

# Administrative Notice Information

**Remember:** The following information are procedures, acts, rules, statutes, **regulations**, the way we do it here, the way we always have done it, and etc.; to get you to CONCEDE to their (**agencies**) demands. If the **law** has not been enabled, enacted, authenticated by the Secretary of State and published in the **Texas Register**, to show delegated authority, it is not a Texas **law** to which you must be subjected to. Even then, the question of **Constitutionality** still remains. The same criteria goes for the procedures, acts, rules, statutes, regulations, the way we do it here, the way we always have done it, and etc.; of the Federal Government established **agencies**. It is not a Federal **Law** by which you must be subject to unless the **law** has been enabled, enacted and published into **the Federal Register**. Even then, the question of **Constitutionality** still remains.

You **must** exhaust your **administrative remedies** before going into a court of **law** and ask for damages. You must **NOTICE** the **agencies** of the wrong that is and was done to you by stating only facts (true) which is **specific** and **clear**, so than no misunderstanding can be found. If they do not respond to your statements, then they will have agreed, to what you have said. Give them a specific time to reply, if they need to reply. Ask questions through and by using the Texas Open Records Act. Always ask for any documentation which indicates their **Regulatory Authority**, to do the acts they have done or trying to do to you. Ask How, When, What, Where, Who and Why. Show me **Specifically**, **Explicitly**, and **Clearly**, so there can be no misunderstanding.

**Remember: It's only Business, we do it to all the **agencies**.**

## Legislative History of **Administrative Procedures Act**

Report With Special Studies, 1937, which President Roosevelt transmitted to Congress with his endorsement and statement that it was “a great document of permanent importance”. At that time he also took occasion to remark that the practice of **creating administrative agencies** – “who perform **administrative** work in addition to judicial work, threatens to develop a ‘**fourth branch**’ of Government for which there is no sanction in the Constitution.” To which the committee added (p.40 of the 1937 Report of President's Committee on Administrative Management: “There is a conflict of principle involved in their make-up and functions. \*\*\* They are vested with **duties** of **administration** \*\*\* and at the same time they are given important judicial work. \*\*\* The **evils** resulting from this confusion of principals are **insidious** and **far reaching**. \*\*\* Pressures and influences properly enough directed toward officers responsible for formulating and administering **policy** constitute an **unwholesome atmosphere** in which to adjudicate private rights. But the mixed duties of the commissions render **escape** from these subversive influences **impossible**. Furthermore, the same men are **obliged to serve both as prosecutors and as judges**. This **not only undermines** judicial **fairness**; it **weakens public confidence** in that **fairness**. Commission decision affecting **private rights** and conduct lie under the **suspicion** of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.”

The Walter-Logan administrative procedure bill (S. 915), was favorably reported to the Senate in 1939 (S. Rept. No. 442, 76<sup>th</sup> Cong., 1<sup>st</sup> sess.) “It would seem to require no argument to demonstrate that the **administrative agencies**, exercising but a fraction of the judicial power may likewise operate under uniform rules of practice and procedure and that they **may be required** to remain within the terms of **law** as to the exercise of both <sup>1</sup>**quasi**-legislative and **quasi**—judicial power.” \*\*\* “Furthermore, the statutes, commencing with the Interstate Commerce Act, **have made no provision whatever for** improvement of the **administrative process** and rarely have these statutes attempted to prescribe, even in a general way, **the scope of judicial review.**”

Committee on the Judiciary of the House of Representatives said in the reporting the bill (H.R. 6324)(H. Rept. No. 1149, 76<sup>th</sup> Cong. 1<sup>st</sup> sess.) (1938) – “**Procedures vary** as among the several **agencies** and to some extent **even among** the principal **officers** or employees **of the same agencies.**” \*\*\* “At the same time, the **law must** provide that the **governors shall be governed** and the **regulators shall be regulated**, if our present form of government is to endure.” \*\*\* “They wished power to make declaratory rulings to be so limited that parties would **not** have an absolute **right** to such a ruling **in every case**, and the present bill expressly confers the authority upon certain **agencies** to be exercised **only** in their ‘**sound<sup>2</sup> discretion**’”.

Committee on the Judiciary of the Senate (S. Rept. No. 79<sup>th</sup> Cong., 1<sup>st</sup> sess.)(1945)(H.R. 4941)(S. 7) – “What the bill does in substance may be summarized under four heading.: 1. It provides that **agencies must issue** as **rules** certain specified information **as to their organization and procedure**, and also make available other materials of **administrative law**. 2. It states the <sup>3</sup>**essentials** of the several forms of **administrative proceedings** and the general **limitations** on **administrative powers**. 3. It provides in more detail the requirements for **administrative hearings** and decisions in cases in which statutes require such hearings. 4. It sets forth a simplified statement of judicial review designed to afford **a remedy for every legal wrong.**”

## **Public Administrative Law & Procedure – Corpus Juris Secundum**

### **Article 73 Section 115 – General Considerations**

**Administrative agencies**, in the performance of their **quasi**-judicial functions, must act in accordance with **judicial traditions** embodying the basic conceptions of **fair play**. **Administrative** proceedings are generally simple, informal, and direct, and while the processes of adjudication and hearing should be within the limits and requirements of the statutes involved, such proceedings are not normally subject to strict and technical rules. While the mode of procedure before a **public administrative body may conform** to the regular practice of courts, rules governing judicial proceeding are not ordinarily applicable unless made so by statute.

### **Article 73 Section 116 – Nature of Proceedings**

An <sup>4</sup>adjudicatory hearing before a **public administrative body** is a **quasi**-judicial proceeding in which factual determinations are made and thus, is considered adjudicatory in **nature**.\*\*\* Generally, proceedings before **administrative** boards are **not** <sup>5</sup>**penal** in **nature**, or <sup>6</sup>**punitive** or <sup>7</sup>**compensatory**, but are preventive and <sup>8</sup>**remedial**, to implement a public **policy**.\*\*\* A adjudicatory proceeding is one which a statutory or constitutional direction dictates an agency hearing.

<sup>1</sup> Quasi – Looks like and acts like but isn’t the same as the real thing.

<sup>2</sup> Ability to make responsible decisions.

<sup>3</sup> Something necessary, indispensable, or unavoidable.

<sup>4</sup> A judicial decision.

<sup>5</sup> Of, relating to, or involving punishment, penalties.

<sup>6</sup> Inflicting, involving, or aiming at punishment.

<sup>7</sup> To offset an error, defect, or undesired effect.

<sup>8</sup> Intended as a remedy.

#### Article 73 Section 117 – Jurisdiction

A public **administrative body** has such adjudicatory jurisdiction as is conferred on it by statute; and generally, an **administrative body** has <sup>9</sup>jurisdiction of a proceeding where it is being with a <sup>10</sup>controversy of the kind which it is authorized to create, and it has the parties before it. **“It has been held that jurisdiction must be <sup>11</sup>affirmatively shown and will not be <sup>12</sup>assumed.”** (See... State v. Brooks, 53 So.2d 329, 255 Ala. 689).

#### Article 73 Section 118 – Institution of Proceedings

Generally, the manner in which **administrative** proceedings may be instituted before a **public administrative body** is controlled by statutes or by rules and **regulations** of such **body**; a board may be authorized to act on its own <sup>13</sup>initiative or only after complaint, charge, or petition by a <sup>14</sup>proper person.

#### Article 73 Section 119 – Consolidation of Proceedings

A **public administrative body** is generally authorized to <sup>15</sup>consolidate proceedings before it in order to promote justice and the proper dispatch of its business. Indeed, consideration of **administrative convenience**, <sup>16</sup>expedition, and fairness may support consolidation so strongly that failure to do so would amount to an abuse of <sup>17</sup>discretion. (See... REA Exp., Inc. v. U.S., C.A.2, 568 F.2d 940).

#### Article 73 Section 120 - Parties; Standing

The term **“party”**. As used with respect to the procedure of **administrative** bodies, means the real party interest as well as an <sup>18</sup>adverse party. ‘It has been held that a protesting party in proceedings before a commission need not be <sup>19</sup>pecuniarily affected and need have only such interest as is required to be a complainant on whose complaint a case is commenced.

#### Article 73 Section 121 – Intervention

Generally, a party who has a direct and substantial interest in an **administrative** proceeding has a **right** to intervene therein.

#### Article 73 Section 122 – Pleadings

The Pleadings required in an **administrative** proceeding are governed by statutes **and** by the rules **and** **regulations** of the **administrative body**; pleadings are <sup>20</sup>liberally construed and are not subject to the strict rules applicable to pleadings in judicial proceedings. In any event, the precision or particularity of a pleading in judicial actions **is not required**. Where question presented to commission was one of law, there was **no** <sup>21</sup>necessity to require filing of answer.

