OCCUPATIONAL LICENSING IN ILLINOIS*

Restrictions imposed by the states upon the pursuit of many trades and professions have been upheld under the police power. Businesses which are commonly thought to be harmful in themselves or which historically have been deemed to have no legitimate functions may be prohibited entirely, and a fortiori may be regulated by the state. Businesses or professions serving valuable economic or social purposes may not be prohibited, but they may, nevertheless, be subjected to regulation in the interests of public health, safety, and welfare when they are attended with danger or liable to abuse.

The device of regulation most commonly adopted has been the issuance of licenses to those found qualified by an administrative agency coupled with the prohibition of the practice of the trade or profession by unlicensed persons.

In Illinois, in the interest of public health, a license is required, for example, of anyone who wishes to practice medicine, dentistry, nursing, chiropody, optometry, pharmacy, veterinary medicine, barbering, or beauty culture.

*This note is restricted to a discussion of licensing of persons directly by state agencies. No analysis of the problems arising out of municipal regulation has been attempted, and problems arising out of license taxation have not been considered. Criminal proceedings for the imposition of penalties for illegal practice are also beyond the scope of this note although they are often initiated on the relation of the occupational licensing agencies.


2 Munn v. Illinois, 94 U. S. 113 (1876); Wiggins Ferry Co. v. East St. Louis, 102 Ill. 560 (1882); Burdick v. People, 149 Ill. 600, 36 N.E. 948 (1894); Price v. People, 193 Ill. 114, 61 N.E. 844 (1901); North American Ins. Co. v. Yates, 214 Ill. 372, 73 N.E. 423 (1903); People v. Evans, 247 Ill. 547, 93 N.E. 388 (1910); People ex rel. Laist v. Lower, 251 Ill. 527, 96 N.E. 346 (1911); People v. Logan, 284 Ill. 83, 119 N.E. 913 (1918); People v. Walder, 317 Ill. 524, 148 N.E. 287 (1925); Lasdon v. Hallihan, 377 Ill. 187, 36 N.E. (2d) 227 (1941).


4 Graves, Professional and Occupational Restrictions, 13 Temple L. Q. 334 (1939). The qualifications imposed by the legislature must, of course, be relevant to the reasons for licensing the particular profession. Noel v. People, 187 Ill. 587, 58 N.E. 616 (1900) (right to sell patent medicines may not be restricted to registered pharmacists); Banghart v. Walsh, 339 Ill. 132, 171 N.E. 154 (1930) (requirement that beauty operators be trained as barbers held unreasonable); Scully v. Hallihan, 365 Ill. 185, 6 N.E. (2d) 176 (1936) (requirement that drain-layers possess the qualifications of plumbers held invalid).


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In the interest of public safety, architects and structural engineers are required to be licensed. And to protect the public from fraud, a person is required to have a license before he may act as real estate broker, insurance agent, or detective.

To be contrasted with those businesses which may be completely prohibited by the state, and to those economically and socially useful callings which are susceptible of some regulation, are those occupations which are of such a private nature, so remotely related to public health, safety, and welfare, that the right of an individual to engage in them cannot be circumscribed. Thus statutes imposing compulsory licensing upon the occupations of land surveying, horse-shoeing, and public accounting have been declared invalid. But even with respect to this class of business the state may give added prestige to those who have received certificates upon meeting minimum requirements, by prohibiting persons who have not obtained certificates from holding themselves out to the public as “registered.”

The line which separates purely private business from businesses affected with the public interest is not static and the increasing interdependence of individuals in a complex society is delimiting the field of business which remains beyond the scope of the police power. The unusual effectiveness of licensing as an administrative technique results from the ever present possibility of revocation which insures compliance with licensing regulations in the vast majority of cases without formal proceedings. The loss of economic and professional status which results from revocation, however, necessitates adequate safeguards of the licensee’s interest from arbitrary administrative action. The purpose of this note is to survey the Illinois law of occupational licensing and to ascertain and evaluate the balance which the Illinois courts have achieved between the public interest and the interest of the practitioner.

