

# Table of Contents

## CHAPTER 1. GOVERNMENT AGENCIES AND ADMINISTRATIVE LAW

### INTRODUCTION

- § 1:1 Role and impact of administrative agencies
- § 1:2 Evolution of modern bureaucracy
- § 1:3 Administrative law and its evolution

### ORGANIZATIONAL STRUCTURE

- § 1:4 Organization of state administrative agencies—In general
- § 1:5 —Nomenclature
- § 1:6 —State departments
- § 1:7 —Department heads
- § 1:8 —Divisions, offices, and other agencies within departments
- § 1:9 —Independent agencies
- § 1:10 Local administrative agencies

### ADMINISTRATIVE AGENCY POWERS

- § 1:11 Creation of administrative agencies
- § 1:12 Powers; in general
- § 1:13 Ministerial functions
- § 1:14 Discretionary, rulemaking, and adjudicatory functions
- § 1:15 Advisory functions
- § 1:16 Administrative Procedure Act and related statutes
- § 1:17 Administrative regulations and Ohio Administrative Code; in general
- § 1:18 Ohio Administrative Code and Ohio Monthly Record
- § 1:19 Administrative adjudication decisions and reports

### CONSTITUTIONAL LIMITATIONS ON ADMINISTRATIVE POWERS AND PRACTICES

- § 1:20 Constitutional limitations in general
- § 1:21 Separation of powers doctrine
- § 1:22 Rule prohibiting delegation of legislative power
- § 1:23 Administrative authority and the “Hot Oil” case
- § 1:24 Administrative authority and Ohio case law—Early cases
- § 1:25 —Adoption of the “Hot Oil” rule
- § 1:26 —Procedural safeguards, and policy statement
- § 1:27 —Application of standards rule to administrative discretion generally
- § 1:28 Due Process and the Appointments Clause Issues

## CHAPTER 2. THE RULEMAKING FUNCTION

### INTRODUCTION

- § 2:1 Authority to adopt administrative rules

- § 2:2 Legislative oversight—The Joint Committee on Agency Rule Review
- § 2:3 Definitions of “rule”

## **RULEMAKING PROCEDURE**

- § 2:4 Statutes governing the promulgation of rules
- § 2:5 Preliminary rulemaking activities, and text of proposed rule
- § 2:6 Common Sense Initiative (CSI) Office
- § 2:7 Initial filing of proposed rule with JCARR—Register of Ohio; Electronic Rule Filing System; guides to rulemaking process
  - § 2:8 —Text of proposed rule
- § 2:9 Original filing a rule—RC 119.03 versus RC 111.15
- § 2:10 —Rule summary and fiscal analysis and other required documents
- § 2:11 Reduction of regulatory restrictions—Original base inventory under RC 121.95
  - § 2:12 —Total reduction schedule
  - § 2:13 —Agency historical progress report
- § 2:14 Appearance to show cause at JCARR under RC 121.952
- § 2:15 Statewide cap on regulatory restrictions
- § 2:16 Original filing a rule—JCARR review and jurisdictional issues
- § 2:17 Public notice of proposed rule under RC Chapter 119—Notice of hearing
  - § 2:18 —Constructive notice and copies of proposed rule available to public
- § 2:19 Hearing on proposed rule under RC Chapter 119—Requirement for public hearing
  - § 2:20 —Who presides at hearing
  - § 2:21 —Conduct of hearing
- § 2:22 Second hearing on proposed rule under RC Chapter 119—Requirement for public notice to be consistent with final adopted amendment
- § 2:23 Filing no change rules—Five year review pursuant to RC 106.03
  - § 2:24 —Early Five Year Review pursuant to RC 106.032
- § 2:25 Legislative oversight of rulemaking function—JCARR recommendation that a rule be invalidated
  - § 2:26 —Concurrent resolution invalidating rule
  - § 2:27 —Notice, and consequences of invalidation
  - § 2:28 —Lack of invalidation does not equate with approval
  - § 2:29 —Authorization to revise and refile
  - § 2:30 —Referral to CSI for determination of adverse impact on business
- § 2:31 Formal adoption of rule, filing, and effective date—Final filing a rule
- § 2:32 Informing those affected by adopted rule
- § 2:33 Emergency rules
  - § 2:34 Principle of law or policy—Agency internal review of principle of law or policy
  - § 2:35 —JCARR’s authority over principles of law or policies
  - § 2:36 —Individual’s ability to petition the agency to restate policy in rule
  - § 2:37 —Exempt agencies
- § 2:38 Agency’s failure to adopt mandated rules

