1979 WL 42709 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 29, 1979

***1 RE: Applicability of Administrative Procedure Act to Workmen's Compensation Law**

The Honorable James J. Reid
Chairman
South Carolina Industrial
Commission
Middleburg Office Park
1800 St. Julian Place
Columbia, S. C. 29204

Dear Commissioner Reid:
You have asked for advice concerning the applicability of the Administrative Procedure Act [Act 176 of 1977; §§ 1=23*-310 et seq. South Carolina Code (1976) to hearings held pursuant to the South Carolina Workmen's Compensation Law [§§ 42-1-10 et seq. of the South Carolina Code (1976)]. Since the threshold inquiry into the question of coverage of the APA is whether or not a given proceeding is a 'contested case,' I have written a separate, formal opinion concerning that question alone. The original of said opinion is attached hereto. You will note that it is the opinion of this Office that hearings before the Industrial Commission are contested cases, and that therefore the provisions of the APA do apply.

While it the opinion of this Office that the provision of the APA do apply to the hearings before the Industrial Commission, it should be noted that the APA is a general statute which prescribes procedures to be followed by state agencies generally in hearings before them. The Workmen's Compensation Law, on the other hand, is a specific statute which contains certain provisions applicable only to hearings before the Industrial Commission. Where provisions of a general statute and a special statute conflict, every effort should be made to reconcile the two; however, if such conflict cannot be reconciled, the provision of the special statute must control. Criterion Insurance Company v. Hoffman, 258 S. C. 282, 188 S.E.2d 459 (1972). The same rule of construction will not apply, however, to conflicts between a statute, such as the APA, and administrative regulations, such as those promulgated by the Industrial Commission and found in Chapter 67 of the Rules and Regulations of Administrative Agencies codified in the 1976 South Carolina Code of Laws. An administrative agency cannot by regulation materially alter or add to the law. Lee v. Michigan Miller's Mutual Insurance Company, 250 S.C. 462, 158 S.E. 2d 774 (1968); Banks v. Batesburg Hauling Company, 202 S.C. 273, 24 S.E.2d 496 (1943). With these particular principles in mind, the specific questions raised in your letter of May 15, 1979 are hereafter addressed.

Your first point is with reference to the requirement contained in § 1-23-320(a) that all parties in a contested case be afforded an opportunity for hearing after not less than thirty (30) days' notice. South Carolina Code § 42-17-20 only provides that after application for a hearing is made by one of the parties, the Commission shall notify the parties of the time and place of the hearing. There is nothing in that statute or any other statute or regulation of the Commission which prescribes a minimum period of notice which must be afforded to the parties to the proceeding. Consequently, it is the opinion of this Office that the thirty (30) day notice requirement contained in § 1&23-320 is fully applicable to hearings before the Industrial Commission.

***2** Your next question asks how much time should be allotted to a scheduled hearing in order to allow an opportunity to all parties to respond and present evidence and arguments on all issues as required by § 1-23-320(e). The amount of time to be devoted to any one hearing is going to depend, in large part, upon the discretion exercised by the individual Hearing Commissioner. Section 1-23-320(e) merely requires that each party to the proceeding have a full and fair opportunity to participate and present his side of the issue. That Section, however, does not give a party a license to unduly prolong a hearing with irrelevant or repetitious material. Indeed, § 1-23-330(1) expressly provides that 'irrelevant, immaterial or unduly repetitious evidence shall be excluded.' If past experience indicates that the current scheduling practices of the Commission are adequate to allow parties to fully and fairly present their cases, there is certainly nothing in the Administrative Procedure Act which purports to prohibit the continued use of such practices. As stated before, it is really up to the individual Hearing Commissioner to see to it that each side is given a fair opportunity to be heard, while at the same time ensuring that hearings are conducted expeditiously and without delay.

Your next question requests advice as to what practice must be included in the composition of the official record. Those items which must be included in the record in a contested case under the APA are set forth in Code § 1-23-320(g)(1) through (6). The list set forth in the foregoing Section only sets forth the minimum requirements for the composition of the record in a contested case. The list is not exhaustive, and there is certainly no reason why an item cannot be included in the record, even if it does not fall within one of the six categories, if such item is particularly relevant to the facts of the case. Of course, all of the items in § 1-23-320(g) may not always be present in a particular case. In many cases, for example, there may be no matters which are officially noticed, or there may be no proposed findings and exceptions. This Section merely requires that where any or all of these items are present, they must be preserved as part of the record.