19 Ruhstrat v. People, 185 Ill. 133, 57 N.E. 41 (1900); Bailey v. People, 190 Ill. 28, 60 N.E. 98 (1901); Bessette v. People, 193 Ill. 334, 62 N.E. 215 (1901); People v. Steele, 237 Ill. 340, 87 N.E. 236 (1907); Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926); cf. Allgeyer v. Louisiana, 165 U.S. 578 (1897).
21 Bessette v. People, 193 Ill. 334, 62 N.E. 215 (1901). This decision may perhaps be rationalized on other grounds, however; the law regulating horseshoers now being administered by the Department of Registration and Education has not been challenged.
22 Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).
ADMINISTRATIVE ORGANIZATION

The administration of occupational licensing laws in Illinois was, at first, entrusted to separate and independent boards or commissions, whose members were chosen by the governor from the ranks of the group to be licensed. Possibilities of monopolistic abuse were clearly inherent in this type of organization. In 1917 Illinois adopted the Civil Administrative Code, which abolished offices, boards, commissions, and agencies and placed them in the administrative departments and commissions created by the code. These departments and commissions were generally empowered both to issue and to revoke licenses. Although the Department of Registration and Education, which administers more than twenty of these statutes, is now the most important licensing agency in the state, other licensing statutes are administered by the Department of Agriculture, Secretary of State, Department of Insurance, Department of Finance, Department of Conservation, Liquor Control Commission, Aeronautics Commission, Athletic Commission, Department of Public Welfare, Racing Board, Commerce Commission, and Mining Board. Under the provisions of the code the Director of the Department of Registration and Education appoints the members of the professional examining committees which administer the various statutes under the supervision of the department. Final orders granting or revoking licenses are issued by the director only upon written authorization by the professional committees, and he is given a veto power over the action of the committees. Thus the possibilities of abuse of power by professional committees for monopolistic ends are checked by an impartial administrative authority, while at the same time the advantages of expertness in dealing with technical professional problems are retained.


Arguments in favor of licensing stress the need of protection of the public against dishonest and incompetent practitioners. On the other hand it is often contended that occupational licensing is a monopolistic device fostered by members of the particular trade or profession in order to restrict the number of persons competing in the field. See Recent Regulation of Useful Occupations by License Requirements, 26 Col. L. Rev. 472 (1926); cf. Lasher v. People, 183 Ill. 226, 55 N.E. 663 (1899). While it cannot be denied that the motive of members of an occupational group which seeks licensing legislation is partially selfish and is prompted by a desire to increase the prestige, social standing, and economic welfare of the group, yet they also have a legitimate interest in protecting their group reputation against the practices of incompetent and fraudulent individuals. Since the public as well as the practitioner is injured when imposters succeed in securing a clientele, monopolistic tendencies should be checked without sacrificing the legitimate interests of the public and of the profession. Lasdon v. Hallihan, 377 Ill. 187, 36 N.E. (2d) 227 (1941).

Note 38 infra.

Annual Report of Department of Registration and Education (1940).

The importance of expertness in administration of licensing statutes varies with the nature of the occupation. Thus where the possession of skill and knowledge required for a license is tested by qualifying examinations, experts are indispensable. On the other hand,
The lack of centralization and integration of occupational licensing agencies has several apparent disadvantages from the viewpoint of effective, economical administration, and in addition causes some inconvenience to licensees. For example, a real estate broker who is also an insurance agent, as is often the case, must get his real estate license from the Department of Registration and Education and his insurance license from the Department of Insurance, and may, therefore, be required to prove many qualifications twice. Administration of all licensing statutes by one administrative agency is, however, probably undesirable, since administration of certain licensing statutes by existing state departments whose specialized activities are closely allied to the occupation regulated aids in the execution of broad departmental policies and prevents duplication of functions and personnel.

