

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

## Administrative Adjudication by Quasi-Public Entities

October 1996

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Administrative Adjudication by Quasi-Public Entities*, 26 Cal. L. Revision Comm'n Reports 277 (1996).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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October 10, 1996

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

An adjudicative decision of a private entity, when affecting the public interest, is subject to common law fair procedure requirements. The exact scope of the fair procedure requirement is not clear, particularly as applied to a quasi-public entity — a private entity created by statute for the purpose of administering a state function. This recommendation would impose the administrative adjudication provisions of the state Administrative Procedure Act, including the administrative adjudication “bill of rights,” on any statutorily or constitutionally required evidentiary hearing of a quasi-public entity administering a state function for which there is no other administrative review with Administrative Procedure Act protections.

This recommendation is submitted pursuant to Resolution Chapter 38 of the Statutes of 1996.

Respectfully submitted,

Allan L. Fink  
*Chairperson*



## ADMINISTRATIVE ADJUDICATION BY QUASI-PUBLIC ENTITIES

Comprehensive legislation enacted in 1995 requires state agency administrative adjudication to adhere to fundamental due process and public policy requirements.<sup>1</sup> Among the requirements the Administrative Procedure Act imposes on state agency administrative adjudication are:<sup>2</sup>

- The agency must give notice and an opportunity to be heard, including the right to present and rebut evidence.
- The agency must make available a copy of its hearing procedure.
- The hearing must be open to public observation.
- The presiding officer must be neutral, the adjudicative function being separated from the investigative, prosecutorial, and advocacy functions within the agency.
- The presiding officer must be free of bias, prejudice, and interest.
- The decision must be in writing, be based on the record, and include a statement of the factual and legal basis of the decision. Credibility determinations made by the presiding officer are entitled to great weight on review. A penalty may not be based on an agency “guideline” unless the agency has adopted the guideline as a regulation.
- The decision may not be relied on as precedent unless the agency designates and indexes it as precedent.
- Ex parte communications to the presiding officer are prohibited.

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1. Gov’t Code §§ 11400-11470.50, enacted by 1995 Cal. Stat. ch. 938, § 21. The legislation implements a recommendation of the California Law Revision Commission, and is operative July 1, 1997. See *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm’n Reports 55 (1995); *Report of the California Law Revision Commission on Chapter 938 of the Statutes of 1995 (Senate Bill 523)*, 25 Cal. L. Revision Comm’n Reports 711 (1995).

2. Gov’t Code § 11425.10 (administrative adjudication bill of rights).

- The agency must make available language assistance to the extent required by existing law.

The new legislation also encourages settlements,<sup>3</sup> alternative dispute resolution,<sup>4</sup> and informal proceedings.<sup>5</sup>

The coverage of the new provisions is limited to adjudication by state agencies made pursuant to constitutionally or statutorily required hearings.<sup>6</sup> However, in many cases a statute delegates or authorizes delegation of a state function to a private entity, including delegation of adjudicative authority. Examples of such delegations to “quasi-public” entities include:

California Automobile Assigned Risk Plan (Ins. Code § 11623)

California Insurance Guarantee Association (Ins. Code §1063)

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3. Gov’t Code § 11415.60 (settlement).

4. Gov’t Code §§ 11420.10-11420.30 (alternative dispute resolution).

5. Gov’t Code §§ 11445.10-11445.60 (informal hearing).

6. Gov’t Code § 11410.10. A number of state agency hearings are exempted from the coverage of the new provisions. Separation of powers principles exempt the Legislature, the Governor and Governor’s Office, and the courts and judicial branch. The California Constitution also exempts the University of California. See discussion in *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm’n Reports 55, 87-91 (1995).

Specified hearings of the following executive branch agencies are also exempted by statute:

State Bar of California

Alcoholic Beverage Control Appeals Board

Commission on State Mandates

Military Department

Department of Corrections (including Board of Prison Terms, Youth Authority, Youthful Offenders Parole Board, Narcotic Evaluation Authority)

Public Utilities Commission

State Board of Equalization

Public Employment Relations Board

Agricultural Labor Relations Board

Franchise Tax Board

Escrow Agents' Fidelity Corporation (Fin. Code § 17311)  
 State Compensation Insurance Fund (Ins. Code § 11773)  
 Various agricultural produce commissions (Food & Agric.  
 Code § 67111 *et seq.*)<sup>7</sup>

Adjudicative proceedings conducted by quasi-public entities of this type are not subject to the administrative adjudication requirements of the Administrative Procedure Act.<sup>8</sup>

Adjudicative proceedings of private entities, when affecting the public interest, are subject to common law "fair procedure" requirements.<sup>9</sup> For example, private hospitals in the admission or exclusion of physicians to staff privileges, and professional societies in the exclusion and expulsion of members, must provide fair procedures, particularly notice and an opportunity to be heard. These principles apply whether or not the activity amounts to "state action" for purposes of equal protection and due process of law.<sup>10</sup>

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7. A typical example is the Winegrowers of California Commission, created by the Dills-Bronzan Winegrowers Joint Commission Act of 1986. The statute proclaims that "There is in state government, the Winegrowers of California Commission." Food & Agric. Code § 74061. However, the statute then proceeds to distance the Commission from the state, providing that it is a corporate body and the state is not liable for its acts. Food & Agric. Code §§ 74074, 74078. It is funded by producer assessments. Food & Agric. Code § 74104. The Commission must provide an informal hearing for individuals aggrieved by its acts; appeals from Commission decisions are made to the Director of Food and Agriculture; the Director's determinations are subject to judicial review. Food & Agric. Code § 74172.

