

Study N-200

April 2, 1998

Memorandum 98-29

Judicial Review of Agency Action: SB 209 Followup

This Memorandum replaces Memorandum 98-9 which was not considered at the last meeting. At the January meeting, the Commission considered whether to prepare a new judicial review recommendation limited to review of state and local agency adjudication, replacing the administrative mandamus statutes, Code of Civil Procedure Sections 1094.5 and 1094.6. The Commission asked the staff to contact the organizations that opposed SB 209 to get their reaction. The staff sent out 20 letters to these organizations. We received six responses, attached:

Exhibit pp.

1. Gary Patton, Planning and Conservation League 1
2. Dave Low, California School Employees Association 2
3. Gerald James, Association of Cal. State Att'ys & ALJs 3
4. Michael Rawson, California Affordable Housing Law Project 4
5. Russell Iungerich, Calif. Academy of Att'ys for Health Care Profs. 5-6
6. Rick Simons, Consumer Attorneys of California 7

Opposed

Mr. Simons of the Consumer Attorneys of California says more study of judicial review of administrative adjudication is "unwarranted." Mr. Patton urges the Commission not to go forward, saying the Planning and Conservation League would undoubtedly oppose such a bill. Mr. Iungerich says the "Academy is inalterably opposed," and that "[e]xperienced practitioners do not see any reason to replace a statute which works well and [with] which the bench and bar are familiar." He says the Academy "would support selective provisions of SB 209, such as codification of rules for exhaustion of administrative remedies, but as separate sections standing on their own."

Mr. Simons says Commission review of local agency hearing procedures "would be helpful."

Neutral

Mr. Low and Mr. James take a wait-and-see attitude, but do not appear enthusiastic about the proposal. Mr. Rawson has no objection to the proposal if his concerns are addressed.

Discussion

In favor of going forward is the fact that the Commission and staff have invested considerable time and effort developing the comprehensive judicial review recommendation, and we could probably develop a proposal limited to review of administrative adjudication with relatively little additional effort. Although the administrative mandamus statutes are more fleshed out and detailed than the cryptic traditional mandamus provisions, there are areas in which codification might be useful — exhaustion of administrative remedies, standards of review (other than for factfinding), record for review, and venue.

Against going forward is the fact that there is little enthusiasm for it and some opposition. If we bring another bill before the Senate Judiciary Committee (our oversight committee) with little support and some strong opposition, legislators may well ask why we continue with this project instead of concentrating our resources in areas where there is consensus for change. Also, in a recodification, there is a risk of introducing new ambiguities and raising new questions, requiring years of appellate decisions to resolve.

Concerning Mr. Simons' suggestion that the Commission study local agency hearing procedures, representatives of public employee groups (e.g., Bill Heath of the California School Employees Association) have said separation of prosecutorial from adjudicative functions in local agencies is the one reform they most need. But local agencies have told us that separation of functions is the one reform they cannot accept because of its cost implications. The staff believes it is unlikely we can achieve a consensus for reforming local agency procedures.

On the basis of three neutral letters and three opposed, and the lack of any constituency urging the Commission to go forward, the staff doubts more work on the judicial review project will be fruitful. Although SB 209 was supported by a letter from the California Judges Association, the Association declined to send a witness to the hearing. We did get more active support from the Judicial Council, but the Council believed the main benefit of SB 209 was that it would have replaced all the various and confusing methods of judicial review. A bill dealing only with review of adjudication would not have this benefit.

Staff Recommendation

In view of the opposition of the Consumer Attorneys of California, the California Academy of Attorneys for Health Care Professionals, and the Planning and Conservation League, the staff recommends against investing any more resources in the judicial review project.