SEPARATION AND DELEGATION OF POWERS

The constitutionality of statutes which provide for refusal or revocation of licenses in administrative proceedings has long been sustained. But in answering the charge that these statutes unconstitutionally delegate judicial functions to administrative officers Illinois courts have given diverse reasons. At times such functions have been characterized as "administrative" and hence properly delegable. These opinions emphasize that refusal or revocation of a license is in no sense punishment but is merely a means of protecting the public against the incompetent, the careless, and the unscrupulous, and that the state under its police powers not only may impose on private individuals the substantive minimum standards of proficiency and honesty but also may provide an administrative process for determining whether those standards have been maintained. At other times the courts, while admitting that the granting and the revocation of licenses involve elements of judgment and discretion, have argued that these elements are found in all administrative proceedings and that the administrator performs, at most, a quasi-judicial function. Only with respect to disbarment of attorneys in administrative proceedings have the courts re-

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[1] People v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911); Klafter v. Bd. of Examiners of Architects, 259 Ill. 15, 102 N.E. 193 (1913); People v. Stokes, 281 Ill. 159, 118 N.E. 87 (1917).


[3] People v. McCoy, 125 Ill. 289, 17 N.E. 786 (1888); Italia America Shipping Corp. v. Nelson, 323 Ill. 477, 154 N.E. 198 (1926); People v. Hawkinson, 324 Ill. 285, 155 N.E. 318 (1927); Bodenweiser v. Dept. of Registration and Education, 347 Ill. 175, 179 N.E. 462 (1931).
fused to uphold this type of delegation, ostensibly on the ground that the admission and disbarment of attorneys is traditionally a prerogative of the courts.\textsuperscript{34}

Licensing statutes which contain inadequate standards to guide administrative discretion, however, have been held to be invalid delegations of legislative power, and to violate the equal protection and due process clauses of the Illinois Constitution. Three problems are presented by such statutes: 1) how far can the legislature go in granting to an administrative agency apparently unguided discretion to refuse or revoke a license; 2) to what extent may the defects of vague statutory provisions be cured by empowering administrative agencies to make rules and regulations defining and supplementing the statutory standard; 3) what effect will the courts give to such administrative rules and regulations.

In determining whether a standard may be implied where none is expressed in a particular statute, the Illinois Supreme Court has distinguished those occupations which are said to serve no legitimate social or economic purpose, the licensing of which confers a mere privilege upon the licensee, from those useful occupations, the practice of which could not be wholly prohibited, in which the licensee is said to have a property right. In general, where the occupation to be regulated is a socially desirable one, the court has demanded that the grounds for refusal and revocation of licenses be expressly stated in the act governing the activities of the regulatory agency and not left completely to the discretion of the administrator. In \textit{Noel v. People},\textsuperscript{35} the supreme court considered a statute which conferred discretionary power upon the Pharmacy Board to issue or refuse licenses for the sale of patent medicines.\textsuperscript{36} Since the discretion of the board was unqualified by any standards set forth in the statute, the court declared the statute invalid as an unauthorized delegation of legislative power and as a denial of equal protection and of due process of law. A similar attitude appears in \textit{Scireson v. Walsh},\textsuperscript{37} where the court found that a statute regulating the medical profession contained no standard to guide the administrators.\textsuperscript{38}

\textsuperscript{34} In re Day, 181 Ill. 73, 54 N.E. 646 (1899); People v. Chamberlain, 242 Ill. 260, 89 N.E. 994 (1909); People v. Czarnecki, 268 Ill. 278, 109 N.E. 14 (1915).

\textsuperscript{35} 187 Ill. 587, 58 N.E. 616 (1900).

\textsuperscript{36} Pharmacy Act, Ill. L. (1895) 245.

\textsuperscript{37} 354 Ill. 40, 187 N.E. 921 (1933).

