

ADMINISTRATIVE BOARDS AND COMMISSIONS - regulations, exceptions to; STATE ELECTRICAL BOARD - regulations.

- HELD:**
- 1. Depending upon the particular circumstances and the nature of the action taken by the state electrical board, it can rescind or modify the action taken by a previous board.**
 - 2. The state electrical board may make exceptions or variances to its rules and regulations but such exceptions or variances regarding transactions which have taken place under prior regulations depend upon the type of regulation involved.**

December 16, 1969

John V. Hale, Director
State Electrical Board
Room 323, Wheat Building
Helena, Montana 59601

Dear Mr. Hale:

You have requested my opinion on the following questions:

1. Does the electrical board have the power to rescind an action taken by a previous board?
2. Does the board have the power to make exceptions or variances to its duly adopted rules and regulations in certain instances?

The answer to your first question turns on the nature of the specific circumstances surrounding the case. However, it can be stated that every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately modify its judgment, decree or order. **Nick v. State Highway Commission**, 21 Wis. 2d 489, 124 N.W. 2d 574 (1963); **Utah Hotel Co. v. Industrial Commission**, 107 Utah 24, 151 P.2d 467 (1944). Therefore, depending upon the particular circumstances and the nature of the action, the present board can rescind or modify the action taken by a previous board.

Your second question is whether the board has the power to make exceptions or variances to its rules and regulations.

It is a general rule of administrative law that an agency may change a rule entirely or may allow the rule to stand as a general rule and provide exceptions to it. **Railroad Commission v. Shell Oil Co.**, 139 Tex. 66, 161 S.W. 2d 1022 (1942); **Helvering v. Wilshire Oil Co.**, 308 U.S. 90 (1939). However, whether an administrative agency has the power to alter, amend or rescind its regulations regarding transactions which have taken place under the previous regulations presents a complex question.

Regulations which are promulgated pursuant to a specific delegation of legislative power are “legislative” regulations. In prescribing such regulations, the administrative agency in effect legislates within the scope of the power granted to it by the legislature. On the other hand, an interpretation of what the legislature meant by its statutory language is an “interpretative” regulation. Hence, “legislative” regulations as opposed to “interpretative” regulations should not be permitted to operate retroactively. **Utah Hotel Co. v. Industrial Comm.**, *supra*.

THEREFORE, IT IS MY OPINION:

1. Depending upon the particular circumstances and the nature of the action taken by the board, it can rescind or modify the action taken by a previous board;
2. The power to alter, amend or rescind its regulations regarding transactions which have taken place under previous regulations depends upon the type of regulation involved.

Very truly yours,

ROBERT L. WOODAHL
Attorney General