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<sup>9</sup> The power or right to exercise authority over something or somebody.

<sup>10</sup> A discussion marked by the expression of opposing views.

<sup>11</sup> Asserting that the fact is so.

<sup>12</sup> To pretend to have or be, to take as granted or true.

<sup>13</sup> At one’s own discretion, independently of outside influence or control.

<sup>14</sup> Referring to one individual only.

<sup>15</sup> To join together into one whole, unite.

<sup>16</sup> Efficient promptness, speed.

<sup>17</sup> Ability to make responsible decisions.

<sup>18</sup> Acting against or in a contrary direction, hostile.

<sup>19</sup> Consisting of or measured in money.

<sup>20</sup> Used with an open mind.

<sup>21</sup> The quality of state of being in need.

#### Article 73 Section 123 – Issues, Proof, & Variance

Although the rule that the pleading and proof must conform is relaxed in **administrative** proceedings, ordinarily the issues are limited to those raised by the pleadings and a proceeding should be confined to the points at issue.

#### Article 73 Section 124 – Discovery

**Except** to the extent that **discovery** is authorized by statute or by a particular agency, discovery, generally, **is not available** in **administrative** proceedings. Furthermore, the federal **Administrative Procedure Act** **does not provide** for pretrial discovery in the **administrative** process, and discovery in federal **administrative** adjudications cannot be<sup>22</sup> predicated upon statutes conferring general rule-making or<sup>23</sup> subpoena power.

#### Article 73 Section 125 – Evidence

The rules of evidence are generally relaxed in **administrative** proceedings and the rules applicable in a court proceeding are not ordinarily binding and controlling, but the<sup>24</sup> essential rules of evidence by which **rights are asserted** or defended must be preserved. Public **policy requires** a<sup>25</sup> litigant to produce **all** existing evidence on his behalf during the course of the **administrative** hearing. **A rule of evidence not invoked is regarded as waived**. A party desiring to present rebuttal evidence **must** make **a timely request** to do so. Mere **error** by an **administrative body** in its rulings with respect to evidence does not constitute a denial of a party's constitutional rights.

#### Article 73 Section 126 – Matters of Record

Generally, in an **administrative** proceeding before a **public administrative body**, nothing may be treated as evidence which has not been introduced as such.

#### Article 73 Section 127 – Administrative Notice; Expert Knowledge

In general, an **administrative** tribunal may take **notice** of certain facts without their being proved. An **administrative** tribunal may, and should take notice of matters of common knowledge and of commonly accepted technical or scientific facts. **Notice may also be taken** of the statutes and court decisions of another state, of the records of the agency, and of the **administrative regulations** of its own state. \*\*\* In general, an **administrative body may use its** expert **knowledge** and experience in the evaluation of evidence but **may not** utilize such **knowledge** and experience as a substitute for evidence.

#### Article 73 Section 128 – Presumptions & Burden of Proof

In an **administrative**<sup>26</sup> adjudicatory proceeding, an agency or the legislature **may** provide that proof of one fact shall create a<sup>27</sup> presumption of another fact; in such proceedings, the **burden of proof** ordinarily rests on the<sup>28</sup> applicant for relief, benefits, or a privilege, or on the one making the charge, or upon one who files a claim with an **administrative** agency to establish that required conditions of eligibility have been met.

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<sup>22</sup> Something that is affirmed or denied of the subject in a proposition in logic.

<sup>23</sup> A writ commanding a person designated in it to appear in court under a penalty for failure to show up.

<sup>24</sup> Something necessary, indispensable, or unavoidable.

<sup>25</sup> One engaged in a lawsuit.

<sup>26</sup> A judicial decision.

<sup>27</sup> The ground, reason, or evidence lending probability to a belief, not certainly known.

<sup>28</sup> The individual which initiated the action.

#### Article 73 Section 129 – Admissibility

General rules as to the admissibility of evidence are frequently relaxed in **administrative** adjudicatory proceeding. ... it has been stated that it is not the hearsay nature in determining whether such evidence is admissible in the **administrative** context; it is its <sup>29</sup> **probative value**, reliability, and fairness of its use that are determinative. So, it has been held that **complaint may not be made** of the refusal of an **administrative** board to receive evidence **which is not** <sup>30</sup> **competent**, <sup>31</sup> **relevant**, or <sup>32</sup> **material**, or which is **unduly** <sup>33</sup> **repetitious**, or which would **not be** <sup>34</sup> **admissible** in a judicial proceeding.

#### Article 73 Section 130 – Weight & Sufficiency

In an adjudicatory proceeding, it is for the **administrative body**, to determine the <sup>35</sup> **weight** and <sup>36</sup> **sufficiency** of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and <sup>37</sup> **circumstantial evidence**.

#### Judicial Enforcement of Administrative Decisions

#### Article 73 Section 272 - General Considerations

**Except** as it may be otherwise provided by statute, **administrative** bodies, generally, have no power to enforce their decisions or orders, but such decisions or orders can be enforced **only** by the courts.

#### Article 73 Section 273 - Nature & Form of Proceedings

Generally, the **nature** and form of the proceedings for the enforcement of **administrative** decisions or orders are governed and controlled by **statutory provisions**. Where **powers** conferred on a court to enforce an agency's orders are equitable in nature, such **power** may be invoked only if the relief sought is consistent with the principles of equity.

#### Article 73 Section 274 – Decisions Enforceable

Where an agency seeks enforcement of an **administrative** action **prior** to completion of the **administrative review process**, courts, generally will not intervene until the **administrative process** has run its course and all agency remedies are exhausted. \*\*\* **Where**, part of an **administrative body's order is not challenged**, the issue whether the court can enforce that part is not raised.

#### Article 73 Section 275 – right to Enforcement

The **right** to the enforcement of an **administrative** decision or order, under certain statutory provisions, is not defeated by the **fact** that the person sought to be charged has not violated and **does not** intend to violate the **administrative** decision or order, **to litigate**, as a condition to obtaining enforcement, issues of facts as to whether the person sought to be charged has complied with the order.

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<sup>29</sup> Serving to test or try, serving to prove.

<sup>30</sup> Legally qualified or adequate.

<sup>31</sup> Tending to prove or disprove the matter at issue or under discussion.

<sup>32</sup> Of or relating to the subject matter of reasoning, having real importance.

<sup>33</sup> Tediously repeating.

<sup>34</sup> Capable of being allowed or conceded.

<sup>35</sup> The relative importance or authority accorded to something, measurable influence.

<sup>36</sup> Having enough to meet the needs of a situation or a proposed end.

<sup>37</sup> That which tends to prove a fact by proving other events which afford a basis for a reasonable inference of the occurrence of the fact at issue.

### Article 73 Section 275 – Jurisdiction & Venue

The court or courts designated by statute have jurisdiction to **enforce** an **administrative** decisions or order. Generally, the **venue** of suits to enforce **administrative** decisions or orders is prescribed by statutory provisions, **once** a court **has acquired**<sup>38</sup> jurisdiction to enforce an **administrative** order, such jurisdiction is<sup>39</sup> **exclusive**.

### Article 66 Section 11 - Corpus Juris Secundum

#### Notice, In General

In General, a **Notice** is regarded in **law** as actual when the person sought to be affected by it **knows** of the existence of the particular **fact** in question, or is **conscious** of having the means of knowing it. So, whenever facts put a person on inquiry, **notice** will be<sup>40</sup> imputed to him if he designedly<sup>41</sup> abstains for the purpose of avoiding notice. A person must use every **reasonable** means to<sup>42</sup> ascertain facts coming to his **notice**. \*\*\* Where a party having knowledge of facts sufficient to put him on inquiry<sup>43</sup> neglects to make that inquiry, and thereby suffers loss, such loss must be attributed to his own negligence, and he will not be relieved in a court of **equity**. After a person has actually made due inquiry and such inquiry has proved<sup>44</sup> **futile**, he is to be regarded as having acted<sup>45</sup> **bona fide** (in or with **good faith**, without deceit or fraud). \*\*\* Time and opportunity for **notice** depends on the circumstances of the case, he **cannot** afterward avoid the effect of the **notice** by claiming that he did not allow himself a **reasonable** time for investigation. \*\*\* The **means of knowledge** must be available and of such character that a<sup>46</sup> **prudent man** might be expected to take advantage of them. \*\*\* The circumstances known to him must have been such as ought **reasonable** to have suggested inquiry and led him to inquire. \*\*\* If his conduct would have been the same whether he had or had not made inquiry, his<sup>47</sup> omission cannot be a reason for charging him with **notice**.