\textsuperscript{38} Ill. Rev. Stat. (1941) c. 127, §§60 et seq.; ibid., at c. 91, §16a. Prior to 1917 the procedure of the Department of Registration and Education with respect to each occupational group had been governed by a separate statute which detailed the grounds for refusal and revocation of licenses. In that year the Civil Administrative Code was enacted, providing a uniform procedure for issuance and revocation of all occupational licenses by the department. The legislature, probably intending only to unify and simplify the operations of the professional committees and of the department, did not reenact the grounds for refusal and revocation of licenses. For this reason the court interpreted the 1927 amendment, which substantially reenacted the 1917 code, as conferring upon the department uncontrolled power to determine upon what grounds licenses should be refused or revoked. In support of its position the court argued that the Act of 1927 could not be interpreted as merely repealing the procedural pro-
Legislation governing the pursuit of socially undesirable or questionable occupations has received markedly different treatment. By characterizing a license to pursue such occupations as conferring a mere privilege upon the holder, the Illinois courts have felt free to sustain legislation authorizing an administrator to grant or revoke such licenses at will. Thus, in Schwuchow v. Chicago, the supreme court upheld a statute which authorized the mayor to grant and revoke liquor licenses at his discretion. Although the distinction between privileges and property rights apparently eliminates objections based on equal protection and due process of law, it fails to explain the fact that precisely the same delegation of legislative power to an administrative agency in other circumstances is held to violate the separation of powers provision of the Illinois Constitution.

Where the legislature has attempted to define the grounds which justify refusal or revocation of licenses, constitutional issues are frequently raised because of the apparent vagueness and indefiniteness of the statutory standards. The courts have apparently determined these issues with reference to the practicability of greater specification of statement of the particular legislative goal to be achieved. Where greater specification is deemed impossible, the courts have implied a legislative intent to grant only reasonable discretion and have sustained the legislation. Thus, for example, in Klafter v. Bd. of Examiners of Architects, the supreme court upheld a statutory provision authorizing revocation of an architect's license for "gross incompetency or recklessness in the construction of buildings" as a sufficient guide of administrative discretion. The court said, "It is a practical impossibility to set out in a statute, in detail, every act which would justify the revocation of a license. The requirements of the statute can only be stated in general terms and a reasonable discretion reposed in the officials charged with its enforcement."

visions of the various professional licensing statutes since the act did not in terms state that to be its effect. Nor, said the court, could the Act of 1927 be construed as supplementary to the existing substantive provisions for refusal and revocation of licenses in each of the occupational statutes, since then the Act of 1927 would be incomplete and hence invalid. The court therefore held this to be an invalid delegation of legislative power. Realistically, of course, the act attempted merely to empower the department to determine what constituted a prima facie case establishing violation of the conditions for receipt and retention of licenses, which were fully set out in the Medical Practice Act and in the other statutes administered by the department. Although the court suggests that even this limited grant of authority would have been invalidated, other decisions indicate that so interpreted the act would have been upheld. Kettles v. People, 221 Ill. 221, 77 N.E. 472 (1906); People v. Kane, 288 Ill. 235, 123 N.E. 265 (1919).

39 Schwuchow v. Chicago, 68 Ill. 444 (1873) (liquor business); People ex rel. Carpenter v. Dever, 236 Ill. App. 135 (1925) (dissemination of birth control information); see Freund, Police Power §§563, 564 (1904).

40 68 Ill. 444 (1873).

41 See Sigler, The Problem of Apparently Unguided Administrative Discretion, 19 St. Louis L. Rev. 261 (1934); 15 Calif. L. Rev. 408 (1927).

42 259 Ill. 15, 102 N.E. 193 (1913).
revocation of a physician’s license for “unprofessional or dishonorable conduct” was upheld. Where personal fitness is a requirement for the issuance of a license, the necessity of vague administrative standards is apparent, and the supreme court has not hesitated to uphold statutes conditioning the grant of a license on the applicant’s “good moral character.”

Provisions authorizing administrative implementation of vague statutory standards by reasonable rules and regulations often aid in securing judicial approval of licensing statutes. In People v. Kane, the supreme court upheld a statute which empowered the State Board of Health to hold examinations “of a character sufficiently strict to test the qualifications of applicants for a physician’s license” and to license those who demonstrated their fitness. The statute further provided that all examinations should be conducted under rules and regulations prescribed by the board, which should provide for a fair and wholly impartial method of examination. No mention was made in the opinion of the delegation of legislative power, but it was stated that in the absence of the grant to the board of the power and duty to make rules and regulations the legislation would have subjected applicants to the arbitrary discretion of the board and would thus have violated due process and equal protection. In view of the rule-making provision, however, it was presumed that the action of the board would be reasonable and that if unreasonable rules were adopted judicial relief would be available to any person injured by them. With similar reasoning the court has sustained statutes empowering licensing authorities to establish uniform and reasonable standards to be observed by “reputable” educational institutions, whose graduates alone are to be permitted to take the qualifying examinations for admission to practice.