You next ask for a specific construction of § 1-23-330(1), wherein it is stated that'. . . the rules of evidence as applied in civil cases in the Court of Common Pleas shall be followed.' This requirement is plain and unambiguous. There are numerous cases from across the country which hold, as a general principle of administrative law, that the strict rules of evidence do not apply in administrative proceedings and that hearsay evidence is admissible if it is credible and probative. See, West' General Digest, Administrative Law, Key No. 462. Moreover, our Supreme Court has stated that great liberality should be exercised in permitting the introduction of evidence in Workmen's Compensation cases and that hearsay evidence is admissible, provided it is corroborated by facts, circumstances or other evidence. Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E. 2d 712 (1940). Despite such judicial pronouncements, the Legislature has failed to carve out any exception for Workmen's Compensation hearings from the general requirement in the APA that the rules of evidence be applied. This the Legislature could easily have done as, for example, it has done with respect to hearings before the Human Affairs Commission. Under the pertinent provisions of the Human Affairs Law [§ 1-13-90(13) of the 1976 Code], the Legislature specifically provided that '. . . the Commission shall not be bound by the rules of evidence prevailing in courts of law or equity.' Since the APA governs hearings before the Industrial Commission, and since the Legislature has not exempted hearings before the Industrial Commission from the general requirement in the APA that the rules of evidence apply, it is the opinion of this Office that the rules of evidence as applied in civil cases in the Court of Common Pleas must be followed.

***3** You have also asked for specific construction of § 1-23-340, wherein it is provided that a proposal for decision must be rendered where the person making a decision is unfamiliar with the case. This Section does not apply unless the Commissioner who must make a decision in the case has not heard the case or reviewed the record. It is understood that in almost every case the individual Commissioner who conducted the hearing is the Commissioner who will issue the decision. Consequently, the Section would have no application. Moreover, even if the Commissioner who is to issue the opinion and award was not physically present at the hearing, he may still render a final decision provided he has reviewed the record. The primary instance in which this particular Section would appear to have some bearing upon the Workmen's Compensation Law is found in § 42-17-40, wherein it is provided that a hearing may be conducted by a deputy who simply takes testimony and transmits the entire record to the Commission for determination and award. In that instance, the procedure outlined in § 1-23-340 would appear to be applicable. However, where the hearing is before

an individual Commissioner who will make the decision, there would appear to no reason why this particular Section would ever come into play.

Your final question relates to § 1-23-350 and the requirement that a final decision include separately stated findings of fact and conclusions of law. You further ask whether the final decision must refer to specific facts in evidence to comply with the requirement that findings of fact, if set forth in statutory language, must be accompanied by a concise statement of the underlying facts supporting the findings. Reasons often cited for requiring findings of fact by administrative agencies include the facilitation of judicial review, the assurance of careful administrative consideration and the assurance that administrative agencies are kept within their jurisdiction. Davis, Administrative Law Treatise § 16.05 (1958). The requirement that the final decision include findings of fact and conclusions of law separately stated is absolute and must be followed in each decision rendered by an Industrial Commissioner in a contested case. The requirement that a concise statement of underlying facts supporting findings of facts be given is only applicable where the findings of fact are set forth in statutory language. Thus, for example, if an order merely recites that it is found as a fact that an employee is injured by an accident arising out of in the course of his employment, without anything more, then the requirement that a concise statement of the underlying facts be given may apply. On the other hand, if the finding recites that the individual was injured in a particular manner, on a particular day, in a particular location, and while he was performing a particular task, it may not be necessary to give the concise statement of underlying facts, inasmuch as those facts are actually set forth as findings. Primarily, the manner in which final decisions are drafted in contested cases should be governed by the reasons set forth above for requiring that separate findings be given.

***4** The foregoing represents a rather involved discussion of several complex issues. If you have any questions about any of the foregoing, please do not hesitate to call.
Very truly yours,

L. Kennedy Boggs
Assistant Attorney General

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