Respectfully submitted,

Robert J. Murphy
Staff Counsel



February 2, 1998

Law Revision Commission
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SOUTHERN CALIFORNIA AGRICULTURAL

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Robert J. Murphy, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Judicial Review of Agency Action

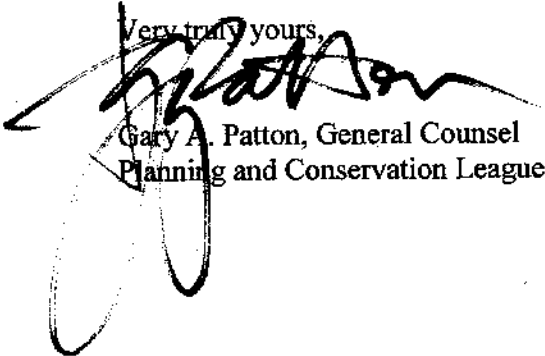
Dear Mr. Murphy:

Thank you for your letter of January 27, 1998, indicating that the Commission is considering the sponsorship of a bill that would revise current law by replacing Code of Civil Procedure Sections 1094.5 and 1094.6 with a unified statute. The idea is that this bill would look much like SB 209, but with a narrower scope.

As you know, PCL opposed SB 209, and we would undoubtedly oppose a bill like the one described in your January 27, 1998 letter. We urge the Commission not to proceed in this manner. We continue to believe that the proposed amendment would in fact be counter productive, would very likely complicate not clarify the law, and could lead to significant unforeseen consequences.

Thanks for taking our concerns into account.

Very truly yours,


Gary A. Patton, General Counsel
Planning and Conservation League

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

Governmental Relations Office • 1127 11th Street, Suite 346 • Sacramento, CA 95814 • (916) 444-0598
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February 9, 1998

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Robert J. Murphy, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

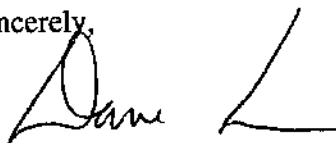
Dear Mr. Murphy:

In response to your January 27, 1998 letter regarding SB 209, Judicial Review of Agency Action, the California School Employees Association would not necessarily object to a proposal as described in your letter, provided that certain interests are protected.

CSEA would support the development of a recommendation to the Legislature limited to judicial review in administrative mandamus (Code of Civil Procedure Section 1094.5 and 1094.6). However, we must ensure that issues such as preparation of the administrative record, time limits, standing and preservation of the independent judgement test are preserved.

Please contact me if you have any questions regarding our position.

Sincerely,



Dave Low, Assistant Director
Governmental Relations

DL:fs

14807/sb209





ASSOCIATION OF CALIFORNIA STATE ATTORNEYS
AND ADMINISTRATIVE LAW JUDGES

February 6, 1998

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FEB 5 1998

File: _____

Steve Baker
Aaron Read & Associates
1127 11th Street, Suite 350
Sacramento, CA 95814

Re: SB 209 (Kopp) Judicial Review of Agency Action

Dear Steve:

I am responding to your request for comment on Robert Murphy's letter of January 27, 1998 regarding the California Law Revision Commission's consideration of revising the law related to judicial review of state and local administrative adjudication.

ACSA would probably not object to a proposal to revise the judicial review of state and local agency adjudication. Mr. Murphy's letter suggests that existing law in areas of our concern including standing, exhaustion of administrative remedies, standards of review and others would be codified. If the Commission's plan is to simply reorganize statutes and codify existing law, then we would likely not be concerned. As Mr. Murphy's letter suggests, we do wish to reserve the right to review the specific proposals and the potential impact upon our members.

Very truly yours,

Gerald James
Labor Relations Counsel

c: Robert J. Murphy, CLRC Staff Counsel
ACSA Administrative Adjudication Ad Hoc Committee

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Date: Fri, 06 Mar 1998 13:04:28 -0800
From: Mike Rawson <mrawson@iname.com>
Organization: The Public Interest Law Project
MIME-Version: 1.0
To: murphy@clrc.ca.gov
Subject: SB 209
X-Rcpt-To: murphy@clrc.ca.gov

Michael Rawson, Director
California Affordable Housing Law Project
of The Public Interest Law Project
449 15th Street, Suite 301
Oakland, CA 94612

March 6, 1998

Ralph Murphy
Staff Counsel
California Law Review Commission
4000 Middlefield Rd. Rm D-1
Palo Alto, CA 94303

Re: SB 209

Dear Mr. Murphy,

I do not generally object to revising the administrative mandamus statutes in most of the aspects proposed in SB 209. My primary objections to 209, as was the case for many others, were the ways it restricted review of legislative and quasi-legislative actions by traditional mandamus.