On the other hand, a statute conferring absolute power on an administrative officer to fix the amount and terms of bonds required of dealers and brokers in securities has been held an unconstitutional delegation of legislative power. The court emphasized the possibilities of discrimination by the administrative officer between persons in the same circumstances, and stated that greater restriction on the exercise of the administrator’s discretion was required. The legislature, to meet this objection, adopted an amendment in which an attempt was made to establish rules to serve as a guide to the Secretary of State in fixing the amount of the bond. The amendment provided that he should consider: first, the proposed method of transacting the business; second, the financial

44 People v. McCoy, 125 Ill. 289, 17 N.E. 786 (1888); People v. Apfelbaum, 251 Ill. 18, 95 N.E. 995 (1911).
45 People v. Flaningam, 347 Ill. 328, 179 N.E. 823 (1932).
46 288 Ill. 235, 123 N.E. 265 (1919).
47 Kettles v. People, 221 Ill. 221, 77 N.E. 472 (1906); People v. Bd. of Dental Examiners, 110 Ill. 180 (1884).
49 Ibid., at 475 and 492.
The opposite result was reached with respect to a statute which permitted the Director of Agriculture to fix the terms and conditions of bonds required of all commission merchants but which provided that all bonds were to be for an amount fixed in the statute and in a standard form.\textsuperscript{51}

The rules and regulations adopted by administrative officers under statutory authorization are subject to judicial review as to their reasonableness, fairness, and impartiality.\textsuperscript{52} The similarity of rules and regulations to legislative enactments has induced the Illinois Supreme Court to refuse review until such regulations have been applied to the complainant.\textsuperscript{53} And a presumption similar to that raised in favor of the constitutionality of statutes is said to be indulged in favor of the validity and reasonableness of an administrative regulation.\textsuperscript{54} In \textit{People v. Love}\textsuperscript{55} the court held that this presumption was rebutted with respect to a regulation of the Board of Health that an applicant for a physician’s license must include with his application letters of recommendation from two reputable medical men. The court sustained the contention that this regulation was unreasonable and discriminatory as applied to chiropractors on the ground that, since the prejudice of the medical profession against chiropractors made it difficult, if not impossible, for them to obtain recommendations, they might thus be precluded from practicing their profession through no fault of their own. An administrative ruling that “good moral character” embraced “the entire sphere of human conduct as coming under the description of right and wrong, the obligation of duty and ethics,” was likewise declared unreasonable on the ground that this standard was much too high and that in adopting it the board had acted beyond its authority.\textsuperscript{56}

A related problem arises when a licensing agency attempts to refuse or revoke a license for a non-statutory reason. In \textit{People ex rel. Suckerman v. State Bd. of Pharmacy},\textsuperscript{57} the board had refused to renew an applicant’s license because the license had been found in the possession of a third party. In granting mandamus


\textsuperscript{53} People v. Witte, 315 Ill. 282, 146 N.E. 178 (1924).

\textsuperscript{54} People v. Witte, 315 Ill. 282, 146 N.E. 178 (1924); People v. McGinley, 329 Ill. 173, 160 N.E. 186 (1928).

\textsuperscript{55} See Kettles v. People, 221 Ill. 221, 77 N.E. 472 (1906); People v. Love, 298 Ill. 304, 131 N.E. 809 (1921); People v. Kane, 288 Ill. 235, 123 N.E. 265 (1919).

\textsuperscript{56} Schireson v. Walsh, 354 Ill. 40, 187 N.E. 921 (1933).

