume" jurisdiction or that the legislature amend the law.

JUDICIAL COMMENT ON EVIDENCE

Lawyers have certainly not come to agreement upon the advisability of restoring to trial judges the common law right of expressing opinions on the weight of evidence and the credibility of witnesses in jury cases while laymen and legislators seem quite definitely dis-