8. See Gov't Code § 11410.20 (application to state); *cf.* Henry George School of Social Science v. San Diego Unified School Dist., 183 Cal. App. 2d 82, 85-86, 6 Cal. Rptr. 661 (1960) ("While it is true that in a limited sense school districts are state agencies, we are of the view that the chapters last above referred to were intended to apply only to those state agencies exercising under authority of statute certain statewide functions, or who exercised some statewide function locally under some statute specifically localizing that function.")

9. For discussion of the fair procedure principle, see California Administrative Hearing Practice §§ 1.35-1.36, at 32-24 (Cal. Cont. Ed. Bar 1984) & Supp. 1996).

10. See 1 G. Ogden, California Public Agency Practice § 2.03 (1996).

It is likely that adjudicative proceedings of quasi-public entities are subject to fair procedure requirements to the same or a greater extent than proceedings of purely private entities, but the law is not clear on this matter. It should be made clear. The Law Revision Commission recommends that a quasi-public entity administering a state function be subject to the administrative adjudication provisions of the Administrative Procedure Act in its conduct of a constitutionally or statutorily required adjudicative hearing. This would also clarify the precise standards that are applicable, in place of nebulous “fair procedure” requirements.

It is appropriate that an adjudicative proceeding of a quasi-public entity performing a state function be treated the same as an adjudicative proceeding of a state agency. A person’s right to fundamental due process and public policy protections should not depend on whether the adjudication is done by a state agency or by a quasi-public entity to which the agency’s authority is delegated. Application of the state procedural protections to quasi-public entity adjudication will also promote uniformity of administrative procedure, to the ultimate benefit of the regulated public.

A critical step in applying the administrative adjudication provisions of the Administrative Procedure Act to quasi-public entities is specification of precisely which entities are covered. Because many private entities perform functions that are arguably “public” in nature, a private entity needs to know with some assurance whether any of its proceedings is subject to the administrative adjudication provisions of the Administrative Procedure Act. For this reason, the Law Revision Commission recommends a narrowly drawn statute — a private entity’s adjudicative proceeding will be subject to the administrative adjudication provisions of the Administrative Procedure Act if each of the following requirements is satisfied:

- (1) The entity is a creature of statute.
- (2) The entity is administering a state function.
- (3) The entity is engaged in making an adjudicative decision that determines the legal rights or other legal interests of a particular individual or entity.
- (4) The entity is constitutionally or statutorily required to formulate its decision pursuant to an evidentiary hearing for determination of facts.
- (5) The entity's decision is not subject to administrative review in a proceeding to which the administrative adjudication protections of the Administrative Procedure Act apply.

Under this test, for example, proceedings of a “community action agency” would not be covered, since those quasi-public entities do not conduct evidentiary hearings.<sup>11</sup>

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11. See Gov't Code §§ 12750-12763.



## PROPOSED LEGISLATION

### **Gov't Code § 11410.60 (added). Application to quasi-public entities**

SECTION 1. Section 11410.60 is added to the Government Code, to read:

11410.60. (a) This chapter applies to a decision by a private entity if all of the following conditions are met:

(1) The entity is created by statute for the purpose of administration of a state function.

(2) Under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

(b) Notwithstanding subdivision (a), this chapter does not apply to a decision by a private entity if the decision is subject to administrative review in an adjudicative proceeding to which this chapter applies.

(c) For the purpose of application of this chapter to a decision by a private entity that meets the conditions specified in subdivision (a), unless the provision or context requires otherwise, the following terms have the following meanings:

(1) "Agency," as defined in Section 11405.30, also includes the private entity.

(2) "Regulation" means a rule promulgated by the private entity.

(d) Article 8 (commencing with Section 11435.05), requiring language assistance in an adjudicative proceeding, applies to a private entity that meets the conditions specified in subdivision (a) to the same extent as a state agency under Section 11018.

**Comment.** Section 11410.60 applies this chapter to decisions of quasi-public entities. It is limited to decisions for which an evidentiary hearing by the quasi-public entity is statutorily or constitutionally required. *Cf.* Section 11405.50 ("decision" is action of specific application that determines legal right or other legal interest of particular person).

This section does not apply to a private entity unless the entity was created by statute for the purpose of administering a state function. Thus the statute governs hearings of a statutory entity such as the Winegrowers of California Commission (Food & Agric. Code § 74061) or the Escrow Agents' Fidelity Corporation (Fin. Code § 17311). But the statute does not govern hearings of a private entity such as a licensed health care provider (Health & Safety Code § 1200 *et seq.*) or a board of trustees established pursuant to statute under an interindemnity, reciprocal, or interinsurance contract between members of a cooperative corporation (Ins. Code § 1280.7).

This section does not apply to the State Bar, including proceedings of the State Bar Court. See Bus. & Prof. Code § 6001.

Although subdivision (b) makes this chapter inapplicable to a quasi-public entity decision if the decision is otherwise reviewable in a proceeding governed by this chapter, the quasi-public entity may voluntarily adopt the procedural protections provided in this chapter. *Cf.* Section 11410.40 (election to apply administrative adjudication provisions).

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