CHAPTER 23

State Agency Rule Making and Adjudication of Contested Cases

CROSS REFERENCES

Vacation time sharing resale services, written contract, and other requirements, see Section 27‑32‑55.

ARTICLE 1

State Register and Code of Regulations

**SECTION 1‑23‑10.** Definitions.

 As used in this article:

 (1) “Agency” or “State agency” means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;

 (2) “Document” means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;

 (3) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

 (4) “Regulation” means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term “regulation” includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney General; decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.

 (5) “Promulgation” means final agency action to enact a regulation after compliance with procedures prescribed in this article.

 (6) “Office” means the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

 (7) “Substantial economic impact” means a financial impact upon:

 (a) commercial enterprises;

 (b) retail businesses;

 (c) service businesses;

 (d) industry;

 (e) consumers of a product or service;

 (f) taxpayers; or

 (g) small businesses as defined in Section 1‑23‑270.

HISTORY: 1977 Act No. 176, Art. I, Section 1; 1992 Act No. 507, Section 2; 1996 Act No. 411, Section 1; 1999 Act No. 77, Section 2; 2000 Act No. 387, Part II, Section 69A.3; 2004 Act No. 231, Section 3, eff January 1, 2005.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 2004 amendment added subparagraph (7)(g).

CROSS REFERENCES

Applicability of this chapter to dissemination of regulations implementing South Carolina Consolidated Procurement Code, see Section 11‑35‑60.

Applicability of this chapter to promulgation of regulations by Commissioner of Labor to prohibit and prevent oppressive child labor practices, see Section 41‑13‑20.

Applicability of this chapter to promulgation of regulations by Department of Social Services relative to day care centers and homes, see Section 63‑13‑180.

Applicability of this chapter to promulgation of regulations by Real Estate Commission for implementation of chapter regulating vacation time sharing plans, see Section 27‑32‑130.

Applicability of this chapter to promulgation of regulations by the Tri‑County Coliseum Commission, see Section 13‑15‑50.

Applicability of this chapter to promulgation of rules and regulations by State Election Commission regarding arrangement of official county ballot, see Section 7‑13‑611.

Applicability of this chapter to provisions relative to boll weevil eradication, see Section 46‑10‑30.

Applicability of this chapter to South Carolina Jobs—Economic Development Authority, see Section 41‑43‑270.

Department of Health and Environmental Control authorized to promulgate regulations as provided in this section to implement provisions of state Mining Act, see Section 48‑20‑210.

Establishment of “Court Register” for rules promulgated by Supreme Court, see Sections 14‑3‑940 et seq.

Hearings and hearings procedures, standards for stormwater management and sediment reduction, see S.C. Code of Regulations R. 72‑313.

Hearing and complaint procedure, standards for stormwater management and sediment reduction, see S.C. Code of Regulations R. 72‑440.

Procedures for protection of state owned or leased historic properties, see Section 60‑12‑30.

Promulgation of regulations by the South Carolina State Board of Veterinary Medical Examiners, see Section 40‑69‑70.

Promulgation of regulations of Division of Savannah Valley Development, see Section 13‑1‑780.

Regulations of SC Edisto Development Authority to be promulgated in accordance with this Chapter, see Section 13‑21‑190.

Regulations of SC Midlands Authority to be promulgated in accordance with this Chapter, see Section 13‑19‑180.

Department of Insurance regulations, see S.C. Code of Regulations R. 69‑1 et seq.

Requirement that regulations adopted pursuant to the long term care insurance act be in accordance with this chapter, see Section 38‑72‑70.

Rural Infrastructure Authority, see Section 11‑50‑60.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak381.

Administrative Law and Procedure 381.

C.J.S. Public Administrative Law And Procedure Sections 87, 91.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 32, Board Discretion.

S.C. Jur. Cooperative Credit Unions Section 9, Judicial Review of Decisions of the State Board of Financial Institutions.

S.C. Jur. Death and Right to Die Section 21, Disabled Infants.

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Probation, Parole, and Pardon Section 11, Definition, Nature, and Purpose of Parole.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law; Administrative Procedure Act. 30 S.C. L. Rev. 1.

Attorney General’s Opinions

All or significant parts of a proposed State plan to implement an U.S. Environmental Protection Agency requirement would have to be submitted to the General Assembly for review as a regulation. S.C. Op.Atty.Gen. (March 6, 2015) 2015 WL 1266151.

“Special rules and regulations”, inasmuch as they do not have general statewide applicability, would not have to be promulgated pursuant to the Administrative Procedures Act. S.C. Op.Atty.Gen. (Sept. 13, 2010) 2010 WL 3896170.

Contract provisions, such as those found in the Standard Specifications for Highway Construction, are not regulations within the meaning of Code Section 1‑23‑10(4) and therefore do not have to undergo public or legislative scrutiny pursuant to the Administrative Procedures Act. 1981 Op Atty Gen, No 81‑52, p 78.

Where the Dairy Commission prescribes the time and manner in which wholesale milk distributors must file price schedules with the Commission, or make amendments to schedules already filed, the time and manner so prescribed must be established in accordance with the requirements of the Administrative Procedure Act. 1979 Op Atty Gen, No. 79‑71, p 93.

The South Carolina Interagency Council on Public Transportation is not a “state agency” as that term is defined in the State Register and Administrative Procedures Act, Code of Laws of South Carolina Section 1‑23‑10 et seq. (1977 Cum. Supp.) 1978 Op Atty Gen, No 78‑11, p 22.

The State Employee Grievance Committee is a “State agency” as that term is defined in the State Register and Administrative Procedure Act, Section 1(1), 59 Acts and Joint Resolutions 1758 (1976). 1976‑77 Op Atty Gen, No 77‑109, p 96.

The policy manual of the State Personnel Rules and Regulations is not a “regulation” under the State Register and Administrative Procedures Act, since the policy manual applies only to State employees; therefore, the policy manual is not subject to the Act. 1976‑77 Op Atty Gen, No 77‑330, p 263.

The Estate tax form prepared for use by the public by the South Carolina Tax Commission does not constitute a regulation within the meaning of the Administrative Procedures Act (Act No. 176 of 1977). 1976‑77 Op Atty Gen, No 77‑378, p 303.

The provisions of Act R790, 1976 [1976 Act No. 671] are applicable to the South Carolina State Plan, because the State Board of Education is an “agency” within the meaning of Section 1 of Act R790 [1976 Act No. 671]. 1975‑76 Op Atty Gen, No 4505, p 363.

NOTES OF DECISIONS

In general 1

Regulations 2

1. In general

Whether an agency’s action or statement amounts to a rule, which must be formally enacted as a regulation, or a general policy statement, which does not have to be enacted as a regulation, depends on whether the action or statement establishes a “binding norm.” Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Constitutional Law 4025

When an agency action or statement so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule’s criterion, then it is a “binding norm” which should be enacted as a regulation, but if the agency remains free to follow or not follow the policy in an individual case, the agency has not established a binding norm. Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Administrative Law and Procedure 382.1

In an appeal from an order declaring unconstitutional the Dairy Commission’s authority to regulate the price of milk paid by distributors to South Carolina producers, an appellate court would hear any constitutional objections to the issuance of the pricing orders, even though defendant did not appeal the initial adoption of the orders pursuant to Section 1‑23‑10, since the failure to exhaust administrative remedies was a defense and thus was not available to a claimant agency as a means to uphold or enforce any otherwise illegal agency action. State Dairy Com’n of South Carolina v. Pet, Inc. (S.C. 1984) 283 S.C. 359, 324 S.E.2d 56.

2. Regulations

Federally approved Medicaid service caps under state’s intellectual disability/related disabilities (ID/RD) waiver program did not need to be promulgated as state regulations under Administrative Procedures Act (APA) to be enforceable, as they carried force and effect of law. Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Constitutional Law 4027

Board of Physical Therapy’s adoption of position statement interpreting statute prohibiting fees for physical‑therapy referrals as being inapplicable to individual physical therapists or associated physical therapists groups’ employment of other physical therapists or physical therapy assistants constituted binding norm, rather than general policy statement, and thus was required to be promulgated as regulation under Administrative Procedure Act (APA); position statement was adopted to protect physical therapists from disciplinary action under statute and was intended to have force of law, Board intended physical therapists and physical therapist groups to rely on position statement, position statement left no question regarding whether physical therapists employed by another physical therapists or physical therapists group violated statute, and Board was not free to exercise its discretion in applying position statement. Joseph v. South Carolina Department of Labor, Licensing and Regulation (S.C. 2016) 417 S.C. 436, 790 S.E.2d 763, rehearing denied. Health 939

Whether a particular agency creates a regulation subject to the requirements of the Administrative Procedure Act (APA) or simply announces a general policy statement depends on whether the agency action establishes a binding norm, and the key inquiry is the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not to follow that general policy in an individual case, or on the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule’s criterion; as long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm. Joseph v. South Carolina Department of Labor, Licensing and Regulation (S.C. 2016) 417 S.C. 436, 790 S.E.2d 763, rehearing denied. Administrative Law and Procedure 382.1

When there is a close question whether a pronouncement is a policy statement, which is not required to be promulgated pursuant to the Administrative Procedure Act (APA), or a regulation, which is subject to the APA requirements, the agency should promulgate the ruling as a regulation in compliance with the APA. Joseph v. South Carolina Department of Labor, Licensing and Regulation (S.C. 2016) 417 S.C. 436, 790 S.E.2d 763, rehearing denied. Administrative Law and Procedure 392.1

Board of Physical Therapy’s adoption of regulation interpreting statute prohibiting fees for physical‑therapy referrals as being inapplicable to individual physical therapists or associated physical therapist groups’ employment of other physical therapists or physical therapy assistants violated requirements of Administrative Procedure Act (APA) for promulgating regulations, and thus was invalid, where Board merely identified consideration of letter that prompted position paper as “discussion on Intra‑Professional Interactions” on its agenda, thus essentially providing no notice to public of what Board was deciding. Joseph v. South Carolina Department of Labor, Licensing and Regulation (S.C. 2016) 417 S.C. 436, 790 S.E.2d 763, rehearing denied. Health 939

**SECTION 1‑23‑20.** Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.

 The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council; provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

HISTORY: 1977 Act No. 176, Art. I, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak407.

Administrative Law and Procedure 407.

C.J.S. Public Administrative Law And Procedure Section 113.

**SECTION 1‑23‑30.** Filing of documents with Legislative Council; public inspection; distribution.

 The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

 The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the Council office for public inspection during office hours.

 The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

HISTORY: 1977 Act No. 176, Art. I, Section 3.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak410.

Administrative Law and Procedure 410.

C.J.S. Public Administrative Law And Procedure Section 114.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 4, Powers and Duties.

Attorney General’s Opinions

The filing of original documents with the Legislative Council under Section 3, Article I of Act 176, 1977, is satisfied as long as the document is an accurate copy of the actual rules embodied in the original document, whether a carbon or a photostatic copy. 1976‑77 Op Atty Gen, No 77‑350, p 278.

**SECTION 1‑23‑40.** Documents required to be filed and published in State Register.

 There shall be filed with the Legislative Council and published in the State Register:

 (1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1‑23‑120.

 (2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

HISTORY: 1977 Act No. 176, Art. I, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak407; 15Ak410.

Administrative Law and Procedure 407, 410.

C.J.S. Public Administrative Law And Procedure Sections 113 to 114.

Attorney General’s Opinions

Pricing Orders established by the South Carolina Diary Commission are not regulations as defined by the State Register and Administrative Procedures Act, Act No. 176 of 1977 and therefore are not subject to approval by the General Assembly. 1978 Op Atty Gen, No 78‑11, p 102.

The policy manual of the State Personnel Rules and Regulations is not a “regulation” under the State Register and Administrative Procedures Act, since the policy manual applies only to State employees; therefore, the policy manual is not subject to the Act. 1976‑77 Op Atty Gen, No 77‑330, p 263.

**SECTION 1‑23‑50.** Legislative Council to establish procedures.

 The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

 (1) The manner of certification of copies required to be filed under Section 1‑23‑40;

 (2) The manner and form in which the documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;

 (3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

 (4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

HISTORY: 1977 Act No. 176, Art. I, Section 5; 1979 Act No. 188, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak406; 15Ak407.

Administrative Law and Procedure 406, 407.

C.J.S. Public Administrative Law And Procedure Sections 112 to 113.

**SECTION 1‑23‑60.** Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

 A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

 (1) That it was duly issued, prescribed or promulgated subject to further action required under this article;

 (2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1‑23‑30;

 (3) That the copy on file in the Legislative Council is a true copy of the original;

 The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

HISTORY: 1977 Act No. 176, Art. I, Section 6.

CROSS REFERENCES

Requirement that regulations adopted pursuant to the long term care insurance act be in accordance with this chapter, see Section 38‑72‑70.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak407; 15Ak410; 15Ak416.

Administrative Law and Procedure 407, 410, 416.

C.J.S. Public Administrative Law And Procedure Sections 96, 101, 113 to 114.

**SECTION 1‑23‑70.** Duty of Attorney General.

 The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

HISTORY: 1977 Act No. 176, Art. I, Section 7.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak410; 46k6.

Administrative Law and Procedure 410.

Attorney General 6.

C.J.S. Attorney General Sections 7 to 15.

C.J.S. Parent and Child Section 251.

C.J.S. Public Administrative Law And Procedure Section 114.

**SECTION 1‑23‑80.** Costs incurred and revenues collected by Legislative Council.

 The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

HISTORY: 1977 Act No. 176, Art. I, Section 8.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak407.

Administrative Law and Procedure 407.

C.J.S. Public Administrative Law And Procedure Section 113.

**SECTION 1‑23‑90.** Complete codifications of documents; Code of State Regulations designated.

 (a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

 (b) A codification published under item (a) of this section shall be designated as the “Code of State Regulations”. The Legislative Council may regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

 (c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

 (d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 9.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak406.

Administrative Law and Procedure 406.

C.J.S. Public Administrative Law And Procedure Section 112.

**SECTION 1‑23‑100.** Exemptions for Executive Orders, proclamations or documents issued by Governor’s Office; treatment of some Executive Orders for information purposes.

 This article shall not apply to Executive Orders, proclamations or documents issued by the Governor’s Office. However, Governor’s Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

HISTORY: 1977 Act No. 176, Art. I, Section 10.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak406 to 15Ak410; 360k43.

Administrative Law and Procedure 406 to 410.

States 43.

C.J.S. Public Administrative Law And Procedure Sections 112 to 114.

C.J.S. States Sections 88 to 90, 130.

**SECTION 1‑23‑110.** Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.

 (A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

 (1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

 (a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

 (b) a synopsis of what the agency plans to draft;

 (c) the agency’s statutory authority for promulgating the regulation;

 (2) submit to the office, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1‑23‑115 on regulations having a substantial economic impact;

 (3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty‑five persons, by a governmental subdivision or agency, or by an association having not less than twenty‑five members. The notice must include:

 (a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

 (b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

 (c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section‑by‑section discussion of the proposed regulation and a justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

 (d) the statutory authority for its promulgation;

 (e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1‑23‑120;

 (f) a summary of the preliminary assessment report submitted by the agency to the office and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1‑23‑115(E) must include an explanation of the exemption;

 (g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1‑23‑115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods must be made part of the official record of the proposed regulations.

 (h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1‑23‑120.

 (B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

 (C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

 (2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

 (D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

HISTORY: 1977 Act No. 176, Art. I, Section 11; 1980 Act No. 442, Section 1; 1985 Act No. 190, Section 2; 1988 Act No. 605, Section 1; 1989 Act No. 91, Section 1; 1992 Act No. 507, Section 3; 1993 Act No. 181, Section 11; 1996 Act No. 411, Sections 2, 3; 2002 Act No. 231, Section 1; 2007 Act. No. 104, Section 1, eff July 1, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1‑23‑110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act’s effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

Effect of Amendment

The 2007 amendment designated paragraph (C)(1) and added paragraph (C)(2) relating to regulations containing substantive changes.

CROSS REFERENCES

Detailed implementation of provisions regarding permits for vehicles exceeding maximum size, weight or load do not have general applicability to public, and are exempt from requirement of General Assembly approval, as prescribed in this chapter, see Section 57‑3‑130.

Requirement that regulations adopted pursuant to the long term care insurance act be in accordance with this chapter, see Section 38‑72‑70.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak394; 15Ak395; 15Ak420; 15Ak421.

Administrative Law and Procedure 394, 395, 420, 421.

C.J.S. Public Administrative Law And Procedure Sections 99, 104 to 105.

NOTES OF DECISIONS

In general 1

1. In general

Board of Physical Therapy Examiners’ decision to begin enforcing statute, which prohibited physical therapists from receiving referrals from or dividing fees with a physician employer, after formally endorsing an opinion issued by Attorney General did not constitute a new “regulation” that was void for failure to comply with the rule‑making provisions of Administrative Procedure Act (APA); Board’s pronouncement did not implement law for therapists in more detail than set forth by statute, Attorney General’s opinion merely set forth legal reasoning and authority he used to interpret statute, and Board in endorsing that opinion did not set forth a list of criteria to use in analyzing whether employment relationship of physician and therapist violated statute. Sloan v. South Carolina Bd. of Physical Therapy Examiners (S.C. 2006) 370 S.C. 452, 636 S.E.2d 598, rehearing denied. Health 192; Health 202; Health 948

**SECTION 1‑23‑111.** Regulation process; public hearings; report of presiding official; options upon unfavorable determination.

 (A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it must be conducted by an administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1‑23‑115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

 (B) After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1‑23‑115(C)(1) through (11), except items (4) through (8), and other factors as the presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

 (C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

 (a) modify the proposed regulation by including the suggested modifications of the presiding official;

 (b) not modify the proposed regulation in accordance with the presiding official’s suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official’s written report; or

 (c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

HISTORY: 1993 Act No. 181, Section 11A; 1996 Act No. 411, Section 4.

CROSS REFERENCES

Detailed implementation of provisions regarding permits for vehicles exceeding maximum size, weight or load do not have general applicability to public, and are exempt from requirement of General Assembly approval, as prescribed in this chapter, see Section 57‑3‑130.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak400.

Administrative Law and Procedure 400.

C.J.S. Public Administrative Law And Procedure Sections 103, 106.

**SECTION 1‑23‑115.** Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.

 (A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred‑twenty‑day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred‑twenty‑day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

 (B) A state agency must submit to the Office of Research and Statistics of Revenue and Fiscal Affairs Office, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the office may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the office on requests made pursuant to this section. The office shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1‑23‑110. The office shall forward the final assessment report and a summary of the final report to the promulgating agency.

 (C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

 (1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;

 (2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;

 (3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost‑effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;

 (4) the effect of the regulation on competition;

 (5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;

 (6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;

 (7) the source of revenue to be used for implementing and enforcing the regulation;

 (8) a conclusion on the short‑term and long‑term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;

 (9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;

 (10) the effect of the regulation on the environment and public health;

 (11) the detrimental effect on the environment and public health if the regulation is not implemented. An assessment report must not consider benefits or burdens on out‑of‑state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost‑benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the office.

 (D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the office which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

 (E) An assessment report is not required on:

 (1) regulations specifically exempt from General Assembly review by Section 1‑23‑120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;

 (2) emergency regulations filed in accordance with Section 1‑23‑130; however, before an emergency regulation may be refiled pursuant to Section 1‑23‑130, an assessment report must be prepared in accordance with this section;

 (3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

HISTORY: 1992 Act No. 507, Section 1; 1993 Act No. 181, Section 12; 1996 Act No. 411, Sections 5, 6.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak392; 15Ak405.5.

Administrative Law and Procedure 392, 405.5.

C.J.S. Public Administrative Law And Procedure Sections 103, 105.

Attorney General’s Opinions

All or significant parts of a proposed State plan to implement an U.S. Environmental Protection Agency requirement would have to be submitted to the General Assembly for review as a regulation. S.C. Op.Atty.Gen. (March 6, 2015) 2015 WL 1266151.

**SECTION 1‑23‑120.** Approval of regulations; submission to Legislative Council for submission to General Assembly; contents, requirements and procedures; compliance with federal law.

 (A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1‑23‑110, except those regulations requiring a final assessment report as provided in Sections 1‑23‑270 and 1‑23‑280.

 (B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

 (1) a copy of the regulations promulgated;

 (2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

 (3) a request for review;

 (4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

 (5) a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1‑23‑115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1‑23‑115(E) must include an explanation of the exemption;

 (6) a copy of the fiscal impact statement prepared by the agency as required by Section 1‑23‑110;

 (7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

 (8) a copy of the economic impact statement, as provided in Section 1‑23‑270(C)(1)(a); and

 (9) a copy of the regulatory flexibility analysis, as provided in Section 1‑23‑270(C)(1)(b).

 (C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

 (D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one‑hundred‑twenty‑day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1‑23‑130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

 (1) the synopsis of the regulation as required by subsection (B)(4);

 (2) the summary of the final assessment report prepared by the office pursuant to Section 1‑23‑115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

 (E) The one‑hundred‑twenty‑day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

 (F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1‑23‑125, but the introduction does not toll the one‑hundred‑twenty‑day period of automatic approval.

 (G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two‑year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1‑23‑110, 1‑23‑111, or 1‑23‑115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

 (H) General Assembly review is not required for regulations promulgated:

 (1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

 (2) by the state Board of Financial Institutions in order to authorize state‑chartered banks, state‑chartered savings and loan associations, and state‑chartered credit unions to engage in activities that are authorized pursuant to Section 34‑1‑110;

 (3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12‑6‑40;

 (4) as emergency regulations under Section 1‑23‑130.

 (I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

 (J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

 (1) for which the agency intends to begin the process of repeal in accordance with this article;

 (2) for which the agency intends to begin the process of amendment in accordance with this article; and

 (3) which do not require repeal or amendment.

 Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

HISTORY: 1977 Act No. 176, Art. I, Section 12; 1979 Act No. 188, Section 3; 1980 Act No. 442, Section 2; 1981 Act No. 21, Section 1; 1982 Act No. 414, Section 1; 1986 Act No. 414, Section 14; 1988 Act No. 605, Section 2; 1989 Act No. 91, Section 2; 1992 Act No. 507, Section 4; 1993 Act No. 181, Section 13; 1996 Act No. 411, Section 7; 1996 Act No. 411, Section 8; 1997 Act No. 114, Section 1; 2002 Act No. 231, Section 2; 2004 Act No. 231, Sections 4, 5, eff January 1, 2005; 2007 Act No. 104, Section 2, eff July 1, 2008; 2011 Act No. 33, Section 1, eff June 7, 2011; 2013 Act No. 31, Section 3, eff May 21, 2013.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1‑23‑110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act’s effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

Effect of Amendment

The 2004 amendment, in subsection (A), added the exception at the end of the first sentence relating to Sections 1‑23‑270 and 1‑23‑280 and, in subsection (B), added paragraphs (B)(7) and (B)(8).

The 2007 amendment rewrote this section to provide for submission of regulations to the Legislative Council for submission to the General Assembly; added paragraph (B)(2) requiring amendments to be clearly indicated; and added subsection (G) relating to when regulations are deemed withdrawn.

The 2011 amendment, in subsection (H)(1), added the last five sentences.

The 2013 amendment, in subsection (C), substituted “the Legislative Services Agency” for “Legislative Printing Information and Technology Services”.

CROSS REFERENCES

Detailed implementation of provisions regarding permits for vehicles exceeding maximum size, weight or load do not have general applicability to public, and are exempt from requirement of General Assembly approval, as prescribed in this chapter, see Section 57‑3‑130.

General, South Carolina Trauma Care Systems, see S.C. Code of Regulations R. 61‑116.901.

Department of Natural Resources, Boating Division regulations, see S.C. Code of Regulations R. 123‑1 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak392; 15Ak405.5.

Administrative Law and Procedure 392, 405.5.

C.J.S. Public Administrative Law And Procedure Sections 103, 105.

LAW REVIEW AND JOURNAL COMMENTARIES

Legislative Oversight and the South Carolina Experience. 34 S.C. L. Rev. 595 (December 1982).

Attorney General’s Opinions

All or significant parts of a proposed State plan to implement an U.S. Environmental Protection Agency requirement would have to be submitted to the General Assembly for review as a regulation. S.C. Op.Atty.Gen. (March 6, 2015) 2015 WL 1266151.

It is doubtful that the courts of South Carolina would find that the legislative oversight provisions of the APA violate Article III, Section 18 of the State Constitution. 1986 Op Atty Gen, No. 86‑39, p 120.

An agency has the authority to withdraw from consideration by the General Assembly regulations which the agency has submitted for review, provided such withdrawal is undertaken prior to the expiration of the ninety‑day review period and/or prior to the time that the General Assembly approves or disapproves the regulations by joint resolution; Where an agency has received public comment on proposed regulations prior to submitting them to the General Assembly for review, it is unnecessary for the agency to afford additional notice and opportunity for comment prior to withdrawing its regulations from General Assembly review. 1979 Op Atty Gen, No 79‑82, p 111.

As set forth in South Carolina Code of Laws, 1976, as amended, Section 1‑23‑120, the General Assembly shall have a period of ninety days to review any regulation promulgated by an agency; the ninety‑day period of review shall begin on the date the regulation is filed with the President of the Senate and the Speaker of the House of Representatives. 1978 Op Atty Gen, No 78‑93, p 118.

By the terms of the Administrative Procedures Act, the General Assembly may only approve or disapprove agency regulations submitted for review. 1978 Op Atty Gen, No 78‑176, p 201.

NOTES OF DECISIONS

In general 1

1. In general

The permit requirements for the importation and possession of certain species of non‑native shrimp, as established by the Wildlife and Marine Resources Commission, were not required to comport with the notice and comment requirements of the Administrative Procedures Act, Section 1‑23‑10 et seq., since the general assembly had given the commission the discretion to condition the approval of permits without issuing a regulation; although it would have been in the state’s best interest to issue a regulation, the commission did not exceed its authority or violate the Act when it failed to do so. Edisto Aquaculture Corp. v. South Carolina Wildlife and Marine Resources Dept. (S.C. 1993) 311 S.C. 37, 426 S.E.2d 753. Administrative Law And Procedure 392.1; Customs Duties 53

Appeal would be dismissed since the issue as to the validity of the regulations was moot, where, during the pendency of the appeal challenging their validity, the challenged regulations had been superseded by new regulations, and the issuing agency had advised the court that it had no interest in pursuing any enforcement action against the appellant for alleged violations of the superseded regulations. Nolas Trading Co., Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1986) 289 S.C. 345, 345 S.E.2d 507.

**SECTION 1‑23‑125.** Approval, disapproval and modification of regulations.

 (A) The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

 (B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

 (1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

 (2) withdraw the regulation permanently;

 (3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

 (C) The notification tolls the one‑hundred‑twenty‑day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee. If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

 (D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

 (E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1‑23‑110, 1‑23‑111, or 1‑23‑115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

HISTORY: 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1988 Act No. 605, Section 3; 1996 Act No. 411, Section 9; 2007 Act No. 104, Section 3, eff July 1, 2008.

Editor’s Note

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1‑23‑110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act’s effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

Effect of Amendment

The 2007 amendment, in subsection (A), deleted the last sentence relating to withdrawal or modification of a regulation under legislative review and rewrote subsection (E) which required public comment on regulations containing a substantive change.

CROSS REFERENCES

Detailed implementation of provisions regarding permits for vehicles exceeding maximum size, weight or load do not have general applicability to public, and are exempt from requirement of General Assembly approval, as prescribed in this chapter, see Section 57‑3‑130.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak392.

Administrative Law and Procedure 392.

C.J.S. Public Administrative Law And Procedure Sections 103, 105.

Attorney General’s Opinions

Administrative Procedures Act does not prescribe when or if set of regulations promulgated by executive agency must be resubmitted to General Assembly for approval after being disapproved by joint resolution of General Assembly. Administrative Procedures Act does not provide when or if such regulations promulgated by executive agency must be resubmitted to General Assembly for approval after regulations have been withdrawn by promulgating agency following request from appropriate committee of House of Senate. 1984 Op Atty Gen, No. 84‑49, p. 119.

**SECTION 1‑23‑126.** Petition requesting promulgation, amendment or repeal of regulation.

 An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.

HISTORY: 1980 Act No. 442, Section 6.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak392; 15Ak420; 15Ak421.

Administrative Law and Procedure 392, 420, 421.

C.J.S. Public Administrative Law And Procedure Sections 99, 103, 105.

NOTES OF DECISIONS

In general 1

1. In general

A plaintiff is not required to proceed pursuant to Section 1‑23‑126 prior to seeking relief under Section 1‑23‑150. Otherwise, an onerous and unnecessary burden would be placed on a person challenging a regulation, since such a person would be required to undergo the public notice, filing, public participation, and legislative review process for promulgating regulations prior to being allowed to contest the applicability of a regulation. Charleston Television, Inc. v. South Carolina Budget and Control Bd. (S.C. 1990) 301 S.C. 468, 392 S.E.2d 671.

In an action brought under Section 1‑23‑150, an unsuccessful bidder to lease space on a television tower was required to exhaust its administrative remedies by petitioning the Budget and Control Board pursuant to Section 1‑23‑126 for the promulgation of a regulation providing for procedures for competitive bidding where feasible, and therefore could not be heard as to any interference or impairment, or threatened interference or impairment, of its legal rights. Charleston Television, Inc. v. South Carolina Budget and Control Bd. (S.C.App. 1988) 296 S.C. 444, 373 S.E.2d 892, reversed 301 S.C. 468, 392 S.E.2d 671. Administrative Law And Procedure 229; States 85; Telecommunications 1140

**SECTION 1‑23‑130.** Emergency regulations.

 (A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state’s best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

 (B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the office pursuant to Section 1‑23‑115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1‑23‑111.