## **JUDICIAL REVIEW OF RULES AND RULEMAKING**

- § 2:39 Direct appeal of rulemaking actions—In general
- § 2:40 No direct appeal to common pleas courts or Supreme Court
- § 2:41 Limited direct appeal to courts of appeals
- § 2:42 Other judicial remedies to challenge rule
- § 2:43 Basis for rules challenges—In general
  - § 2:44 —Presumptions and interpretive rules

TABLE OF CONTENTS

§ 2:45 —Agency policy or interpretation as improperly adopted rule

**THE FUTURE OF RULEMAKING**

§ 2:46 Future trends in rulemaking

**CHAPTER 3. AGENCY INVESTIGATIONS**

**INTRODUCTION**

§ 3:1 Investigations; in general

**SCOPE OF AGENCY INVESTIGATIVE POWERS**

- § 3:2 Investigative power of state agencies
- § 3:3 Authority for administrative investigations
- § 3:4 Authority for criminal investigations
- § 3:5 Agency attorneys as special prosecutors
- § 3:6 Attorney ethics in conducting investigations

**INVESTIGATIVE METHODS & TECHNIQUES**

- § 3:7 Required reports by regulated parties
- § 3:8 Public records
- § 3:9 Administrative subpoena powers
- § 3:10 Physical inspections
- § 3:11 Undercover operations
- § 3:12 Search warrants

**INVESTIGATIVE HEARINGS & DISCOVERY**

- § 3:13 Hearings as an investigative process
- § 3:14 Respondent's discovery

**CHAPTER 4. THE ADJUDICATION FUNCTION**

**NATURE OF ADJUDICATION AND ADMINISTRATIVE ADJUDICATION PROCEEDINGS**

- § 4:1 Definition of adjudication
- § 4:2 Rulemaking and adjudication distinguished
- § 4:3 Ministerial acts
- § 4:4 Licensing
- § 4:5 Nature of administrative adjudication proceedings

**INITIATING ADJUDICATION PROCEEDINGS**

- § 4:6 Right to adjudication hearing
- § 4:7 Notice of right to adjudication hearing
- § 4:8 Request for adjudication hearing, and scheduling hearing
- § 4:9 Parties
- § 4:10 Representation

§ 4:11 Intervention

### **PREHEARING PROCEDURE**

§ 4:12 Pleadings and motions  
 § 4:13 Discovery, and availability of agency files  
 § 4:14 Continuances  
 § 4:15 Prehearing conference  
 § 4:16 Prehearing orders

### **ADJUDICATION HEARINGS**

§ 4:17 Use of hearing examiners—Appointment and qualifications  
 § 4:18 —Duties  
 § 4:19 Burden of proof  
 § 4:20 Presumptions  
 § 4:21 Evidentiary rules—Admissibility of evidence in general  
 § 4:22 —Hearsay  
 § 4:23 —Objections  
 § 4:24 —Administrative notice  
 § 4:25 Witnesses; in general  
 § 4:26 Order of presentation of witnesses  
 § 4:27 Transcripts

### **FINDINGS, DECISIONS, AND AGENCY ORDERS**

§ 4:28 Briefs and proposed findings  
 § 4:29 Referee's report and objections to report—Referee's report and agency action on report  
 § 4:30 —Service of report and filing of objections  
 § 4:31 —Agency action on report  
 § 4:32 Adjudication orders—Entry of order  
 § 4:33 —Notice of order  
 § 4:34 —Need for written findings; basis for findings of agency  
 § 4:35 Rehearing or reconsideration  
 § 4:36 Subsequent entries to correct record  
 § 4:37 Application of res judicata to agency orders

## **CHAPTER 5. STATE APPEALS AND OTHER CHALLENGES TO STATE AND LOCAL ADMINISTRATIVE ACTIONS**

### **APPEAL OF ADMINISTRATIVE ADJUDICATIONS IN GENERAL**

§ 5:1 Adjudication as quasi-judicial function subject to appeal  
 § 5:2 Right to obtain judicial review  
 § 5:3 Administrative appeals and requirement for exhaustion of administrative remedies  
 § 5:4 Requirement for final appealable order  
 § 5:5 Effect of pending appeal on agency's power to reconsider, vacate, or modify order  
 § 5:6 Effect of pending appeal on enforceability of order  
 § 5:7 Further judicial appeals