However, I also had a few concerns about the administrative mandamus provisions of the proposal. Specifically, the codification of deference to the decision of the local agency should be accompanied by a similar reference to the deference that also must be afforded the decisions of other state or local administrative agencies which may come into play in the review of a local agency action. Otherwise, a court would not be obligated to give due weight to the determinations of a state agency with special expertise when considering the challenge of a local agency decision which ignored the determinations of the state agency.

Please feel free to contact me if you have any questions. And, please keep me apprised as the Commission continues work on this issue.

Sincerely,

Michael Rawson
Director, CAHLP

CALIFORNIA ACADEMY OF ATTORNEYS FOR HEALTH CARE PROFESSIONALS

President
Russell Iungerich
3580 Wilshire Boulevard
Suite 1920
Los Angeles, CA 90010

March 20, 1998

**BY FAX: 1(650)494-1827 AND
FIRST CLASS MAIL**

Robert J. Murphy, Esq.
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Your Letter of January 27, 1998
S.B. 209, Judicial Review of Agency Action

Dear Mr. Murphy:

I apologize for not having sent you a response by March 6. It takes time for an organization with a membership of busy practitioners to respond on short notice where business meetings are infrequent.

Please advise the Commission that the Academy does not support replacement of Code of Civil Procedure section 1094.5 with a new writ of review. Experienced practitioners do not see any reason to replace a statute which works well and which the bench and bar are familiar. The fact that law students and newly admitted lawyers may have to work a little to understand the field is no reason for wholesale change which will just engender litigation for a decade. Professor Asimov's proposal is basically not codification but a revision and rewrite of existing law dealing with judicial review of administrative actions.

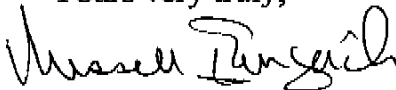
Robert J. Murphy, Esq.
March 20, 1998
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The Academy is inalterably opposed to substitution of the substantial evidence test for the independent judgment test. The independent judgment test is a safety valve that permits a superior court to do justice in appropriate cases. It is anomalous to do away with the independent judgment test in cases involving fundamental vested rights of licensees of state boards, but to retain it in less important cases involving local agencies.

We would support selective provisions of S.B. 209, such as codification of rules for exhaustion of administrative remedies, but as separate sections standing on their own.

In closing, the Academy requests that I be placed on the Commission's mailing list for notice of meetings, agenda, and proposals for further action on the S.B. 209 proposal as it relates to administrative mandamus and related matters.

Yours very truly,

A handwritten signature in black ink, appearing to read "Russell Iungerich", written in a cursive style.

Russell Iungerich
President, CAAHCP

RI:tkb

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March 25, 1998

Mr. Robert Murphy
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Re: Administrative Mandamus

Dear Mr. Murphy:

Thank you for giving us the opportunity to comment on the need for further review of the administrative mandamus statutes. We do not believe that such review is necessary or advisable. As we maintained throughout the initial review process and subsequent legislation embodied in SB 209, CAOC does not believe that the current review process is deficient. Therefore, additional review at this time is unwarranted.

Regarding review of local agency hearing procedures, we believe further review would be helpful; however, such a task is better launched at the beginning of a two-year session, when more time is available to give careful consideration to such a project.

Again, thank you for considering our position. I look forward to working with you in the future.

Sincerely,



Rick Simons
President

cc: Steven Pingel

Legislative Department

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