 (C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

 (D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refiling emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

 (E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 13; 1980 Act No. 442, Section 4; 1986 Act No. 478, Section 1; 1992 Act No. 507, Section 5; 1993 Act No. 181, Section 14.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

CROSS REFERENCES

Administrative subpoena for production of certain telecommunication subscriber or customer information, see Section 17‑30‑125.

Administrative subpoena to a financial institution, public or private utility, or communications provider, see Section 23‑3‑75.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak392.

Administrative Law and Procedure 392.

C.J.S. Public Administrative Law And Procedure Sections 103, 105.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 4:842, Adoption of Emergency Standards.

Attorney General’s Opinions

When promulgating emergency regulations pursuant to the State Register and Administrative Procedures Act, (Act 176, 1976), once an agency determines that an imminent peril to the public exists, it should publish a notice of its proposed emergency regulation in two newspapers of general circulation within the State one week prior to promulgation. This is only required when the General Assembly is not in session; however, it is recommended that this procedure be followed even when the General Assembly is in session in order to insure that the object of public notice is fulfilled. 1976‑77 Op Atty Gen, No 77‑353, p 279.

The South Carolina Water Resources Commission may not, by way of emergency regulation promulgated under the Administrative Procedures Act (Section 1‑23‑130), expand its regulation of water usage during drought conditions. 1981 Op Atty Gen, No 81‑77, p 95.

NOTES OF DECISIONS

In general 1

1. In general

The Tax Commission did not violate the Administrative Procedures Act (Sections 1‑23‑130, 1‑23‑140) by failing to publish, as a regulation, its determination that the Bingo Act (Sections 12‑21‑3310 et seq.) prohibited use of runners employed by bingo operators to fill in for players, since the determination was issued in the form of an internal memorandum, which was similar to a policy statement as opposed to a binding norm, given that it was not issued by the commissioners, and thus no final agency approval had been given. Home Health Service, Inc. v. South Carolina Tax Com’n (S.C. 1994) 312 S.C. 324, 440 S.E.2d 375, rehearing denied. Administrative Law And Procedure 408; Gaming And Lotteries 206(3)

**SECTION 1‑23‑140.** Duties of state agencies; necessity for public inspection.

 (a) In addition to other requirements imposed by law, each agency shall:

 (1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

 (2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

 (3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

 (b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

HISTORY: 1977 Act No. 176, Art. I, Section 14.

CROSS REFERENCES

Requirement that regulations adopted pursuant to the long term care insurance act be in accordance with this chapter, see Section 38‑72‑70.

LIBRARY REFERENCES

Westlaw Key Number Search: 326k30.

Records 30.

C.J.S. Records Sections 60, 62 to 63, 65, 93, 95.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law; Administrative Procedure Act. 30 S.C. L. Rev. 1.

NOTES OF DECISIONS

In general 1

1. In general

The Tax Commission did not violate the Administrative Procedures Act (Sections 1‑23‑130, 1‑23‑140) by failing to publish, as a regulation, its determination that the Bingo Act (Sections 12‑21‑3310 et seq.) prohibited use of runners employed by bingo operators to fill in for players, since the determination was issued in the form of an internal memorandum, which was similar to a policy statement as opposed to a binding norm, given that it was not issued by the commissioners, and thus no final agency approval had been given. Home Health Service, Inc. v. South Carolina Tax Com’n (S.C. 1994) 312 S.C. 324, 440 S.E.2d 375, rehearing denied. Administrative Law And Procedure 408; Gaming And Lotteries 206(3)

**SECTION 1‑23‑150.** Appeals contesting authority of agency to promulgate regulation.

 (a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

 (b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. The agency shall be made a party to the action.

HISTORY: 1977 Act No. 176, Art. I, Section 15; 1980 Act No. 442, Section 5.

CROSS REFERENCES

Attorney General, contests of authority to issue regulations, see S.C. Code of Regulations R. 13‑13.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak508.

Administrative Law and Procedure 508.

C.J.S. Public Administrative Law And Procedure Sections 87, 158.

NOTES OF DECISIONS

In general 1

1. In general

Administrative procedure statute allowing affected persons to petition for declaratory judgment regarding the validity of an agency’s regulation, rather than the Revenue Procedures Act, applied to taxpayer’s request for a declaratory judgment that regulation requiring written authorization for the diabetic supplies sales tax exemption to apply exceeded the Department of Revenue’s authority, and thus taxpayer was not required to exhaust administrative remedies under the Revenue Procedures Act; Revenue Procedures Act could not apply because Administrative Law Court had no authority to rule on validity of regulation. Drummond v. State, Dept. of Revenue (S.C. 2008) 378 S.C. 362, 662 S.E.2d 587. Declaratory Judgment 44; Declaratory Judgment 215

An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose. Bazzle v. Huff (S.C. 1995) 319 S.C. 443, 462 S.E.2d 273. Administrative Law And Procedure 305

A plaintiff is not required to proceed pursuant to Section 1‑23‑126 prior to seeking relief under Section 1‑23‑150. Otherwise, an onerous and unnecessary burden would be placed on a person challenging a regulation, since such a person would be required to undergo the public notice, filing, public participation, and legislative review process for promulgating regulations prior to being allowed to contest the applicability of a regulation. Charleston Television, Inc. v. South Carolina Budget and Control Bd. (S.C. 1990) 301 S.C. 468, 392 S.E.2d 671.

In an action brought under Section 1‑23‑150, an unsuccessful bidder to lease space on a television tower was required to exhaust its administrative remedies by petitioning the Budget and Control Board pursuant to Section 1‑23‑126 for the promulgation of a regulation providing for procedures for competitive bidding where feasible, and therefore could not be heard as to any interference or impairment, or threatened interference or impairment, of its legal rights. Charleston Television, Inc. v. South Carolina Budget and Control Bd. (S.C.App. 1988) 296 S.C. 444, 373 S.E.2d 892, reversed 301 S.C. 468, 392 S.E.2d 671. Administrative Law And Procedure 229; States 85; Telecommunications 1140

**SECTION 1‑23‑160.** Prior filed regulations unaffected.

 All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.

HISTORY: 1977 Act No. 176, Art. I, Section 16; 1993 Act No. 181, Section 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Death and Right to Die Section 21, Disabled Infants.

ARTICLE 2

Small Business Regulatory Flexibility

**SECTION 1‑23‑270.** Small business defined; economic impact statements; impact reduction options; judicial review of agency compliance; periodic review of regulations.

 (A) This article may be cited as the “South Carolina Small Business Regulatory Flexibility Act of 2004”.

 (B) As used in this article “small business” means a commercial retail service, industry entity, or nonprofit corporation, including its affiliates, that:

 (1) is, if a commercial retail service or industry service, independently owned and operated; and

 (2) employs fewer than one hundred full‑time employees or has gross annual sales or program service revenues of less than five million dollars.

 (C) Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare:

 (1) an economic impact statement that includes the following:

 (a) an identification and estimate of the number of small businesses subject to the proposed regulation;

 (b) the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

 (c) a statement of the economic impact on small businesses; and

 (d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;

 (2) a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

 (D) The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

 (1) establishment of less stringent compliance or reporting requirements for small businesses;

 (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

 (3) consolidation or simplification of compliance or reporting requirements for small businesses;

 (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

 (5) exemption of small businesses from all or a part of the requirements contained in the proposed regulation.

 (E) A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this article. A small business may seek that review during the period beginning on the date of final agency action.

 (F)(1) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in Section 1‑23‑120(H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

 (a) for which the agency intends to begin the process of repeal in accordance with this article;

 (b) for which the agency intends to begin the process of amendment in accordance with this article; and

 (c) which do not require repeal or amendment.

 Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with Article 1 before or after it is identified in the report to the Code Commissioner.

 (2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

 (3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

 (a) continued need for the regulation;

 (b) nature of complaints or comments received concerning the regulation from the public;

 (c) complexity of the regulation;

 (d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

 (e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005; 2007 Act No. 104, Section 4, eff July 1, 2008.

Code Commissioner’s Note

Paragraphs (D)(a) to (D)(e) were redesignated as paragraphs (D)(1) to (D)(5) at the direction of the Code Commissioner.

Editor’s Note

2007 Act No. 104, Section 5, provides as follows:

“This act takes effect July 1, 2008, and applies to regulations for which a notice of a public hearing has been published in the State Register, in accordance with Section 1‑23‑110(A)(3) of the 1976 Code, after June 30, 2008; all other regulations under General Assembly review on this act’s effective date must be processed and reviewed in accordance with the law in effect on June 30, 2008.”

Effect of Amendment

The 2007 amendment rewrote paragraph (F)(1).

**SECTION 1‑23‑280.** Small Business Regulatory Review Committee; membership; terms.

 (A)(1) There is established a Small Business Regulatory Review Committee within the South Carolina Department of Commerce. For purposes of this article, “committee” is the Small Business Regulatory Review Committee and “department” is the South Carolina Department of Commerce.

 (2) The duties of the committee, in determining if a proposed permanent regulation has a significant adverse impact on small businesses, are to:

 (a) direct the promulgating agency to prepare the regulatory flexibility analysis described in Section 1‑23‑270(C)(2) no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1‑23‑110(A)(3); and

 (b) request, at the committee’s discretion, the Revenue and Fiscal Affairs Office to prepare a final assessment report, as provided in Section 1‑23‑115(B), of the proposed permanent regulation no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1‑23‑110(A)(3). The committee may request a final assessment report from the Revenue and Fiscal Affairs Office only in cases where the committee determines that information in addition to the agency’s economic impact as provided in Section 1‑23‑270(C)(1) is critical in the committee’s determination that a proposed permanent regulation has a significant adverse impact on small business. The Revenue and Fiscal Affairs Office:

 (i) within the review and comment period, shall perform a final assessment report of the regulation on small businesses within sixty days of a request for assessment by the committee, and the promulgating agency has sixty days to complete a regulatory flexibility analysis; and

 (ii) may request additional information from the agency. The sixty‑day final assessment report deadline must be tolled until the time that the Office of Research and Statistics receives the requested additional information. The one‑year deadline for submission of regulations to the General Assembly as provided in Section 1‑23‑120(A) also must be tolled until the time that both analyses are prepared and presented to the committee; and

 (c) submit to the promulgating agency, no later than thirty days after receipt of the regulatory flexibility analysis prepared by the promulgating agency and, if requested by the committee, after receipt of the final assessment report prepared by the Office of Research and Statistics, a written statement advising the agency that a proposed permanent regulation has a significant adverse impact on small business.

 (3) This subsection does not limit the committee’s ability to petition a state agency to amend, revise, or revoke an existing regulation.

 (4) Staff support for the committee must be provided by the department. The department shall act only as a coordinator for the committee, and may not provide legal counsel for the committee.

 (B) The committee shall consist of eleven members, appointed as follows:

 (1) five members to be appointed by the Governor;

 (2) three members to be appointed by the President Pro Tempore of the Senate; and

 (3) three members to be appointed by the Speaker of the House of Representatives.

 (C) In addition, the Chairman of the Labor, Commerce and Industry Committee of the South Carolina Senate and the Chairman of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives, or their designees, shall serve as nonvoting, ex officio members of the committee. During the committee review process, the director or his designee, of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

 (D) Appointments to the committee must be representative of a variety of small businesses in this State. All appointed members shall be either current or former owners or officers of a small business.

 (E) The initial appointments to the committee must be made within sixty days from the effective date of this act. The department shall provide the name and address of each appointee to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Labor, Commerce and Industry Committees.

 (F)(1) Members initially appointed to the committee shall serve for terms ending December 31, 2005. Thereafter, appointed members shall serve two‑year terms that expire on December thirty‑first of the second year.

 (2) The Governor shall appoint the initial chairman of the committee from the appointed members for a term ending December 31, 2006, and shall appoint subsequent chairs of the committee from the appointed members for two‑year terms that expire on December thirty‑first of the second year.

 (3) The committee shall meet as determined by its chairman.

 (4) A majority of the voting members of the committee constitutes a quorum to do business. The concurrence of a majority of the members of the committee present and voting is necessary for an action of the committee to be valid.

 (5) An appointed committee member may not serve more than three consecutive terms.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference in subparagraph (A)(2)(a) was changed from “1‑23‑270(C)(1)” to “1‑23‑270(C)(2)”.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 4:863, Review by Administrative Law Court.

**SECTION 1‑23‑290.** Petition opposing regulation having significant adverse impact; determination of whether impact statement or public hearing addressed economic impact; waiver or reduction of administrative penalties.

 (A) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has a significant adverse impact on small business.

 (B) Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business or if conditions justifying the regulation have changed. The agency shall submit a written response of its determination to the committee within sixty days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

 (C) If the agency determines that the petition does not merit the amendment or repeal of a regulation, the committee promptly shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal the regulation in accordance with the Administrative Procedures Act. The review must be based upon the actual record presented to the agency. The committee shall base its recommendation on any of the following reasons:

 (1) the actual impact on small business was not reflected in, or significantly exceeded, the economic impact statement formulated by the Revenue and Fiscal Affairs Office, pursuant to Section 1‑23‑280(A)(2);

 (2) the actual impact was not previously considered by the agency in its economic impact statement formulated pursuant to Section 1‑23‑270(C) or its regulatory flexibility analysis formulated pursuant to Section 1‑23‑280(A)(2); or

 (3) the technology, economic conditions, or other relevant factors justifying the purpose for the regulations have changed or no longer exist.

 (D) If the committee recommends that an agency initiate regulation proceedings for a reason provided in subsection (C), the committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency’s response as provided in Section 1‑23‑290(B). The General Assembly may take later action in response to the evaluation report and the agency’s response as the General Assembly finds appropriate.

 (E)(1) Notwithstanding another provision of law, an agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce an administrative penalty or administrative fine for a violation of a regulation by a small business if the:

 (a) small business corrects the violation within thirty days or less after receipt of a notice of violation or citation; or

 (b) violation was the result of an excusable misunderstanding of the agency’s interpretation of a regulation.

 (2) Item (1) does not apply if:

 (a) a small business has been notified previously of the violation of a regulation by the agency pursuant to Section 1‑23‑290(E)(1) and has been given an opportunity to correct the violation on a previous occasion;

 (b) a small business fails to exercise good faith in complying with the regulation;

 (c) a violation involves wilful or criminal conduct;

 (d) a violation results in imminent or adverse health, safety, or environmental impact; or

 (e) the penalty or fine is assessed pursuant to a federal law or regulation, for which a waiver or reduction is not authorized by the federal law or regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

**SECTION 1‑23‑300.** Applicability.

 This article does not apply to emergency regulations promulgated pursuant to Section 1‑23‑130 or regulations promulgated pursuant to Chapter 9 of Title 46 or Chapter 4 of Title 47 or to proposed regulations by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions that do not allow discretion to consider less restrictive alternatives or to a federal regulation that has gone through the federal regulatory flexibility act, if the federal review process is the same as or is stricter than the requirements of these sections.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

ARTICLE 3

Administrative Procedures

**SECTION 1‑23‑310.** Definitions.

 As used in this article:

 (1) “Administrative law judge” means a judge of the South Carolina Administrative Law Court created pursuant to Section 1‑23‑500;

 (2) “Agency” means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases;

 (3) “Contested case” means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

 (4) “License” includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

 (5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

 (6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 1977 Act No. 176, Art. II, Section 1; 1980 Act No. 442, Section 7; 1993 Act No. 181, Section 16; 1998 Act No. 359, Section 1; 2008 Act No. 334, Section 3, eff June 16, 2008.

Effect of Amendment

The 2008 amendment, in item (1), substituted “Administrative Law Court” for “administrative law judge division”; and, in item (2), substituted “, the courts, or the Administrative Law Court,” for “or the courts, but to include the administrative law judge division”.

CROSS REFERENCES

Appeals of department permitting decisions for animal facilities, procedures, see Section 44‑1‑65.

Applicability of definition of “contested case” in this section to judicial review of actions taken in connection with Pesticide Control Act, see Section 46‑13‑210.

Applicability of definition of “contested case” in this section to proceedings relative to South Carolina Revenue Proceedings Act, see Section 12‑60‑30.

Applicability of procedures outlined in this Article to hearings held by Chief Insurance Commissioner in regard to grievances against South Carolina Windstorm and Hail Underwriting Association, see Section 38‑75‑410.

Applicability of provisions of this Article to hearings on question of revocation of license issued pursuant to South Carolina Underwater Antiquities Act, see Section 54‑7‑800.

Applicability of this article to proceedings before State Employee Grievance Committee, see Section 8‑17‑330.

Applicability of this chapter to revocation of permits for amusement rides, see Section 41‑18‑60.

Application of Administrative Procedures Act to proceedings under state Fair Housing Laws, see Section 31‑21‑130.

Application of Administrative Procedures Act to promulgation of regulations involving solid waste, see Sections 44‑96‑60, 44‑96‑105, and 44‑96‑130.

Application of Article to administrative proceedings involving health maintenance organizations, see Section 38‑33‑210.

Application of this section to issuance of permits to sellers of electric energy, natural gas, or communication services to cross on, over, or under scenic rivers, see Section 49‑29‑170.

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

Authority of Procurement Review Panel to review determinations and decisions concerning procurement matters, see Section 11‑35‑4410.

Proceedings in consumer transaction investigation and hearing constituting contested case within meaning of item (2) of this section, see Section 37‑6‑118.

Propriety of public employee or member of General Assembly representing another in a contested case being heard by a governmental entity, see Sections 8‑13‑740, 8‑13‑745.

Provision that handling and disposition of claims under the South Carolina Tort Claims Act are not subject to the provisions of this article, see Section 15‑78‑80.

Regulations of Department of Highways and Public Transportation implementing State Disadvantaged Business Enterprise Program, see S.C. Code of Regulations, R. 63‑700 et seq.

Regulations of SC Edisto Development Authority to be promulgated in accordance with this Chapter, see Section 13‑21‑190.

Regulations of SC Midlands Authority to be promulgated in accordance with this Chapter, see Section 13‑19‑180.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Automobiles and Other Motor Vehicles Section 27, Administrative Review.

S.C. Jur. Carriers Section 10, Licensing in General.

S.C. Jur. Carriers Section 30, Licensing.

S.C. Jur. Colleges and Universities Section 22, Discipline Matters.

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Eminent Domain Section 40, Use of the Appraisal Panel.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 63, Procedure and Hearings Before the State Employee Grievance Committee.

S.C. Jur. Public Officers and Public Employees Section 64, Judicial Review of Final Administrative Decisions Under the State Employee Grievance Procedure Act of 1982.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law; Administrative Procedure Act. 30 S.C. L. Rev. 1.

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 8 (Autumn 1986).

Annual Survey of South Carolina Law: State and Local Government: Postcitation Discovery Rules for Administrative Hearings. 33 S.C. L. Rev. 154 (August 1981).

Judicialization of the administrative process: adversarial risks for fairness. 42 S.C. L. Rev. 345 (Winter 1991).

Ogburn‑Matthews v. Loblolly Partners: Procedural Due Process and an Individual’s Right to an Adjudicatory Hearing. 51 S.C. L. Rev. 699 (Summer, 2000).

Attorney General’s Opinions

Contested hearings held before the Industrial Commission pursuant to the Workmen’s Compensation Law are “contested cases” within the meaning of the Administrative Procedure Act, and therefore such hearings are subject to the administrative procedures set forth in the Act. 1979 Op Atty Gen, No 79‑87, p 121.

NOTES OF DECISIONS

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1. In general

Appeals from administrative agencies are governed by the Administrative Procedures Act. Hilton v. Flakeboard America Limited (S.C. 2016) 418 S.C. 245, 791 S.E.2d 719. Workers’ Compensation 1814

Tax appeals to the Administrative Law Court (ALC) are subject to the Administrative Procedures Act (APA). Centex Intern., Inc. v. South Carolina Dept. of Revenue (S.C. 2013) 406 S.C. 132, 750 S.E.2d 65, rehearing denied. Taxation 3547

Matters brought under Department of Health and Environmental Control’s (DHEC) procedure for assessing civil penalties or issuing compliance orders for violations of permits or requirement of the Coastal Zone Management Act (CZMA) are administrative in nature and are, therefore, governed by the procedures of Administrative Procedures Act (APA). Berry v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 402 S.C. 358, 742 S.E.2d 2. Environmental Law 633

Tax appeals to the Administrative Law Court are subject to the Administrative Procedures Act. Taylor v. Aiken County Assessor (S.C.App. 2013) 402 S.C. 559, 741 S.E.2d 31. Taxation 2640

Revenue laws are generally construed in favor of the taxpayer and against the taxing authority. Taylor v. Aiken County Assessor (S.C.App. 2013) 402 S.C. 559, 741 S.E.2d 31. Taxation 2027

Review of a decision of the Workers’ Compensation Commission is governed by the Administrative Procedures Act (APA). Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1910

The Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers’ Compensation Commission. Adkins v. Georgia‑Pacific Corp. (S.C.App. 2002) 350 S.C. 34, 564 S.E.2d 339, rehearing denied, certiorari denied. Workers’ Compensation 1910

The Administrative Procedures Act establishes the standard of review for decisions by the Workers’ Compensation Commission. Schurlknight v. City of North Charleston (S.C.App. 2001) 345 S.C. 45, 545 S.E.2d 833, rehearing denied, reversed 352 S.C. 175, 574 S.E.2d 194. Workers’ Compensation 1822

The Administrative Procedures Act establishes the standard of review for decisions by the Workers’ Compensation Commission. Code 1976, Sections Sections 1‑23‑310 et seq., Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1804

Neither city nor city’s grievance committee were a “state board, commission, or department” whose decisions were subject to judicial review under the Administrative Procedures Act (APA). Rowe v. City of West Columbia (S.C.App. 1999) 334 S.C. 400, 513 S.E.2d 379. Municipal Corporations 218(9); Public Employment 767(1)

In cases governed by the Administrative Procedures Act, Section 1‑23‑310 et seq., the proceeding at first instance is an administrative hearing before an agency authorized by law to determine the legal rights, duties or privileges of a party in a contested case after an opportunity for a hearing. Ross v. Medical University of South Carolina (S.C.App. 1993) 312 S.C. 532, 435 S.E.2d 877, rehearing denied, certiorari granted, reversed 317 S.C. 377, 453 S.E.2d 880.

An appeal from an action of the Public Service Commission is governed by the provisions of the South Carolina Administrative Procedures Act. Hamm v. South Carolina Public Service Com’n (S.C. 1993) 315 S.C. 119, 432 S.E.2d 454. Public Utilities 189

If a person adversely affected by a DHEC decision is foreclosed by virtue of not being a “party” from seeking judicial review under the APA, the person is also barred from seeking judicial review under Section 44‑7‑377. Home Health Services, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1989) 298 S.C. 258, 379 S.E.2d 734.

The Industrial Commission is an agency for purposes of the Administrative Procedures Act, Sections 1‑23‑310 to 1‑23‑400. Webber v. Michelin Tire Corp. (S.C.App. 1985) 285 S.C. 581, 330 S.E.2d 547. Workers’ Compensation 1076

South Carolina Employment Security Commission is clearly “agency” within meaning of Section 1‑23‑310(1). Todd’s Ice Cream, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 254, 315 S.E.2d 373. Administrative Law And Procedure 5

1.5. Construction with other laws

The Administrative Procedures Act applies to appeals from decisions of the Workers’ Compensation Commission. Pack v. State Dept. of Transp. (S.C.App. 2009) 381 S.C. 526, 673 S.E.2d 461. Workers’ Compensation 1165

The South Carolina Administrative Procedures Act (APA) governs judicial review of a decision of the Workers’ Compensation Commission. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1833

2. Agency

Since Department of Motor Vehicle Hearings (DMVH) is authorized to hear contested cases arising from Department of Motor Vehicles (DMV), it is an “agency” under the Administrative Procedures Act (APA), and, thus, appeals must be taken to the Administrative Law Court. South Carolina Dept. of Motor Vehicles v. Holtzclaw (S.C.App. 2009) 382 S.C. 344, 675 S.E.2d 756, rehearing denied, certiorari denied. Automobiles 144.2(1); Automobiles 144.2(3)

Circuit Court which heard charter school case on appeal from the State Board, a state agency, had no authority to hold a hearing on damages while sitting as an appellate court in this administrative appeal. James Academy of Excellence v. Dorchester County School Dist. Two (S.C. 2008) 376 S.C. 293, 657 S.E.2d 469. Education 24

The Fee Disputes Board is a creature of the South Carolina Bar and operates as a part of the judicial branch of government under the Supreme Court. Therefore, it is not an “agency” subject to the provisions of the Administrative Procedures Act, Section 1‑23‑310 to ‑400. Kores Nordic (USA) Corp. v. Sinkler, Gibbs & Simons (S.C.App. 1985) 284 S.C. 513, 327 S.E.2d 365. Attorney And Client 156

The Employment Security Commission is an agency within the meaning of Section 1‑23‑310 of the Administrative Practices Act since it has rule‑making authority and hears and decides contested matters. Gibson v. Florence Country Club (S.C. 1984) 282 S.C. 384, 318 S.E.2d 365.

The Tax Board of Review is an “agency” within the meaning of the Administrative Procedure Act, since it is a statewide board appointed by the governor pursuant to Section 12‑5‑10, since it is authorized under Section 12‑5‑50 to decide appeals concerning tax assessments, since appeal to the Board of Review is a “Contested case” involving determination of the legal rights of taxpayers after a hearing, pursuant to Sections 12‑5‑50 and 12‑5‑70, and since it hears adversary proceedings pursuant to Section 12‑5‑60. Owen Steel Co., Inc. v. S.C. Tax Com’n (S.C.App. 1984) 281 S.C. 80, 313 S.E.2d 636.

Alcoholic Beverage Control Commission is agency within meaning of Administrative Procedures Act (S.C. Code Section 1‑23‑310). Schudel v. South Carolina Alcoholic Beverage Control Commission (S.C. 1981) 276 S.C. 138, 276 S.E.2d 308.

South Carolina Industrial Commission is clearly an “agency” within meaning of S.C. Code Section 1‑23‑310. Lark v. Bi‑Lo, Inc. (S.C. 1981) 276 S.C. 130, 276 S.E.2d 304.

2.2. Jurisdiction

The Administrative Law Court (ALC) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department of Corrections final orders in administrative or non‑collateral matters. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Prisons 293

2.5. Standard of review

Tax appeals to the Administrative Law Court (ALC) are subject to the Administrative Procedures Act (APA); accordingly, Court of Appeals reviews the decision of the ALC for errors of law. Montgomery v. Spartanburg County Assessor (S.C.App. 2016) 419 S.C. 77, 795 S.E.2d 866, rehearing denied. Taxation 2640; Taxation 2699(9)

In an appeal from the decision of an administrative agency, the Administrative Procedures Act (APA) provides the appropriate standard of review. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Administrative Law and Procedure 657.1

Under the Administrative Procedure Act (APA), Supreme Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. Crisp v. SouthCo., Inc. (S.C. 2013) 401 S.C. 627, 738 S.E.2d 835. Administrative Law and Procedure 793

The Administrative Procedures Act (APA) determines the standard of judicial review for cases initially heard by the Department of Health and Human Services, regarding Department’s recovery of medical assistance paid under Medicaid from estate of individual who, at age 55 or older, received medical assistance consisting of nursing facility services or home and community‑based services. Estate of Nicholson ex rel. Nicholson v. South Carolina Dept. of Health and Human Services (S.C.App. 2008) 377 S.C. 590, 660 S.E.2d 303. Health 507

Administrative Procedures Act (APA) establishes the standard of review for decisions by the Workers’ Compensation Commission. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1910

3. Scope of review

The Administrative Procedures Act clearly contemplates that the Administrative Law Court (ALC)] will make its own findings of fact in a contested case hearing. Rent‑A‑Center West Inc. v. South Carolina Department of Revenue (S.C.App. 2016) 418 S.C. 320, 792 S.E.2d 260, rehearing denied. Administrative Law and Procedure 513

Tax appeals to the administrative law court (ALC) are subject to the Administrative Procedures Act (APA); accordingly, the Court of Appeals reviews decisions of the ALC for errors of law. Charleston County Assessor v. LMP Properties, Inc. (S.C.App. 2013) 403 S.C. 194, 743 S.E.2d 88. Taxation 2640; Taxation 2699(7)

Administrative Procedure Act (APA) governs appellate review of a final decision from an administrative agency. Crisp v. SouthCo., Inc. (S.C. 2013) 401 S.C. 627, 738 S.E.2d 835. Administrative Law and Procedure 657.1

In an appeal from the Employment Security Commission, the Court of Appeal’s review is limited to whether there is substantial evidence to support the findings of the commission. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638. Administrative Law And Procedure 791; Unemployment Compensation 486

If, viewing the evidence in its entirety, the appellate court determines the Employment Security Commission’s findings are erroneous, the court may reverse or modify the decision. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638. Unemployment Compensation 494; Unemployment Compensation 496

The South Carolina Procurement Review Panel lacked jurisdiction to, sua sponte, conduct an administrative review into the propriety of a party’s successful bid to provide the state with a computer, absent a formal protest of a chief procurement officer’s prior decision, since the panel is an administrative review body, and not an investigative one; the Panel’s scope of authority is limited to the appellate review of written determinations and decisions brought to it by way of protest or application, as set forth in Section 11‑35‑10, et seq. Hitachi Data Systems Corp. v. Leatherman (S.C. 1992) 309 S.C. 174, 420 S.E.2d 843.