**Possession:** Except in so far as the rule has been varied by statute, actual possession of land is such **notice** to all the world, or to anyone having knowledge of such possession, as will put on inquiry those acquiring title or a lien on the land to ascertain the **nature** of the **right** that the occupant has in the premises. If proper inquiry is made, and information concerning the rights of the possessor is withheld or concealed, possession will be **notice** of only that fact. In order to constitute **notice** of a claim of title, open, visible, **exclusive**, and<sup>48</sup> **unequivocal** or<sup>49</sup> **unambiguous**. Occupancy may be shown by any use of the land that indicates an intention to<sup>50</sup> appropriate it for the benefit of the possessor, and such use may be any to which the land is adapted, and which is calculated to apprise the world that the property is occupied under a claim of right therein.

<sup>38</sup> The power or right to exercise authority over something or somebody.

<sup>39</sup> the control is limited by this one and only court.

<sup>40</sup> To lay the responsibility to a person or a cause.

<sup>41</sup> To refrain deliberately and often with an effort of self-denial from an action or practice.

<sup>42</sup> To make exact or precise.

<sup>43</sup> To leave undone or unattended, through carelessness.

<sup>44</sup> Serving no useful purpose, completely ineffective.

<sup>45</sup> Made in good faith without fraud or deceit.

<sup>46</sup> Marked by wisdom.

<sup>47</sup> Something left undone.

<sup>48</sup> Leaving no doubt, clear.

<sup>49</sup> Clear and precise.

<sup>50</sup> To take or make use of without authority or right.

## Article 66 Section 23 - Corpus Juris Secundum

### Notice – Notify

By common usage the word ‘notify’ simply means to make known, and should be construed according to its ordinary usage, in the absence of a different meaning expressed or clearly implied. It is also defined as meaning to give **notice** to; to inform by words or writings, in person or by message, or by signs which are understood. To notify one of a **fact** is to make it known to him; to inform him by **notice**. In legal proceedings, and in respect of public matters, the word ‘notify’ generally, if not universally, imports **notice** by some person whose duty it is to give it, in some manner prescribed, and to some person **entitled** to receive it. While the term may not, of <sup>51</sup>necessity, import or imply a writing, and in common use the word ‘notify’ may sometimes mean a mere verbal communication, when applied to an official act it is said that it **requires** a writing.

### Defacing, Destroying, or Removing Public Notice

Defacing or destroying a **notice** posted under a public **law** has been regarded as an indictable offense at common law, and **defacing** or **destroying a public notice** has been made an **offense** by some statutes.

### Article 35 C. J. – Knowledge

**Knowledge** consists in the perception of the truth of affirmative or **negative** propositions. There cannot be knowledge without understanding, and in this sense, it requires mental capacity. **Knowledge** of the **law** includes **knowledge** of decisions of the courts, which are part of **law**. In the strict sense, **knowledge** is not compatible with error. One who **intentionally** remains ignorant may be chargeable in **law** with **knowledge**. (See... U.S. v. Erie R. Co., 222 Fed. 444, 450, 451.)

### A.L.& P. – Formal Adjudications

Any general description of **administrative** adjudication must be subject to numerous **exceptions** and qualifications. The agency adjudications that are exempt from the **Administrative** Procedures Act remain within the administrator’s <sup>52</sup>discretion. \*\*\* Adequate **notice** of the other side’s contentions is an <sup>53</sup>**essential** <sup>54</sup>prerequisite to fair and effective adjudication. Actual **notice** of the relevant facts and issues is sufficient, so long as the respondent has a **fair opportunity to know** and challenge the positions taken by adverse parties. If the agency changes or conceals its theory so that the respondent is deprived of a **reasonable** opportunity to challenge it, a reviewing court may set aside an order because of <sup>55</sup>inadequate notice. (See... Morgan v. United States, 304 U.S. 1, 18-19 (1938))

### Notice – Defined

The information given of some act done, or the <sup>56</sup>interpellation by which by some act is required to be done. It also signifies, simply, **knowledge**. **Notices** should always be in writing and preserve evidence of its delivery. **Notices** are **actual**, as when they are directly given to the party to be affected by them. \*\*\* **Constructive notice** is information or **knowledge of a fact** <sup>57</sup>imputed by **law** to a person. (Bouvier’s **Law** Dictionary, 1914)

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<sup>51</sup> The quality of state of being in need.

<sup>52</sup> Ability to make responsible decisions.

<sup>53</sup> Something necessary, indispensable, or unavoidable.

<sup>54</sup> Something that is necessary to an end or to the carrying out of a function.

<sup>55</sup> Insufficient or not capable.

<sup>56</sup> To question an official action or policy or personal conduct.

<sup>57</sup> To lay the responsibility to a person or a cause.

## Notice - Corpus Juris Secundum

### Definitions & Distinctions

The word ‘notice’ is not a technical one, while it can have various meanings, the meaning given by the courts is to be controlled largely by the context and by the purpose and intent of the statute which provides for or requires it.

### Notice Defined

“Notice” in its legal sense, may be defined as information concerning a **fact** actually communicated to a person by an authorized person, or actually derived by him from a proper source, or else presumed by **law** to have been required by him, which information is regarded as equivalent in its legal effects to full **knowledge of the fact**, and to which the **law**<sup>58</sup> attributes the same consequences as would be imputed to knowledge.

### Actual Notice in General

**Notice** is regarded in **law** as actual when the person sought to be affected by it knows of the existence of the particular **fact** in question, or is conscious of having the means of knowing it.

### Express Notice

Express notice is that kind of actual **notice** which consists of knowledge actually brought personally home.

### Implied Notice

Implied notice is generally regarded as a kind of actual **notice** which consists of knowledge of facts so in forming that a reasonably cautious person would be led by them to the ultimate **fact**.

### Constructive Notice

Constructive notice is a legal inference or a legal<sup>59</sup> presumption of **notice** which may not be disputed or controverted. **Constructive Notice** is **law**’s substitute for actual **notice**.

(See... Fleck v. Iowa Employment Security Commission, 8 N.W.2d 703, 233 Iowa 67.)

### Actual Notice & Constructive Notice Distinguished

Actual Notice differs from constructive notice in respect of the<sup>60</sup> inferences of fact on which it rests.

### Other Definitions & Distinctions

Courts have defined various other kinds of **notice** and distinguished various other terms from **notice**. \*\*\*<sup>61</sup> Imputed notice has been said to be information as to a given fact or circumstance charged or attributed to a person, and affecting his **rights** or conduct, on the ground that actual **notice** was given to some person whose duty was to report it to the person to be affected, as his agent or attorney of record. \*\*\* Legal notice has been referred to as the same as “constructive notice, such **notice** as the **law** requires to be given for the specific purpose or in particular case. \*\*\* “Notice to all the world” is a phrase which has been construed to mean **notice** to all persons within the<sup>62</sup> jurisdiction or state where the suit is pending. \*\*\* Personal notice is communication of **notice** orally or in writing, according to the circumstances, directly to the person affected or to be charged. \*\*\* Positive notice is that kind of actual **notice** which consists of direct information of a fact brought home to a person. \*\*\* Public notice is a **notice** given to the public generally, or to the entire community, or to all whom it may concern. \*\*\*<sup>63</sup> Presumptive notice is that kind of actual **notice** which

<sup>58</sup> To regard as a characteristic of a person or thing, classify or designate.

<sup>59</sup> The ground, reason, or evidence lending probability to a belief, not certainly known.

<sup>60</sup> The act of passing from one statement considered as true to another whose truth is believed to follow from that other statement.

<sup>61</sup> To lay the responsibility to a person or a cause.

<sup>62</sup> The power or right to exercise authority over something or somebody.

<sup>63</sup> Based on probability, giving grounds for reasonable opinion or belief.

consists of any **knowledge** of circumstances leading to a **knowledge of such facts**. \*\*\* **Process**<sup>64</sup> emanates from a court, and is usually directed to the sheriff, as considered in the C.J.S. title **Process** § 1 and § 27, also § 50 C.J., while a **notice** has its emanation in act of the party sending it forth, and may be served by a<sup>65</sup> layman.

#### Statutory Provisions

The legislature has the **right** to make reasonable **regulations** as to public or legal **notices**, and the statutory requirements **must be** completely met in order to effect a **valid notice**. Statutory provisions pertaining to **notice** are governed by the general rules applicable to statutes with respect to construction and repeal.

#### Doctrine of Presumptive or Imputed Notice

**Notice** to an agent as affecting the principal is considered in Agency §§ 262-274.

#### Facts Putting on Inquiry

Whatever puts a person on inquiry amounts in judgment of **law** to **notice**, provided the inquiry becomes a duty and would lead to knowledge of the **facts** by the exercise of ordinary intelligence and understanding.

