

VOLUME NO. 35

Opinion No. 1

**ADMINISTRATIVE PROCEDURE ACT — Board of Highway Appeals, applicability of Act to; BOARD OF HIGHWAY APPEALS — Administrative Procedure Act, applicability of; HIGHWAYS, DEPARTMENT OF — Board of Highway Appeals, Administrative Procedure Act, applicability of. Sections 82-4202, 82A-103 (10), 82A-112, and 82A-704, R.C.M. 1947.**

**HELD: The Board of Highway Appeals as a quasi-judicial board is an agency pursuant to the Administrative Procedure Act and must publish its organizational structure and procedural rules, concerning the hearing of personnel grievances and the hearing of disputes that result from the administration and enforcement of proportional registration agreements, in the Montana Administrative Register and Code.**

January 16, 1973

Mr. Patrick F. Hooks, Chairman  
Board of Highway Appeals  
218 Broadway  
Townsend, Montana 59644

Dear Mr. Hooks:

You have requested my opinion concerning the extent to which the board of highway appeals, hereinafter referred to as the Board, must comply with the Montana Administrative Procedure Act (sections 82-4201 to 82-4225, Revised Codes of Montana, 1947), hereinafter referred to as the APA.

The Board was created by section 82A-704, R.C.M. 1947, with jurisdiction over the hearing of personnel grievances of the Department of Highways and the hearing of disputes resulting from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, R.C.M. 1947. 82A-704 (4), R.C.M. 1947. To determine the extent to which the Board must comply with the APA, it is necessary to examine each function of the Board and determine whether, for each function, the Board is an agency pursuant to section 82-4202, R.C.M. 1947, and if so, whether its rules must be published pursuant to the APA.

The first function of the Board is to hear personnel grievances of the department of highways. Subsection 4 of section 82A-704, R.C.M. 1947, designates the Board as acting in a quasi-judicial capacity pursuant to section 82A-112, R.C.M. 1947.

Section 82A-112, R.C.M. 1947, provides in pertinent part:

(3) Any board continued or created in this act and assigned the duty of acting in a quasi-judicial capacity in certain matters has the authority, in addition to any quasi-judicial functions retained in or transferred to

it by this act, to perform any of those quasi-judicial functions which are proper and necessary to perform its duties. A quasi-judicial function includes holding hearings and issuing orders, and any other appropriate quasi-judicial, function enumerated in section 82A-103 (10) of this act. ...

Section 82A-103 (10), R.C.M. 1947, provides:

(10) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion g determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; **adopting procedural rules**; holding hearings; and any other act necessary to the performance of a quasi-judicial function. (Emphasis supplied)

The APA defines an agency as:

... any board ... authorized by law to make rules and to determine contested cases. ...

Since section 82A-103 (10), R.C.M. 1947, authorizes the board to make procedural rules and to determine rights and interests of adverse parties, it would appear that the Board fits the definition of an agency under the act.

It then becomes necessary to determine whether the Board must publish its rules pursuant to the APA. Section 82-4202 (2) (f), R.C.M. 1947, exempts from the definition of a rule:

... rules relating to personnel standards, job classifications or salary ranges for agency employees; ...

If the board had rule-making authority, under section 82A-704, supra, which established personnel standards, job classifications, or salary ranges, it would appear that rules promulgated pursuant to that authority would not be required to be published in the Montana Administrative Register or Code. Because the board has authority pursuant to section 82A-103 (10), supra, to adopt procedural rules, and because a function of the board is to hear personnel grievances and not establish personnel standards, job classifications or salary ranges, it is my opinion that the board must file an organizational description and procedural rules pursuant to section 82-4203, R.C.M. 1947, relating to its function in determining personnel grievances.

The second function of the Board is to hear disputes that may result from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, R.C.M. 1947. As stated earlier the board, as a quasi-judicial board, has rule-making and rule-adjudicating authority. As such, the board must publish its organizational description and its rules of procedure.

It must then be determined whether the board must publish regulations promulgated pursuant to Title 53, chapter 7, supra, in the substantive portion of the Montana Administrative Register or Code.

Section 82A-704 (4), R.C.M. 1947, grants the board the authority to hear disputes resulting from proportional registration agreements under Title 53, chapter 7, R.C.M. 1947. Substantive regulations are made by the department of highways; thus, the board is not authorized to publish substantive regulations concerning proportional registration agreements.

**THEREFORE, IT IS MY OPINION:**

The Board of Highway Appeals as a quasi-judicial board is an agency pursuant to the Administrative Procedure Act and must publish, in the Montana Administrative Register and Code, its organizational structure and procedural rules concerning the hearing of personnel grievances and the hearing of disputes that result from the administration and enforcement of proportional registration agreements.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General