4. Contested case

Administrative Procedures Act (APA) governs contested proceedings before the State Board of Medical Examiners. South Carolina Dept. of Labor, Licensing and Regulation v. Girgis (S.C.App. 1998) 332 S.C. 162, 503 S.E.2d 490, rehearing denied, certiorari denied, certiorari dismissed. Health 215

Hearings were not required under the Administrative Procedures Act prior to the suspension of the respondent’s driver’s license because of 2 convictions for driving under the influence and 5 convictions for driving under suspension, since such suspensions were not “contested cases” as defined in Section 1‑23‑310(2); the respondent’s rights were protected by due process of law provided to him for the underlying convictions on which the suspensions were based. Yeargin v. South Carolina Dept. of Highways and Public Transp. (S.C. 1993) 313 S.C. 387, 438 S.E.2d 234. Administrative Law And Procedure 470; Automobiles 144.2(1); Constitutional Law 4358

The process for a proposed sanitary sewer system to be certified consistent with the Coastal Zone Management Program was not a “contested case” reviewable by the Administrative Procedures Act; however, prior to the issuance of a certification, superseding constitutional due process provisions confer the right to notice, the opportunity to be heard, and judicial review onto parties with an interest. League of Women Voters of Georgetown County v. Litchfield‑by‑the‑Sea (S.C. 1991) 305 S.C. 424, 409 S.E.2d 378. Administrative Law And Procedure 442; Municipal Corporations 708

5. Substantial evidence

Judicial review of a workers’ compensation decision is governed by the substantial evidence rule of the Administrative Procedures Act. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Expert witness in workers’ compensation case, whose report included a vocational evaluation of claimant and indicated that claimant was totally disabled and unable to work, was qualified to give an opinion as to claimant’s employability, where witness’s qualifications, including her educational and relevant professional experience, were set forth in her report. Gadson v. Mikasa Corp. (S.C.App. 2006) 368 S.C. 214, 628 S.E.2d 262, rehearing denied. Workers’ Compensation 1396

Expert’s report in workers’ compensation case, which included a vocational evaluation and indicated that claimant was totally disabled and unable to work, was admissible under the state administrative procedures act and state regulations governing admission of expert reports in such proceedings; report was properly filed and timely served, and after service, defense counsel made no attempt to depose expert or to challenge her credentials. Gadson v. Mikasa Corp. (S.C.App. 2006) 368 S.C. 214, 628 S.E.2d 262, rehearing denied. Workers’ Compensation 1396

In an appeal from a decision of the Employment Security Commission, substantial evidence is something less than the weight of the evidence; it is evidence that allows reasonable minds to reach the same conclusion that the administrative agency reached. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638. Unemployment Compensation 486

By the terms of Section 1‑23‑380, the probate court, as part of the unified judicial system, does not come under the Administrative Procedures Act Sections 1‑23‑310 et seq.; accordingly, the “substantial evidence” standard of review mandated by the Act is not applicable on appeal to the circuit court. Matter of Howard (S.C. 1993) 315 S.C. 356, 434 S.E.2d 254. Courts 202(5)

6. Sentence starting dates

Claims challenging sentence starting dates should be brought under the Administrative Procedures Act (APA), rather than the Post‑Conviction Relief (PCR) Act. Cooper v. State (S.C. 2000) 338 S.C. 202, 525 S.E.2d 886, rehearing denied. Criminal Law 1426(1)

7. Dismissal of moot appeals

Appeal would be dismissed since the issue as to the validity of the regulations was moot, where, during the pendency of the appeal challenging their validity, the challenged regulations had been superseded by new regulations, and the issuing agency had advised the court that it had no interest in pursuing any enforcement action against the appellant for alleged violations of the superseded regulations. Nolas Trading Co., Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1986) 289 S.C. 345, 345 S.E.2d 507.

8. Attorney fees

A proceeding under the Administrative Procedures Act, Section 1‑23‑310 et seq., is considered a civil action for purposes of recovering attorney’s fees. Ross v. Medical University of South Carolina (S.C.App. 1993) 312 S.C. 532, 435 S.E.2d 877, rehearing denied, certiorari granted, reversed 317 S.C. 377, 453 S.E.2d 880. Administrative Law And Procedure 686

**SECTION 1‑23‑320.** Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of record.

 (A) In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days, except in proceedings before the Department of Employment and Workforce, which are governed by the provisions of Section 41‑35‑680.

 (B) The notice must include a:

 (1) statement of the time, place, and nature of the hearing;

 (2) statement of the legal authority and jurisdiction under which the hearing is to be held;

 (3) reference to the particular sections of the statutes and rules involved;

 (4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

 (C) A party to these proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Depositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of it, and matters of practice relating to it apply.

 (D) The agency hearing a contested case may issue subpoenas in the name of the agency for the attendance and testimony of witnesses and the production and examination of books, papers, and records on its own behalf or, upon request, on behalf of another party to the case.

 A party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court pursuant to Section 1‑23‑600(F).

 (E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

 (F) Unless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

 (G) The record in a contested case must include:

 (1) all pleadings, motions, intermediate rulings, and depositions;

 (2) evidence received or considered;

 (3) a statement of matters officially noticed;

 (4) questions and offers of proof, objections, and rulings on the contested case;

 (5) proposed findings and exceptions;

 (6) any decision, opinion, or report by the officer presiding at the hearing.

 (H) Oral proceedings or any part of the oral proceedings must be transcribed on request of a party.

 (I) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

HISTORY: 1977 Act No. 176, Art. II, Section 2; 1983 Act No. 56, Section 1; 1993 Act No. 181, Section 17; 1998 Act No. 359, Section 2; 2008 Act No. 334, Section 4, eff June 16, 2008.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, “Department of Employment and Workforce” was substituted for all references to “Employment Security Commission”, and “Executive Director of the Department of Employment and Workforce” or “executive director” was substituted for all references to the “Chairman of the Employment Security Commission” or “chairman” that refer to the Chairman of the Employment Security Commission, as appropriate.

Effect of Amendment

The 2008 amendment substituted (A) to (I) for (a) to (i) as the subsection designations; in subsection (D), rewrote the second undesignated paragraph relating to enforcement of or relief from an agency subpoena; and made nonsubstantive language changes throughout.

CROSS REFERENCES

Applicability of procedure set forth in this article to an appeal by any person, representative, or insurer aggrieved by any act, ruling, or decision of the South Carolina Windstorm and Hail Underwriting Association, see Section 38‑75‑410.

Applicability of rules set forth in this section in contested revenue case hearings brought before the Administrative Law Judge Division, see Section 12‑60‑3340.

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

General fair hearing procedures, Department of Social Services, see S.C. Code of Regulations R. 114‑130.

Provisions relating to decision of appeal, see Section 41‑35‑680.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak452; 15Ak466; 15Ak469; 15Ak506.

Administrative Law and Procedure 452, 466, 469, 506.

C.J.S. Public Administrative Law And Procedure Sections 124, 129, 134, 136, 138 to 139, 160.

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S.C. Jur. Colleges and Universities Section 25, Tenure.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: State and Local Government: Postcitation Discovery Rules for Administrative Hearings. 33 S.C. L. Rev. 154 (August 1981).

Ogburn‑Matthews v. Loblolly Partners: Procedural due process and an individual’s right to an adjudicatory hearing. 51 S.C. L. Rev. 699.

Taxpayer Remedies in South Carolina. 37 S.C. L. Rev. 489 (Spring 1986).

NOTES OF DECISIONS

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1. In general

South Carolina Real Estate Commission’s determinations as to whether the South Carolina Vacation Time Sharing Plans Act was violated are not binding on courts unless they have been subjected to judicial review and found to be lawful. Fullbright v. Spinnaker Resorts, Inc. (S.C. 2017) 2017 WL 2153920. Administrative Law And Procedure 651

Trial judge erred in failing to dismiss petition for judicial review of Health and Environmental Control Board’s decision to remand to the Health and Environmental Control Department hospital service suppliers’ application for certificate of need, since that decision was merely interlocutory, and not a final agency decision subject to judicial review. South Carolina Baptist Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C. 1987) 291 S.C. 267, 353 S.E.2d 277.

**SECTION 1‑23‑320 evidences a legislative recognition that the Administrative Procedures Act applies to employment security cases.** Gibson v. Florence Country Club (S.C. 1984) 282 S.C. 384, 318 S.E.2d 365.

1.3. Due process

Employer’s due process rights were violated when a single commissioner, on rehearing after it was determined that the reporter’s equipment malfunctioned and portions of the hearing were inaudible, forced employer to repeat their questions from the original hearing, allowed workers’ compensation claimant to answer all questions freely, and precluded employer from asking any follow up questions after claimant provided different answers from the original hearing; the commissioner did not conduct a true rehearing or a reconstruction of the missing transcript. Adams v. H.R. Allen, Inc. (S.C.App. 2012) 397 S.C. 652, 726 S.E.2d 9. Constitutional Law 4186; Workers’ Compensation 1802

2. Notice of hearing

Parties explicitly recognized as parties by order of the Alcoholic Beverage Commission, in connection with an application for a retail permit to sell beer and wine, were entitled to notice of hearing before the Circuit Court on appeal of the order denying the permit. Sabella v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1986) 289 S.C. 400, 346 S.E.2d 530. Intoxicating Liquors 75(4)

3. Notice of charges

Two letters from Attorney General’s Office detailing treatment of 20 patients, and complaint filed against doctor by State Board of Medical Examiners which alleged violations of statutes and Board regulations in doctor’s treatment of same 20 patients, provided doctor with adequate notice of charges against him to satisfy due process, in Board’s disciplinary action against him. South Carolina Dept. of Labor, Licensing and Regulation v. Girgis (S.C.App. 1998) 332 S.C. 162, 503 S.E.2d 490, rehearing denied, certiorari denied, certiorari dismissed. Constitutional Law 4286; Health 216

University was not required, under notice provisions of Administrative Procedures Act (APA), to provide more specific notice of charges against tenured professor forming basis of university’s decision to terminate him upon professor’s request therefor, where correspondence to professor, received by him within notice deadline, fully and fairly apprised him of matters asserted in such time and manner so as to enable him to meaningfully respond at hearing. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1148(3)

4. Statement of exceptions

The circuit court lacked jurisdiction, based on the insufficiency of the appeal, over a petition for review of a commission’s ruling pursuant to the Administrative Procedures Act, Sections 1‑23‑320 et seq., where an injured worker set forth 3 exceptions but 2 of them, that the “decision of the commission failed to address all the exceptions and points of law brought before the commission” and that “upon such further exception as will hereafter be served,” were so vague that they did not adequately specify grounds for appeal. Solomon v. W.B. Easton, Inc. (S.C.App. 1992) 307 S.C. 518, 415 S.E.2d 841.

5. Depositions

Any error in faculty hearing committee’s denial of tenured professor’s request for order compelling deposition of university representative and his request to subpoena television footage did not substantially prejudice professor, absent any indication that inability to conduct subject deposition or gain access to television footage substantially hindered his ability to respond to charges against him, where professor took full advantage of his opportunity to cross‑examine university’s witnesses at his termination hearing. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1149(1)

In reviewing an agency procedure under the Administrative Procedures Act, Section 1‑23‑310 et seq., a circuit court has the discretion to order discovery and admit extrinsic evidence concerning alleged irregularities in the agency proceeding. Ross v. Medical University of South Carolina (S.C. 1994) 317 S.C. 377, 453 S.E.2d 880, rehearing denied. Administrative Law And Procedure 676

6. Intervention

Intervenors were entitled to the due process rights of notice and the opportunity to be heard in a proceeding to consider water quality certification where a marina applied for and was denied a certification to expand by the Department of Health and Environmental Control (DHEC), the marina gave the DHEC notice of its intent to appeal under Reg. 61‑72, which provides procedures for “contested cases,” the marina requested a hearing before the DHEC, the intervenors were granted leave to intervene in the Reg. 61‑72 appeal, and the intervenors objected to the DHEC’s consideration of the merits of the matter before the Reg. 61‑72 proceedings already in progress were concluded, but the DHEC went forward and approved the certification without affording the intervenors the opportunity to be heard. Stono River Environmental Protection Ass’n v. South Carolina Dept. of Health and Environmental Control (S.C. 1991) 305 S.C. 90, 406 S.E.2d 340.

**SECTION 1‑23‑330.** Evidentiary matters in contested cases.

 In contested cases:

 (1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

 (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

 (3) Any party may conduct cross‑examination;

 (4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency’s specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

HISTORY: 1977 Act No. 176, Art. II, Section 3; 1979 Act No. 188, Section 6.

CROSS REFERENCES

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

Department of Social Services, general fair hearing procedures, see S.C. Code of Regulations R. 114‑130.

Institute of Archeology and Anthropology, adjudication rules, evidence, admissibility, see S.C. Code of Regulations R. 9‑100.320.

Institute of Archeology and Anthropology, adjudication rules, evidence, written testimony, see S.C. Code of Regulations R. 9‑100.325.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak458; 15Ak469.

Administrative Law and Procedure 458, 469.

C.J.S. Public Administrative Law And Procedure Sections 124 to 125, 134, 136, 138 to 139.

NOTES OF DECISIONS

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1. In general

Hearsay testimony may be admissible in workers’ compensation matters if corroborated by facts, circumstances, or other evidence. Hamilton v. Bob Bennett Ford (S.C. 2000) 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1385

Workers’ Compensation Commission was required to consider surveillance videotape admitted into evidence by single commissioner, where extent of claimant’s disability was in substantial conflict. Hendricks v. Pickens County (S.C.App. 1999) 335 S.C. 405, 517 S.E.2d 698, rehearing denied. Workers’ Compensation 1814

Workers’ compensation commissioner has discretion to limit or exclude irrelevant testimony, in workers’ compensation proceeding. Smith v. South Carolina Dept. of Mental Health (S.C.App. 1997) 329 S.C. 485, 494 S.E.2d 630, rehearing denied, certiorari granted, affirmed 335 S.C. 396, 517 S.E.2d 694. Workers’ Compensation 1691

1.3. Due process

Employer’s due process rights were violated when a single commissioner, on rehearing after it was determined that the reporter’s equipment malfunctioned and portions of the hearing were inaudible, forced employer to repeat their questions from the original hearing, allowed workers’ compensation claimant to answer all questions freely, and precluded employer from asking any follow up questions after claimant provided different answers from the original hearing; the commissioner did not conduct a true rehearing or a reconstruction of the missing transcript. Adams v. H.R. Allen, Inc. (S.C.App. 2012) 397 S.C. 652, 726 S.E.2d 9. Constitutional Law 4186; Workers’ Compensation 1802

2. Judicial notice

The appellate panel could take judicial notice of workers’ compensation claimant’s prior civil action against employer, in action to obtain workers’ compensation benefits; the summons, complaint, and default judgment claimant obtained against employer were indisputable, and thus the appellate panel could take judicial notice of them. Wise v. Wise (S.C.App. 2011) 394 S.C. 591, 716 S.E.2d 117, rehearing denied. Workers’ Compensation 1814

3. Medical evidence

Admissibility of evidence in workers’ compensation case involving an alleged repetitive trauma injury is governed by statute defining “medical evidence” in context of that type of claim, rather than by threshold standard in Administrative Procedure Act (APA), which requires exclusion of irrelevant, immaterial or unduly repetitious evidence in contested cases. Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust (S.C. 2012) 396 S.C. 589, 723 S.E.2d 805. Workers’ Compensation 1383; Workers’ Compensation 1384; Workers’ Compensation 1396

**SECTION 1‑23‑340.** Procedure in contested cases where majority of those who are to render final decision are unfamiliar with case.

 When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

HISTORY: 1977 Act No. 176, Art. II, Section 4.

CROSS REFERENCES

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak469.

Administrative Law and Procedure 469.

C.J.S. Public Administrative Law And Procedure Sections 134, 136, 138 to 139.

Attorney General’s Opinions

The delegation to a deputy commissioner of the responsibility to hear evidence and take testimony in the conduct of a hearing for approval of a settlement is consistent with the law provided that final approval authority of the settlement remains with the Commissioners. 1986 Op Atty Gen, No. 86‑118 p 348.

**SECTION 1‑23‑350.** Final decision or order in contested case.

 A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. 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. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

HISTORY: 1977 Act No. 176, Art. II, Section 5.

CROSS REFERENCES

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

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Westlaw Key Number Searches: 15Ak484; 15Ak488; 15Ak489.

Administrative Law and Procedure 484, 488, 489.

C.J.S. Public Administrative Law And Procedure Sections 143, 146 to 148.

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S.C. Jur. Colleges and Universities Section 25, Tenure.

Attorney General’s Opinions

Under South Carolina’s Freedom of Information Act, final order or opinion issued in disciplinary proceeding by State licensing board or agency is public information. 1984 Op Atty Gen, No. 84‑61, p. 150.

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1. In general

Appeals from the State Employee Grievance Committee are governed by the Administrative Procedures Act. Carson v. South Carolina Dept. of Natural Resources (S.C. 2002) 371 S.C. 114, 638 S.E.2d 45. Public Employment 751

A circuit court erred in affirming an order of the Workers’ Compensation Commission where the full commission, following a remand of the case to the full commission for it to state separately findings of fact and conclusions of law in accordance with Section 1‑23‑350, conducted a de novo hearing and reversed a decision of the majority of a 3‑member panel denying a claimant benefits under the Workers’ Compensation Act. Where a case that has been appealed is remanded by the court to the Workers’ Compensation Commission with specific directions, the Commission must proceed in accordance with those directions. In such a case, the order limits the authority of the Commission, and the appeal remains pending in the circuit court while it awaits the Commission’s compliance with the order of remand. Since the circuit court remanded the case to the full commission with specific instructions and the full commission exceeded the authority granted it under the order of remand, the circuit court erred in not remanding the case to the full commission and directing it to comply with the circuit court’s earlier order. Bobo v. Marshane Corp. (S.C.App. 1990) 302 S.C. 86, 394 S.E.2d 2.

Findings of fact and conclusions of law in the final order of the state board of medical examiners, which suspended physician for misconduct, was public information and publication of such findings would not be enjoined. Ewing v. State Bd. of Medical Examiners of South Carolina (S.C. 1986) 290 S.C. 89, 348 S.E.2d 361.

2. Necessity of findings of fact

Because the limited appeal of parole decisions is governed by the Administrative Procedures Act (APA), the parole board and the administrative law court (ALC) must comply with its provisions, pursuant to which a final decision in an agency adjudication of a contested case shall include findings of fact and conclusions of law. Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2008) 377 S.C. 489, 661 S.E.2d 106. Pardon And Parole 62

Workers’ Compensation Commission decision that accident did not arise out of and in course of employment failed to comply with Administrative Procedures Act (APA) requirement to state the underlying facts; the Commission merely said that the injury had no causal connection to employment and the claimant’s ordinary job duties did not include removing debris from road or road maintenance. Grant v. Grant Textiles (S.C. 2007) 372 S.C. 196, 641 S.E.2d 869, rehearing denied. Workers’ Compensation 1753

Board of Department of Health and Environmental Control, as the reviewing tribunal of ALJ’s decision as finder of fact in hearing over issuance of stormwater permit for proposed motor speedway by Department’s Office of Ocean and Coastal Resource Management (OCRM), lacked authority under Administrative Procedures Act to make its own findings of fact regarding whether OCRM conducted a consistency review meeting terms of Coastal Management Plan (CMP) when issuing permit; though ALJ did determine that proposed speedway met requirements of CMP, ALJ’s opinion lacked any findings of fact and conclusions of law that would have allowed Board to conduct an acceptable review of issue, and rather than making its own findings of fact Board should have remanded matter to ALJ for a clarifying order. Brown v. South Carolina Dept. of Health and Environmental Control (S.C. 2002) 348 S.C. 507, 560 S.E.2d 410, rehearing denied. Environmental Law 222

University board of trustees was not required to issue its own findings of fact and conclusions of law with respect to its termination of tenured professor; board heard oral arguments by counsel for both parties, and subsequently agreed in writing with recommendation of faculty hearing committee that professor be terminated. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1148(3)

A benefit proceeding would be remanded to the Workers’ Compensation Commission for an express finding regarding the character of the trip on which the claimant was injured where the claimant, having held property belonging to the employer over the weekend, was bringing it from her home into the workplace when the accident occurred; the Commission would have to determine whether the employee would have taken the trip to the workplace irrespective of having the employer’s property in her possession. DiMaria v. Multimedia, Inc. (S.C.App. 1992) 308 S.C. 387, 418 S.E.2d 324.

3. Sufficiency of findings of fact

Workers’ Compensation Commission’s order complied with the Administrative Procedures Act (APA) because it included a clear and concise statement of the facts supporting the Commission’s finding that claimant suffered an injury; Commission stated in its findings of fact that, based upon the medical records and testimony, claimant sustained an injury by accident to his back while moving a heavy frame machine while cleaning up employer’s shop. Hartzell v. Palmetto Collision, LLC (S.C.App. 2016) 419 S.C. 87, 796 S.E.2d 145, rehearing denied. Workers’ Compensation 1743

Workers’ Compensation Commission’s Appellate Panel’s order, in which it reversed single commissioner’s finding that claimant had suffered a compensable brain injury, was insufficiently detailed to enable meaningful review, and thus, necessitated remand for the Panel to weigh the evidence and determine whether claimant suffered a brain injury, where the Panel failed to detail any of the evidence presented to the Commission, but rather, simply indicated that it rejected claimant’s brain injury claim because no evidence supported a finding that she suffered from any brain damage. Canteen v. McLeod Regional Medical Center (S.C.App. 2012) 400 S.C. 551, 735 S.E.2d 246. Workers’ Compensation 1820

The findings of fact made by the Appellate Panel of the Workers’ Compensation Commission must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings. Canteen v. McLeod Regional Medical Center (S.C.App. 2012) 400 S.C. 551, 735 S.E.2d 246. Workers’ Compensation 1820

Single Workers’ Compensation Commissioner’s order was sufficiently detailed to enable appellate review, such that the underlying reasons supporting the Single Commissioner’s conclusion were not left to speculation, where the Single Commissioner’s order provides seventeen pages of evidence, and sixteen findings of fact supporting its decision. Martinez v. Spartanburg County (S.C.App. 2011) 394 S.C. 224, 715 S.E.2d 339, rehearing denied, rehearing granted, vacated 406 S.C. 532, 753 S.E.2d 436. Workers’ Compensation 1738

As with all agency orders, when the Public Service Commission (PSC) issues its determination about the reasonableness of intercompany dealings, its findings of fact must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence in the record and whether the law has been properly applied. Kiawah Property Owners Group v. Public Service Com’n of South Carolina (S.C. 1999) 338 S.C. 92, 525 S.E.2d 863. Public Utilities 168

Orders of Public Service Commission (PSC) approving rate increase for provider of water and sewer services did not sufficiently address reasonableness of intercompany transactions; on many issues, PSC merely recited each party’s general position on the issue and then announced the one the PSC chose to follow, and there was a total lack of explanation and citation in orders. Kiawah Property Owners Group v. Public Service Com’n of South Carolina (S.C. 1999) 338 S.C. 92, 525 S.E.2d 863. Municipal Corporations 712(7); Water Law 2201(4)

Public Service Commission’s (PSC) statement that it had determined that only “minimal increases in expenses” had been incurred which were not significant enough to justify grant of water and sewer utility’s application for rate increase, which statement was unaccompanied by factual documentation, was insufficient permit meaningful appellate review. Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina (S.C. 1998) 332 S.C. 20, 503 S.E.2d 739. Municipal Corporations 712(8); Water Law 2201(4)

An applicant was improperly denied a retail permit to sell beer and wine for off‑premises consumption based on the unsuitability of his location, even though the Alcoholic Beverage Control Commission found that (1) a church was 3⁄4 of a mile away, (2) a school was 1⁄2 of a mile away, and (3) police protection to the area was provided by one part‑time officer, where the commission failed to make an express finding regarding the effect of granting the permit for the location requested. Moore v. South Carolina Alcoholic Beverage Control Commission (S.C. 1991) 304 S.C. 356, 404 S.E.2d 714, Vacated (S.C. 1992) 308 S.C. 160, 417 S.E.2d 555.

An order of the Public Service Commission, which merely stated that the derating of the generating capacity of a utility plant was “immaterial,” did not adequately address the issue of the utility’s operational prudence, and thus the order would be remanded for factual findings to support the Commission’s decision. Hamm v. South Carolina Public Service Com’n (S.C. 1989) 298 S.C. 309, 380 S.E.2d 428.

Public Service Commission’s order approving a rate base for a telephone co‑operative’s tone and voice paging service was defective, and would be vacated, where the order contained no factual findings in support of the conclusion that the proposed rates were just and reasonable. Able Communications, Inc. v. South Carolina Public Service Com’n (S.C. 1986) 290 S.C. 409, 351 S.E.2d 151. Telecommunications 1064

Legal error controlled Industrial Commission’s finding that the worker’s compensation claimants suffered from an occupational disease where the commission’s finding failed to find on the critical issue as to whether the claimants had proved that their lung disease was caused by a hazard recognized as peculiar to a particular trade, process, occupation or employment, and the case would be reversed and remanded to the Circuit Court for the purpose of entering an appropriate order remanding the cases to the Industrial Commission for a determination of the issue. Mohasco Corp., Dixiana Mill Div. v. Rising (S.C.App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456. Workers’ Compensation 1950

4. Format of findings of fact

The “expert” status of the Public Service Commission (PSC) with respect to the regulation of rates and services of public utilities does not diminish the PSC’s duty to support its conclusions with factual findings but, rather, that status heightens the duty to make the explicit findings of fact which allow meaningful appellate review. However, no particular format for setting forth such findings is required nor is it necessary that findings of facts and conclusions of law be stated or enumerated under separate headings. Seabrook Island Property Owners Ass’n v. South Carolina Public Service Com’n (S.C. 1991) 303 S.C. 493, 401 S.E.2d 672.

An order of the Public Service Commission contained adequate findings supporting the commission’s decision modifying the frequency of the filing and format of surveillance reports and requiring non‑complying interexchange carriers to file modified surveillance reports, where the commission specifically found that information contained in the reports could be market sensitive and that because such information could be obtained by the public under the Freedom of Information Act, the reports should be modified and streamlined; although the commission did not recite the underlying reasons for its conclusion in a regimented style under the order’s heading entitled “FINDINGS AND CONCLUSIONS,” the underlying reasons were adequately set forth under the order’s heading entitled “DISCUSSION.” Hamm v. American Tel. & Tel. Co. (S.C. 1990) 302 S.C. 210, 394 S.E.2d 842.

Under Section 1‑23‑350, findings of fact and conclusions of law need not be presented in any particular format but need only be sufficiently detailed to enable a reviewing court to determine whether fact findings are supported by evidence and whether the law has been correctly applied. Cloyd v. Mabry (S.C.App. 1988) 295 S.C. 86, 367 S.E.2d 171. Administrative Law And Procedure 485; Administrative Law And Procedure 488

5. Standard of review

Administrative Procedures Act’s substantial evidence standard of review applies to full workers’ compensation commission’s factual findings. Lee v. Harborside Cafe (S.C.App. 2002) 350 S.C. 74, 564 S.E.2d 354, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Intercompany deals are not required to meet a level of review stricter than the other analyses done by Public Service Commission (PSC). Kiawah Property Owners Group v. Public Service Com’n of South Carolina (S.C. 1999) 338 S.C. 92, 525 S.E.2d 863. Public Utilities 101

**SECTION 1‑23‑360.** Communication by members or employees of agency assigned to decide contested case.

 Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

 (1) May communicate with other members of the agency; and

 (2) May have the aid and advice of one or more personal assistants.

 Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

HISTORY: 1977 Act No. 176, Art. II, Section 6.

CROSS REFERENCES

Application of penalties set forth herein to prohibited communications to or by members of State Board of Health and Environmental Control regarding applications for Certificate of Need for health facilities, see Section 44‑7‑200.

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak314.

Administrative Law and Procedure 314.

C.J.S. Public Administrative Law And Procedure Sections 61, 138.

NOTES OF DECISIONS

In general 1

1. In general

Distribution of “comments” prepared by faculty review committee with respect to conduct of university in terminating tenured professor to university and university’s counsel, but not to professor or professor’s counsel, constituted impermissible ex parte communication; although committee characterized document as mere criticism of university’s actions, comments clearly expressed committee’s findings as to university’s conduct and, therefore, addressed factual issues. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1148(1)

Impermissible ex parte communication between faculty review committee and university administration and counsel with respect to termination of tenured professor did not prejudice professor; while communication at issue offered more thorough explanation of committee’s criticism of university administration, another document received by professor expressed same concern, and adjudicators’ receipt of communication at issue did not influence their decisions. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1149(1)

Erroneous ex parte communication between university vice president and university general counsel concerning university’s response to faculty review committee’s findings in termination proceeding did not prejudice terminated tenured professor and was therefore harmless; vice president reached his decision concerning committee’s recommendation before communicating with general counsel, and letter drafted by general counsel on vice president’s behalf simply stated vice president’s concurrence in committee’s recommendation and informed professor of procedure for appeal, and did not set forth findings of fact or conclusions of law. Ross v. Medical University of South Carolina (S.C. 1997) 328 S.C. 51, 492 S.E.2d 62. Education 1149(1)

Where a university professor acted as an employee of an agency assigned to render a decision, he was prohibited from discussing the case ex parte with the university’s general counsel who had represented the university in the original hearing in front of the faculty committee. Ross v. Medical University of South Carolina (S.C. 1994) 317 S.C. 377, 453 S.E.2d 880, rehearing denied.

**SECTION 1‑23‑370.** Procedures regarding issuance, denial or renewal of licenses.

 (a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this article and Article 1 concerning contested cases apply.

 (b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

 (c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

HISTORY: 1977 Act No. 176, Art. II, Section 7.

CROSS REFERENCES

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

Continuation of expiring permits, see S.C. Code of Regulations R. 61‑9.122.6.

Department of Labor, Licensing and Regulation, Commissioners of Pilotage, lower coastal area, penalties, see S.C. Code of Regulations, R. 136‑099.

Department of Labor, Licensing and Regulation, Commissioners of Pilotage, upper coastal area, penalties, see S.C. Code of Regulations R. 136‑799.

Requirements for protesting beer and wine permits or alcoholic liquor licenses, see S.C. Code of Regulations R. 7‑201.

LIBRARY REFERENCES

Westlaw Key Number Search: 238k22.

Licenses 22.

C.J.S. Licenses Section 43.