#### Notice of Judicial Proceedings

Generally, a party who has been properly brought into court is chargeable with **notice** of **all** subsequent steps taken in the cause down to and including the judgment, although he does not in fact appear and has **no actual knowledge** thereof. The doctrine which charges **all** parties to a judicial proceeding with **notice** of orders and judgments rendered therein is distinct from the<sup>66</sup> lis pendens doctrine.

#### Notice Afforded by Particular

**Publication or Posting** – Unless it may be a **notice** or advertisement published in accordance with some positive law or legal order, the publication of a **notice** or advertisement, if not seen or read by a person, does not charge him with constructive or implied **notice** of its contents. \*\*\* **Public Law and Acts of Public Officials** – **all** persons must take **notice** of the **public laws** by which they are governed. A petitioner who institutes proceedings before an **administrative** agency is deemed to have **notice** of a change in rules governing such proceedings. \*\*\* **Record** – The record of any instrument entitled to be recorded will give constructive notice to the persons bound to search for it. \*\*\* **Deed** – **Notice of a deed** is **notice** of its whole contents, as far as they affect the transaction in which **notice** of the deed is acquired, and it is also **notice** of whatever matters one would have learned by any inquiry which the recitals of the instrument made it **one's duty** to pursue. \*\*\* **Miscellaneous Acts or Instruments** – Acts or instruments of various kinds have been held sufficient to put a person on inquiry and to charge him with **notice**. An addressee of a register letter who accepts it and signs the return receipt is chargeable with knowledge of the contents thereof.

#### Necessity of Notice

As a general rule, due notice of proposed steps is an<sup>67</sup> essential element of a proper **administration** of Justice, and action taken, without compliance with an order of court requiring **notice** preliminary to such action is not binding on parties who are **entitled** to **notice**.

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<sup>64</sup> To come out from a source.

<sup>65</sup> A person who is not an expert in some field.

<sup>66</sup> That which starts foreclosure process.

<sup>67</sup> Something necessary, indispensable, or unavoidable.

### Waiver

A person may waive a **notice** which is intended for his benefit or protection, but he may not affect the **rights** of third person by his waiver.

### Form & Requisites

A **required notice** should give necessary information and should be **clear** and **explicit**. \*\*\* Where giving of **notice** is relied on to sustain <sup>68</sup>forfeiture or <sup>69</sup>divestiture of one's **rights**, statutory directions as to how such **notice** shall be given must be strictly complied with (See... Germantown Trust Co. v. Forrest Hill Building & Loan Ass'n, 190 A. 561, 125 Pa.Super, 477) \*\*\* A **notice** must be **clear**, **definite**, and **explicit**, and not <sup>70</sup>ambiguous. The **notice** is not clear unless its meaning can be apprehended **without explanation or argument**. (See... Shimer v. Jones, 47 Pa. 268) \*\*\* A **notice** may consist of **two or more** papers properly connected. In determining whether a **notice** is sufficient, **exhibits** and **affidavits attached thereto** may be considered. (See... Este v. Pennsylvania R. Co., 27 Pa.Super. 521) \*\*\* Where the **law** fixes a **definite date** on which a **notice** shall be returnable, it may not be made returnable at a different date. (See... State v. Blair, 151 S.W. 148, 245 Mo. 680) \*\*\* Mere informalities, irregularities, or immaterial defects do not <sup>71</sup>vitiating **notices** as long as they do not misled, and give the necessary information to the proper parties. (See... Cole v. Board of Sup'rs of Orange County, 150 P. 784, 785, 27 Cal.App. 528) \*\*\* It is <sup>72</sup>**essential** that a **notice** required by **law** should be given, or should be caused to be given, by the person who is authorized to give **notice**. \*\*\* A notice is not necessarily <sup>73</sup>invalidated by lack of signature.

### Amendment or New Notice

A **notice** may be amended in a proper case. An additional **notice** before the expiration of the prescribed time may supply on <sup>74</sup>**omission** in the original **notice**.

### Service & Publication

A **required notice** must be served on the <sup>75</sup>proper person. \*\*\* In general, the period of **notice** prescribed by the legislature is controlling, and there must be due <sup>76</sup>compliance with requirements as to time. When **notice** is deemed to be necessary, it must appear that it was given in due time. \*\*\* A method of service of **notice** which is prescribed by statute **must be** followed, and, as a general rule, a **strict compliance** with the statute **is required**. \*\*\* "**Personal service**" of **notice** means personally serve, or serve directly on the person to be served, and, as a general rule, personal service of a required **notice** is essential unless otherwise provided. **Acknowledgement or acceptance of service** is the full equivalent of actual personal service. (See... Priester v. Priester, 127 S.E. 18, 131 S.C. 284) \*\*\* General speaking, it is essential that personal service of **notice** should be proved by competent evidence, and compliance with statutory requirements as to the method of **proof** is <sup>77</sup>essential and sufficient. \*\*\* A provision for **personal service** may be complied with by using the mails. \*\*\* In order to prove service by mail, it is essential to show the existence of conditions on which the <sup>78</sup>validity of such service depends, and there should be proof of due mailing. \*\*\* Giving **notice** by posting is sometimes authorized or required. \*\*\* Proof of service of **notice** by posting must show compliance with the

<sup>68</sup> The loss of property or money because of a breach of a legal obligation.

<sup>69</sup> The compulsory transfer of title or disposal of interests.

<sup>70</sup> Not clear or precise.

<sup>71</sup> To make faulty or defective.

<sup>72</sup> Something necessary, indispensable, or unavoidable.

<sup>73</sup> To weaken or destroy the legality of the Item.

<sup>74</sup> Something neglected or left undone.

<sup>75</sup> Referring to one individual only.

<sup>76</sup> The fulfilling of an official requirement.

<sup>77</sup> Something necessary, indispensable, or unavoidable.

<sup>78</sup> To support on a sound or authoritative basis.

requirements imposed. \*\*\* There must be due compliance with statutes providing for the giving of **notice** by publication. \*\*\* There must be proof of the fact of publication of **notice** in compliance with the requirements imposed; some statutes permit proof by the affidavit of the publisher or printer of the newspaper in which the **notice** appears.

#### Construction, Operation & Effect

A doubt as to the meaning of a **notice**, resulting from an <sup>79</sup>ambiguity in its terms, is resolved against the person who gives the **notice**. \*\*\* Generally speaking, constructive or <sup>80</sup>imputed **notice** and actual **notice** have the same effect, and each is as binding as the other. \*\*\* **Notice** of a status or relationship between various person constitutes **notice** of property rights which are based on such status or relationship. \*\*\* According to some authorities **notice** of a specific claim or right does not constitute **notice** with respect to another or different right. \*\*\* While the view has been taken that **notice** to a person in a particular transaction does not necessarily affect him in a subsequent and independent transaction, **notice** to a person in one transaction has been regarded as <sup>81</sup>operative under some circumstances in subsequent transactions of the same character between the same persons. \*\*\* While there is authority for the view that **notice** to a person when acting in a particular capacity does not affect him when acting in a different capacity, the capacity in which a person is acting when he receives **notice** has been regarded as immaterial. \*\*\* According to some authorities, **notice** to one of the several persons who have a common interest or who are jointly liable may constitute **notice** to all.

#### Pleading

The general rule with respect to the <sup>82</sup>necessity of alleging **notice** is that, when the matter alleged in the pleading lies <sup>83</sup>peculiarly within the knowledge of the party pleading it, **notice** thereof should be <sup>84</sup>averred. \*\*\* In pleading **notice**, it is essential to plead facts as distinguished from conclusions of law; a general <sup>85</sup>averment that a party had **notice** is usually not sufficient, and, with respect to a **notice** required by statute, the allegations should show a sufficient notice under the statute. \*\*\* While a mere denial of **notice** pleaded as an element of the plaintiff's cause of action may be sufficient, lack of notice, as an affirmative defense, should be pleaded. \*\*\* In general, where allegations of **notice** show a reliance on constructive notice, no issue as to actual **notice** is made and evidence of actual **notice** may not be admitted, but, according to some authorities, evidence tending to show either actual or constructive notice may be admitted under a general allegation of **notice**.

#### Evidence

While the <sup>86</sup>presumption arising from constructive notice in the strict sense **is one of law** and usually is conclusive, under the meaning sometimes given to the term "constructive notice", the view has been taken that the facts from which constructive notice may arise are not necessarily conclusive in effect. The burden of proving notice rests on the party who asserts, or who relies on, the claim of **notice**. \*\*\* Unless otherwise provided by law, competent and relevant oral evidence is admissible to prove **notice**, and evidence of common knowledge and <sup>87</sup>notoriety in the neighborhood may be admissible in this respect. \*\*\* As a general

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<sup>79</sup> A doubtful or uncertain way of being understood.

<sup>80</sup> To lay the responsibility to a person or a cause.

<sup>81</sup> Exerting force or influence.

<sup>82</sup> The quality of state of being in need.