### **APPEAL OF ADJUDICATIONS UNDER ADMINISTRATIVE PROCEDURE ACT**

§ 5:8 Right to appeal under RC 119.12

## TABLE OF CONTENTS

- § 5:9 Perfecting appeal under RC 119.12—Notice of appeal
- § 5:10 —Time limit for perfecting appeal
- § 5:11 Certification of record on appeal under RC 119.12
- § 5:12 Hearing under RC 119.12
- § 5:13 Standards of review and disposition of appeal under RC 119.12—In general
- § 5:14 —“Some evidence” standard
- § 5:15 —Constitutionality of rule
- § 5:16 —Treatment of other issues

### **METHODS OTHER THAN APPEAL TO CHALLENGE ADMINISTRATIVE ACTIONS**

- § 5:17 Nonappellate judicial remedies in general
- § 5:18 Declaratory judgment and injunction—Rulemaking
- § 5:19 —Adjudication orders
- § 5:20 —Exhaustion of administrative remedies
- § 5:21 Mandamus
- § 5:22 Prohibition
- § 5:23 Procedendo
- § 5:24 Collateral attack
- § 5:25 Alternative dispute resolution for administrative actions

### **CHAPTER 6. AWARD OF ATTORNEY FEES IN ADMINISTRATIVE AND OTHER PROCEEDINGS INVOLVING THE STATE**

- § 6:1 Statutes providing for award of attorney fees, and their purpose

#### **CRITERIA FOR AWARDING ATTORNEY FEES**

- § 6:2 Eligibility for award, and exceptions; in general
- § 6:3 Prevailing eligible party
- § 6:4 Denial of fee award—State substantially justified in initiating matter in controversy—In general
- § 6:5 ——Meaning of “substantially justified”
- § 6:6 ——Initiation of matter in controversy
- § 6:7 —Special circumstances make award unjust
- § 6:8 Denial or reduction of fee award; claimant’s conduct protracted final resolution

#### **PROCEDURE FOR AWARD OF ATTORNEY FEES**

- § 6:9 Motion for award of attorney fees under RC 119.092 and RC 2335.39
- § 6:10 Ruling on motion for attorney fees under RC 119.092 and RC 2335.39—Who rules on motion
- § 6:11 —Factors to be considered
- § 6:12 —Burden of establishing certain factors
- § 6:13 —Determination and entry
- § 6:14 Amount of award
- § 6:15 Appeal of award determination by party or agency
- § 6:16 Payment of award

### **CHAPTER 7. LOCAL ADMINISTRATIVE AGENCY ACTIONS**

- § 7:1 Administrative actions by political subdivisions of the state

- § 7:2 Nature and composition of local administrative agencies
- § 7:3 Legislative and quasi-legislative activities
- § 7:4 Adjudication or quasi-judicial activities; in general
- § 7:5 Specific types of proceedings subject to RC Chapter 2506 appeals
- § 7:6 Minimal statutory and constitutional requirements for local agency hearings
- § 7:7 Pre-hearing practice
- § 7:8 Conduct of hearings
- § 7:9 Proof standards for finders of fact
- § 7:10 Treatment of questions of law
- § 7:11 Checklist for conducting local agency hearings
- § 7:12 Protecting record for appeal of local agency decision
- § 7:13 Appeals from local agencies in general
- § 7:14 Right of appeal under RC Chapter 2506
- § 7:15 Commencement of appeal under RC Chapter 2506
- § 7:16 Record on appeal under RC Chapter 2506
- § 7:17 Hearing on appeal under RC Chapter 2506
- § 7:18 Standards of review and disposition of appeal under RC Chapter 2506

## **CHAPTER 8. PUBLIC RECORDS AND OPEN MEETINGS**

- § 8:1 General overview: Ohio's "sunshine" laws

### **OHIO PUBLIC RECORDS ACT**

- § 8:2 Purpose of the Public Records Act, and rules for interpretation
- § 8:3 Scope of the Public Records Act, definitions
- § 8:4 Requirement for availability and right of access to public records
- § 8:5 Public records; defined
- § 8:6 Request to inspect or copy public records
- § 8:7 Scope of Public Records Act
- § 8:8 Records maintained by private entities
- § 8:9 Specificity requirement of public records requests
- § 8:10 Liberal rules of construction in favor of disclosure
- § 8:11 Records not subject to disclosure
- § 8:12 Compelling compliance with public records laws
- § 8:13 Public records and the Personal Information Systems Act
- § 8:14 Sealing of court records
- § 8:15 Miscellaneous