NOTES OF DECISIONS

In general 1

1. In general

Administrative Law Court had subject matter jurisdiction over a petition for revocation of nightclub’s liquor license initiated by the Department of Revenue, even if the license was surrendered after commencement of the revocation proceedings. South Carolina Dept. of Revenue v. Club Rio (S.C.App. 2011) 392 S.C. 636, 709 S.E.2d 690. Intoxicating Liquors 108.1

Under South Carolina Administrative Procedure Act (APA), Department of Public Safety was required to provide notice and opportunity to be heard before removing wrecker service from wrecker rotation list for failing to have a physical location within zone. Marietta Garage, Inc. v. South Carolina Dept. of Public Safety (S.C.App. 1999) 337 S.C. 133, 522 S.E.2d 605, rehearing denied. Automobiles 368

Section 1‑23‑370 does not require that a licensee be given an opportunity to correct the deficiencies before a hearing can be held to revoke his status; rather, the “opportunity to show compliance,” as provided in the statute, means the opportunity to show that no violations occurred. Garris v. Governing Bd. of South Carolina Reinsurance Facility (S.C. 1995) 319 S.C. 388, 461 S.E.2d 819.

**SECTION 1‑23‑380.** Judicial review upon exhaustion of administrative remedies.

 A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

 (1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

 (2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

 (3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

 (4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

 (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

 (a) in violation of constitutional or statutory provisions;

 (b) in excess of the statutory authority of the agency;

 (c) made upon unlawful procedure;

 (d) affected by other error of law;

 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section to provide for review by an administrative law judge and appeal to the South Carolina Court of Appeals.

The 2008 amendment deleted subsection (B) relating to review by an administrative law judge of a final decision in a contested case; deleted the designation of the first paragraph as subsection (A) and at the end of the first sentence substituted “pursuant to this article and Article 1” for “under this article, Article 1, and Article 5”; in paragraph (1) deleted “, the Administrative Law Court,” following “agency”; in the fourth sentence of paragraph (2) deleted “or administrative law judge” following “agency”; and in the second sentence of paragraph (4) deleted “or the Administrative Law Court” following “agency” in two places.

CROSS REFERENCES

Administrative Law Court review of Certificate of Need decisions, see Section 44‑7‑220.

Appeal from action of Commissioners of Pilotage Port of Charleston, see S.C. Code of Regulations, R. 136‑095.

Appeals of decisions resulting from pilot suspension and revocation proceedings to be made in accordance with this section, see S.C. Code of Regulations R. 136‑772.

Appeals of determination of panel of State Human Affairs Commission on discrimination in public accommodations complaint must be made pursuant to this section, see Section 45‑9‑75.

Application of this section to a health maintenance organization seeking judicial review on a determination involving its financial condition, see Section 38‑33‑210.

Application of this section to a review of the denial of a license for a private child day care center or home, see Section 63‑13‑460.

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

Child protective services appeals process, see Sections 63‑7‑1410 et seq.

Criminal Justice Academy, final decision by Law Enforcement Training Council, S.C. Code of Regulations R. 37‑107.

Immediate revocation of permit or license, notwithstanding the provisions of this section, upon determination that establishment has discriminated in public accommodations, see Section 45‑9‑80.

Institute of Archeology and Anthropology, adjudication rules, petitions for review, see S.C. Code of Regulations R. 9‑100.410.

Power of the county governing bodies to hear contested cases brought by aggrieved magistrates, see Section 22‑8‑50.

Protest of final decisions of review board under South Carolina Consolidated Procurement Code, see Section 11‑35‑4210.

Provision that any action, order, or decision of the Commissioner made pursuant to Chapter 21 is subject to judicial review in accordance with this section, see Section 38‑21‑370.

Standards for stormwater management and sediment reduction, review and enforcement requirements, see S.C. Code of Regulations R. 72‑312.

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Administrative Law and Procedure 229, 651 to 821.

C.J.S. Public Administrative Law And Procedure Sections 38 to 42, 151, 172 to 271.

RESEARCH REFERENCES

ALR Library

78 ALR 5th 533 , Validity, Construction, and Application of Statute or Regulation Governing Charter Schools.

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Appeal and Error Section 70, Appealability.

S.C. Jur. Appeal and Error Section 76, Historical Notes: Exceptions and Additional Sustaining Grounds; in Favorem Vitae Review of Death Penalty Cases.

S.C. Jur. Carriers Section 10, Licensing in General.

S.C. Jur. Carriers Section 30, Licensing.

S.C. Jur. Carriers Section 31, Rates and Charges.

S.C. Jur. Colleges and Universities Section 25, Tenure.

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Labor Relations Section 26, Appeals.

S.C. Jur. Labor Relations Section 29, Procedure.

S.C. Jur. Labor Relations Section 31, Relationship Between the Grievance Committee Decision and the Courts.

S.C. Jur. Labor Relations Section 38, Enforcement Procedure.

S.C. Jur. Medical and Health Professionals Section 37, Patients’ Compensation Fund.

S.C. Jur. Public Health Section 3, Enforcement.

S.C. Jur. Public Health Section 129, Licensure of Ambulance Services.

S.C. Jur. Shipping Law Section 90, Supervision of Wharves, Warehouses and Terminals.

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 4:866, Conduct of Judicial Review.

LAW REVIEW AND JOURNAL COMMENTARIES

Al‑Shabazz v. State: Excluding NonCollateral Claims from the Scope of Post‑Conviction Relief. 51 S.C. L. Rev. 839 (Summer 2000).

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 1 (Autumn 1986).

Annual survey of South Carolina law, administrative law. 41 S.C. L. Rev. 1 (Autumn 1989).

Annual survey of South Carolina law: Administrative law. 43 S.C. L. Rev. 1, 6 (Autumn 1991).

Degree of disability may be higher than established by medical testimony. 39 S.C. L. Rev. 231 (Autumn 1987).

Taxpayer Remedies in South Carolina. 37 S.C. L. Rev. 489 (Spring 1986).

Attorney General’s Opinions

Two previously‑issued opinions which held that an agency can withdraw proposed regulations at any time prior to expiration of the 120 day review period or prior to the enactment of a joint resolution continue to represent the opinion of this Office and are reaffirmed. 1994 Op Atty Gen, No. 94‑34, p. 82.

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1. In general

In proceedings governed by the Administrative Procedures Act (APA), a “final judgment” necessary to obtain judicial review disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Administrative Law and Procedure 704

An administrative agency decision which does not decide the merits of a contested case is not a “final” agency decision subject to judicial review. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Administrative Law and Procedure 704

An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review. Price v. Peachtree Elec. Services, Inc. (S.C. 2013) 405 S.C. 455, 748 S.E.2d 229. Administrative Law and Procedure 704

An administrative agency decision which does not decide the merits of a contested case is not a final agency decision subject to judicial review.(Per Beatty, J., with one justice concurring and one justice concurring in result.) Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 704

Administrative Procedures Act governs a court’s review of a decision of the South Carolina Workers’ Compensation Commission. Hutson v. South Carolina State Ports Authority (S.C. 2012) 399 S.C. 381, 732 S.E.2d 500. Workers’ Compensation 1910

Administrative Procedures Act (APA) governs judicial review of a decision of the Workers’ Compensation Commission. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1910

Administrative Procedures Act governs judicial review of a decision of an administrative agency. Turner v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 540, 661 S.E.2d 118, rehearing denied, certiorari denied. Administrative Law And Procedure 657.1

Administrative Procedures Act governs appellate review of the Workers’ Compensation Commission’s decision, and accordingly, appellate court will not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. Therrell v. Jerry’s Inc. (S.C. 2006) 370 S.C. 22, 633 S.E.2d 893. Workers’ Compensation 1939.6

The Administrative Procedures Act establishes the standard of review for decisions by the Workers’ Compensation Commission. Roberts v. McNair Law Firm (S.C.App. 2005) 366 S.C. 50, 619 S.E.2d 453, rehearing dismissed. Workers’ Compensation 1910

Review of a decision of the Workers’ Compensation Commission is governed by the Administrative Procedures Act. Rodriguez v. Romero (S.C. 2005) 363 S.C. 80, 610 S.E.2d 488, rehearing denied. Workers’ Compensation 1910

An inmate may seek judicial review of the Department of Corrections’ final decision in an administrative matter under the provisions for contested cases contained in the Administrative Procedures Act (APA). Al‑Shabazz v. State (S.C. 2000) 338 S.C. 354, 527 S.E.2d 742. Prisons 295

The Supreme Court may not substitute its judgment for the Public Service Commission’s (PSC) on questions about which there is room for a difference of intelligent opinion. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Public Utilities 194

Court may reverse or modify agency’s decision if substantial rights of appellant have been prejudiced because administrative findings, inferences, conclusions or decisions are affected by other error of law. Stephen v. Avins Const. Co. (S.C.App. 1996) 324 S.C. 334, 478 S.E.2d 74, rehearing denied. Administrative Law And Procedure 796

In reviewing a final decision of an administrative agency under Section 1‑23‑380, the Circuit Court essentially sits as an appellate court to review alleged errors committed by the agency. Kiawah Resort Associates v. South Carolina Tax Com’n (S.C. 1995) 318 S.C. 502, 458 S.E.2d 542, rehearing denied. Administrative Law And Procedure 741

A petition for judicial review pursuant to Section 1‑23‑380 is neither a proceeding at first instance nor is it within the original jurisdiction of the circuit court. Ross v. Medical University of South Carolina (S.C.App. 1993) 312 S.C. 532, 435 S.E.2d 877, rehearing denied, certiorari granted, reversed 317 S.C. 377, 453 S.E.2d 880. Action 1

The Supreme Court’s remand to the Public Service Commission to “substantiate the record” was a direction to the Commission merely to review the evidence which was already contained in the record, not to reopen the record in order to receive additional evidence. Piedmont Natural Gas Co., Inc. v. Hamm (S.C. 1990) 301 S.C. 50, 389 S.E.2d 655. Gas 14.5(9)

A circuit court did not have authority under the Administrative Procedures Act, coupled with the court’s inherent equitable power, to put a rate schedule for a public utility into effect under bond at the motion of the Consumer Advocate. Santee Cooper Resort, Inc. v. South Carolina Public Service Com’n (S.C. 1989) 298 S.C. 179, 379 S.E.2d 119. Administrative Law And Procedure 325; Water Law 2212

Appeal to the circuit court of the South Carolina Review Panel’s determination with respect to contractor’s failure to list subcontractor in its bid, as required by Section 11‑35‑3020, was governed by Section 1‑23‑380. William C. Logan & Associates v. Leatherman (S.C. 1986) 290 S.C. 400, 351 S.E.2d 146.

The doctrine of collateral estoppel is applicable to a final decision of an administrative agency. St. Philip’s Episcopal Church v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1985) 285 S.C. 335, 329 S.E.2d 454. Intoxicating Liquors 71

Despite provision for court review of order of Dairy Commission (former Code Section 39‑33‑300; see now Section 46‑49‑10, et seq.), and despite fact Consumer Advocate may maintain declaratory judgment actions (Code Section 37‑6‑607), proper review of wholesale pricing order is by way of appeal under this section; application for relief being within 30 days, trial judge could properly enjoin enforcement of the order pending trial on the merits. Parker v. South Carolina Dairy Commission (S.C. 1980) 274 S.C. 209, 262 S.E.2d 38.

2. Choice of court for review

Court of common pleas had subject‑matter jurisdiction to review Fair Hearing Committee’s decision that recipient of aid to families with dependent children (AFDC) benefits had to pay back benefits she received while her niece was not living with her. Goodwine v. Dorchester Dept. of Social Services (S.C.App. 1999) 336 S.C. 413, 519 S.E.2d 116, rehearing denied. Public Assistance 100(11); Public Assistance 126; Public Assistance 130

In absence of specific statutory direction, review of agency decisions may be had in any circuit court so long as chosen forum is neither arbitrary nor unreasonable. 1972 Capri ID GAECMRH7509 v. South Carolina Dept. of Highways and Public Transp. (S.C. 1979) 274 S.C. 88, 261 S.E.2d 307. Highways 95.1

3. Construction

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. South Carolina Energy Users Committee v. South Carolina Elec. and Gas (S.C. 2014) 410 S.C. 348, 764 S.E.2d 913. Administrative Law and Procedure 431

Where provisions of the Administrative Procedures Act (APA) and the Workers Compensation Act conflict, the APA controls. Thus, a notice of appeal which failed to state the grounds or errors of law in support of the appeal as required by the APA, could not be amended after expiration of the 30‑day statutory period for filing the appeal under the APA. Pringle v. Builders Transport (S.C. 1989) 298 S.C. 494, 381 S.E.2d 731.

A health services organization lacked standing under Section 1‑23‑380(a) [now Section 1‑23‑380(A)] to seek judicial review of a final decision by the Department of Health and Environmental Control (DHEC) regarding a hospital’s application for a certificate of need because the organization was not a “party” as the term is defined by the Administrative Procedures Act (APA) where the organization did not seek party status in the agency proceedings, as it properly could have done. Additionally, even if the organization was a “person adversely affected” within the meaning of former Section 44‑7‑377 [see now Section 44‑7‑220], which specifically provides for judicial review of certificate of need decisions made by the DHEC, it nonetheless lacked standing to obtain judicial review of DHEC’s decision; while former Section 44‑7‑377 [see now Section 44‑7‑220] confers the right to seek judicial review upon a person adversely affected by a DHEC decision granting or denying a certificate of need, the statute requires any such review to be carried out “pursuant to the Administrative Procedures Act,” of which Section 1‑23‑380(a) [now Section 1‑23‑380(A)] is a part. Thus, if a person adversely affected by a DHEC decision is foreclosed from seeking judicial review under the APA, the person is also barred from seeking judicial review under Section 44‑7‑377. Home Health Services, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1989) 298 S.C. 258, 379 S.E.2d 734.

4. Notice

Workers’ Compensation Commission must be served with a copy of the appeal petition, but the Administrative Procedures Act, from a jurisdictional standpoint, does not mandate such service within thirty days; the reference in the Act to serving the agency is not associated with the filing deadline with the court. Skinner v. Westinghouse Elec. Corp. (S.C. 2008) 380 S.C. 91, 668 S.E.2d 795. Workers’ Compensation 1874; Workers’ Compensation 1882.1

Parties explicitly recognized as parties by order of the Alcoholic Beverage Commission, in connection with an application for a retail permit to sell beer and wine, were entitled to notice of hearing before the Circuit Court on appeal of the order denying the permit. Sabella v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1986) 289 S.C. 400, 346 S.E.2d 530. Intoxicating Liquors 75(4)

5. Pleadings

A respondent was not required to file a responsive pleading to appeals under the Administrative Procedures Act, Section 1‑23‑380; consequently, the appellant’s argument that the respondent was in default on the appeal because it did not timely file a response was without merit. O’Neal v. South Carolina Dept. of Social Services (S.C.App. 1993) 313 S.C. 223, 437 S.E.2d 127.

6. Time for appeal

Petition for rehearing was inapplicable to matters before the Appellate Panel of the Workers’ Compensation Commission, and, thus, workers’ compensation claimant’s petition for rehearing on Panel’s limitations‑based dismissal of his claim for compensation could not toll the time in which claimant was required to file petition for judicial review of the Panel’s decision. Rhame v. Charleston County School Dist. (S.C.App. 2012) 399 S.C. 477, 732 S.E.2d 202, rehearing denied, certiorari granted, reversed 412 S.C. 273, 772 S.E.2d 159, on remand 415 S.C. 162, 781 S.E.2d 151, certiorari dismissed. Workers’ Compensation 1802

Trial court’s order reversing Worker’s Compensation Commission decision that held claimant failed to report her alleged on‑the‑job injury within 90 days, and that required the Commission to conduct additional proceedings to determine whether the injury occurred during the course and scope of employment, set the claimant’s average weekly wage and compensation rate, and answer other questions that might arise, was not a final judgment, and thus, not immediately appealable. Long v. Sealed Air Corp. (S.C.App. 2011) 391 S.C. 483, 706 S.E.2d 34. Workers’ Compensation 1956

Substantial rights of highway patrolman were prejudiced due to the arbitrary and capricious nature of the Department of Public Safety’s interpretation of its grievance procedure; the rule that the time for patrolman’s appeal of decision at Step II Grievance Hearing began to run upon service by facsimile was not included in any written materials or guidelines available to the public or the bar, and thus, service of department’s letter upholding his Step II Grievance was not perfected upon facsimile of its final agency decision, but rather the time period for filing appeal began to run once patrolman’s attorney received certified copy of letter. Trowell v. South Carolina Dept. of Public Safety (S.C.App. 2009) 384 S.C. 232, 681 S.E.2d 893. Public Employment 515

In the absence of an agency rule specifying a time limit for filing petitions for the rehearing of administrative agency decisions, parties have 30 days after a final agency decision to petition the agency for rehearing or appeal the decision to the Circuit Court. McCummings v. South Carolina Dept. of Corrections (S.C. 1995) 319 S.C. 440, 462 S.E.2d 271. Administrative Law And Procedure 483; Administrative Law And Procedure 722.1

A party has thirty days after receiving written notice to appeal an agency decision, and not thirty days from the time the decision is made, as a literal reading of Section 1‑23‑380(b) [now Section 1‑23‑380(A)(1)] would suggest. Hamm v. South Carolina Public Service Com’n (S.C. 1985) 287 S.C. 180, 336 S.E.2d 470.

An attempt by the South Carolina Public Service Commission, following a hearing, to serve a copy of its order denying a rehearing on a party by mailing a copy of the order to the party’s office, addressed to a former employee of the party who the Public Service Commission knew had not been employed by the party for several months, was invalid, and did not commence the running of the thirty days permitted for the filing of an appeal. Hamm v. South Carolina Public Service Com’n (S.C. 1985) 287 S.C. 180, 336 S.E.2d 470.

A petition seeking review of property tax assessments that was filed within 30 days after the final decision of the Tax Board of Review satisfied the time requirements of Section 1‑23‑380, since the Board of Review is an “agency” within the meaning of the Administrative Procedure Act. Owen Steel Co., Inc. v. S.C. Tax Com’n (S.C.App. 1984) 281 S.C. 80, 313 S.E.2d 636.

7. Petition for appeal

The “petition” referred to in paragraphs (b), (c), and (d) of Section 1‑23‑380 [now paragraphs (A)(1), (2), and (3) of Section 1‑23‑380] must be one which will direct the court’s attention to the abuse or abuses allegedly committed below through a distinct and specific statement of the rulings complained of. It must include all that is necessary to enable the appellate court to decide whether the ruling complained of was erroneous, and a mere statement of dissatisfaction with the decision is insufficient. Smith v. South Carolina Dept. of Social Services (S.C. 1985) 284 S.C. 469, 327 S.E.2d 348. Administrative Law And Procedure 725

8. Exhaustion of administrative remedies

Requesting and participating in hearing after school district board of trustees had made final decision not to renew teacher’s contract was within futility exception to requirement to exhaust administrative remedies, and, thus, teacher could appeal to circuit court without participating in hearing. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

To exhaust administrative remedies, teacher challenging decision not to renew contract was required to make written request for hearing before school district board of trustees within 15 days of notice of nonrenewal, the time frame prescribed by Teacher Employment and Dismissal Act. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

The doctrine of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a Circuit Court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy. Thomas Sand Co. v. Colonial Pipeline Co. (S.C.App. 2002) 349 S.C. 402, 563 S.E.2d 109, rehearing denied, certiorari denied. Administrative Law And Procedure 229

After Department of Health and Environmental Control (DHEC) denied a permit to mine a sand deposit, mining company was not required to exhaust administrative remedies before bringing negligence action against pipeline owner for economic damages it suffered when diesel spill contaminated sand deposit; the question was not whether the permit would have been granted, but was whether mining company was damaged, either by added delay or expense in the permit process or by the eventual denial of the permit, because of pipeline owner’s actions. Thomas Sand Co. v. Colonial Pipeline Co. (S.C.App. 2002) 349 S.C. 402, 563 S.E.2d 109, rehearing denied, certiorari denied. Mines And Minerals 71

Insurance agent’s constitutional challenge to composition of governing board of Reinsurance Facility was not res judicata following denial of injunction against Facility and Supreme Court’s decision requiring the agent to exhaust administrative remedies; the agent could not have raised the issue before exhausting administrative remedies, and the Supreme Court’s decision to address one argument in a premature appeal did not justify penalty for not raising every purely legal challenge in that premature appeal. Garris v. Governing Bd. of South Carolina Reinsurance Facility (S.C. 1998) 333 S.C. 432, 511 S.E.2d 48, rehearing denied. Judgment 735

In an action seeking to enjoin the Reinsurance Facility from conducting a hearing to determine whether the plaintiff’s agent status under Section 38‑77‑590 should be revoked, the trial court did not abuse its discretion in denying relief since there had been no final order in the matter nor any showing that a final agency decision would not provide an adequate remedy; thus, the action was an attempt to obtain interlocutory review of the Governing Board chairman’s decision without exhausting the administrative process. Garris v. Governing Bd. of South Carolina Reinsurance Facility (S.C. 1995) 319 S.C. 388, 461 S.E.2d 819.

A Public Service Commission (PSC) order which set rates for sale‑for‑resale customers of a natural gas pipeline was not appealable by the industrial customers of the pipeline, where the PSC had opened a separate docket to address industrial rate cap issues and that docket remained open, since industrial customers were required by Section 1‑23‑380(a) [now Section 1‑23‑380(A)] to exhaust their administrative remedies. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com’n (S.C. 1994) 312 S.C. 79, 439 S.E.2d 270, rehearing denied. Gas 14.5(3)

A landowner who claimed that a town ordinance was constitutionally invalid based of the denial of his building permit was required to exhaust his administrative remedies, despite his claim that the Board of Adjustments had affirmed the denial of a similar permit to another landowner, where the board’s vote to deny the other permit was not unanimous and the composition of the board had changed substantially since that decision; thus, the landowner failed to show that the pursuit of administrative remedies would have been futile. Stanton v. Town of Pawley’s Island (S.C. 1992) 309 S.C. 126, 420 S.E.2d 502, rehearing denied. Zoning And Planning 1571

Trial court’s dismissal of petition for writ of mandamus was proper where administrative remedy had not been pursued to conclusion. Bradley v. State Human Affairs Com’n (S.C.App. 1987) 293 S.C. 376, 360 S.E.2d 537.

8.3. Civil actions

Reduction in services to Medicaid recipient due to service caps under state’s intellectual disability/related disabilities (ID/RD) waiver program posed substantial risk of institutionalization in violation of ADA’s mandate requiring that care and treatment for qualified, disabled individuals be provided in most integrated, least restrictive environment possible; respite care was unacceptable substitute for personal care services that recipient received prior to waiver renewal, and treating physician opined that recipient would have been able to remain in community in less restrictive setting had services that physician ordered been provided. Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Administrative Law And Procedure 382.1

Statute, providing that a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review, allowed students to file a civil action for damages in circuit court, in lieu of a direct appeal from school board’s expulsion order; the statute did not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law, students had exhausted all levels of administrative review, and judicial review under statute was a judicial, rather than administrative, remedy. Stinney v. Sumter School Dist. 17 (S.C.App. 2009) 382 S.C. 352, 675 S.E.2d 760, rehearing denied, certiorari granted, reversed 391 S.C. 547, 707 S.E.2d 397. Education 758

8.4. Workers’ compensation

The Administrative Procedures Act (APA) establishes the standard for appellate review of decisions of the Appellate Panel of the Workers’ Compensation Commission. Nero v. South Carolina Department of Transportation (S.C.App. 2017) 420 S.C. 523, 804 S.E.2d 269. Workers’ Compensation 1910

Under the Administrative Procedures Act (APA), the Court of Appeals may reverse or modify the decision of the Workers’ Compensation Commission when the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sellers v. Tech Service, Inc. (S.C.App. 2017) 421 S.C. 30, 803 S.E.2d 731. Workers’ Compensation 1945; Workers’ Compensation 1946

Workers’ compensation claimant did not have adequate remedy by appeal of Workers’ Compensation Commission’s Appellate Panel’s interlocutory order that vacated and remanded single commissioner’s order based on claimant’s competency and ordered claimant’s physical injuries evaluated by physician of employer’s choosing, and therefore claimant could immediately appeal order; Panel had in effect ordered new trial without regard to matters raised by employer, and without any explanation why such extreme remedy was appropriate, and claimant could have faced possibility of repeated unexplained “do overs” before final decision. Hilton v. Flakeboard America Limited (S.C. 2016) 418 S.C. 245, 791 S.E.2d 719. Administrative Law And Procedure 657.1

Appellate Panel of the Workers’ Compensation Commission had authority following review of a single commissioner’s decision to entertain claimant’s motion for rehearing pursuant to statute that stated how proceedings for review were to be instituted and set deadline of 30 days after final decision or, if a rehearing was requested, 30 days after the decision was rendered; Legislature intended to allow motions for rehearing before all administrative agencies that were governed by the Administrative Procedures Act (APA), and plain and common sense interpretation of statute envisioned an expansive view of exhaustion of potential remedies before the agency and, thus, promoted judicial economy and avoided unnecessary appeals. Rhame v. Charleston County School Dist. (S.C. 2015) 412 S.C. 273, 772 S.E.2d 159, rehearing denied, on remand 415 S.C. 162, 781 S.E.2d 151, certiorari dismissed. Workers’ Compensation 1794

Workers’ compensation claimant was not required to request rehearing before the Appellate Panel of the Workers’ Compensation Commission following review of a single commissioner’s decision in order to have the right to appeal. Rhame v. Charleston County School Dist. (S.C. 2015) 412 S.C. 273, 772 S.E.2d 159, rehearing denied, on remand 415 S.C. 162, 781 S.E.2d 151, certiorari dismissed. Workers’ Compensation 1834

Workers’ Compensation Commission decision requiring Property and Casualty Insurance Guaranty Association (IGA) and Uninsured Employers’ Fund to pay benefits in ten consolidated cases depending on date of accident was not final and appealable, where Commission did not decide individual claimants’ entitlement to benefits. Ex parte South Carolina Property and Cas. Ins. Guar. Ass’n (S.C.App. 2015) 411 S.C. 501, 768 S.E.2d 670. Workers’ Compensation 1834

Workers’ Compensation Commission’s order, refusing to transfer responsibility for continuing compensation and benefits to the Uninsured Employers’ Fund, was not immediately appealable because it left the merits of employee’s workers’ compensation claim for permanent disability unresolved; dismissing appeal did not deprive employer of an adequate remedy, and employer made no specific argument as to how the Commission’s refusal to address transfer at this time affected it in any way other than to delay the payment of money. Rose v. JJS Trucking, LLC (S.C.App. 2015) 411 S.C. 366, 768 S.E.2d 412, rehearing denied, certiorari denied. Workers’ Compensation 1833

Order of the Workers’ Compensation Commission is not a final decision unless it resolves the entire action. Rose v. JJS Trucking, LLC (S.C.App. 2015) 411 S.C. 366, 768 S.E.2d 412, rehearing denied, certiorari denied. Workers’ Compensation 1790

Workers’ Compensation Commission Appellate Panel’s restriction, stating that claimant was entitled to causally‑related future medical treatment that might tend to lessen her period of disability, specifically restricted to specific medication, affected claimant’s substantial right to receive future medical care and treatment that would tend to lessen the period of her disability, and thus, the restriction would be stricken; restriction deprived claimant of the opportunity to seek any medical treatment besides pain medications for her deteriorating knee condition. Carter v. Verizon Wireless (S.C.App. 2014) 407 S.C. 641, 757 S.E.2d 528. Workers’ Compensation 984

The Court of Appeals could not review the Workers’ Compensation Commission’s decision to hold part of workers’ compensation claimant’s claim in abeyance; the Court of Appeals could not review a decision that had not been made. Lee v. Bondex, Inc. (S.C.App. 2013) 406 S.C. 97, 749 S.E.2d 155. Workers’ Compensation 1833

Substantial evidence supported finding that workers’ compensation claimant sustained compensable injuries to his neck, left shoulder, and left arm; claimant testified that a large metal hood claimant was installing with co‑workers fell on his left shoulder, and physician opined that claimant’s work accident caused his injuries. Lee v. Bondex, Inc. (S.C.App. 2013) 406 S.C. 97, 749 S.E.2d 155. Workers’ Compensation 1531.5; Workers’ Compensation 1531.6

The state Administrative Procedures Act establishes the standard for judicial review of decisions of the Workers’ Compensation Commission. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1910

Appellate court can reverse or modify a decision of the Workers’ Compensation Commission if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1945; Workers’ Compensation 1946

“Substantial evidence,” sufficient to find that a decision of the Workers’ Compensation Commission is clearly erroneous, is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1939.4(4)

Despite the significant deference that the substantial evidence standard affords the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, where there are no disputed facts, the question of whether an accident is compensable is a question of law. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1716; Workers’ Compensation 1939.6

While the appellate courts are required to be deferential to the full Workers’ Compensation Commission regarding questions of fact, this deference does not prevent the courts from overturning the full commission’s decision when it is legally incorrect. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1939.1; Workers’ Compensation 1939.3

Appellate panel’s remand of workers’ compensation case to a single commissioner of the Workers’ Compensation Commission for further determination of benefits was not immediately appealable pursuant to the Administrative Procedure Act (APA), and therefore employer’s failure to seek judicial review of appellate panel’s decision, instead waiting and seeking judicial review of subsequent decision of single commissioner, did not render the findings of fact and conclusions of law of appellate panel the law of the case. Price v. Peachtree Elec. Services, Inc. (S.C. 2013) 405 S.C. 455, 748 S.E.2d 229. Workers’ Compensation 1789; Workers’ Compensation 1834

“Maximum medical improvement” (MMI), is a term used in a workers’ compensation case to indicate that a claimant has reached such a plateau that in the physician’s opinion there is no further medical care or treatment which will lessen the degree of impairment; MMI is a factual determination made by the Appellate Panel that will be upheld unless not supported by substantial evidence. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 870.1; Workers’ Compensation 1939.11(9)