<sup>83</sup> Distinctive to that one individual.

<sup>84</sup> Verified to be true in pleading a cause.

<sup>85</sup> That which has been affirmed.

<sup>86</sup> The ground, reason, or evidence lending probability to a belief, not certainly known.

<sup>87</sup> Generally known and talked of.

rule the existence of **notice** may be established either by direct or by<sup>88</sup>circumstantial evidence in the same manner as any other **fact** may be established. \*\*\* As a general rule actual **notice** may be proved either by direct or by circumstantial evidence.

#### Questions of Law & Fact

Rules applicable in civil actions generally as to what matters are questions of law or of **fact** usually apply with respect to **notice**; the question of actual notice is usually one of fact. \*\*\* While the question whether **notice** is imputed person from particular **facts** has been regarded question of **law**, the view has been taken that a person had **notice** of circumstances sufficient to the duty to make inquiry, and whether, by making inquiry, **knowledge** of the ultimate **fact** might have acquired, are questions of fact.

#### Administrative – From “Word & Phrases”

A court’s decision on a matter of **business policy** is “**administrative**” in **nature** rather than “**judicial**” and cannot be disturbed on review unless there has been an abuse of<sup>89</sup>discretion. (See... Reconstruction Finance Corp. v. Kentucky River Coal Corp., C.C.A.Ky., 114 F.2d 942, 946) \*\*\* The authority to make **rules** and **regulations** to carry out an express legislative purpose or to effect the operation and enforcement of a **law** is not an exclusively “**legislative power**”. But is “**administrative**” in its **nature** and may be delegated by the Legislature. (See... Motsinger v. Perryman, 9 S.E.2d 511, 514, 218 N.C. 15.) \*\*\* The enforcement of order of county court directing issuance of order requiring relators to show cause why building permit should not be revoked and enjoining and restraining construction of building could be prevented by writ of prohibition as against contention that acts were “**administrative**” or “**legislative**” in **nature**. (See... Convalescent Crippled Children v. Corneli, 152 S.W.2d 83, 85, 347 Mo. 1164.) \*\*\* Appeal under state statute to county court from county treasurer’s action on proposal to assess property held “**administrative**”, not “**judicial**”, and hence **taxpayer**, **not having exhausted administrative remedy**, could not enjoin assessment by bringing suit in federal court pending county court’s disposition of appeal. (See... J. B. Schermerhorn, Inc., v. Holloman, C.C.A. Okl., 74 F.2d 265, 266.) \*\*\* The words “<sup>90</sup>**ministerial**” and “**administrative**” may be, and frequently are, used interchangeably. (See... People v. Salsbury, 96 N.W. 874, 65 Neb. 814, 59 L.R.A. 915.) \*\*\* “**Purley**” means exclusively, and “**administrative**” is defined as having character of **executive** or **ministerial** action (See... Nissen v. City of Winston-Salem, 175 S.E. 310, 313, 206 N.C. 888.) \*\*\* A “**court**” is a **body** to which **public administration of justice** is delegated, and one common and<sup>91</sup> **essential** feature of all courts is that judge or judges have **some sort of judicial function, power, or authority**. (See... Mauritz v. Schwind, Tex.Civ.App., 101 S.W.2d 1085, 1090.) \*\*\* “**Executive**” and “**administrative**” duties are such as concern the execution of existing **laws**, and acts which require the<sup>92</sup> ordaining of new laws are “**legislative**”, so that where it can be shown that the particular act could not have been done without a **law** or ordinance such act is to be considered “**legislative**”. (See,, Holvey v. Kapp, 189 N.E. 920, 923, 355 Ill. 596.) \*\*\* Whether a power or function conferred upon official or other governmental agency is “**judicial**”, “**legislative**”, “**executive**” or “**administrative**” depends upon inherent **nature** or quality of the power or function, irrespective of whether it involves<sup>93</sup> **discretion**. (See... Clark v. Brisco Irr. Co., Tex.Civ.App. 200 S.W.2d 674, 683.) \*\*\* A violation of statute or **regulation** is not unconstitutional because no **right** of appeal to a

<sup>88</sup> That which tends to prove a fact by proving other events which afford a basis for a reasonable inference of the occurrence of the fact at issue.

<sup>89</sup> Ability to make responsible decisions.

<sup>90</sup> Acting or active as an agent doing the duties of an administrative office.

<sup>91</sup> Something necessary, indispensable, or unavoidable.

<sup>92</sup> To establish or order by appointment, decree, or law.

<sup>93</sup> Ability to make responsible decisions.

court is afforded, since authority of Liquor Commission [agency] is “**administrative**” and not “**judicial**” and hence no legal or **constitutional right** is invaded by summary exercise of the power. (See... Darling Apartment Co. v. Springer, Del., 22 A.2d 397, 402, 137 A.L.R. 803.) \*\*\* If action of city be designed merely to carry into effect **law** already enacted, it is “**administrative**” rather than “**legislative**” action, so as not to be subject to power of <sup>94</sup>referendum. (See... Kleiber v. City and County of San Francisco, 117 P.2d 657, 659, 18 Cal. 2d 718.) \*\*\* Whereas an ordinance which puts into execution previously enacted **laws** is “**administrative**” or **executive**” in character. (See... People v. City of Centralia, 117 N.E.2d 410, 413, 1 Ill.App.2d 228.) \*\*\* The crucial test for determining what is “**legislative**” and what is “**administrative**”... is whether the ordinance is one making new **law**, or one executing a **law** already in existence. (See... Keigley v. Bench, 89 P.2d 480, 484, 485, 97 Utah 69, 122 A.L.R. 756.) \*\*\* The basic distinction between an “**administrative act**” and a “**judicial act**” by officers **other than judges** is that the <sup>95</sup>**quasi-judicial** action contrary to an **administrative** function is one in which **all** parties are of **right** entitled to **notice** and hearing under judicial form of procedure and that **no one deprived** of such **rights** is bound by the action taken. (See... South View Cemetery Ass’n v. Hailey, Ga., 34 S.E.2d 863, 866.) \*\*\* The term “**administrative affairs**”... was used in its broadest sense as including activity of state in exercise of its **political powers**, including action of **legislative**, **judicial**, and **executive** departments. (See... Troutman v. Crippen, 212 S.W.2d 33, 36, 186 Tenn. 459.) \*\*\* The tax commissioner is an “**administrative agency**” subject to the **Administrative Agencies Uniform Practice Act** and the appeal provisions thereof. (See... Langer v. Gray, 15 N.W.2d 732, 734, 73 N.D. 437.) \*\*\* An “**administrative agency**”... has no <sup>96</sup>**jurisdiction to adjudicate controverted individual property or contract rights**. (See... Mitchell v. Illinois Cent. R. Co., 47 N.E.2d 115, 119, 317 Ill.App. 501.) \*\*\* “**Administrative boards**” differ from “**courts**” in that boards frequently represent **public interests** entrusted to boards, where courts are concerned with litigating **rights** of parties with <sup>97</sup>adverse interests. (See... Rommell v. Walsh, 15 A.2d 6, 9, 127 Conn. 16.) \*\*\* Under Constitution and statutes, a taxpayer has a **right** to appeal from decision of **Board of Tax Appeals**, an “**administrative board**”, to the Supreme Court where both sides may be fully heard and **all rights** and safeguards may be had. (See... Fiddler v. Board of Tax Appeals, 42 N.E.2d 151, 151, 140 Ohio St. 34.) \*\*\* **The county court is no longer a judicial court**, but has become an “**administrative body**” within **constitutional** provision pertaining to **judicial review** of action of **administrative agencies**. (See... Horn v. Randall, Mo.App., 275 S.W.2d 758, 760.) \*\*\* **Issuance of a municipal or county warrant or order is not a “judicial determination”, nor is it an “administrative or quasi-judicial decision”**... (See... Giessman v. Garrett County Com’rs, 44 A.2d 862, 860, 185 Md. 350.) \*\*\* An employee, to be an “**administrative employee**” within exemption accorded such by **regulation** <sup>98</sup>promulgated under **Fair Labor Standards Act**, must be engaged in work which requires exercise of <sup>99</sup>discretion and independent judgment. (See... Giannini v. Standard Oil Co., D.C.Ind., 130 F.Supp. 740, 746, 747.) \*\*\* Taxes upon land may become an **obligation of a receiver, trustee** in bankruptcy or a **debtor** in possession as an “**administrative expense**”. (See... Northumberland County v. Philadelphia and Reading Coal & Iron Co., C.C.A. Pa., 131 F.2d 562, 564.) \*\*\* “**Administrative finality**” means decision of **administrative board** is not open to review **except** upon questions affecting **constitutional power**,

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<sup>94</sup> The principle or practice of submitting to popular vote.