### **OHIO OPEN MEETINGS ACT**

- § 8:16 Purpose of the Open Meetings Act; rules for interpretation
- § 8:17 Public bodies subject to the Open Meetings Act
- § 8:18 Definition of a "Meeting"
- § 8:19 Requirement for public meetings
- § 8:20 Agencies exempt from Act
- § 8:21 When closed meetings are allowed in connection with development program financing
- § 8:22 When executive sessions may be held
- § 8:23 Effect of a municipal charter
- § 8:24 Sanctions for violations of Open Meetings Act

## **CHAPTER 9. ETHICS FOR PUBLIC OFFICIALS, PUBLIC EMPLOYEES, AND ATTORNEYS IN ADMINISTRATIVE PRACTICE**

### **OHIO'S ETHICS LAW AND RELATED STATUTES**

- § 9:1 Introduction to Ohio's Ethics Law
- § 9:2 Who the law governs; oversight
- § 9:3 Financial disclosure—Public officials required to file disclosure by statute
- § 9:4 —Information to be disclosed
- § 9:5 —Public officials required to file confidential financial disclosure
- § 9:6 —When the filing is due
- § 9:7 —Filing fees and sanctions
- § 9:8 Revolving door prohibitions
- § 9:9 Confidentiality restrictions
- § 9:10 License or rate-making restrictions
- § 9:11 Restrictions upon the use of position to secure substantial and improper things of value
- § 9:12 Restrictions upon the solicitation or acceptance of substantial and improper things of value
- § 9:13 Restrictions upon persons promising or giving substantial and improper things of value
- § 9:14 Rationale and exceptions governing substantial things of value
- § 9:15 Exemption applicable to campaign contributions
- § 9:16 Honoraria restrictions
- § 9:17 Acceptance of travel, meals, and lodging from non-prohibited parties
- § 9:18 Exemption for association membership
- § 9:19 Specific prohibitions for officials and employees of the Casino Control Commission
- § 9:20 Specific prohibitions for members of the general assembly
- § 9:21 Influence peddling restrictions
- § 9:22 Composition of the Ohio Ethics Commission
- § 9:23 Composition of Joint Legislative Ethics Committee
- § 9:24 Composition of Board of Professional Conduct of the Supreme Court
- § 9:25 Investigation processes
- § 9:26 Prohibition on disclosure of confidential information
- § 9:27 Advisory opinion processes
- § 9:28 Distribution of financial disclosure forms and copies of the law
- § 9:29 Penalties for ethics law violations
- § 9:30 Public contract restrictions; general application
- § 9:31 Public contract restrictions
- § 9:32 Public contract restrictions; exemptions
- § 9:33 Supplemental compensation and coercive campaign contribution solicitation restrictions
- § 9:34 Sources of information
- §§ 9:35 to 9:39 *[Reserved]*

### **SPECIAL ETHICAL REQUIREMENTS FOR ATTORNEYS IN ADMINISTRATIVE PRACTICE**

- § 9:40 Attorney ethics in state government and administrative law practice; in general
- § 9:41 Conflicts of interest—Determining the client

- § 9:42 —The attorney as a witness
- § 9:43 —Criminal conduct
- § 9:44 “Zealous” representation
- § 9:45 Criminal conduct by attorneys
- § 9:46 Reporting misconduct—Generally
- § 9:47 —The inspector general’s role
- § 9:48 Avoiding the appearance of impropriety
- § 9:49 Unauthorized practice of law
- § 9:50 Legal ethics, a vision for the future

## **CHAPTER 10. ADMINISTRATIVE LAW RESEARCH**

- § 10:1 Introduction
- § 10:2 Finding current administrative regulations
- § 10:3 Updating regulations
- § 10:4 Finding proposed and recently adopted regulations
- § 10:5 Regulatory oversight and review
- § 10:6 Finding background or information on intent
- § 10:7 Finding historical materials
- § 10:8 Administrative decisions
- § 10:9 Other resources

## **DIRECTORY OF STATE ADMINISTRATIVE AGENCIES**

### **APPENDIX**

Appendix A. Ohio Revised Code (Selected Provisions)

**Table of Laws and Rules**

**Table of Cases**

**Index**