Sufficient evidence existed to support the Workers’ Compensation Commission’s Appellate Panel’s finding that claimant had sustained a 10% permanent partial disability, despite conflicting testimony as to the percentage of impairment claimant sustained from her right hand and arm injury; a hand specialist opined that claimant had sustained a 2% permanent impairment to her right arm, and an independent medical examiner opined that claimant had sustained a 7% whole person impairment rating. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1646.7; Workers’ Compensation 1646.16

The extent of an injured claimant’s disability is a question of fact for determination by the Workers’ Compensation Commission’s Appellate Panel and will not be reversed if it is supported by competent evidence. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1723; Workers’ Compensation 1939.11(9)

Workers’ Compensation Commission’s Appellate Panel was not precluded from finding claimant incredible, based in part on claimant’s use or attempted use of a post‑hole digger; the Appellate Panel was in the best position to gauge the credibility of claimant because they saw and talked with her. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1723

Substantial evidence existed to support the Workers’ Compensation Commission, Appellate Panel’s finding that claimant was not entitled to future medical treatment, even though one independent medical examiner opined that surgery should have been considered for claimant; claimant was seen by her treating orthopedist for over two years, and notes from those visits indicated he thought time would be a major factor in claimant’s improvement, and orthopedist found claimant’s magnetic resonance imaging (MRI) to be normal. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 998.6(3)

The final determination of witness credibility and the weight to be accorded evidence is reserved to the Workers’ Compensation Commission Appellate Panel. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1820

The possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding of the Workers’ Compensation Commission Appellate Panel from being supported by substantial evidence; when the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1939.5

Substantial evidence existed to support the Workers’ Compensation Commission, Appellate Panel’s finding that claimant had reached maximum medical improvement (MMI), even though one physician who conducted an independent medical examination (IME) opined that claimant had not reached MMI; three other physicians, including claimant’s treating orthopedist and two hand specialists opined that claimant had reached MMI. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1627.14

Substantial evidence existed to support Worker’ Compensation Commission’s Appellate Panel’s finding that claimant had reached maximum medical improvement (MMI) from her right hand and forearm injury as of the date her treating orthopedist referred claimant to a hand specialist for an independent medical examination; claimant’s treating orthopedist specifically stated that claimant had reached MMI prior to the date selected by the Appeals Board, and other doctors placed claimant at MMI around the same time as her treating orthopedist. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1627.14

The substantial evidence rule governs the standard of review in a workers’ compensation decision; “substantial evidence” is not a mere scintilla of evidence but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1939.4(4)

An appellate court may not substitute its judgment for that of the Workers’ Compensation Commission, Appellate Panel as to the weight of the evidence on questions of fact, but may reverse when the decision is affected by an error of law. Hamilton v. Martin Color‑Fi, Inc. (S.C.App. 2013) 405 S.C. 478, 748 S.E.2d 76, rehearing denied. Workers’ Compensation 1939.6

The Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers’ Compensation Commission (WCC).(Per Beatty, J., with one justice concurring and one justice concurring in result.) Code 1976, Section 1‑23‑10 et seq. Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Workers’ Compensation 1910

Where there are no disputed facts, the question of whether a job‑related accident is compensable under the workers’ compensation laws is a question of law. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1716

The Workers’ Compensation Commission’s Appellate Panel has the final determination of witness credibility and the weight to be accorded the evidence. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1820

When determining if a workers’ compensation claimant has established causation, the Workers’ Compensation Commission’s Appellate Panel has discretion to weigh and consider all the evidence, both lay and expert; thus, while medical testimony is entitled to great respect, the fact finder may disregard it if other competent evidence is presented. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1418; Workers’ Compensation 1814

Additional evidence related to the amount claimant was to receive from employer per mile driven that claimant sought to offer Workers’ Compensation Commission’s Appellate Panel was not material to the Commission’s determination with regard to a fair average weekly wage, absent a showing by claimant of a good reason for failing to present the evidence at the hearing before the single commissioner and the Appellate Panel. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1812

The Court of Appeals must affirm the Workers’ Compensation Commission’s Appellate Panel’s findings of fact if they are supported by substantial evidence. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1939.4(4)

The South Carolina Administrative Procedure Act (APA) establishes the standard for judicial review of decisions by the Appellate Panel of Workers’ Compensation Commission. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Workers’ Compensation 1910

Administrative Procedure Act (APA) provides the standard for judicial review of decisions by Workers’ Compensation Commission, and under the APA, appellate court can reverse or modify the decision of the Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Burnette v. City of Greenville (S.C.App. 2012) 401 S.C. 417, 737 S.E.2d 200, rehearing denied, certiorari denied. Workers’ Compensation 1910; Workers’ Compensation 1945; Workers’ Compensation 1946; Workers’ Compensation 1947

The Administrative Procedures Act (APA) establishes the standard for judicial review of workers’ compensation decisions. Cranford v. Hutchinson Const. (S.C.App. 2012) 399 S.C. 65, 731 S.E.2d 303, rehearing denied. Workers’ Compensation 1910

Judicial review of a workers’ compensation decision is governed by the substantial evidence rule of the Administrative Procedures Act. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96. Workers’ Compensation 1939.4(4)

On appeal from the workers’ compensation commission, appellate court may reverse where the decision is affected by an error of law. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96. Workers’ Compensation 1946

8.5. Findings of facts

The Appellate Panel of the Workers’ Compensation Commission is the ultimate fact finder in workers’ compensation cases, and if its findings are supported by substantial evidence, it is not within the Court of Appeals province to reverse those findings. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 1820

Administrative Law Court (ALC) did not wrongfully misapprehend or ignore expert testimony that locating permittee’s dock closer to adjoining property owner’s property line, as allowed by Department of Health and Environmental Control’s (DHEC) critical area permit amendment, would impact navigation and public safety, in determining that the matter was a private dispute that does not impact public interest, as there was also evidence that proposed location of dock would not create a public harm and the ALC, acting as a factfinder, was permitted to accept or reject expert’s testimony. Maull v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 411 S.C. 349, 768 S.E.2d 402. Water Law 1250(2)

Administrative Law Court (ALC) did not commit clear error in finding that the question of navigation of adjoining property owner’s boat, raised because of critical area permit amendment allowing permittee’s proposed dock to be located closer to adjoining property owner’s property line and dock, could be resolved by mooring adjoining property owner’s boat on the outboard portion of his dock, where adjoining property owner testified that he had docked his boat on the outboard side of his dock in the past, but preferred to dock on the landward side. Maull v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 411 S.C. 349, 768 S.E.2d 402. Water Law 1250(2)

Vacation of the administrative law judge’s (ALJ) order, which affirmed the dismissal of unemployment compensation claimant’s appeal as untimely based on claimant’s action of depositing the appeal in an improper mailbox, was warranted; the appellate panel’s decision was based on claimant’s untimely action of depositing the appeal in the mailbox, and the ALJ did not review the finding made by the appellate panel, but instead affirmed based on its own finding, which was not made by the appellate panel. Stubbs v. South Carolina Dept. of Employment and Workforce (S.C.App. 2014) 407 S.C. 288, 755 S.E.2d 114. Unemployment Compensation 313

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Administrative Law and Procedure 791

An appellate court may not substitute its judgment for that of an administrative agency’s as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Administrative Law and Procedure 785; Administrative Law and Procedure 791; Administrative Law and Procedure 793

Factual findings of the appellate panel of the Workers’ Compensation Commission will normally be upheld; however, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.3; Workers’ Compensation 1939.4(1)

Appellate court is prohibited from overturning findings of fact of the appellate panel of the Workers’ Compensation Commission unless there is no reasonable probability the facts could be as related by the witness upon whose testimony the finding was based. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.3

Findings of the appellate panel of the Workers’ Compensation Commission are presumed correct and will be set aside by a reviewing court only if unsupported by substantial evidence. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1935; Workers’ Compensation 1939.4(4)

Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel of the Workers’ Compensation Commission are conclusive. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.5

The Appellate Panel’s factual findings will normally be upheld in a workers’ compensation proceeding; however, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.3; Workers’ Compensation 1939.4(1)

An appellate court is prohibited in a workers’ compensation proceeding from overturning findings of fact of the Appellate Panel unless there is no reasonable probability the facts could be as related by the witness upon whose testimony the finding was based. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.3

Where there are conflicts in the evidence over a factual issue in a workers’ compensation proceeding, the findings of the Appellate Panel are conclusive. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.5

The Appellate Panel is the ultimate fact finder in workers’ compensation cases and is not bound by the single commissioner’s findings of fact. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1820

8.7. Law questions

Administrative Law Court (ALC) did not adequately address whether Department of Health and Environmental Control (DHEC) properly considered the impact its critical area permit amendment allowing permittee to build his dock closer to adjoining property owner’s property line would have on adjoining property owner’s value and enjoyment of his property, as required by statute governing the approval or denial of such permits, even though ALC’s order did generally state that the amendment complied with the relevant statute, as ALC never specifically addressed impact amendment would have on adjoining property owner’s value and enjoyment of his property and general ruling was insufficient to permit meaningful review of ALC’s decision. Maull v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 411 S.C. 349, 768 S.E.2d 402. Environmental Law 132; Water Law 1250(2)

The Supreme Court will correct the decision of the Administrative Law Court (ALC) if it is affected by an error of law, and questions of law are reviewed de novo. South Carolina Dept. of Revenue v. Blue Moon of Newberry, Inc. (S.C. 2012) 397 S.C. 256, 725 S.E.2d 480, rehearing denied. Administrative Law and Procedure 796

Court of Appeals exercises freedom and independence in deciding an issue of law in a workers’ compensation case. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.1

When the evidence gives rise to but one reasonable inference in a workers’ compensation case, the question becomes one of law for the courts to decide. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.7

The Court of Appeals exercises freedom and independence in deciding an issue of law in a workers’ compensation case. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.1

No passivity or complaisance is owed or given to the ruling of the Appellate Panel or circuit judge on an issue of law in an appeal in a workers’ compensation proceeding. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.1; Workers’ Compensation 1964

Though an appellate court’s review of factual findings in a workers’ compensation case is governed and controlled by the substantial evidence rule, an appellate court freely and absolutely reviews a trial court’s decision concerning an issue of law. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.1

9. Scope of review

In applying a substantial evidence test, an appellate court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, unless its findings or conclusions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency. Friends of Earth v. Public Service Com’n of South Carolina (S.C. 2010) 387 S.C. 360, 692 S.E.2d 910. Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 793

In reviewing workers’ compensation decisions, the appellate court ascertains whether the circuit court properly determined whether the findings of fact of the appellate panel of the Workers’ Compensation Commission are supported by substantial evidence in the record and whether the panel’s decision is affected by an error of law. Johnson v. Beauty Unlimited Landscape Co. (S.C.App. 2008) 379 S.C. 403, 665 S.E.2d 656, rehearing denied, certiorari granted. Workers’ Compensation 1969

Judicial review of administrative agency orders as to factual issues is limited to a determination whether the order is supported by substantial evidence. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2008) 379 S.C. 1, 664 S.E.2d 471. Administrative Law And Procedure 791

Court of Appeals did not exceed its scope of review when it reversed decision of Workers’ Compensation Commission that denied benefits regarding injuries sustained by claimant while driving to jobsite; whether injuries were compensable was question of law given that relevant facts were undisputed. Whitworth v. Window World, Inc. (S.C. 2008) 377 S.C. 637, 661 S.E.2d 333, rehearing denied. Workers’ Compensation 1939.11(5); Workers’ Compensation 1946

An appellate court’s review in a workers’ compensation proceeding is limited to deciding whether the Appellate Panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

Under the scope of review established in the Administrative Procedures Act (APA), appellate court may not substitute its judgment for that of the Appellate Panel of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Kimmer v. Murata of America, Inc. (S.C.App. 2006) 372 S.C. 39, 640 S.E.2d 507, rehearing denied, certiorari denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

Pursuant to the Administrative Procedures Act (APA), the Court of Appeals’ review in a workers’ compensation proceeding is limited to deciding whether the Appellate Panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

Under the scope of review established in the Administrative Procedures Act (APA), the Court of Appeals may not substitute its judgment for that of the Appellate Panel of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

In reviewing circuit court’s decision in appeal from decision of appellate panel of Workers’ Compensation Commission, Supreme Court must determine whether the circuit court properly determined whether the panel’s findings of fact are supported by substantial evidence in the record and whether the panel’s decision is affected by an error of law. Baxter v. Martin Bros., Inc. (S.C. 2006) 368 S.C. 510, 630 S.E.2d 42. Workers’ Compensation 1964

Under the scope of review established in the state administrative procedures act, the appellate court may not substitute its judgment for that of the workers’ compensation appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Gadson v. Mikasa Corp. (S.C.App. 2006) 368 S.C. 214, 628 S.E.2d 262, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

Under the scope of review established in the Administrative Procedures Act (APA), Court of Appeals may not substitute its judgment for that of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund (S.C.App. 2005) 363 S.C. 612, 611 S.E.2d 297, rehearing denied, certiorari denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

Although the Supreme Court may not substitute its judgment for that of the full Workers’ Compensation Commission as to the weight of the evidence on questions of fact, it may reverse where the decision is affected by an error of law. Rodriguez v. Romero (S.C. 2005) 363 S.C. 80, 610 S.E.2d 488, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

In reviewing a final decision of an administrative agency, the Circuit Court has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency. Kiawah Resort Associates v. South Carolina Tax Com’n (S.C. 1995) 318 S.C. 502, 458 S.E.2d 542, rehearing denied. Administrative Law And Procedure 669.1

Circuit Court exceeded its scope of review by overturning Public Service Commission’s finding that intervenors, to an application for a certificate to render motor freight service over irregular routes within the state, had failed to show that, with the exception of petroleum and petroleum products, the public convenience and necessity was already being served; even though a determination different from that of the Commission could have been reached based on the evidence before it, this would not justify setting aside the Commission’s finding and the action of the Circuit Court amounted to a substitution of judicial discretion for that of the Commission, which required reversal. Central Transport, Inc. v. South Carolina Public Service Commission (S.C. 1986) 289 S.C. 267, 346 S.E.2d 25.

Where a dentist employed or permitted unlicensed personnel to take impressions of teeth and mouths of patients, to insert dentures in the mouths of patients and to make adjustments of dentures of dental patients, in violation of Sections 40‑15‑10 to 40‑15‑380, a decision of the South Carolina State Board of Dentistry suspending his license was clearly within the sanctions established by Section 40‑15‑200, and could not be reversed on judicial review under Section 1‑23‑380(g) [now Section 1‑23‑380(A)(6)] on the basis that it was arbitrary, capricious, or characterized by an abuse of discretion. The alleged disparity between the sanctions imposed on the dentist and those imposed on others similarly accused in recent Board decisions did not demonstrate arbitrariness which would afford a basis for reversal of the Board’s sanctions. Deese v. South Carolina State Bd. of Dentistry (S.C.App. 1985) 286 S.C. 182, 332 S.E.2d 539.

A court violates the Administrative Procedures Act, Sections 1‑23‑310 to 1‑23‑400 by substituting its judgment for that of the Industrial Commission as to the weight of the evidence. Webber v. Michelin Tire Corp. (S.C.App. 1985) 285 S.C. 581, 330 S.E.2d 547. Workers’ Compensation 1939.6

Scope of review provision of Section 41‑35‑750 is repealed by implication and supplanted by scope of review of Section 1‑23‑380(g) [now Section 1‑23‑380(A)(6)]. Todd’s Ice Cream, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 254, 315 S.E.2d 373.

In a prosecution for driving while under the influence, in which an administrative hearing officer of the Department of Highways and Public Transportation suspended defendant’s driving license for refusal to submit to a breathalyzer test, the court improperly reversed the hearing officer’s decision by concluding that defendant did not refuse to take the test but was physically incapable of participating in the test by reason of emphysema, since under Section 1‑23‑380 which provides for judicial review upon exhaustion of administrative remedies, the court improperly substituted its judgment for that of the hearing officer in that the record contained conflicting evidence as to whether or not the defendant had problems with his breathing and the hearing officer did not act in an arbitrary or capricious manner in weighing such evidence. White v. South Carolina Dept. of Highways and Public Transp. (S.C. 1983) 278 S.C. 603, 299 S.E.2d 852.

10. Standard of review

The Administrative Procedures Act establishes the standard of review for decisions of the Appellate Panel of the Workers’ Compensation Commission. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 1910

Where facts were undisputed in workers’ compensation case, Supreme Court was free to decide case as a matter of law, and thus Court was not constrained by “substantial evidence” standard of review. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

A reviewing court will not overturn a decision by the Workers’ Compensation Commission unless the determination is unsupported by substantial evidence; however, the court may reverse when the decision is affected by an error of law. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

The Court of Appeals may not substitute its judgment for that of the agency’s as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Administrative Law and Procedure 785; Administrative Law and Procedure 791; Administrative Law and Procedure 793

Under the substantial evidence standard of review, the Court of Appeals may not substitute its judgment for that of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Potter v. Spartanburg School Dist. 7 (S.C.App. 2011) 395 S.C. 17, 716 S.E.2d 123, rehearing denied. Workers’ Compensation 1939.6; Workers’ Compensation 1946

Under Administrative Procedures Act (APA), the Supreme Court can reverse or modify the decision of the Workers’ Compensation Commission where the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole. Trotter v. Trane Coil Facility (S.C. 2011) 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1945; Workers’ Compensation 1946

Judicial review of administrative agency decisions is limited to a determination of whether they are supported by substantial evidence; after considering the entire record, an appellate court need only find evidence that would allow reasonable minds to reach the conclusion that the administrative agency reached. Spartanburg Regional Medical Center v. Oncology and Hematology Associates of South Carolina, LLC (S.C. 2010) 387 S.C. 79, 690 S.E.2d 783. Administrative Law And Procedure 791

Review of decision of State Board of Medical Examiners by Administrative Law Court (ALC) is governed by provision of Administrative Procedures Act (APA) governing judicial review upon exhaustion of administrative remedies. Osman v. South Carolina Dept. of Labor (S.C. 2009) 382 S.C. 244, 676 S.E.2d 672. Health 222(1)

Appellate court can reverse or modify the decision of the Appellate Panel of the Workers’ Compensation Commission only if the appellant’s substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sanders v. Wal‑Mart Stores, Inc. (S.C.App. 2008) 379 S.C. 554, 666 S.E.2d 297. Workers’ Compensation 1945; Workers’ Compensation 1946

Administrative Law Court (ALC) could not reverse decision of Department of Corrections (DOC) denying prisoner’s grievance requesting that DOC provide him allegedly medically‑recommended support shoes, absent showing that DOC decision was clearly erroneous, arbitrary, capricious, or characterized by an abuse of discretion; reversal based on DOC’s failure to file a substantive brief improperly reversed the parties’ burden of proof. South Carolina Dept. of Corrections v. Mitchell (S.C.App. 2008) 377 S.C. 256, 659 S.E.2d 233. Prisons 293

Although under the Administrative Procedures Act (APA), the Supreme Court may not substitute its judgment for that of a state agency as to the weight of the evidence on questions of fact, it may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record. Lee County School Dist. Bd. of Trustees v. MLD Charter School Academy Planning Committee (S.C. 2007) 371 S.C. 561, 641 S.E.2d 24. Administrative Law And Procedure 785

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers’ Compensation Commission. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Workers’ Compensation 1910

Appellate court may reverse or modify the Workers’ Compensation Commission’s decision only if the claimant’s substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1945; Workers’ Compensation 1946

Under substantial‑evidence standard of review, the appellate court may not substitute its judgment for that of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1939.6

In a typical appeal from the Workers’ Compensation Commission, Court of Appeals reviews facts based on the substantial‑evidence standard. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Administrative Procedures Act (APA) establishes the standard of review for decisions by the Workers’ Compensation Commission. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1910

Appropriate standard of review on the issue of whether electric and gas company’s activity was “excavation” under definition of “mining” so as to exempt it from obtaining a mine operating permit was the “substantial evidence” standard of review under the Administrative Procedures Act (APA). Bursey v. South Carolina Dept. of Health and Environmental Control (S.C. 2006) 369 S.C. 176, 631 S.E.2d 899. Mines And Minerals 92.21

Administrative Procedures Act governs judicial review of a decision of an administrative agency, and Act establishes the substantial evidence rule as the standard of review, and under this standard, a reviewing court may reverse or modify an agency decision based on errors of law, but may only reverse or modify an agency’s findings of fact if they are clearly erroneous. Smith v. NCCI, Inc. (S.C.App. 2006) 369 S.C. 236, 631 S.E.2d 268, rehearing denied. Administrative Law And Procedure 651; Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 796

The substantial evidence rule of the Administrative Procedures Act (APA) governs the standard of review in a workers’ compensation decision. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1939.4(4)

Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers’ Compensation Commission. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund (S.C.App. 2005) 363 S.C. 612, 611 S.E.2d 297, rehearing denied, certiorari denied. Workers’ Compensation 1910

Review of a decision of the Workers’ Compensation Commission is limited to deciding whether the Commission’s decision is unsupported by substantial evidence or is controlled by some error of law. Rodriguez v. Romero (S.C. 2005) 363 S.C. 80, 610 S.E.2d 488, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

Supreme Court will not substitute its judgment for that of the Public Service Commission (PSC) where there is room for a difference of intelligent opinion. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 194

Administrative Procedures Act establishes the applicable standard of review for decisions of the workers’ compensation commission. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 1910

Under the applicable substantial evidence standard of review, the Court of Appeals may reverse the workers’ compensation commission’s findings only when they are unsupported by substantial evidence. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Court of Appeals, under standard of review applied in administrative cases, may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. Converse Power Corp. v. South Carolina Dept. of Health and Environment Control (S.C.App. 2002) 350 S.C. 39, 564 S.E.2d 341, rehearing denied, certiorari denied. Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 793

Under the Administrative Procedures Act (APA), appellate court will not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Leventis v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2000) 340 S.C. 118, 530 S.E.2d 643, certiorari denied. Administrative Law And Procedure 793

Under standard of review applicable to decisions of administrative agencies, “substantial evidence” is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Summersell v. South Carolina Dept. of Public Safety (S.C.App. 1999) 334 S.C. 357, 513 S.E.2d 619, rehearing denied, certiorari granted in part, vacated in part 337 S.C. 19, 522 S.E.2d 144. Administrative Law And Procedure 791

Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina (S.C. 1998) 332 S.C. 20, 503 S.E.2d 739. Administrative Law And Procedure 751

The standard for judicial review of proceedings before State Board of Medical Examiners, after an exhaustion of administrative remedies, is governed by the Administrative Procedures Act (APA). South Carolina Dept. of Labor, Licensing and Regulation v. Girgis (S.C.App. 1998) 332 S.C. 162, 503 S.E.2d 490, rehearing denied, certiorari denied, certiorari dismissed. Health 223(2)

In appeal from Workers’ Compensation Commission, Circuit Court and Court of Appeals may not substitute their judgment for that of Commission as to weight of evidence on questions of fact, but may reverse where decision is affected by error of law. Lester v. South Carolina Workers’ Compensation Com’n (S.C.App. 1997) 328 S.C. 535, 493 S.E.2d 103, rehearing denied, certiorari granted, affirmed in part, reversed in part 334 S.C. 557, 514 S.E.2d 751. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

Reviewing court will not disturb findings of Workers’ Compensation Commission if its findings are supported by substantial evidence on record as whole. Pearson v. JPS Converter & Indus. Corp. (S.C.App. 1997) 327 S.C. 393, 489 S.E.2d 219, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

State Administrative Procedure Act (APA) establishes “substantial evidence” rule as standard for judicial review of agency decisions. Hendley v. South Carolina State Budget and Control Bd. By and Through Div. of Ins. Services (S.C.App. 1996) 325 S.C. 413, 481 S.E.2d 159, rehearing denied, certiorari granted, reversed 333 S.C. 455, 510 S.E.2d 421. Administrative Law And Procedure 791

In reviewing the finding of an administrative agency, neither the Court of Appeals nor the Circuit Court may substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. South Carolina Coastal Council (S.C. 1995) 319 S.C. 348, 461 S.E.2d 388.

In a Workers’ Compensation action, the determination of witness credibility and the weight to be accorded evidence is reserved to the Workers’ Compensation Commission; the Court of Appeals cannot substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. O’Banner v. Westinghouse Elec. Corp. (S.C.App. 1995) 319 S.C. 24, 459 S.E.2d 324.

Pursuant to the Administrative Procedures Act, Sections 1‑23‑380 et seq., the court may not substitute its judgment for that of the agency concerning the weight of the evidence on questions of fact. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed.

The substantial evidence standard for judicial review as stated in Section 1‑23‑380 is a proper standard for review of actions by the Coastal Council and, the court will not substitute its judgment for that of the agency unless the agency’s determination is affected by error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. State ex rel. Medlock v. South Carolina Coastal Council (S.C. 1986) 289 S.C. 445, 346 S.E.2d 716.

The standard of judicial review under Section 1‑23‑380 applies to appeals from the Industrial Commission; accordingly, the Commission reasonably found substantial evidence that a deceased employee’s heart attack was caused by unexpected strain and unusual conditions in employment. Poulos by Poulos v. Pete’s Drive‑In No. 3 (S.C.App. 1985) 284 S.C. 264, 325 S.E.2d 583, certiorari denied 286 S.C. 128, 332 S.E.2d 529. Workers’ Compensation 1939.4(4)

The standard of judicial review under Section 1‑23‑380 applies to appeals from the Industrial Commission; accordingly, in an appeal taken from a decision of the Industrial Commission granting worker’s compensation benefits to a deceased employee based on the lent employee doctrine, the Commission reasonably found that the deceased was a lent employee of the defendant. Eaddy v. A.J. Metler Hauling & Rigging Co. (S.C.App. 1985) 284 S.C. 270, 325 S.E.2d 581.

Appeal from South Carolina Alcoholic Beverage Control Commission is controlled by Administrative Procedures Act; it follows that Section 1‑23‑380(g) [now Section 1‑23‑380(A)(6)] provides standard for judicial review. Schudel v. South Carolina Alcoholic Beverage Control Commission (S.C. 1981) 276 S.C. 138, 276 S.E.2d 308. Intoxicating Liquors 130.5

S.C. Code Section 1‑23‑380(g) [now Section 1‑23‑380(A)(6)] governs standard of judicial review of awards of Industrial Commission. Lark v. Bi‑Lo, Inc. (S.C. 1981) 276 S.C. 130, 276 S.E.2d 304.