<sup>95</sup> Quasi – Looks like and acts like but isn’t the same as the real thing.

<sup>96</sup> The power or right to exercise authority over something or somebody.

<sup>97</sup> Acting against or in contrary direction, hostile.

<sup>98</sup> To make known by open declaration.

<sup>99</sup> Ability to make responsible decisions.

statutory authority and basis <sup>100</sup>perquisitor of proof. (See... L. D. Wilson, Inc. v. Federal Communications Commission, 170 F.2d 793, 802. 83 U.S.App.D.C. 176.) \*\*\* **Enforcement of the law** is an “**administrative function**” **not subject to judicial control** by proceedings in the **nature** of <sup>101</sup>prohibition. (See... Baldwin Gardens, Inc. v. McGoldrick, 100 N.Y.S.2d 548, 551, 198 Misc. 748.) \*\*\* A license to operate an automobile on highways of the commonwealth is a “**privilege**” and **not** a “**property right**”, and **the power of the secretary of revenue** to suspend or revoke such operating privileges **is not** a “**judicial function**” but an “**administrative**” one which can be performed **without allowing** motorist accused of violating traffic laws the **right** to confront and cross-examine his accuser. (See... Commonwealth v. Cronin, 9 A.2d 408,410,336 Pa. 469, 125 A.L.R. 1455.) \*\*\* Police officer held an “**executive officer**” within bribery statute,... and is an “**executive**” or “**administrative**” officer... (See... State v. Emory, 46 P.2d 67, 68, 55 Idaho. 649.) \*\*\* “**Administrative police**” is that branch of the police which has for its object the maintenance of **public order** in every part of the general **administration**. (See... State v. Frazier, 167 N.W. 510, 515, 39 N.D. 430.) \*\*\* Fixing of values for taxation by state tax commission is exercise of **administrative power**, but determination by commission as to whether property is subject to taxation **is** exercise of **judicial power**. (See... Western Union Telegraph Co. v. Tax Commission of Ohio, D.C. Ohio, 21 F.2d 355, 358.) \*\*\* “**Administrative presumptions**” are <sup>102</sup>**prima facie** presumptions based upon considerations of fairness and convenience in placing the **burden of proof**. (See... Alabama Power Co. v. McGehee, 154 So. 105, 228 Ala. 505.) \*\*\* The “**administrative process**” is a means by which governmental agency clothed with delegated **legislative** authority or performing a <sup>104</sup>**quasi-judicial** function, regulates activities of groups of persons within specified channels. (See... American Eagle Fire Ins. Co. v. Jordan, D.C.Wash., 67 F.Supp. 76, 79.) \*\*\* The determination of the question **whether** a statue **violates the constitution** is a “**judicial** question” and not an “**administrative** question” or “**legislative** question”. (See... Federal Land Bank of St. Paul v. Bismarck Lumber Co.,297 N.W. 42, 45, 70 N.D. 607.) \*\*\* **Administrative remedies must be exhausted** before <sup>105</sup>redress may be had in court and a rehearing is an “**administrative remedy**” within such rule. (See... Alexander v. State Personnel Board, 137 P.2d 433, 434, 22 Cal.2d 198.) \*\*\*

### **Admiralty and Maritime - From “Word & Phrases”**

The most venerable monument of **admiralty** <sup>106</sup>**jurisdiction** is the Black Book of the Admiralty, which has always been deemed of the highest authority, and, besides containing the **laws of Oleron** at large. (See... De Lovio v. Boit, C.C.Mass. 7 Fed.Cas. 418, 420, 2 Gall. 398.) \*\*\* “The principals subjects of **admiralty jurisdiction** are **maritime** contracts and **maritime** torts, including captures jure belli, and seizures on water for municipal and revenue **forfeitures**.” (See... The Belfast, 74 U.S. 624, 637, 7 Wall. 624, 637, 19 L.Ed. 266) \*\*\* The **admiralty jurisdiction** given to the United States courts by the **Constitution** extends over **all public navigable waters**, **without regard** to their being influenced by the tide. (See... The Eagle, 75 U.S.15, 20, 8, Wall. 15 20 19 L.Ed. 365.) \*\*\*

<sup>100</sup> The one who searches, the one expected or promised.

<sup>101</sup> An order to restrain or stop.

<sup>102</sup> The ground, reason, or evidence lending probability to a belief.

<sup>103</sup> True, valid, or sufficient at first view, on the first appearance. Apparent.

<sup>104</sup> Quasi – Looks like and acts like but isn’t the same as the real thing.

<sup>105</sup> Relief from distress.

<sup>106</sup> The power or right to exercise authority over something or somebody.

## Texas Register – Proposed Rules

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action **must be published** in the **Texas Register** at least 30 days before action is taken. The 30 day time period gives **interested persons** an opportunity to review and make oral or written comments on the section. Also, in case of substantive action, a **public hearing must be granted** if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

<http://www.sos.state.tx.us/texreg/index.html> \*\*\*

## Administrative Judiciary News & Journal

Judge Charles N. Bono of the National Conference of **Administrative Law** Judges stated “I became keenly aware of how important such professional organizations are and how the ‘**hidden judiciary**’ of **Administrative Law** Judges is constantly challenged...”

## Administrative Law – Federal Regulations

With the **exception** of the **Defense Department** and **law** enforcement **agencies**, the federal government carries out its activities through **administrative agencies**: like the IRS, HCFA, SSA and many others. The states also operate through **administrative agencies**. \*\*\* **Except** for criminal **laws**, most of the **laws** passed by congress and the state legislatures are <sup>107</sup> implemented through **administrative law** proceedings. In addition to enforcing **laws** to enforcing **laws** passed by the legislatures, **administrative agencies** **flesh** out these **laws** **with regulations**. **Agencies** **must satisfy** specific procedural requirements when <sup>108</sup> **promulgating regulations**. Once the **regulations** are promulgated, they have the force of **law**. \*\*\* **Administrative regulations** may be enforced by private courts presided over by **administrative judges** or in the state and federal civil courts. \*\*\* The **Federal Register** is a publication in which **all** proposed and final **regulations** having general applicability and legal effect **must be published**. \*\*\*

[http://www.access.gpo.gov/su\\_docs/aces/aces/140.html](http://www.access.gpo.gov/su_docs/aces/aces/140.html) \*\*\*

## United States Code – Title 5 – Administrative Procedures

United States Code, Title 5 – Government Organization and Employees, Part 1 – The **Agencies** Generally, Chapter 5 – **Administrative** Procedure \*\*\* **Subchapter I** – General Provisions \*\*\* § 500 – **Administrative** practice; general provisions. \*\*\* § 501 – Advertising practice; restrictions. \*\*\* § 502 – **Administrative** practice; Reserves and National Guardsmen \*\*\* § 503 – Witness fees and allowances \*\*\* § 504 – Costs and fees of parties \*\*\* **Subchapter II** – **Administrative** Procedure \*\*\* § 551 – Definitions \*\*\* § 552 – Public information; agency rules, opinions, orders, records, and proceedings \*\*\* § 552a – Records about individuals \*\*\* § 552b – Open meetings \*\*\* § 553 – Rule making \*\*\* § 554 Adjudications \*\*\* § 555 <sup>109</sup> Ancillary matters \*\*\* § 556 Hearing; presiding employees; **powers** and duties; **burden of proof**; evidence; record as basis of decision \*\*\* § 557 – Initial decision; conclusiveness; review by agency; submissions by parties; contents of decision; record \*\*\* § 558 – Imposition of sanctions; determination of applications for licenses; suspension, revocation and expiration of licenses \*\*\* § 559 - Effect on other **laws**; effect of subsequent statute \*\*\* of licenses. •§ 559. Effect on other **laws**; effect of subsequent statute. \*\*\* **SUBCHAPTER III** - NEGOTIATED RULEMAKING PROCEDURE \*\*\* § 561 - Purpose. \*\*\* § 562 - Definitions. \*\*\* § 563 - Determination of need for negotiated **rulemaking** committee. \*\*\* § 564 - Publication of **notice**; applications for membership on committee. \*\*\* § 565 - Establishment of committee. \*\*\* § 566 - Conduct of committee activity. \*\*\* § 567 - Termination of committee. \*\*\* § 568 - Services,

<sup>107</sup> To be carried out or accomplished.

<sup>108</sup> To make known by open declaration.