10.5. Fact findings

In workers’ compensation cases, the Workers’ Compensation Commission is the ultimate factfinder. Tims v. J.D. Kitts Const. (S.C.App. 2011) 393 S.C. 496, 713 S.E.2d 340. Workers’ Compensation 1704

Where there are conflicts in the evidence over a factual issue in a workers’ compensation proceeding, the findings of the Appellate Panel of the Workers’ Compensation Commission are conclusive. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.5

The Appellate Panel of the Workers’ Compensation Commission is the ultimate fact finder in workers’ compensation cases and is not bound by the single commissioner’s findings of fact. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1820

11. Substantial evidence

Substantial evidence supported Board of Social Work Examiners’ findings, in prohibiting licensed social worker from working as a guardian ad litem (GAL) and barring her from all independent social work practice, that social worker committed fraud and represented that she performed services that she had not performed in violation of Social Work Examiners Practice Act; Board’s expert witness described how social worker had failed to comply with statutory requirements in her investigations of cases in which social worker had worked as a GAL. Forman v. South Carolina Department of Labor (S.C.App. 2016) 419 S.C. 64, 796 S.E.2d 138, rehearing denied. Licenses 38

The possibility of drawing two inconsistent conclusions from evidence does not prevent reviewing court from concluding that substantial evidence supports an administrative agency’s finding. Forman v. South Carolina Department of Labor (S.C.App. 2016) 419 S.C. 64, 796 S.E.2d 138, rehearing denied. Administrative Law and Procedure 791

“Substantial evidence” is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency’s action. Forman v. South Carolina Department of Labor (S.C.App. 2016) 419 S.C. 64, 796 S.E.2d 138, rehearing denied. Administrative Law and Procedure 791

“Substantial evidence,” for purposes of reviewing administrative agency’s findings under the Administrative Procedure Act (APA), is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached to justify its action. Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Administrative Law And Procedure 784.1; Administrative Law And Procedure 791

When determining whether the record contains substantial evidence to support an administrative agency’s findings, the Court of Appeals cannot substitute its judgment on the weight of the evidence for that of the agency. Myers v. South Carolina Department of Health and Human Services (S.C.App. 2016) 418 S.C. 608, 795 S.E.2d 301. Administrative Law and Procedure 784.1; Administrative Law and Procedure 791

Substantial evidence supported Administrative Law Court’s (ALC) finding that dispute over location of permittee’s dock was a private matter not negatively impacting the public, where the docks in question were private docks that would not impede the free flow of commercial and recreational traffic in the channel, adjoining landowner’s main argument was that the proposed dock would make it more difficult to dock his boat in the manner he prefers, and the channel was 565 feet wide, indicating the docking of adjoining property owner’s 48 foot boat on channel side of his dock, as may have been required by permittee’s proposed dock, would not impact navigation on the channel. Maull v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 411 S.C. 349, 768 S.E.2d 402. Water Law 1250(2)

Substantial evidence supported Administrative Law Court’s (ALC) finding, in affirming Department of Health and Environmental Control’s (DHEC) critical area permit amendment allowing permittee to build dock closer to adjoining property owner’s property line, that there were no vessels in the area of similar size to adjoining property owner’s boat, where navigation expert testified that boats the size of adjoining property owner’s were somewhat rare in that area. Maull v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 411 S.C. 349, 768 S.E.2d 402. Water Law 1250(2)

Substantial evidence existed to support Workers’ Compensation Commission’s Appellate Panel’s denial of lifetime medical care for claimant’s lower back problems; surgeon who performed cervical surgery on claimant interchangeably used neck and back to refer to claimant’s injury, x‑rays and nerve conduction studies were normal and showed no evidence of lumbosacral peri‑radiculopathy, no doctor performed any surgeries or procedures on claimant’s lower back, and the only treatment he received for his low back was a pain medication given him at emergency room. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1531.4

For purposes of a court’s review of a decision of the South Carolina Workers’ Compensation Commission, “substantial evidence” is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion reached by the commission. Hutson v. South Carolina State Ports Authority (S.C. 2012) 399 S.C. 381, 732 S.E.2d 500. Workers’ Compensation 1939.4(4)

For purposes of judicial review of an administrative agency’s decision, “substantial evidence” is not a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. Johnson v. Rent‑A‑Center, Inc. (S.C. 2012) 398 S.C. 595, 730 S.E.2d 857, rehearing denied. Administrative Law and Procedure 791

Substantial evidence to support an administrative agency decision is not a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. Bentley v. Spartanburg County (S.C. 2012) 398 S.C. 418, 730 S.E.2d 296, rehearing denied. Administrative Law and Procedure 791

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. Jervey v. Martint Environmental, Inc. (S.C.App. 2012) 396 S.C. 442, 721 S.E.2d 469, rehearing denied, vacated in part 406 S.C. 210, 750 S.E.2d 90. Administrative Law And Procedure 791

“Substantial evidence” sufficient to support a finding of the administrative law court is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Risher v. South Carolina Dept. of Health and Environmental Control (S.C. 2011) 393 S.C. 198, 712 S.E.2d 428, rehearing denied. Administrative Law and Procedure 791

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. Risher v. South Carolina Dept. of Health and Environmental Control (S.C. 2011) 393 S.C. 198, 712 S.E.2d 428, rehearing denied. Administrative Law and Procedure 791

In reviewing decisions of the Workers’ Compensation Commission, the appellate court must ascertain whether the circuit court properly determined whether the Appellate Panel’s findings of fact are supported by substantial evidence in the record and whether the Appellate Panel’s decision is affected by an error of law. State Acc. Fund v. South Carolina Second Injury Fund (S.C.App. 2010) 388 S.C. 67, 693 S.E.2d 441. Workers’ Compensation 1964

Substantial evidence supported Appellate Panel’s finding that the reinstatement notice did not clearly state workers’ compensation insurance policy coverage had lapsed, and, thus, policy was in effect at time of claimant’s injury; the notice did not mention a lapse in policy during the time period in which premium was past due which coincided with date of claimant’s injury. Jeffrey v. Sunshine Recycling (S.C.App. 2009) 386 S.C. 174, 687 S.E.2d 332. Workers’ Compensation 1065

Possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Administrative Law And Procedure 791

For purposes of judicial review to determine whether an agency’s findings of fact are supported by substantial evidence, “substantial evidence” is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Administrative Law And Procedure 791

Judicial review of factual findings of the appellate panel of the Workers’ Compensation Commission is governed by the substantial‑evidence standard. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.4(4)

Pursuant to the Administrative Procedures Act (APA), an appellate court’s review of a decision of the full Workers’ Compensation Commission is limited to deciding whether the decision is unsupported by substantial evidence or is controlled by some error of law. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

For purposes of rule that a reviewing court must affirm an agency’s findings of fact if they are supported by substantial evidence, “substantial evidence” is not a mere scintilla of evidence but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. Whitworth v. Window World, Inc. (S.C. 2008) 377 S.C. 637, 661 S.E.2d 333, rehearing denied. Administrative Law And Procedure 791

Supreme Court must affirm the findings of fact made by the full Workers’ Compensation Commission if they are supported by substantial evidence. Whitworth v. Window World, Inc. (S.C. 2008) 377 S.C. 637, 661 S.E.2d 333, rehearing denied. Workers’ Compensation 1939.4(4)

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Administrative Law And Procedure 791

Substantial evidence, for purposes of an appellate court’s review of an Appellate Panel’s finding of facts in a worker’s compensation proceeding, is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.4(4)

It is not within an appellate court’s province in a workers’ compensation proceeding to reverse the Appellate Panel’s factual findings if they are supported by substantial evidence. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.4(4)

Judicial review of the Appellate Panel’s factual findings in a workers’ compensation proceeding is governed by the substantial evidence standard, and the findings must be affirmed if supported by substantial evidence in the record. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1939.4(4)

The possibility of drawing two inconsistent conclusions from the evidence does not prevent the findings of the Appellate Panel of Workers’ Compensation Commission from being supported by substantial evidence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.7

“Substantial evidence,” for purposes of judicial review of decision of the Appellate Panel of the Workers’ Compensation Commission, is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Appellate Panel reached in order to justify its action; rather, it is something less than the weight of the evidence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.4(4)

The findings of the Appellate Panel of the Workers’ Compensation Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1935; Workers’ Compensation 1939.4(4)

It is not within a reviewing court’s province to reverse findings of the Appellate Panel of the Workers’ Compensation Commission which are supported by substantial evidence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.4(4)

The substantial evidence rule governs the standard of review in a workers’ compensation decision such that the decision of the Appellate Panel of the Workers’ Compensation Commission must be affirmed if supported by substantial evidence in the record. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.4(4)

Judicial review of a Workers’ Compensation Commission’s decision is governed by the substantial evidence rule of the Administrative Procedures Act (APA). Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.4(4)

When reviewing whether findings of Workers’ Compensation Commission are supported by substantial evidence, “substantial evidence” is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached. Thompson v. South Carolina Steel Erectors (S.C.App. 2006) 369 S.C. 606, 632 S.E.2d 874, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Pursuant to the state administrative procedures act, appellate court review is limited to deciding whether the workers’ compensation appellate panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Gadson v. Mikasa Corp. (S.C.App. 2006) 368 S.C. 214, 628 S.E.2d 262, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

The substantial evidence rule of the state administrative procedures act governs the standard of review in a workers’ compensation decision. Gadson v. Mikasa Corp. (S.C.App. 2006) 368 S.C. 214, 628 S.E.2d 262, rehearing denied. Workers’ Compensation 1939.4(4)

When confronted with a challenge to a factual determination by the Workers’ Compensation Commission the court’s review is limited to deciding whether the Commission’s decision is supported by substantial evidence. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

Review of the full Workers’ Compensation Commission’s factual findings is governed by the substantial evidence standard. Lizee v. South Carolina Dept. of Mental Health (S.C.App. 2005) 367 S.C. 122, 623 S.E.2d 860, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

“Substantial evidence” to support decision of Workers’ Compensation Commission is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but, rather, is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund (S.C.App. 2005) 363 S.C. 612, 611 S.E.2d 297, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

The substantial evidence rule of the Administrative Procedures Act (APA) governs the standard of review in a workers’ compensation decision. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund (S.C.App. 2005) 363 S.C. 612, 611 S.E.2d 297, rehearing denied, certiorari denied. Workers’ Compensation 1939.4(4)

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. S.C. Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2005) 363 S.C. 67, 610 S.E.2d 482, rehearing denied. Administrative Law And Procedure 791

Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. S.C. Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control (S.C. 2005) 363 S.C. 67, 610 S.E.2d 482, rehearing denied. Administrative Law And Procedure 791

Substantial evidence, sufficient to support an administrative agency’s decision under the Administrative Procedures Act (APA), is not a mere scintilla of evidence nor evidence viewed blindly from one side, but is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion that the agency reached. Tennis v. South Carolina Dept. of Social Services (S.C.App. 2003) 355 S.C. 551, 585 S.E.2d 312. Administrative Law And Procedure 791

The possibility of drawing two inconsistent conclusions from the evidence will not mean an administrative agency’s conclusion was unsupported by substantial evidence. Tennis v. South Carolina Dept. of Social Services (S.C.App. 2003) 355 S.C. 551, 585 S.E.2d 312. Administrative Law And Procedure 791

“Substantial evidence” to support decision of workers’ compensation commission is evidence which, considering the entire record, would allow reasonable minds to arrive at the same conclusion reached by the commission. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 1939.4(4)

“Substantial evidence,” the standard of review applicable to final decisions of administrative agencies, is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Administrative Law And Procedure 791

In reviewing a decision of the Workers’ Compensation Commission, the reviewing court will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

When reviewing a decision of the Workers’ Compensation Commission, the court’s review is limited to deciding whether the Commission’s decision is supported by substantial evidence. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 1939.4(4)

“Substantial evidence,” for purposes of judicial review of agency decisions, is not mere scintilla of evidence, but is evidence which, considering record as whole, would allow reasonable mind to reach conclusion that administrative agency reached to justify its action. Hendley v. South Carolina State Budget and Control Bd. By and Through Div. of Ins. Services (S.C.App. 1996) 325 S.C. 413, 481 S.E.2d 159, rehearing denied, certiorari granted, reversed 333 S.C. 455, 510 S.E.2d 421. Administrative Law And Procedure 791

Section 1‑23‑380 only requires the circuit court to determine whether the final decision of the grievance committee was supported by substantial evidence; consequently, the appellant’s argument that the circuit court erred in failing to state its findings of fact and conclusions of law in its order was without merit. O’Neal v. South Carolina Dept. of Social Services (S.C.App. 1993) 313 S.C. 223, 437 S.E.2d 127. Administrative Law And Procedure 791; Administrative Law And Procedure 811; Public Employment 768(16); Public Employment 773

The circuit court erred in remanding to the Alcoholic Beverage Control Commission the denial of an off‑premises beer and wine permit, for the purpose of hearing further evidence on the amount of police protection and drag racing which existed in the area of the store, where at the original hearing citizens offered evidence that (1) the store was within one mile of a church, a school, a playground, and their residences, (2) there were only 2 deputies for the 400 square miles which included the store, and (3) vandalism, littering, and drag racing were problems in the area, since Section 61‑9‑320 provides that proximity to residences, schools, playgrounds and churches are proper factors in determining location suitability. Byers v. South Carolina Alcoholic Beverage Control Com’n (S.C. 1991) 305 S.C. 243, 407 S.E.2d 653.

Substantial evidence under Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)] is neither a mere scintilla of evidence nor evidence viewed blindly from one side of a case, but rather is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Carroll v. Gaddy (S.C. 1988) 295 S.C. 426, 368 S.E.2d 909.

In reviewing Insurance Department’s decision in insurance rate case, decision can be set aside if it is unsupported by substantial evidence, substantial evidence being such relevant evidence as a reasonable mind might accept as adequate to support conclusion; Insurance Department’s decision to allow insurance company 9 percent rate increase for its major medical policy, partly on grounds of “medical intensity”, which is development of more effective medical technologies which engender more expensive methods to combat same medical problems, was not supported by relevant evidence adequate to warrant increase in rate where insurance company introduced only results of study which was conducted from 1969 to 1978 and published in 1981. Hamm v. Central States Health and Life Co., of Omaha (S.C. 1987) 292 S.C. 408, 357 S.E.2d 5.

Conflicting testimony supported the Employee Grievance Committee’s finding that charge of patient abuse against mental retardation department employee was not supported by the evidence. South Carolina Dept. of Mental Retardation v. Glenn (S.C. 1987) 291 S.C. 279, 353 S.E.2d 284.

The Circuit Court, in reviewing the Employment Security Commission’s decision, must affirm the factual findings of the commission if they are supported by substantial evidence. Merck v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 459, 351 S.E.2d 338. Administrative Law And Procedure 791; Unemployment Compensation 486

Public Service Commission’s denial of application of railroad to replace a resident agent with a mobile agency was not supported by substantial evidence, where the railroad’s general supervisor for terminal station management had testified that the change would benefit the public by reducing cost and increasing the efficiency of the service, and the only witness testifying against the application had merely testified that he had talked with people who had used a mobile agency and these people had told him that they were not satisfied with it. Seaboard System R., Inc. v. Public Service Com’n of South Carolina (S.C.App. 1986) 290 S.C. 275, 349 S.E.2d 896. Railroads 9(1)

The circuit court properly affirmed the findings of the state board of medical examiners that physician was affected by mental condition which rendered further practice by him unsafe to the public, where the finding was supported by substantial evidence. Ewing v. State Bd. of Medical Examiners of South Carolina (S.C. 1986) 290 S.C. 89, 348 S.E.2d 361.

Market need was not the only criteria for consideration in the designation of producers for the Reinsurance Facility under Section 38‑37‑150 (as a statute read prior to 1985 amendment), so that the designated agent’s moving of agency to a location where there was no need for designated agent was not grounds of revocation of agent’s producer designation in absence of reliable, probative and substantial evidence to support insurance commissioner’s factual finding that the agent’s appointment as a producer was based solely upon market need. Mungo v. Smith (S.C.App. 1986) 289 S.C. 560, 347 S.E.2d 514. Insurance 1627

Testimony of a truck driver, in workers’ compensation case, that he had seen the deceased driving erratically immediately before the motor vehicle accident did not render clearly erroneous the finding of the industrial commissioner, which was supported by substantial evidence, that the employer had failed to prove by the preponderance of the evidence either that the deceased was intoxicated at the time of the accident or that intoxication was a proximate cause of the accident and death. Chandler v. Suitt Const. Co. (S.C.App. 1986) 288 S.C. 503, 343 S.E.2d 633.

On appeal from a decision of the State Board of Medical Examiners to suspend a doctor’s license, the reviewing Circuit Court was governed by the Administrative Procedure Act and, under this Act, the reviewing court was confined to determining whether substantial evidence existed which could support the board’s conclusions; substantial evidence is relevant evidence that a reasonable mind might accept as being adequate to support a given conclusion. Boggs v. State Bd. of Medical Examiners (S.C. 1986) 288 S.C. 144, 341 S.E.2d 635. Health 223(2)

In the matter of granting of certificates of public convenience and necessity to provide unlimited intercity telecommunication services in the state, the Public Service Commission is the recognized expert designated by law to make factual determinations and, when those determinations are supported by substantial evidence, the Supreme Court is without authority to substitute its judgment for that of the commission. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126.

“Substantial evidence” under Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)] is neither a mere scintilla of evidence nor evidence viewed blindly from one side of a case, but rather is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Port Oil Co., Inc. v. Allen (S.C.App. 1985) 286 S.C. 286, 332 S.E.2d 787. Intoxicating Liquors 70

“Substantial evidence,” for purposes of Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)], is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. Koon v. Spartan Mills (S.C.App. 1985) 286 S.C. 190, 332 S.E.2d 544. Administrative Law And Procedure 791

Substantial evidence, under Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)], is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Webber v. Michelin Tire Corp. (S.C.App. 1985) 285 S.C. 581, 330 S.E.2d 547.

“Substantial evidence,” under Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)] is something less than the weight of the evidence; it is evidence which would allow reasonable minds to reach the conclusion the administrative agency reached. The standard of review established in this subsection applies to appeals from the Employment Security Commission. DeGroot v. Employment Sec. Com’n (S.C.App. 1985) 285 S.C. 209, 328 S.E.2d 668. Administrative Law And Procedure 791

The conclusion that the administrative agency reached or must have reached in order to justify its action is supported by substantial evidence, as defined by Section 1‑23‑380, where, considering the record as a whole, reasonable minds could reach the same conclusion, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. Bilton v. Best Western Royal Motor Lodge (S.C.App. 1984) 282 S.C. 634, 321 S.E.2d 63. Administrative Law And Procedure 791

Under Section 1‑23‑380, when determining whether the record contains substantial evidence upon which to support an agency’s findings, a trial judge must not substitute his or her judgment for that of the agency as to the weight of the evidence on questions of fact. Gibson v. Florence Country Club (S.C. 1984) 282 S.C. 384, 318 S.E.2d 365.

In an unemployment compensation proceeding, the “substantial evidence” test of the Administrative Procedure Act governs the issue of fact to be determined by the administrative agency of whether a claimant was available and actively seeking work. Wellington v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 115, 314 S.E.2d 37. Unemployment Compensation 486

Substantial evidence test must not be either judicial fact finding or substitution of judicial judgment for agency judgment; and judgment upon which reasonable men might differ will not be set aside. Lark v. Bi‑Lo, Inc. (S.C. 1981) 276 S.C. 130, 276 S.E.2d 304.

11.5. Weight and sufficiency of evidence

Testimony of workers’ compensation claimant about a possible restaurant business was based on speculation, surmise, and conjecture and, thus, could not constitute substantial evidence supporting a decision that claimant was not entitled to wage‑loss benefits, even though claimant, who had been a crane operator before he was injured, had family members in the restaurant business, had taken a course in culinary arts, and was confident in his own abilities; claimant never worked in a restaurant in his life, much less operated one, and clearly had no idea what income he might realize from such a venture. Hutson v. South Carolina State Ports Authority (S.C. 2012) 399 S.C. 381, 732 S.E.2d 500. Workers’ Compensation 1627.17(1)

Under an appellate court’s standard of review, the court may not substitute its judgment for that of the Administrative Law Court (ALC) as to the weight of the evidence on questions of fact, unless the ALC’s findings are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 793

The final determination of witness credibility and the weight assigned to the evidence in a workers’ compensation proceeding is reserved to the Appellate Panelof the Workers’ Compensation Commission. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1704

12. Error of law

Under the Administrative Procedures Act (APA), Supreme Court can reverse or modify the decision of the Workers’ Compensation Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Bartley v. Allendale County School Dist. (S.C. 2011) 392 S.C. 300, 709 S.E.2d 619. Workers’ Compensation 1945; Workers’ Compensation 1946

Under the Administrative Procedures Act (APA) the Supreme Court can reverse or modify the decision of the Workers’ Compensation Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Paschal v. Price (S.C. 2011) 392 S.C. 128, 708 S.E.2d 771, rehearing denied. Workers’ Compensation 1945; Workers’ Compensation 1946

Pursuant to the Administrative Procedures Act (APA), the Court of Appeals’ review in a workers’ compensation proceeding is limited to deciding whether the decision of the Appellate Panel of the Workers’ Compensation Commission is unsupported by substantial evidence or is controlled by some error of law. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1939.1; Workers’ Compensation 1939.4(4)

Supreme Court may reverse a decision of the Workers’ Compensation Commission where the decision is affected by an error of law. Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1939.1

On appeal from the workers’ compensation commission, appellate court may reverse where the decision is affected by an error of law. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96, rehearing denied, certiorari denied. Workers’ Compensation 1946

Under the scope of review established in the Administrative Procedures Act (APA), Court of Appeals may not substitute its judgment for that of the Appellate Panel of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

In an appeal from the Workers’ Compensation Commission, appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Schurlknight v. City of North Charleston (S.C.App. 2001) 345 S.C. 45, 545 S.E.2d 833, rehearing denied, reversed 352 S.C. 175, 574 S.E.2d 194. Workers’ Compensation 1939.6

Appellate court may not substitute its judgment for that of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact, but may reverse if the decision is affected by an error of law. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1939.6

In an appeal from the Workers’ Compensation Commission, the Court of Appeals may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 1939.6

The Court of Appeals may review whether the Workers’ Compensation Commission’s determination that an occurrence did not amount to an “injury by accident” was affected by an error of law. Creech v. Ducane Co. (S.C.App. 1995) 320 S.C. 559, 467 S.E.2d 114, rehearing denied, certiorari denied. Workers’ Compensation 1939.11(5)

On appeal from the Workers’ Compensation Commission, the court may reverse where the decision is affected by an error of law. Gilliam v. Woodside Mills (S.C. 1995) 319 S.C. 385, 461 S.E.2d 818. Workers’ Compensation 1946

Trial court erred n failing to reverse Procurement Review Panel’s order to rebid where substantial rights were greatly prejudiced by panel’s statutory violation of Section 11‑35‑1590 and Regulation 19‑445.202. Tall Tower, Inc. v. South Carolina Procurement Review Panel (S.C. 1987) 294 S.C. 225, 363 S.E.2d 683.

In an appeal from the Workers’ Compensation Commission, Court of Appeals may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Pratt v. Morris Roofing, Inc. (S.C.App. 2003) 353 S.C. 339, 577 S.E.2d 475, rehearing denied, certiorari granted, affirmed as modified 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

13. Clearly erroneous decisions

The Court of Appeals court can reverse or modify the decision of the Appellate Panel of the Workers’ Compensation Commission only if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 1945; Workers’ Compensation 1946

Under the Administrative Procedures Act (APA), the Court of Appeals can reverse or modify the decision of the Workers’ Compensation Commission when the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole. Brunson v. American Koyo Bearings (S.C.App. 2011) 395 S.C. 450, 718 S.E.2d 755, rehearing denied. Workers’ Compensation 1945; Workers’ Compensation 1946

A reviewing court may reverse or modify an agency decision based on errors of law, but may only reverse or modify an agency’s findings of fact if they are clearly erroneous. Turner v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 540, 661 S.E.2d 118, rehearing denied, certiorari denied. Administrative Law And Procedure 785; Administrative Law And Procedure 796

A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Hall v. United Rentals, Inc. (S.C.App. 2006) 371 S.C. 69, 636 S.E.2d 876. Administrative Law And Procedure 785; Administrative Law And Procedure 791

The appellate court may reverse or modify the full Workers’ Compensation Commission’s decision only if the claimant’s substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Roberts v. McNair Law Firm (S.C.App. 2005) 366 S.C. 50, 619 S.E.2d 453, rehearing dismissed. Workers’ Compensation 1945; Workers’ Compensation 1946

A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Bass v. Isochem (S.C.App. 2005) 365 S.C. 454, 617 S.E.2d 369, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 374 S.C. 346, 649 S.E.2d 485. Administrative Law And Procedure 785; Administrative Law And Procedure 791

Findings made by Public Service Commission (PSC) are presumptively correct, requiring the party challenging a PSC order to show the decision is clearly erroneous in view of the substantial evidence on the whole record. Kiawah Property Owners Group v. The Public Service Com’n of South Carolina (S.C. 2004) 357 S.C. 232, 593 S.E.2d 148. Public Utilities 195

In reviewing a workers’ compensation commission decision, reviewing court will not overturn factual findings unless clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 1939.3

Under clearly erroneous standard of review of a decision of the full Workers’ Compensation Commission, substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the full Commission reached. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 1939.4(1)

The Court of Appeals may reverse or modify an administrative decision if such decision is affected by errors of law, characterized by an abuse of discretion, or clearly erroneous in view of the substantial evidence on the whole record. Professional Samplers, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1999) 334 S.C. 392, 513 S.E.2d 374. Administrative Law And Procedure 754.1; Administrative Law And Procedure 763; Administrative Law And Procedure 791

The State Board of Medical Examiner’s factual findings in a disciplinary proceeding for misconduct were supported by substantial evidence where the record contained “relevant evidence which a reasonable mind might accept as adequately supporting the [board’s] conclusion”; however, the board improperly found the doctor guilty of obtaining incomplete surgical consent forms from patients where the complaint only charged misconduct connected with the improper filing of insurance claims. Wilson v. State Bd. of Medical Examiners (S.C. 1991) 305 S.C. 194, 406 S.E.2d 345.

Although under the Administrative Procedures Act, the Supreme Court may not substitute its judgment for that of a state agency as to the weight of evidence on questions of fact, the Supreme Court may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record. Welch Moving and Storage Co., Inc. v. Public Service Com’n of South Carolina (S.C. 1990) 301 S.C. 259, 391 S.E.2d 556. Administrative Law And Procedure 791; Administrative Law And Procedure 793

On review of the findings supporting an agency decision such as a finding of total disability made by the Industrial Commission, the Court of Appeals is limited by Section 1‑23‑380(g)(5) [now Section 1‑23‑380(A)(6)(e)] to a determination of whether the Commission’s findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91. Administrative Law And Procedure 791

Judicial review and reversal of Industrial Commission decisions are permitted under Section 1‑23‑380(g) [now Section 1‑23‑380(A)(6)], where administrative findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Goff v. Mills (S.C. 1983) 279 S.C. 382, 308 S.E.2d 778.

14. Standing to challenge agency holding

Auto dealerships that were not paid by another dealer who in turn auctioned the autos had standing to challenge Department of Highways and Public Transportation’s decision not to suspend or revoke the erroneously issued certificates of title, and Department’s refusal directly violated Code Section 56‑19‑440(1)(a). 1972 1972 Capri ID GAECMRH7509 v. South Carolina Dept. of Highways and Public Transp. (S.C. 1979) 274 S.C. 88, 261 S.E.2d 307.

14.5. Jurisdiction

A civil cover sheet, which was not required by statute, was not essential to invoke the jurisdiction of circuit court in an appeal from decision of the Appellate Panel of Workers’ Compensation Commission; cover sheet was required for the purposes of administration and was at most a ministerial requirement. Paschal v. Price (S.C.App. 2008) 380 S.C. 419, 670 S.E.2d 374, rehearing denied, certiorari granted, affirmed 392 S.C. 128, 708 S.E.2d 771. Workers’ Compensation 1872

15. Irregularity in agency proceedings

Under Section 1‑23‑380(g) [now Section 1‑23‑380(A)(5)], a circuit court reviewing an agency proceeding has the discretion to order discovery and admit extrinsic evidence concerning alleged irregularity in the agency proceeding. Ross v. Medical University of South Carolina (S.C. 1994) 317 S.C. 377, 453 S.E.2d 880, rehearing denied. Administrative Law And Procedure 676

In reviewing a determination of the Workers’ Compensation Commission as to jurisdiction, the Circuit Court did not err by substituting its judgment for that of the commission as to the weight of evidence on questions of fact; although judicial review of a workers’ compensation decision is governed by the substantial evidence rule of the Administrative Procedures Act, Section 1‑23‑380, in cases where the commission’s jurisdiction is at issue, the reviewing court is not bound by the commission’s findings of fact upon which jurisdiction is dependent. Wilson v. Georgetown County (S.C. 1994) 316 S.C. 92, 447 S.E.2d 841.

16. Appearance as waiver of objection

Parties waived any objection they may have had to the failure to file summons and petition for review where they appeared without making an objection. Parker v. South Carolina Public Service Com’n (S.C. 1986) 288 S.C. 304, 342 S.E.2d 403. Administrative Law And Procedure 725

16.5. Decision of Board of Medical Examiners

A physician has the ability to appeal to the Administrative Law Court (ALC) an interlocutory disciplinary decision by the Board of Medical Examiners if a review of the final decision would not provide an adequate remedy. Island Packet v. Kittrell (S.C. 2005) 365 S.C. 332, 617 S.E.2d 730. Health 223(1)

Temporary suspension orders of physician in disciplinary proceeding before the Board of Medical Examiners, and order that required physician to undergo a mental or physical examination, were not final decisions appealable to the Administrative Law Court (ALC); the Board issued the orders pending hearings and final order, the Board retracted publication of the temporary orders, and review of any final order would provide the physician with an adequate remedy. Island Packet v. Kittrell (S.C. 2005) 365 S.C. 332, 617 S.E.2d 730. Health 223(1)

17. Decisions of Administrative Law Judge

Administrative law court’s discovery order compelling Attorney General to produce documents in cigarette importer’s challenge to Attorney General’s decision that importer was not tobacco product manufacturer was immediately appealable as preliminary, procedural, or intermediate agency action or ruling when review of the final agency decision would not provide an adequate remedy. Tobaccoville USA, Inc. v. McMaster (S.C. 2010) 387 S.C. 287, 692 S.E.2d 526. States 127

Board of Department of Health and Environmental Control, as the reviewing tribunal of ALJ’s decision as finder of fact in hearing over issuance of stormwater permit for proposed motor speedway by Department’s Office of Ocean and Coastal Resource Management (OCRM), lacked authority under Administrative Procedures Act to make its own findings of fact regarding whether OCRM conducted a consistency review meeting terms of Costal Management Plan (CMP) when issuing permit; though ALJ did determine that proposed speedway met requirements of CMP, ALJ’s opinion lacked any findings of fact and conclusions of law that would have allowed Board to conduct an acceptable review of issue, and rather than making its own findings of fact Board should have remanded matter to ALJ for a clarifying order. Brown v. South Carolina Dept. of Health and Environmental Control (S.C. 2002) 348 S.C. 507, 560 S.E.2d 410, rehearing denied. Environmental Law 222

Recipient of aid to families with dependent children (AFDC) benefits was not required to take her appeal of the recoupment decision of Fair Hearing Committee to the Administrative Law Judges Division. Goodwine v. Dorchester Dept. of Social Services (S.C.App. 1999) 336 S.C. 413, 519 S.E.2d 116, rehearing denied. Public Assistance 127; Public Assistance 130

18. Burden of proof

Because the Public Service Commission’s (PSC) findings are presumptively correct, the party challenging the PSC’s order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole. South Carolina Energy Users Committee v. South Carolina Elec. and Gas (S.C. 2014) 410 S.C. 348, 764 S.E.2d 913. Public Utilities 195

The burden is on appellants to prove convincingly that an administrative agency’s decision is unsupported by the evidence. Tennis v. South Carolina Dept. of Social Services (S.C.App. 2003) 355 S.C. 551, 585 S.E.2d 312. Administrative Law And Procedure 750

Because the Public Service Commission’s findings are presumptively correct, the party challenging a Commission order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. Duke Power Co. v. Public Service Com’n of South Carolina (S.C. 2001) 343 S.C. 554, 541 S.E.2d 250, rehearing denied. Public Utilities 195

Because the Public Service Commission’s (PSC) findings are presumptively correct, the party challenging a PSC order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Public Utilities 195

19. Damages

Towing company could not recover money damages from Department of Public Safety when it was removed from Department’s wrecker rotation list in violation of the Administrative Procedures Act (APA), as the APA allowed a party to seek judicial review upon exhaustion of administrative remedies, but it did not provide for an assessment of civil penalties against an agency found to be in violation of its provisions. Marietta Garage, Inc. v. South Carolina Dept. of Public Safety (S.C.App. 2002) 352 S.C. 95, 572 S.E.2d 306. Automobiles 63

20. Witnesses

The final determination of witness credibility and the weight assigned to the evidence is reserved to the Appellate Panel in a workers’ compensation proceeding. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 1820

**SECTION 1‑23‑390.** Supreme Court review.

 An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

HISTORY: 1977 Act No. 176, Art. II, Section 9; 1999 Act No. 55, Section 4; 2006 Act No. 387, Section 3, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment added “or the court of appeals” and made nonsubstantive changes.

CROSS REFERENCES

Appeals of determination of panel of State Human Affairs Commission on discrimination in public accommodations complaint must be made pursuant to this section, see Section 45‑9‑75.

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

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LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Administrative law. 43 S.C. L. Rev. 6 (Autumn 1991).

NOTES OF DECISIONS

In general 1

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Interlocutory orders 3

1. In general

Supreme Court employs a deferential standard of review when reviewing a decision from the Public Service Commission (PSC) and will affirm the PSC’s decision if it is supported by substantial evidence. South Carolina Energy Users Committee v. South Carolina Elec. and Gas (S.C. 2014) 410 S.C. 348, 764 S.E.2d 913. Public Utilities 194

General appealability statute, allowing appeals from decisions “involving the merits,” has no place in the Administrative Procedure Act (APA), which establishes a different appellate scheme. Levi v. Northern Anderson County EMS (S.C.App. 2014) 409 S.C. 374, 762 S.E.2d 44, rehearing denied, certiorari denied. Administrative Law and Procedure 651

Circuit court’s order which reversed a decision of the Workers’ Compensation Commission and remanded the case for further proceedings was not a final judgment for purposes of appeal; it remanded the matter to the Commission for further proceedings and, thus, left matters to be determined, rather than disposing of the whole subject matter of the action. Martinez v. Spartanburg County (S.C. 2014) 406 S.C. 532, 753 S.E.2d 436. Workers’ Compensation 1956

For purposes of the provision of Administrative Procedures Act (APA) stating that an aggrieved party may obtain a review of a final judgment of the circuit court or the Court of Appeals by taking an appeal in the manner provided by the appellate court rules as in other civil cases, the term “final judgment” means a judgment that finally disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to execute the judgment. (Per Beatty, J., with one justice concurring and one justice concurring in result.) Code 1976, Section 1‑23‑390. Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 681.1

Circuit court order remanding matter to the Workers’ Compensation Commission (WCC) for further proceedings after concluding that claimant suffered a compensable injury did not constitute a “final judgment,” as required by appeal provision of Administrative Procedures Act (APA), and thus, the order was not immediately appealable. (Per Beatty, J., with one justice concurring and one justice concurring in result.) Code 1976, Section 1‑23‑390. Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Workers’ Compensation 1834

Provision of Administrative Procedures Act (APA) limiting appeals to those from final judgments, rather than general appealability statute allowing interlocutory appeals “involving the merits,” applied to determine the appealability of circuit court order remanding matter to the Workers’ Compensation Commission (WCC) for further proceedings after concluding that claimant suffered a compensable injury; APA controlled over general provisions that conflicted with its terms. Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Workers’ Compensation 1834; Workers’ Compensation 1910

The meaning of the term “final judgment” as used in provision of Administrative Procedures Act (APA) stating that an aggrieved party may obtain a review of a final judgment of the circuit court or the Court of Appeals by taking an appeal in the manner provided by the appellate court rules as in other civil cases is not defined by using the exceptions that are present in the general appealability statute, whether or not the statute is specifically referenced. (Per Beatty, J., with one justice concurring and one justice concurring in result.) Code 1976, Section 1‑23‑390. Bone v. U.S. Food Service (S.C. 2013) 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 681.1

Appeals in administrative agency matters are handled differently than appeals in other cases, and Administrative Procedures Act’s (APA) mechanisms for review provide uniform procedures after the exhaustion of administrative remedies, and the APA’s provisions are controlling in agency matters and supersede any conflicting provisions. Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 657.1

Administrative Procedures Act’s (APA) requirement of review of a final decision, and its statutory mandate for the exhaustion of administrative remedies, serves (1) to protect the administrative agency’s authority and (2) to promote efficiency. immediately appealable. Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 229; Administrative Law and Procedure 704

Appellate review of workers’ compensation decisions is governed by the Administrative Procedures Act. Foggie v. General Elec. Co. (S.C.App. 2008) 376 S.C. 384, 656 S.E.2d 395. Workers’ Compensation 1834

Circuit court’s order remanding workers’ compensation proceeding on the issue of claimant’s permanent total disability, as well as issue of whether employer was entitled to a credit for previous disability award to employer, was not a final decision on the merits, and thus order was not immediately appealable. Foggie v. General Elec. Co. (S.C.App. 2008) 376 S.C. 384, 656 S.E.2d 395. Workers’ Compensation 1956

Circuit court’s order remanding workers’ compensation case to Workers’ Compensation Commission was final decision on merits on issue of cause apportionment of claimant’s disease, and thus, appealable; order finally determined that claimant’s smoking, which was non‑compensable cause, contributed to his disability, circuit court ruled that employer was entitled to determination of proportion allocable to non‑compensable cause, and case was remanded, not for evaluation whether apportionment was appropriate, but with specific direction to make necessary findings as to apportionmentbetween compensable versus non‑compensable causes, and corresponding reduction in claimant’s disability award. Brown v. Greenwood Mills, Inc. (S.C.App. 2005) 366 S.C. 379, 622 S.E.2d 546, rehearing denied, certiorari denied. Workers’ Compensation 1956

An order of the circuit court remanding a case for additional proceedings before an administrative agency, such as the Workers’ Compensation Commission, is not directly appealable. Montjoy v. Asten‑Hill Dryer Fabrics (S.C. 1994) 316 S.C. 52, 446 S.E.2d 618. Administrative Law And Procedure 701; Workers’ Compensation 1956

A landowner who claimed that a town ordinance was constitutionally invalid based of the denial of his building permit was required to exhaust his administrative remedies, despite his claim that the Board of Adjustments had affirmed the denial of a similar permit to another landowner, where the board’s vote to deny the other permit was not unanimous and the composition of the board had changed substantially since that decision; thus, the landowner failed to show that the pursuit of administrative remedies would have been futile. Stanton v. Town of Pawley’s Island (S.C. 1992) 309 S.C. 126, 420 S.E.2d 502, rehearing denied. Zoning And Planning 1571

Although under the Administrative Procedures Act, the Supreme Court may not substitute its judgment for that of a state agency as to the weight of evidence on questions of fact, the Supreme Court may reverse or modify decisions which are clearly erroneous in view of the substantial evidence on the whole record. Welch Moving and Storage Co., Inc. v. Public Service Com’n of South Carolina (S.C. 1990) 301 S.C. 259, 391 S.E.2d 556. Administrative Law And Procedure 791; Administrative Law And Procedure 793

2. Construction with other laws

While appeals from the circuit court are subject to the general appealability statute, which allows appeals from interlocutory orders in certain instances, such as where the interlocutory order involves the merits, this provision and its concepts are inapplicable in matters subject to the Administrative Procedures Act (APA). Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 681.1

General appealability statute, allowing interlocutory appeals in certain instances, was not applicable in workers’ compensation case, and instead, specific statute in the Administrative Procedures Act (APA), that governed appeals from the circuit court in Workers’ Compensation Commission cases, applied. Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Workers’ Compensation 1956

In agency appeals, the Administrative Procedures Act (APA) is controlling over general provisions that conflict with its terms. Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Administrative Law and Procedure 657.1

3. Interlocutory orders

Circuit court order, remanding the matter to the Workers’ Compensation Commission for further proceedings, did not constitute a “final judgment,” as required by appeal provision of Administrative Procedures Act (APA), and thus, circuit court’s order was not immediately appealable. Bone v. U.S. Food Service (S.C. 2012) 399 S.C. 566, 733 S.E.2d 200, adhered to on rehearing 404 S.C. 67, 744 S.E.2d 552. Workers’ Compensation 1956

**SECTION 1‑23‑400.** Application of article.

 The provisions of this article shall not apply to any matters pending on June 13, 1977. The provisions of Sections 1‑23‑360 and 1‑23‑370 shall not apply to any agency which under existing statutes have established and follow notice and hearing procedures which are in compliance with such sections.

HISTORY: 1977 Act No. 176, Art. II, Section 10.

CROSS REFERENCES

Application of this section to the imposition of fines for violations of sections 44‑7‑80 through 44‑7‑90, dealing with Medicaid Nursing Home permits, see Section 44‑7‑90.

Detailed implementation of provisions regarding permits for vehicles exceeding maximum size, weight or load do not have general applicability to public, and are exempt from requirement of General Assembly approval, as prescribed in this chapter, see Section 57‑3‑130.

Regulations of SC Edisto Development Authority to be promulgated in accordance with this Chapter, see Section 13‑21‑190.

Regulations of SC Midlands Authority to be promulgated in accordance with this Chapter, see Section 13‑19‑180.

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NOTES OF DECISIONS

In general 1

1. In general

The Administrative Procedures Act establishes the standard of review for decisions by the Workers’ Compensation Commission. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 1910

In reviewing an agency procedure under the Administrative Procedures Act, Section 1‑23‑310 et seq., a circuit court has the discretion to order discovery and admit extrinsic evidence concerning alleged irregularities in the agency proceeding. Ross v. Medical University of South Carolina (S.C. 1994) 317 S.C. 377, 453 S.E.2d 880, rehearing denied. Administrative Law And Procedure 676

A proceeding under the Administrative Procedure Act, Section 1‑23‑310 et seq., is considered a civil action for purposes of recovering attorney’s fees. Ross v. Medical University of South Carolina (S.C.App. 1993) 312 S.C. 532, 435 S.E.2d 877, rehearing denied, certiorari granted, reversed 317 S.C. 377, 453 S.E.2d 880. Administrative Law And Procedure 686

Where provisions of the Administrative Procedures Act (APA) and the Workers Compensation Act conflict, the APA controls. Thus, a notice of appeal which failed to state the grounds or errors of law in support of the appeal as required by the APA, could not be amended after expiration of the 30‑day statutory period for filing the appeal under the APA. Pringle v. Builders Transport (S.C. 1989) 298 S.C. 494, 381 S.E.2d 731.

Where provisions of the Administrative Procedures Act (APA) and the Workers’ Compensation Act directly conflict, the APA controls. However, where the APA is silent, specific provisions of existing agency law retain their viability. Since the APA contains no express provisions regarding the proper county for judicial review which impliedly repealed the forum provisions of Section 42‑17‑60, that statute continues to govern judicial review of workers’ compensation decisions. Williams v. South Carolina Dept. of Wildlife (S.C. 1987) 295 S.C. 98, 367 S.E.2d 418.

ARTICLE 5

South Carolina Administrative Law Court

Editor’s Note

2004 Act No. 202, Section 3, provides as follows:

“Wherever the term ‘Administrative Law Judge Division’ appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act.”

**SECTION 1‑23‑500.** South Carolina Administrative Law Court created; number of judges.

 There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 9; 2004 Act No. 202, Section 1, eff April 26, 2004.

Effect of Amendment

The 2004 amendment deleted the designation preceding former subsection (A) and rewrote the paragraph, substituting “Administrative Law Court” for “Administrative Law Judge Division”, and deleted subsection (B) relating to a feasibility study by the Judicial Council.

CROSS REFERENCES

Board of Architectural Examiners may seek injunction from Administrative Law Court against unregistered architect or illegal practice by architect, see Section 40‑3‑100.

Board of Health and Environmental Control may hear appeals of decisions of Administrative Law Court pursuant to this Chapter, see Section 44‑1‑60.

Use of Administrative Law Court procedures for subpoenas and injunctions by Board of Chiropractic Examiners, see Section 40‑9‑95.

Use of Administrative Law Court procedures in proceedings relative to the Revenue Proceedings Act, see Section 12‑60‑30.

Use of Administrative Law Court procedures in proceedings relative to the State Board of Dentistry, see Section 40‑15‑185 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak443.

Administrative Law and Procedure 443.

C.J.S. Public Administrative Law And Procedure Section 138.

NOTES OF DECISIONS

In general 1

1. In general

Inmate seeking review by an administrative law judge of the Department of Correction’s final decision in a non‑collateral or administrative matter must file and serve a notice of appeal upon specified parties within thirty days of receipt of written notice of Department’s final decision. Al‑Shabazz v. State (S.C. 2000) 338 S.C. 354, 527 S.E.2d 742. Prisons 293

**SECTION 1‑23‑505.** Definitions.

 As used in this article:

 (1) “Administrative law judge” means a judge of the South Carolina Administrative Law Court created pursuant to Section 1‑23‑500.

 (2) “Agency” means a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.

 (3) “Contested case” means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

 (4) “License” includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

 (5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

 (6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 2008 Act No. 334, Section 1, eff June 16, 2008.

Notes of Decisions

Contested case 1

1. Contested case

Letter from Department of Health and Environmental Control (DHEC), declining hospital’s request for final review conference on whether competitor was required to obtain certificate of need (CON) or Non‑Applicability Determination (NAD) to operate urgent care center, did not give rise to a final agency decision subject to a contested case proceeding, despite reference in letter to statute providing that a department decision became final if a final review conference was not timely conducted, as there was no original decision that could have become final; competitor neither sought nor received formal approval for a CON or a NAD, and there was no license, order, or decision issued. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

Telephone conversation in which staff member of Department of Health and Environmental Control (DHEC) informed hospital’s attorney that DHEC had decided not to require hospital’s competitor to apply for a Certificate of Need (CON) or a Non‑Applicability Determination (NAD) for competitor’s urgent care center, was not a “staff decision” on the grant or denial of a license, license, permit, or other matter for which a determination was required by law, and, therefore, did not entitle hospital to a contested case hearing. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

Exemption of hospital’s competitor from process of obtaining a certificate of need (CON) or a Non‑Applicability Determination (NAD) for its urgent care center, based on status of urgent care center as the office of a licensed private practitioner, did not require a formal written, determination by Department of Health and Environmental Control (DHEC) and, therefore, did not give rise to jurisdiction of Administrative Law Court over contested case proceeding brought by hospital. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

**SECTION 1‑23‑510.** Election of judges; terms.

 (A) The judges of the division must be elected by the General Assembly in joint session, for a term of five years and until their successors are elected and qualify; provided, that of those judges initially elected, the chief judge, elected to Seat 1 must be elected for a term of five years, the judge elected to Seat 2 must be elected for a term of three years, the judge elected to Seat 3 must be elected for a term of one year. The remaining judges of the division must be elected for terms of office to begin February 1, 1995, for terms of five years and until their successors are elected and qualify; provided, that those judges elected to seats whose terms of office are to begin on February 1, 1995, to Seat 4 must be initially elected for a term of five years, the judge elected to Seat 5 must be initially elected for a term of three years, and the judge elected to Seat 6 must be initially elected for a term of one year. The terms of office of the judges of the division for Seats 1, 2, and 3 shall begin on March 1, 1994. The terms of office of the judges of the division for Seats 4, 5, and 6 shall begin on February 1, 1995. The terms of office of each of the seats shall terminate on the thirtieth day of June in the final year of the term for the respective seats.

 (B) In electing administrative law judges, race, gender, and other demographic factors including age, residence, type of practice, and law firm size should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State.

 (C) Before election as an administrative law judge, a candidate must undergo screening pursuant to the provisions of Section 2‑19‑10, et seq.

 (D) Each seat on the division must be numbered. Elections are required to be for a specific seat. The office of chief administrative law judge is a separate and distinct office for the purpose of an election.

 (E) In the event that there is a vacancy in the position of the chief administrative law judge or for any reason the chief administrative law judge is unable to act, his powers and functions must be exercised by the most senior administrative law judge as determined by the date of their election to the division.

HISTORY: 1993 Act No. 181, Section 19; 1999 Act No. 39, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 283k8; 283k50.

Officers and Public Employees 8, 50.

C.J.S. Officers and Public Employees Sections 47, 86 to 90, 92 to 94.

**SECTION 1‑23‑520.** Eligibility for office.

 No person is eligible for the office of law judge of the division who does not at the time of his election meet the qualification for justices and judges as set forth in Article V of the Constitution of this State.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 283k18.

Officers and Public Employees 18.

C.J.S. Officers and Public Employees Sections 21 to 22.

**SECTION 1‑23‑525.** Members of General Assembly disqualified for office of law judge.

 No member of any General Assembly who is not otherwise prohibited from being elected to an administrative law judge position may be elected to such position while he is a member of the General Assembly and for a period of four years after he ceases to be a member of the General Assembly.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 283k30.3.

Officers and Public Employees 30.3.

C.J.S. Officers and Public Employees Section 41.

**SECTION 1‑23‑530.** Oath of office.

 The judges of the division shall qualify after the date of their election by taking the constitutional oath of office.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 283k36.

Officers and Public Employees 36.

C.J.S. Officers and Public Employees Sections 59 to 60, 62.

**SECTION 1‑23‑535.** Official seal.

 The Administrative Law Court shall have a seal with a suitable inscription, an impression of which must be filed with the Secretary of State.

HISTORY: 2008 Act No. 334, Section 2, eff June 16, 2008.

**SECTION 1‑23‑540.** Compensation; full‑time position.

 The chief judge (Seat 1) shall receive as annual salary equal to ninety percent of that paid to the circuit court judges of this State. The remaining judges shall receive as annual salary equal to eighty percent of that paid to the circuit court judges of this State. They are not allowed any fees or perquisites of office, nor may they hold any other office of honor, trust, or profit. Administrative law judges in the performance of their duties are also entitled to that per diem, mileage, expenses, and subsistence as is authorized by law for circuit court judges.

 Each administrative law judge shall devote full time to his duties as an administrative law judge, and may not practice law during his term of office, nor may he during this term be a partner or associate with anyone engaged in the practice of law in this State.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 283k93.

Officers and Public Employees 93.

C.J.S. Officers and Public Employees Sections 270 to 271.

**SECTION 1‑23‑550.** Vacancies.

 All vacancies in the office of administrative law judge must be filled in the manner of original appointment. When a vacancy is filled, the judge elected shall hold office only for the unexpired term of his predecessor.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Searches: 283k57 to 283k59.

Officers and Public Employees 57 to 59.

C.J.S. Officers and Public Employees Sections 53, 105 to 109.

**SECTION 1‑23‑560.** Application of Code of Judicial Conduct; complaints against administrative law judges; attending judicial‑related functions.

 Administrative law judges are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for administrative law judges are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against administrative law judges for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge and the judge’s spouse or guest may accept an invitation to attend a judicial‑related or bar‑related function, or an activity devoted to the improvement of the law, legal system, or the administration of justice.

HISTORY: 1993 Act No. 181, Section 19; 2008 Act No. 334, Section 6, eff June 16, 2008; 2014 Act No. 146 (S.405), Section 1, eff April 7, 2014.

Effect of Amendment

The 2008 amendment added the second sentence referring to Code of Judicial Conduct, Rule 502, Rule 7, and the fourth sentence relating to invitations to judicial‑related functions; and, in the third sentence, added “, which” following “Commission” and substituted “shall use the procedure contained in” for “pursuant to”.

2014 Act No. 146, Section 1, rewrote the third sentence, removing reference to the State Ethics Commission.

LIBRARY REFERENCES

Westlaw Key Number Searches: 227k11(2); 283k110.

Judges 11(2).

Officers and Public Employees 110.

C.J.S. Judges Sections 35 to 36, 43.

C.J.S. Officers and Public Employees Sections 234 to 245.

**SECTION 1‑23‑570.** Chief Judge responsible for administration of division.

 The Chief Judge of the Administrative Law Judge Division is responsible for the administration of the division, including budgetary matters, assignment of cases, and the administrative duties and responsibilities of the support staff. The chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 3.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak443; 283k110.

Administrative Law and Procedure 443.

Officers and Public Employees 110.

C.J.S. Officers and Public Employees Sections 234 to 245.

C.J.S. Public Administrative Law And Procedure Section 138.

**SECTION 1‑23‑580.** Clerk of division; assistants to administrative law judges; other staff.

 (A) A clerk of the division, to be appointed by the chief judge, must be appointed and is responsible for the custody and keeping of the records of the division. The clerk of the division shall perform those other duties as the chief judge may prescribe.

 (B) Each administrative law judge may appoint, hire, contract, and supervise an administrative assistant as individually allotted and authorized in the annual general appropriations act.

 (C) The other support staff of the division is as authorized by the General Assembly in the annual general appropriations act and shall be hired, contracted, and supervised by the chief judge. The division may engage stenographers for the transcribing of the proceedings in which an administrative law judge presides. It may contract for these stenographic functions, or it may use stenographers provided by the agency or commission.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 283k13.

Officers and Public Employees 13.

C.J.S. Officers and Public Employees Section 53.

**SECTION 1‑23‑590.** Appropriation of funds.

 The General Assembly in the annual general appropriations act shall appropriate those funds necessary for the operation of the Administrative Law Judge Division.

HISTORY: 1993 Act No. 181, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k129.

States 129.

C.J.S. States Sections 230, 232.

**SECTION 1‑23‑600.** Hearings and proceedings.

 (A) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1‑23‑505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1‑30‑10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the:

 (1) Consolidated Procurement Code;

 (2) Public Service Commission;

 (3) Department of Employment and Workforce;

 (4) Workers’ Compensation Commission, except as provided in Section 42‑15‑90; or

 (5) other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court. Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence. The South Carolina Rules of Evidence apply in all contested case proceedings before the Administrative Law Court.

 (B) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court’s rules of procedure. A party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case. Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.

 (C) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge shall render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

 (D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11‑35‑4410, and an appeal from the Workers’ Compensation Commission is to the court of appeals as provided in Section 42‑17‑60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence‑related credits pursuant to Section 24‑13‑210(A) or Section 24‑13‑230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.

 (E) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1‑23‑380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1‑23‑610.

 (F) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1‑23‑630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

 (G) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by an agency or by a department of the executive branch of government, as defined in Section 1‑30‑10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department or agency of the executive branch of government authorized by law to seek an administrative process may apply to the Administrative Law Court to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department or agency of the executive branch of government may apply to the Administrative Law Court for relief from the process as provided in the Rules of the Administrative Law Court.

 (H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

 (2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. Requests for contested case hearings challenging only the amount of fines or penalties must be considered not to affect those portions of such orders imposing substantive requirements.

 (3) The general rule of item (2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

 (4)(a) Ninety days after a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection or for a determination of the applicability of the automatic stay. A hearing must be held within thirty days after any party files a motion with the court and serves the motion upon the parties. The court shall lift the stay unless the party that requested a contested case hearing proves: (i) the likelihood of irreparable harm if the stay is lifted, (ii) the substantial likelihood that the party requesting the contested case and stay will succeed on the merits of the case, (iii) the balance of equities weigh in favor of continuing the stay, and (iv) continuing the stay serves the public interest. The judge must issue an order no later than fifteen business days after the hearing is concluded. If the stay is lifted, action undertaken by the permittee or licensee does not moot and is not otherwise considered an adjudication of the issues raised by the request for a contested case hearing. Notwithstanding the provisions of this item, the process to lift a stay as provided in this item does not apply to a contested case concerning a permit or license involving hazardous waste as defined in Section 44‑56‑20(6), and a stay in such a contested case must not be lifted until the contested case is concluded and the Administrative Law Court has filed its final order in the matter.

 (b) Notwithstanding any other provision of law, in a contested case arising under this subsection, the Administrative Law Court shall file a final decision on the merits of the case no later than twelve months after the contested case is filed with the Clerk of the Administrative Law Court, unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise.

 (5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the Court of Appeals.

 (6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

 (I) If a final order of the Administrative Law Court is not appealed in accordance with the provisions of Section 1‑23‑610, upon request of a party to the proceedings, the clerk of the Administrative Law Court shall file a certified copy of the final order with a clerk of the circuit court, as requested, or court of competent jurisdiction, as requested. After filing, the certified order has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

 (J) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Sections 1, 5; 1995 Act No. 92, Section 1; 2004 Act No. 202, Section 2, eff April 26, 2004; 2006 Act No. 381, Section 1, eff June 13, 2006; 2006 Act No. 387, Section 4, eff July 1, 2006; 2007 Act No. 111, Pt I, Section 1, eff July 1, 2007, applicable to injuries that occur on or after that date; 2008 Act No. 188, Section 1, eff January 1, 2009; 2008 Act No. 201, Section 13, eff February 10, 2009; 2008 Act No. 334, Section 7, eff June 16, 2008; 2010 Act No. 278, Section 23, eff July 1, 2010; 2012 Act No. 183, Section 2, eff June 7, 2012; 2012 Act No. 212, Section 1, eff June 7, 2012; 2018 Act No. 134 (S.105), Section 1, eff March 12, 2018.

Code Commissioner’s Note

At the direction of the Code Commissioner, the 2006 amendments were read together. The text of the section as amended by Act 387 is set forth above, except that in subsection (B), “those matters which are otherwise provided for in title 56” was deleted following “Occupational Health and Safety Act”, in subparagraph (G)(3), “(G)” was substituted for “(F)”, and subsection (E) from Act 381 was added as subsection (H).

At the direction of the Code Commissioner, the amendment of this section by 2008 Act No. 334, Section 1, effective June 16, 2008, was deemed to prevail over the amendment by 2008 Act No. 201, Section 13, effective February 10, 2009, because it was enacted later. The section was also amended by 2008 Act No. 188, Section 1, effective January 1, 2009, to delete the reference to cases arising under the Occupational Safety and Health Act in subsection (B). Among other changes, the amendment by Act 334 redesignated subsection (B) as subsection (A) and included cases arising under the Occupational Safety and Health Act as item (1). At the direction of the Code Commissioner, the deletion of the reference to the Occupational Safety and Health Act by Act 188 effective January 1, 2009 was applied to subsection (A) as amended by Act 334 on the basis that the reference to OSHA was inadvertently included in the later act and its inclusion was not consistent with the intent of the General Assembly in passing Act 188. Accordingly, in subsection (A) as amended by Act 334, item (1) was deleted effective January 1, 2009, and items (2) to (6) redesignated as items (1) to (5).

At the direction of the Code Commissioner, the reference in subsection (E) to Section 1‑23‑380(A) was changed to Section 1‑23‑380 to conform to the amendment of that section by 2008 Act No. 334, Section 5.

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, “Department of Employment and Workforce” was substituted for all references to “Employment Security Commission”, and “Executive Director of the Department of Employment and Workforce” or “executive director” was substituted for all references to the “Chairman of the Employment Security Commission” or “chairman” that refer to the Chairman of the Employment Security Commission, as appropriate.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

2010 Act 278, Section 26, provides as follows:

“This act takes effect July 1, 2010; provided, the provisions of this act do not apply to any matter pending before a court of this State prior to June 1, 2010.”

Effect of Amendment

The 2004 amendment in subsection (A) substituted “must” for “shall” and “is responsible” for “shall be responsible”; in subsections (B) and (D) deleted “of the division” following “administrative law judge”; in subsection (B) substituted “Court” for “Judge Division”; in subsection (D), inserted “, or as otherwise provided by law,” following “Licensing and Regulation”; rewrote subsection (C); deleted subsection (E) relating to cases initiated before and after May 1, 1994; and made nonsubstantive changes.

The first 2006 amendment, in subsection (B), deleted “those matters which are otherwise provided for in Title 56,” following “Occupational Health and Safety Act”; and added subsection (E) [redesignated as (H)] relating to the filing of final orders.

The second 2006 amendment rewrote subsections (B) and (D) and added subsection (E), (F) and (G) relating to appeal of orders of the State Human Affairs Commission to the Administrative Law Court.

The 2007 amendment, in subsection (D), substituted “Court of Appeals” for “circuit court” relating to appeals from the Workers’ Compensation Commission.

The first 2008 amendment, in subsection (B), deleted “arising under the Occupational Safety and Health Act,”.

The second 2008 amendment, in subsection (B), added the second sentence relating to the standard of proof in a contested case’ and, in subsection (H), in the first sentence deleted “petition for judicial review of a” preceding “final order” and substituted “appealed” for “filed”.

The third 2008 amendment, deleted subsection (A) relating to the keeping and availability of records and reenacted it as subsection (C); redesignated subsections (B) and (C) as subsections (A) and (B); in subsection (A) substituted “1‑23‑505” for “1‑23‑310”, designated paragraphs (1) to (6) [redesignated as (1) to (5) effective January 1, 2009 at the direction of the Code Commissioner] from existing text, and added the second and third sentences of (6) [redesignated as (5)] relating to standard of proof and applicability of the South Carolina Rules of Evidence; in subsection (B), added the fourth sentence relating to notice of the contested case hearing; in subsection (D), added the second sentence relating to certain appeals from inmates; added subsection (E); redesignated subsections (E) to (H) as (F) to (I); in subsection (G), substituted “Administrative Law Court” for “chief administrative law judge” and added references to agencies of the executive branch in two places; in paragraph (H)(2), in the fourth sentence added “however,” and the fifth and sixth sentences; in paragraph (H)(3), substituted “(H)(2)” for “(G)(2)”; in paragraph (H)(4), added the second through fourth sentences; in paragraph (H)(5), deleted from the end “, or cases when Section 1‑23‑610(A) applies, the appropriate board or commission”; and, in subsection (I), in the first sentence deleted “petition for judicial review of a” preceding “final order” and substituted “filed” for “appealed”, “1‑23‑610” for “1‑23‑600” and ‘shall” for “must”.

The 2010 amendment added subsection (J) relating to priority of actions in different courts.

The first 2012 amendment in subsection (A)(4), inserted “, except as provided in Section 42‑15‑90”.

The second 2012 amendment in subsection (D), deleted “, and an appeal from the Department of Employment and Workforce is to the circuit court as provided in Section 41‑35‑750”, and made other changes.

2018 Act No. 134, Section 1, rewrote (H), providing for the imposition and duration of stays involving contested cases before the Administrative Law Court, the manner in which and requirements under which these stays may be lifted, exceptions to the general provision regarding the lifting of stays, and when the court must render a final decision on the merits of the contested case.

CROSS REFERENCES

Agritourism and Tourism‑Oriented Directional Signing, see S.C. Code of Regulations R. 63‑339.

Criminal Justice Academy, final decision by Law Enforcement Training Council, see S.C. Code of Regulations R. 37‑107.