<sup>109</sup> Subordinate, subsidiary, auxiliary, or supplementary.

facilities, and payment of committee member expenses. \*\*\*§ 569 - Role of the [Administrative](#) Conference of the United States and other entities. \*\*\* § 570 - Judicial review. \*\*\* **SUBCHAPTER IV - ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS** \*\*\* § 571 - Definitions. \*\*\* § 572 - General authority. \*\*\* § 573 - Neutrals. \*\*\* § 574 - Confidentiality. \*\*\* § 575 - Authorization of arbitration. \*\*\* § 576 - Enforcement of arbitration agreements. \*\*\*§ 577 - Arbitrators. \*\*\* § 578 - Authority of the arbitrator. \*\*\*§ 579 - Arbitration proceedings. \*\*\*§ 580 - Arbitration awards. \*\*\*§ 581 - Judicial review. \*\*\* § 582 - Compilation of information. \*\*\*§ 583 - Support services. \*\*\* **SUBCHAPTER V - ADMINISTRATIVE CONFERENCE OF THE UNITED STATES** \*\*\* § 591 - Purpose. \*\*\* § 592 - Definitions. \*\*\* § 593 - [Administrative](#) Conference of the United States. \*\*\*§ 594 - **Powers** and duties of the Conference. \*\*\* § 595. Organization of the Conference. \*\*\* § 596 - Authorization of appropriations. \*\*\*

<http://fatty.law.cornell.edu/uscode/>

### **McKart v. United States, 395 US 185 (1969)**

The doctrine of exhaustion of [administrative](#) remedies is well established in the Jurisprudence of [Administrative Law](#). See generally 3 K. Davis, [Administrative Law](#) Treatise 20.01 et seq. (1958 ed., 1965 Supp.); L. Jaffe, Judicial Control of [Administrative](#) Action 424-458 (1965). The doctrine provides “that no one is entitled to judicial relief for a supposed or threatened injury **until** the prescribed [administrative remedy](#) has been exhausted.” **Myers v. Bethlehem Shipbuilding Corp.**, 303 U.S. 41, 50-51 (1938). The doctrine is applied in a number of different situations and is, like most judicial doctrines, subject to numerous exceptions. /9/ Application of the doctrine to specific cases **requires** and **understanding** of its purpose and of the particular [administrative](#) scheme involved. \*\*\* Perhaps the most common application of the **Exhaustion Doctrine** is in cases where the **relevant statute** provides that certain [administrative](#) procedures shall be **exclusive**. See... **Myers v. Bethlehem Shipbuilding Corp.**, 303 U.S. 41, 50-51 (1938) (National Labor Relations Act). The reasons for making such procedures **exclusive**, and for the judicial application of the **Exhaustion Doctrine** in cases where the statutory requirement of **exclusivity** is not so **explicit**, are not difficult to understand. A primary purpose is, of course, the avoidance of premature interruption of the [administrative](#) process. The agency, like the court, is created for the purpose of applying a statute in the first instance. Accordingly, it is **normally** desirable **to let the agency** develop the necessary **factual** background upon which **decisions should be based**. And since agency decisions are frequently of a <sup>110</sup>discretionary nature or **frequently require expertise**, the agency should be given the first chance to exercise that discretion or to apply that expertise. And of course it is generally more efficient for the [administrative](#) process to go forward without interruption than it is to permit the parties to seek aid from the courts at various intermediate stages. The very same reasons lie behind judicial rules sharply limiting <sup>111</sup>interlocutory appeals. \*\*\* Closely related to the above reasons is a notion peculiar to [administrative law](#). The [administrative](#) agency is created as a **separate entity** and invested with certain **powers** and **duties**. The courts ordinarily should not interfere with an agency until it has completed its action, or else has clearly **exceeded its** <sup>112</sup>jurisdiction. As professor Jaffe puts it, “**The Exhaustion Doctrine** is, therefore, an expression of executive and [administrative](#) <sup>113</sup>autonomy.” /10/ This reason is particularly pertinent where the function of the agency and the particular decision sought to be reviewed involve exercise of discretionary powers granted the agency by congress, or required application of special expertise.

<sup>110</sup> Ability to make responsible decisions.

<sup>111</sup> Pronounced during the progress of a legal action and having only provisional force.

<sup>112</sup> The power or right to exercise authority over something or somebody.

<sup>113</sup> The quality or state of being self-governing.

## Administrative Law Handbook – by Dan Morales (1996)

State agencies are governed by many different provisions of law. Each state agency is initially created and defined by its <sup>114</sup>enabling statute. In addition three Texas laws govern the actions and procedures of all state agencies:

1. The Texas Open Meetings Act requires that all governmental bodies deliberate in public meetings, **unless** a closed executive session is expressly authorized.
2. The Texas Open Records Act specifies that documents or records of a state agency are open, **unless** there is an explicit provision to keep a particular item confidential.
3. The Administrative Procedures Act provides general legal requirements that agencies must adhere to when adopting rules or conducting contested cases.

State agencies must also observe the provisions of the United States Constitution, the Texas Constitution, the General Provisions of the General Appropriations Act, and all other state and federal laws. Various statutes set out procedures for specific actions such as competitive bidding for governmental purchases. For the most part, however, the three statutes listed above determine the procedural requirements applicable to the actions of all state boards, commissions, and agencies.

<http://www.oag.state.tx.us/WEBSITE/OPENGOVT/adminlaw.htm>

### Texas Government Code

**TITLE 1** --- GENERAL PROVISIONS \*\*\* CHAPTER 1 --- GENERAL PROVISIONS \*\*\* **TITLE 2** --- JUDICIAL BRANCH \*\*\* .... SUBTITLE A --- COURTS \*\*\* SUBTITLE B --- JUDGES \*\*\* SUBTITLE C --- PROSECUTING ATTORNEYS \*\*\* SUBTITLE D --- JUDICIAL PERSONNEL AND OFFICIALS \*\*\* SUBTITLE E --- JURIES \*\*\* SUBTITLE F --- COURT ADMINISTRATION \*\*\* SUBTITLE G --- ATTORNEYS \*\*\* SUBTITLE H --- INFORMATION RESOURCES \*\*\* **TITLE 3** --- LEGISLATIVE BRANCH \*\*\* SUBTITLE A --- LEGISLATURE \*\*\* SUBTITLE B --- LEGISLATION \*\*\* SUBTITLE C --- LEGISLATIVE AGENCIES \*\*\* **TITLE 4** --- EXECUTIVE BRANCH \*\*\* SUBTITLE A --- EXECUTIVE OFFICERS \*\*\* SUBTITLE B --- LAW ENFORCEMENT AND PUBLIC PROTECTION \*\*\* SUBTITLE C --- STATE MILITARY FORCES AND VETERANS \*\*\* SUBTITLE D --- HISTORY \*\*\* SUBTITLE E --- OTHER EXECUTIVE AGENCIES AND PROGRAMS \*\*\* SUBTITLE F --- COMMERCE AND INDUSTRIAL DEVELOPMENT \*\*\* SUBTITLE G --- CORRECTIONS \*\*\* SUBTITLE I --- HEALTH AND HUMAN SERVICES \*\*\* **TITLE 5** --- OPEN GOVERNMENT ETHICS \*\*\* SUBTITLE A --- OPEN GOVERNMENT \*\*\* SUBTITLE B --- ETHICS \*\*\* **TITLE 6** --- PUBLIC OFFICERS AND EMPLOYEES \*\*\* SUBTITLE A --- PROVISIONS GENERALLY APPLICABLE TO PUBLIC OFFICERS AND EMPLOYEES \*\*\* SUBTITLE B --- STATE OFFICERS AND EMPLOYEES \*\*\* **TITLE 7** --- INTERGOVERNMENTAL RELATIONS \*\*\* **TITLE 8** --- PUBLIC RETIREMENT SYSTEMS \*\*\* SUBTITLE A --- PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS \*\*\* SUBTITLE B --- EMPLOYEES RETIREMENT SYSTEM OF TEXAS \*\*\* SUBTITLE C --- TEACHER RETIREMENT SYSTEM OF TEXAS \*\*\* SUBTITLE D --- JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN ONE \*\*\* SUBTITLE E --- JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO \*\*\* SUBTITLE F --- TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM \*\*\* SUBTITLE G --- TEXAS MUNICIPAL RETIREMENT SYSTEM \*\*\* **TITLE 10** --- GENERAL GOVERNMENT \*\*\* SUBTITLE A --- ADMINISTRATIVE PROCEDURE

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<sup>114</sup> To give legal power, capacity, or sanction to, by indicting where in the Constitution, the power comes from.

AND PRACTICE \*\*\* SUBTITLE B --- INFORMATION AND PLANNING \*\*\* SUBTITLE C --- STATE ACCOUNTING, FISCAL MANAGEMENT, AND PRODUCTIVITY \*\*\* SUBTITLE D --- STATE PURCHASING AND GENERAL SERVICES \*\*\* SUBTITLE E --- GOVERNMENT PROPERTY \*\*\* SUBTITLE F --- STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT \*\*\* SUBTITLE G --- ECONOMIC DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL GOVERNMENTS \*\*\*

<http://www.capitol.state.tx.us/statutes/gvtoc.html>

### **TEXAS ADMINISTRATIVE CODE**

Title 1. **ADMINISTRATION** \*\*\* Title 4. AGRICULTURE \*\*\* Title 7. BANKING AND SECURITIES \*\*\* Title 10. COMMUNITY DEVELOPMENT \*\*\* Title 13. CULTURAL RESOURCES \*\*\* Title 16. ECONOMIC **REGULATION** \*\*\* Title 19. EDUCATION \*\*\* Title 22. EXAMINING BOARDS \*\*\* Title 25. HEALTH SERVICES \*\*\* Title 28. INSURANCE \*\*\* Title 30. ENVIRONMENTAL QUALITY \*\*\* Title 31. NATURAL RESOURCES AND CONSERVATION \*\*\* Title 34. PUBLIC FINANCE \*\*\* Title 37. PUBLIC SAFETY AND CORRECTIONS \*\*\* Title 40. SOCIAL SERVICES AND ASSISTANCE \*\*\* Title 43. TRANSPORTATION \*\*\*

<http://www.sos.state.tx.us/tac/index.html>

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### **TEXAS CODES**

(That can be down loading by computer over the Internet.)

Agriculture Code \*\*\* Alcoholic Beverage Code \*\*\* Business & Commerce Code \*\*\* Business Corporation Act \*\*\* Civil Practice & Remedies Code \*\*\* Code of Criminal Procedure \*\*\* Texas Constitution \*\*\* Education Code \*\*\* Election Code \*\*\* Family Code \*\*\* Government Code \*\*\* Health & Safety Code \*\*\* Human Resources Code \*\*\* Insurance Code \*\*\* Labor Code \*\*\* Local Government Code \*\*\* Natural Resources Code \*\*\* Parks and Wildlife Code \*\*\* Penal Code \*\*\* Probate Code \*\*\* Property Code \*\*\* Tax Code \*\*\* Transportation Code \*\*\* Water Code \*\*\* Vernon's Texas Civil Statutes \*\*\*

<http://www.capitol.state.tx.us/statutes/statutes.html>

The preceding information is meant for the direct understanding of an [Administrative Process](#), how it got started, why they do what they do and what you should expect by dealing with THEM. Look at [Exhausting your Administrative Remedies](#) by using one of many Standard Operating Procedures or SOP that can be used in some situations. It is us against THEM.

1. Find out the name and position of the individual, which initiated the beginning action upon you.
2. You will send a Notice to this individual asking for his/her delegated authority to do what they have done to you. Tell THEM to be specific, explicit, and clear to where THIS delegated authority comes from. You will give them 3 to 10 days to respond, indicated on the Notice.
3. Now you need to find out the Chain of Command. Boss to Boss to Boss.
4. If the agency has a legal department, find out who the legal representative is and who is his/her Boss.
5. All of these people will need to be Noticed. Try not to go over anyone's head and stay through the Chain of Command.
6. After the Notices have run their course, you are ready for remedy.
7. Options will vary from action to action.
8. One Option can be specified in the second Notice, asking for relief from the agents and tell THEM this is what you plan to do if they do not comply to your demands.
9. The first thing I'm going to do is file in Small Claims Court for \$5,000.00 damages and I will ask for discovery. I may ask for your phone records, bank records, employment records or anything else that I may think of, to prove my case. It will cost the agents to defend this action in their private and official capacity.
10. Right before the Case comes to trial you will dismiss the case and refile it in County Court for \$20,000.00, then start the discovery all over again, just incase that something would be missed. This will cost the agents more money to defend this action.
11. Right before the Case comes to trial, you will dismiss the case and refile it in District Court for \$100,000.00, then start the discovery all over again, three time a charm. This will cost the agents even more money.
12. By now you should have all the evidence that will be need to show that no delegated authority exists, that puts you under there jurisdiction, to prove your case in District Court for violation of their Oath of Office; Abuse of Discretion; No Delegated Authority; Violation of the Peace and Dignity of (Your Name); Color of Law; Extortion; Fraud; Title 42, Section 1986, Knowledge of a Wrong Being Done and Failed to Stop it; Coercion, to accuse a person of any offense, to take or withhold action as a public, servant, or to cause a public servant to take or withhold action; Texas Penal Code Sec. 7.02. Criminal Responsibility for Conduct of Another, having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense; Texas Penal Code Sec. 7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association, (a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf, (b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.
13. Having multiple charges proved by their own omissions should not be difficult to find. But an other weapon to be used is the Texas Open Records Act. This is found in the Texas Government Code,

CHAPTER 552. PUBLIC INFORMATION, SUBCHAPTER A. GENERAL PROVISIONS, Sec. 552. By this action, you can ask for specific documentation of anything that you can dream up, that would prove the laws are valid, that they use against you, or it will prove that the law has nothing to do with you at all. What is interesting, is the first statement indicating the policy and construction of the Texas Open Records Act which states in Sec. 522.001: “(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy. (b) This chapter shall be liberally construed in favor of granting a request for information.”

14. The following is an example of a Texas Open Record Act:

## Texas Open Records Act Request

July 4, 1997

**TO:** Judge Im Sombody, Municipal Courts Building, 301 Loco, Houston, Texas 77002  
Sig Bigshot, General Counsel, Administrative Office of the District Courts, 301 San Jacinto, Room 1000, Houston Texas 77002

**FROM:** The Lone, Ranger, 803 Trigger Dr., Bullet, Texas 77540

**RE:** Formal request for the production of documents

**AUTHORITY:** Texas Open Records Act Request pursuant to **Texas Government Code § 552**

Dear Sir or Madam:

Under the Chapter 552, Public Information of the Texas Government Code as stated:  
Sec. 552.001. Policy; Construction.

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

In response to Cause # 1414142-2-1, which was originated in the Municipal Courts Building in Houston Texas, the following request are made. Further:

This is to assure you, that I will comply with Section **552.122**; as you are to comply with Section **552.261** and, for documents in excess of 50 pages, Section **552.271**. These documents should be delivered to the stated above (FROM) address.

I request no "speculative or hypothetical legal opinion". I request no "creation of documents", "legal research", opinion or advice. I request the documents showing the authority of all actions stated herein.

**DOCUMENTS BEING REQUESTED:**

**1.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify any local rules of courts which do not follow the Texas Rules of Criminal Procedure, that may or may not be used in a criminal action, through the appeal process.

**1.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **1.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**Page 1 of Three**

**2.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify that the Traffic Violation \_\_\_\_\_, is an ordinance, statute, state law or other violation which gives jurisdiction to such court.

**2.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **2.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**3.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify when and by whom that such ordinance, statute, state law or other violation, as stated in document request **2.0** was pursuant to the **Texas Constitution, Article 2, § 29, § 30, §32, § 36 and Article 4, § 21.**

**3.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **3.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**4.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify by what authority can a peace officer arrest an individual, that does not sign a Class C Misdemeanor citation.

**4.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **4.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**5.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify the amount of fines collected, in 1996, by the above stated court system. To whom and/or where are the percentage of the fines collected, being distributed.

**5.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **5.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**6.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify how the retirement fund of a judge, associated with the above court system, is calculated and based on.

**6.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **6.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**7.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify a license to practice law. Indicate if the license is to be renewed, when, and by whom or what, is the license to practice law issued. Indicate the form used to issue such license to practice law. Indicate whether the license must be produced on demand or by which procedure is used to prove such license exist.

**7.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **7.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

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**8.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify the authority of a judge or prosecutor of the above stated court to operate as a court or represent the State of Texas in a Civil or Criminal action which has not completed, Article 16, Section 1 of the Texas Constitution requirements.

**8.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **8.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

**9.0** COPIES OF ALL DOCUMENTS that are in your possession, under your control, or within your system of records, such documents which would indicate or specify the authority of a peace officer to detain, arrest, or give out citations for Traffic or other violations of law, which has not completed, Article 16, Section 1 of the Texas Constitution requirements.

**9.1** IF THERE ARE NO DOCUMENTS that are responsive to document request **9.0**, PLEASE SO INDICATE IN YOUR WRITTEN RESPONSE.

If you cannot produce this public information for inspection or duplication within 10 calendar days after the date of receiving this request, you shall so certify to me in writing and set a date and hour within a reasonable time when the information will be available for inspection, duplication, or be mailed to me per § 552.221 and § 552.308.

You shall treat this request for information uniformly without regard to the position of the person who signs this request per § 552.223.

Sincerely,

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The Lone, Ranger

cc: Attorney General Dan Morales  
P.O. Box 12546  
Austin, Texas 78711

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15. This is just an example and requests should be changed to suit your purpose. **Freedom** is only with [Internal Vigilance](#).

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