Decisions by Administrative Law Judge Division available to public, see Section 12‑60‑3360.

Disqualification and suspension from participation in contracts with the South Carolina Department of Transportation, see S.C. Code of Regulations R. 63‑306.

For purposes of determining whether a domestic relations order is a qualified domestic relations order, the administrator of a retirement system or his designee is considered a single hearing officer within the meaning of this section, see Section 9‑18‑30.

Procedures for certification, Disadvantaged Business Enterprises Program, see S.C. Code of Regulations R. 63‑704.

Procedures for decertification, Disadvantaged Business Enterprises Program, see S.C. Code of Regulations R. 63‑706.

Relocation of displaced persons, review of applications for relocation assistance payments under Chapter 11 of Title 28 of the 1976 Code, see S.C. Code of Regulations R. 63‑322.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak443; 15Ak469.

Administrative Law and Procedure 443, 469.

C.J.S. Public Administrative Law And Procedure Sections 134, 136, 138 to 139.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 47, Board Review.

NOTES OF DECISIONS

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1. In general

Tax appeals to the Administrative Law Court (ALC) are subject to the Administrative Procedures Act (APA). Centex Intern., Inc. v. South Carolina Dept. of Revenue (S.C. 2013) 406 S.C. 132, 750 S.E.2d 65, rehearing denied. Taxation 3547

The ALJ presides over all hearings of contested Department of Health and Environmental Control (DHEC) permitting cases and, in such cases, serves as the finder of fact. Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2007) 372 S.C. 351, 641 S.E.2d 763, rehearing denied, certiorari denied. Environmental Law 17

In contested permitting cases of Department of Health and Environmental Control (DHEC), the ALJ serves as the finder of fact. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Health 242

Administrative Law Judge Division (ALJD) had jurisdiction to hear defendant’s appeal from the Department of Probation, Parole, and Pardon Services (DPPPS) decision that, as a violent offender, defendant was not parole eligible; defendant had a liberty interest in gaining access to the parole board. Furtick v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2003) 352 S.C. 594, 576 S.E.2d 146, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 2584, 539 U.S. 932, 156 L.Ed.2d 612. Pardon And Parole 62

Administrative Law Judge Division (ALJD) was required to reconsider findings in dispute over dock permit, which were based on interpretation and application by the Coastal Zone Management Appellate Panel of the Bureau of Ocean and Coastal Resource Management (OCRM) of its own regulations; ALJ denied permit at least partially on finding that dock would obstruct navigation and create problems with adjoining dock while OCRM panel ruled that regulation barring obstructions to navigation did not encompass problems between neighbors of conflicts with nearby docks. Dorman v. Department of Health and Environmental Control (S.C.App. 2002) 350 S.C. 159, 565 S.E.2d 119. Zoning And Planning 1724

Board of Department of Health and Environmental Control, as the reviewing tribunal of ALJ’s decision as finder of fact in hearing over issuance of stormwater permit for proposed motor speedway by Department’s Office of Ocean and Coastal Resource Management (OCRM), lacked authority under Administrative Procedures Act to make its own findings of fact regarding whether OCRM conducted a consistency review meeting terms of Coastal Management Plan (CMP) when issuing permit; though ALJ did determine that proposed speedway met requirements of CMP, ALJ’s opinion lacked any findings of fact and conclusions of law that would have allowed Board to conduct an acceptable review of issue, and rather than making its own findings of fact Board should have remanded matter to ALJ for a clarifying order. Brown v. South Carolina Dept. of Health and Environmental Control (S.C. 2002) 348 S.C. 507, 560 S.E.2d 410, rehearing denied. Environmental Law 222

1.5. Jurisdiction

Landowners’ challenge to enforcement order of Department of Health and Environmental Control (DHEC), assessing penalty against them for violating conditions of critical area permit to construct replacement bulkhead and requiring them to restore impacted portion of critical area to its previous condition, was not within statute providing for judicial review of revocation of permit applications, rather, matter was governed by Administrative Procedures Act (APA), which gave Administrative Law Court (ALC) exclusive jurisdiction to hear challenge. Berry v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 402 S.C. 358, 742 S.E.2d 2. Environmental Law 143; Environmental Law 633; Environmental Law 640

Administrative Law Court (ALC) had subject matter jurisdiction over prisoner’s appeal from Department of Corrections’ finding that prisoner provided legal assistance to illiterate inmate in drafting motion for postconviction relief, where claim raised as applied constitutional challenge to policy. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Prisons 293

Prisoner did not have state‑protected liberty interest in unearned good‑time credits, and therefore, amended statute depriving Administrative Law Court (ALC) of jurisdiction over prisoner’s appeal from disciplinary sanction imposed by Department of Corrections, namely, loss of opportunity to earn credits during month of prison infraction, did not implicate procedural or substantive due process; however, the ALC retained jurisdiction over prisoner’s appeal to extent prisoner challenged loss of earned credits; abrogating Furtick v. South Carolina Department of Corrections, 374 S.C. 334, 649 S.E.2d 35. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Constitutional Law 4829; Prisons 293

Administrative Law Court had subject matter jurisdiction over a petition for revocation of nightclub’s liquor license initiated by the Department of Revenue, even if the license was surrendered after commencement of the revocation proceedings. South Carolina Dept. of Revenue v. Club Rio (S.C.App. 2011) 392 S.C. 636, 709 S.E.2d 690. Intoxicating Liquors 108.1

2. Parties

Bureau of Ocean and Coastal Resource Management (OCRM) was proper party to present arguments before Coastal Zone Management Appeal Panel or circuit court on appeal as to proper implementation and interpretation of regulations OCRM was charged with administering in dispute over dock permit; while OCRM did not appeal the ALJ’s order, it remained party at all levels to represent its policy stance. Dorman v. Department of Health and Environmental Control (S.C.App. 2002) 350 S.C. 159, 565 S.E.2d 119. Zoning And Planning 1436; Zoning And Planning 1601

2.5. Findings of fact

Vacation of the administrative law judge’s (ALJ) order, which affirmed the dismissal of unemployment compensation claimant’s appeal as untimely based on claimant’s action of depositing the appeal in an improper mailbox, was warranted; the appellate panel’s decision was based on claimant’s untimely action of depositing the appeal in the mailbox, and the ALJ did not review the finding made by the appellate panel, but instead affirmed based on its own finding, which was not made by the appellate panel. Stubbs v. South Carolina Dept. of Employment and Workforce (S.C.App. 2014) 407 S.C. 288, 755 S.E.2d 114. Unemployment Compensation 313

The Administrative Law Court (ALC) presides over all hearings of contested Department of Health and Environmental Control (DHEC) permitting cases and, in such cases, serves as the fact‑finder and is not restricted by the findings of the administrative agency. Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Environmental Law 17

In administrative law cases, the Administrative Law Court (ALC) serves as the fact‑finder and is not restricted by the findings of the administrative agency. Terry v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 569, 660 S.E.2d 291. Administrative Law And Procedure 513

3. Standard of review

Board of Department of Health and Environmental Control (DHEC), in reviewing permitting case for outpatient surgical clinic, was required to apply substantial‑evidence standard, not de novo standard. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Health 245

4. Appeals

The factors to be considered by the Administrative Law Court (ALC) in deciding whether to close physician disciplinary proceedings before it, when the closure is contested, may not be limited to, but should include: (1) the ensuring of fairness, (2) the need for witness cooperation, (3) the reliance of the parties upon confidentiality, (4) the public or professional significance of the proceeding, and (5) the harm to parties from disclosure. Island Packet v. Kittrell (S.C. 2005) 365 S.C. 332, 617 S.E.2d 730. Health 215

In closing physician disciplinary proceedings, the Administrative Law Court (ALC) is required to issue an order stating specific findings of fact balancing the interests of the physician and the public and explaining the need for closure of the proceedings. Island Packet v. Kittrell (S.C. 2005) 365 S.C. 332, 617 S.E.2d 730. Health 215

On appeal of contested permitting case from Department of Health and Environmental Control Board (DHEC), a reviewing tribunal must affirm the ALJ if the findings are supported by substantial evidence, not based on the Board’s own view of the evidence. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Health 245

**SECTION 1‑23‑610.** Judicial review of final decision of administrative law judge; stay of enforcement of decision.

 (A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

 (2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge’s decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

 (B) The review of the administrative law judge’s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

 (a) in violation of constitutional or statutory provisions;

 (b) in excess of the statutory authority of the agency;

 (c) made upon unlawful procedure;

 (d) affected by other error of law;

 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1993 Act No. 181, Section 19; 2006 Act No. 387, Section 5, eff July 1, 2006; 2008 Act No. 334, Section 8, eff June 16, 2008.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section.

The 2008 amendment rewrote this section.

CROSS REFERENCES

Appeals of final decisions made by the Administrative Law Court in matters of contested revenue case hearings shall be made in accordance with this section, see Section 12‑60‑3380.

Clarification of county boundaries, role of South Carolina Geodetic Survey, contested case hearings, see Section 27‑2‑105.

Procedure to obtain review of decisions made under authority of Department of Employment and Workforce, see Section 41‑35‑750.

Right of person aggrieved to judicial review of final decision of Administrative Law Judge, see Section 1‑23‑380.

LIBRARY REFERENCES

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C.J.S. Public Administrative Law And Procedure Sections 151, 166 to 171, 204, 206, 209, 212 to 226, 244, 246.

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S.C. Jur. Labor Relations Section 38, Enforcement Procedure.

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Employment Coordinator Workplace Safety Section 4:863, Review by Administrative Law Court.

LAW REVIEW AND JOURNAL COMMENTARIES

Al‑Shabazz v. State: Excluding NonCollateral Claims from the Scope of Post‑Conviction Relief. 51 S.C. L. Rev. 839 (Summer 2000).

NOTES OF DECISIONS

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1. In general

Administrative Law Court’s initial ruling that employer’s evidence failed to show that employee committed misconduct connected with work based on positive drug screen or gross misconduct due to failure to comply with state or federal drug and alcohol testing, as statutory ground for finding that employee was ineligible for unemployment benefits, became “final,” as prerequisite to judicial review, when, following remand to Department of Employment and Workforce (DEW) to determine whether drug testing facility used by employer was certified in accordance with statute, DEW appellate panel determined that facility was not certified, and panel’s decision was not appealed. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Unemployment Compensation 454

On appeal of contested permit case, an appellate court may not substitute its judgment for that of the Administrative Law Court (ALC) as to the weight of the evidence on questions of fact unless the ALC’s findings are clearly erroneous in view of the reliable, probative and substantial evidence in the whole record. Bailey v. South Carolina Dept. of Health (S.C.App. 2010) 388 S.C. 1, 693 S.E.2d 426, rehearing denied, certiorari denied. Administrative Law And Procedure 793

An aggrieved party may appeal a decision by the Administrative Law Court (ALC) to the agency’s appellate panel; however, the panel’s review is confined to the record and is governed by statute allowing judicial review or stay of enforcement of final decision of an administrative law judge (ALJ). Oakwood Landfill, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2009) 381 S.C. 120, 671 S.E.2d 646. Administrative Law And Procedure 513

Pursuant to law providing that certain appeals from decision of administrative law court (ALC) would be heard by the Court of Appeals, Board of Health and Environmental Control did not have jurisdiction to hear environmental interest group’s appeal from decision of ALC that was pending on effective date of the law, and the appeal would be transferred to the Court of Appeals, despite exception for cases pending with the ALC on effective date; the exception did not apply to cases pending before the Board. Chem‑Nuclear Systems, LLC v. South Carolina Bd. of Health and Environmental Control (S.C. 2007) 374 S.C. 201, 648 S.E.2d 601, transferred to 387 S.C. 424, 693 S.E.2d 13, rehearing denied, certiorari denied. Environmental Law 492

Under the Administrative Procedure Act (APA), a reviewing tribunal may reverse or modify the decision of the agency where it is arbitrary or capricious or constitutes an abuse of discretion. McEachern v. South Carolina Employment Security Com’n (S.C.App. 2006) 370 S.C. 553, 635 S.E.2d 644. Administrative Law And Procedure 754.1; Administrative Law And Procedure 763; Administrative Law And Procedure 814; Administrative Law And Procedure 815

The Coastal Zone Management Appellate Panel of the Bureau of Ocean and Coastal Resource Management (OCRM) was required to affirm the administrative law judge (ALJ) if the ALJ’s findings were supported by substantial evidence, not based on the Panel’s own view of evidence, and Panel could not reweigh facts or make findings of fact in accord with its own view of evidence. Dorman v. Department of Health and Environmental Control (S.C.App. 2002) 350 S.C. 159, 565 S.E.2d 119. Zoning And Planning 1438

Board of Department of Health and Environmental Control, as the reviewing tribunal of ALJ’s decision as finder of fact in hearing over issuance of stormwater permit for proposed motor speedway by Department’s Office of Ocean and Coastal Resource Management (OCRM), lacked authority under Administrative Procedures Act to make its own findings of fact regarding whether OCRM conducted a consistency review meeting terms of Coastal Management Plan (CMP) when issuing permit; though ALJ did determine that proposed speedway met requirements of CMP, ALJ’s opinion lacked any findings of fact and conclusions of law that would have allowed Board to conduct an acceptable review of issue, and rather than making its own findings of fact Board should have remanded matter to ALJ for a clarifying order. Brown v. South Carolina Dept. of Health and Environmental Control (S.C. 2002) 348 S.C. 507, 560 S.E.2d 410, rehearing denied. Environmental Law 222

2. Substantial evidence

“Substantial evidence” supporting an administrative law court’s (ALC) decision to deny an application to renew a permit to sell beer and wine for off‑premises consumption is evidence that, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC and is more than a mere scintilla of evidence. Kan Enterprises, Inc. v. South Carolina Department of Revenue (S.C.App. 2017) 803 S.E.2d 882. Intoxicating Liquors 102

An administrative law court’s (ALC) decision, denying an application to renew a permit to sell beer and wine for off‑premises consumption, should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law. Kan Enterprises, Inc. v. South Carolina Department of Revenue (S.C.App. 2017) 803 S.E.2d 882. Intoxicating Liquors 102

In determining whether the Administrative Law Court’s (ALC) decision was supported by substantial evidence, the Court of Appeals need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC; still, the Court of Appeals may reverse the decision of the ALC if it is based on an error of law or in violation of a statutory provision. Bruning v. SCDHEC (S.C.App. 2016) 418 S.C. 537, 795 S.E.2d 290, rehearing denied. Administrative Law and Procedure 791; Administrative Law and Procedure 796

The decision of the Administrative Law Court on a tax appeal should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law. Centex Intern., Inc. v. South Carolina Dept. of Revenue (S.C. 2013) 406 S.C. 132, 750 S.E.2d 65, rehearing denied. Taxation 3551

In determining whether the decision of the Administrative Law Court (ALC) was supported by substantial evidence, the Supreme Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the ALC reached. Barton v. South Carolina Dept. of Probation Parole and Pardon Services (S.C. 2013) 404 S.C. 395, 745 S.E.2d 110. Administrative Law and Procedure 791

Although reviewing court shall not substitute its judgment for that of the Administrative Law Court as to findings of fact, reviewing court may reverse or modify decisions that are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. ESA Services, LLC v. South Carolina Dept. of Revenue (S.C.App. 2011) 392 S.C. 11, 707 S.E.2d 431. Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 796

The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding of an Administrative Law Court (ALC) judge from being supported by substantial evidence. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 791

On review of a decision of the Administrative Law Court (ALC), substantial evidence is that which, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC and is more than a mere scintilla of evidence. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 791

The Administrative Law Court (ALC) judge’s order should be affirmed on appeal if supported by substantial evidence in the record. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 791

The Coastal Zone Management Appellate Panel can reverse the decision of the Administrative Law Court (ALC) if it determines the ALC’s findings are not supported by substantial evidence contained in the record or are affected by an error of law. Terry v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2008) 377 S.C. 569, 660 S.E.2d 291. Zoning And Planning 1343

For purposes of reviewing a contested permitting case, the administrative law court’s (ALC’s) findings are supported by substantial evidence if, looking at the record as a whole, there is evidence from which reasonable minds could reach the same conclusion the administrative agency reached. Neal v. Brown (S.C.App. 2007) 374 S.C. 641, 649 S.E.2d 164, rehearing denied, rehearing granted, reversed 383 S.C. 619, 682 S.E.2d 268. Zoning And Planning 1703

Reviewing courts apply the substantial evidence rule, under which the agency’s decision is upheld unless it is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. McEachern v. South Carolina Employment Security Com’n (S.C.App. 2006) 370 S.C. 553, 635 S.E.2d 644. Administrative Law And Procedure 791

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support the ALJ’s decision; it exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dept. of Transp. (S.C.App. 2002) 352 S.C. 113, 572 S.E.2d 462. Administrative Law And Procedure 791

The possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports the ALJ’s factual finding. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dept. of Transp. (S.C.App. 2002) 352 S.C. 113, 572 S.E.2d 462. Administrative Law And Procedure 791

3. Standard of review

The Administrative Procedures Act (APA) establishes the standard of review for appeals from the Administrative Law Court (ALC). Abel v. South Carolina Department of Health and Environmental Control (S.C.App. 2017) 419 S.C. 434, 798 S.E.2d 445, rehearing denied. Administrative Law and Procedure 657.1

In determining whether the administrative law court’s decision was supported by substantial evidence, the Supreme Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the administrative law court; however, the Court of Appeals may reverse where it is in violation of a statutory provision or it is affected by an error of law. Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 411 S.C. 16, 766 S.E.2d 707. Administrative Law and Procedure 791; Administrative Law and Procedure 796

Issue, in taxpayer’s action for income tax refund, regarding which apportionment formula corporate taxpayer was required to use was an issue of statutory interpretation that the Court of Appeals would review as a question of law. Duke Energy Corp. v. South Carolina Dept. of Revenue (S.C.App. 2014) 410 S.C. 415, 764 S.E.2d 712, rehearing denied, certiorari granted, affirmed as modified 415 S.C. 351, 782 S.E.2d 590. Taxation 3558

Court of Appeals would review Administrative Law Court’s ruling, in taxpayer’s action for income tax refund, that taxpayer’s manufacturing business was its principal business in South Carolina as a factual determination and would determine if it was clearly erroneous in view of the reliable, probative, and substantial evidence. Duke Energy Corp. v. South Carolina Dept. of Revenue (S.C.App. 2014) 410 S.C. 415, 764 S.E.2d 712, rehearing denied, certiorari granted, affirmed as modified 415 S.C. 351, 782 S.E.2d 590. Taxation 3558

The Supreme Court may not substitute its judgment for the judgment of the Administrative Law Court (ALC) as to the weight of the evidence on questions of fact. Barton v. South Carolina Dept. of Probation Parole and Pardon Services (S.C. 2013) 404 S.C. 395, 745 S.E.2d 110. Administrative Law and Procedure 793

The Supreme Court’s standard of review of a decision by the Administrative Law Court derives from the Administrative Procedures Act. Howard v. South Carolina Dept. of Corrections (S.C. 2012) 399 S.C. 618, 733 S.E.2d 211. Administrative Law and Procedure 683

A reviewing court may reverse or modify the decision of the Administrative Law Court (ALC) judge if the finding, conclusion, or decision reached is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by an error of law. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 785; Administrative Law And Procedure 791; Administrative Law And Procedure 796

The decision of the Administrative Law Court (ALC) should not be overturned on appeal unless it is unsupported by substantial evidence or controlled by some error of law. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 791; Administrative Law And Procedure 796

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Administrative Law And Procedure 657.1

4. Reversal

Under the review procedure in effect at the time landowners sought dock permits, the Coastal Zone Management Appellate Panel was authorized to reverse the administrative law judge (ALJ) based on an error of law or if his findings were not supported by substantial evidence. Brownlee v. South Carolina Dept. of Health and Environmental Control (S.C. 2009) 382 S.C. 129, 676 S.E.2d 116, rehearing denied. Water Law 1249; Water Law 1250(2)

5. Preservation of issues for review

Department of Health and Environmental Control (DHEC) preserved for appellate review challenge to Administrative Law Court’s (ALC) determination that property that was subject of application to construct bridge constituted part of larger island, where DHEC was the prevailing party below based on ALC’s separate finding that property constituted coastal island, and DHEC properly raised its challenge to ALC’s finding that property was part of larger island in brief to appellate court. Dreher v. South Carolina Dept. of Health and Environmental Control (S.C. 2015) 412 S.C. 244, 772 S.E.2d 505, rehearing denied. Environmental Law 666

6. Environmental regulations

Department of Health and Environmental Control (DHEC), which improperly relied on total maximum daily load (TMDL) when issuing National Pollutant Discharge Elimination System (NPDES) permits that established ultimate oxygen demand (UOD) load limits during the “shoulder months” between low‑limit summer months and higher‑limit winter, was entitled to opportunity to establish UOD load limits for the shoulder months without relying on the TMDL. Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2007) 372 S.C. 351, 641 S.E.2d 763, rehearing denied, certiorari denied. Environmental Law 698

**SECTION 1‑23‑630.** Powers of law judges.

 (A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

 (B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division’s rules of procedure.

HISTORY: 1993 Act No. 181, Section 19; 2003 Act No. 39, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak444.

Administrative Law and Procedure 444.

NOTES OF DECISIONS

In general 1

1. In general

Statutory provisions that allowed a state agency authorized by law to seek injunctive relief to apply to the Administrative Law Court (ALC) for injunctive or equitable relief did not grant the Department of Consumer Affairs or the ALC the authority to exceed their statutorily granted powers, or provide the ALC with the power to grant Department the relief it wanted, an order requiring credit counseling service company and its owner to refund all monies collected under contracts entered into with state consumers while it operated without a license, as an equitable remedy. South Carolina Dept. of Consumer Affairs v. Foreclosure Specialists, Inc. (S.C.App. 2010) 390 S.C. 182, 700 S.E.2d 468. Antitrust and Trade Regulation 337

ALJs cannot rule on validity of a statute; however, an agency or ALJ can still rule on whether a party’s constitutional rights have been violated. Dorman v. Department of Health and Environmental Control (S.C.App. 2002) 350 S.C. 159, 565 S.E.2d 119. Administrative Law And Procedure 316; Administrative Law And Procedure 430

Administrative Law Judge Division (ALJD) was required to reconsider findings in dispute over dock permit, which were based on interpretation and application by the Coastal Zone Management Appellate Panel of the Bureau of Ocean and Coastal Resource Management (OCRM) of its own regulations; ALJ denied permit at least partially on finding that dock would obstruct navigation and create problems with adjoining dock while OCRM panel ruled that regulation barring obstructions to navigation did not encompass problems between neighbors of conflicts with nearby docks. Dorman v. Department of Health and Environmental Control (S.C.App. 2002) 350 S.C. 159, 565 S.E.2d 119. Zoning And Planning 1724

**SECTION 1‑23‑640.** Principal offices of court; where cases heard.

 The court shall maintain its principal offices in the City of Columbia. However, judges of the court shall hear contested cases at the court’s offices or at a suitable location outside the City of Columbia when determined by the chief judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 6; 2008 Act No. 334, Section 9, eff June 16, 2008.

Effect of Amendment

The 2008 amendment substituted “court” for “division” throughout and in the second sentence deleted “offices or location of the involved department or commission as prescribed by the agency or commission, at the division’s” following “hear contested cases at the” and made minor language changes.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak443.

Administrative Law and Procedure 443.

C.J.S. Public Administrative Law And Procedure Section 138.

**SECTION 1‑23‑650.** Promulgation of rules.

 (A) Rules governing the internal administration and operations of the Administrative Law Court must be:

 (1) proposed by the chief judge of the court and adopted by a majority of the judges of the court; or

 (2) proposed by any judge of the court and adopted by seventy‑five percent of the judges of the court.

 (B) Rules governing practice and procedure before the court which are:

 (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and

 (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.

 (C) All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 2; 1998 Act No. 359, Section 5; 2006 Act No. 387, Section 6, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment designated subsections (A) and (B); in subsection (A), in the introductory statement substituted “Administrative Law Court must” for “administrative law judge division shall”; added subsection (C); and substituted “court” for “division” and made nonsubstantive changes throughout.

CROSS REFERENCES

Certificate of Need review procedures, see Section 44‑7‑210.

LIBRARY REFERENCES

Westlaw Key Number Search: 15Ak443.

Administrative Law and Procedure 443.

C.J.S. Public Administrative Law And Procedure Section 138.

**SECTION 1‑23‑660.** Office of Motor Vehicle Hearings; conduct of hearings; applicability of Code of Judicial Conduct; appeals.

 (A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The chief judge of the Administrative Law Court shall serve as the director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.

 (B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Motor Vehicle Hearings, at suitable locations as determined by the chief judge. For purposes of this section, any law enforcement agency that employs an officer who requested a breath test and any law enforcement agency that employs a person who acted as a breath test operator resulting in a suspension pursuant to Section 56‑1‑286 or 56‑5‑2951 is a party to the hearing and shall be served with appropriate notice, afforded the opportunity to request continuances and participate in the hearing, and provided a copy of all orders issued in the action. Representatives of the Department of Motor Vehicles are not required to appear at implied consent, habitual offender, financial responsibility, or point suspension hearings. However, if the Department of Motor Vehicles elects not to appear through a representative at any implied consent hearing, or through the submission of documentary evidence at any habitual offender, financial responsibility, or point suspension hearing, and it wishes to appeal the decision, it must first file a motion for reconsideration with the Office of Motor Vehicle Hearings within ten days after receipt of the hearing officer’s decision. The hearing officer must issue a written order upon the motion for reconsideration within thirty days. The Department of Motor Vehicles may file a notice of appeal with the Administrative Law Court within thirty days after receipt of the hearing officer’s order on the motion for reconsideration. The Administrative Law Court must dismiss any appeal which does not meet the requirements of this subsection.

 (C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The State Ethics Commission is responsible for the enforcement and administration of those rules and for the issuance of advisory opinions on the requirements of those rules for administrative law judges and hearing officers pursuant to the procedures contained in Section 8‑13‑320. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge’s or hearing officer’s spouse or guest, may accept an invitation to and attend a judicial‑related or bar‑related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

 (D) Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court’s appellate rules of procedure. Recordings of all hearings will be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge shall not hear any appeals from these decisions.

HISTORY: 1993 Act No. 181, Section 19; 2005 Act No. 128, Section 22, eff July 1, 2005; 2006 Act No. 381, Section 2, eff June 13, 2006; 2006 Act No. 387, Section 7, eff July 1, 2006; 2008 Act No. 201, Section 14, eff February 10, 2009; 2008 Act No. 279, Section 1, eff October 1, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, both 2006 amendments were read together. The text of the section from the second amendment by Act 387 is set forth above, except that the eighth and ninth sentences in the first undesignated paragraph and the second and sixth sentences of the third undesignated paragraph were added from first amendment by Act 381.

This section was amended by 2008 Act Nos. 201 and 279. At the direction of the Code Commissioner, the text of Act 279 appears above because it was enacted later.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2005 amendment rewrote this section.

The first 2006 amendment, in the first undesignated paragraph, added the eighth and ninth sentences relating to promulgation of rules; and in the third undesignated paragraph, added the second sentence relating to breath tests, the third sentence relating to appearance by representatives of the Department of Motor Vehicles, and the seventh sentence relating to tape recordings of hearings.

The second 2006 amendment rewrote this section.

The first 2008 amendment deleted the last four sentences of the first undesignated paragraph relating to hiring a law clerk to assist the judges who hear Department of Motor Vehicle Hearing appeals; deleted the second undesignated paragraph relating to the role of the Budget and Control Board in the transition; and rewrote the third undesignated paragraph.

The second 2008 amendment rewrote this section, designating the subsections and substituting “Office of Motor Vehicle Hearings” for “Division of Motor Vehicle Hearings” throughout.

LIBRARY REFERENCES

Westlaw Key Number Searches: 15Ak446; 15Ak447.

Administrative Law and Procedure 446, 447.

C.J.S. Public Administrative Law And Procedure Sections 116 to 117.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 27, Administrative Review.

NOTES OF DECISIONS

In general 1

1. In general

Since Department of Motor Vehicle Hearings (DMVH) is authorized to hear contested cases arising from Department of Motor Vehicles (DMV), it is an “agency” under the Administrative Procedures Act (APA), and, thus, appeals must be taken to the Administrative Law Court. South Carolina Dept. of Motor Vehicles v. Holtzclaw (S.C.App. 2009) 382 S.C. 344, 675 S.E.2d 756, rehearing denied, certiorari denied. Automobiles 144.2(1); Automobiles 144.2(3)

**SECTION 1‑23‑670.** Filing fees.

 Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Administrative Law Court must be accompanied by a filing fee equal to that charged in circuit court for filing a summons and complaint, unless another filing fee schedule is established by rules promulgated by the Administrative Law Court, subject to review as in the manner of rules of procedure promulgated by the Supreme Court pursuant to Article V of the Constitution of this State. This fee must be retained by the Administrative Law Court in order to help defray the costs of the proceedings. No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty‑five dollar filing fee. If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require, including the sanctions authorized in the Frivolous Civil Proceedings Sanctions Act, Chapter 36, Title 15, and as otherwise provided by law.

HISTORY: 2008 Act No. 353, Section 2, Pt 18A, eff July 1, 2009; 2018 Act No. 134 (S.105), Section 2, eff March 12, 2018.

Effect of Amendment

2018 Act No. 134, Section 2, in the fifth sentence, added “, including the sanctions authorized in the Frivolous Civil Proceedings Sanctions Act, Chapter 36, Title 15, and as otherwise provided by law” at the end.

**SECTION 1‑23‑680.** Cost of South Carolina Code, supplements, and replacement volumes.

 The South Carolina Administrative Law Court is not required to reimburse the South Carolina Legislative Council for the cost of the Code of Laws, code supplements, or code replacement volumes distributed to the court.

HISTORY: 2008 Act No. 353, Section 2, Pt 18B, eff July 1, 2009.