\textsuperscript{57} 275 Ill. 236, 114 N.E. 22 (1916).
to compel the board to renew the license the supreme court found that the board was without statutory authority to refuse to renew the license for this reason. But here again a distinction between "reputable" occupations and socially questionable businesses has been drawn. In *Harrison v. People ex rel. Rabens* the court refused to compel the issuance of a liquor license to an applicant whose "good moral character" was admitted by the licensing official. Although lack of "good moral character" was the only ground specified in the statute as justifying refusal of a license, it was said that broad discretionary power was vested in the mayor to refuse to license an applicant when the public interest so required, and the court sustained the mayor's determination that the business location proposed by the applicant was too close to a school to be in the public interest.

The same issue would be presented if a licensing agency attempted to revoke a license issued because of mistake of fact caused by clerical error, since most statutes do not provide for revocation on such grounds. Action may be taken against the licensee under the Illinois quo warranto statute, but whether the board may revoke a license so issued is an open question in this state. An allied unsettled problem appears where a statute expressly grants the administrative agency power to refuse a license, but makes no mention of revocation.

**PROCEDURAL DUE PROCESS**

The illusory nature of the distinction between "privilege" and "property" licenses which the Illinois courts have drawn is demonstrated in the courts' treatment of procedural requirements for the revocation of occupational licenses. This distinction is said to rest on the ground that "privilege" occupations afford a greater opportunity to jeopardize or injure the public health, safety, or morals of the community than do occupations in which the licensee has a "right" to engage. As a result the supreme court has held that "privilege"

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58 222 Ill. 150, 78 N.E. 52 (1906).
59 Cf. People v. United Medical Service Inc., 362 Ill. 442, 200 N.E. 157 (1936); Martens v. People ex rel. Searle, 186 Ill. 314, 57 N.E. 871 (1900); People ex rel. Stead v. Chicago, 187 Ill. App. 117 (1914).
60 Ill. Rev. Stat. (1941) c. 112, §9; People v. Heidelberg Garden Co., 233 Ill. 290, 84 N.E. 230 (1908); note 57 supra.
61 An injunction to prevent the unauthorized practice of dentistry in Kentucky was upheld in *State Bd. of Dental Examiners v. Payne*, 213 Ky. 382, 281 S.W. 188 (1926). But this remedy has been held unavailable to the administrator in Illinois on the ground that the remedy at law by a suit to recover penalties for unauthorized practice was adequate. *People ex rel. Shepardson v. Universal Chiropractors' Ass'n*, 302 Ill. 228, 134 N.E. 4 (1922).
62 In Illinois under the Horseshoers' Act the Department of Registration and Education is empowered to refuse a license but the statute is silent as to revocation. Ill. Rev. Stat. (1941) c. 66, §14a. The department has not attempted to revoke licenses under this statute, however, and the question has not been finally determined.
63 See Gellhorn, Administrative Law 372 et seq. (1940); Power of State to Restrict One's Right to Engage in Lawful Occupation, 25 Va. L. Rev. 219 (1939); 4 Wis. L. Rev. 180, 182 (1928).
licenses may be summarily revoked;64 "property" licenses may be revoked only after notice and hearing.66 But the activities of a quack doctor or of a crooked real estate broker are no less injurious to the public welfare than are the illegal activities of tavern owners or dance hall proprietors. And once a license has been issued and an investment has been made both classes of licensees are in similar situations—the loss of valuable assets may result from revocation of a liquor dealer's license just as revocation of a professional license may entail disastrous consequences for a practitioner. Only a determination by the legislature that the continued illegal practice of a less highly regarded trade is more detrimental to the public interest than the continued illegal practice of a more reputable profession might justify a provision for summary revocation. And no license should be subject to summary revocation unless the harm to the licensee from revocation without an opportunity to be heard is outweighed by the danger to the public interest from continued malpractice and the resultant need for immediate protection of the public. Illinois statutes now almost uniformly grant notice and hearing to occupational licensees of both types.

Notice.—In the early case of People v. McCoy,66 decided under the Medical Practice Act of 1877, which contained no express requirement of notice prior to revocation of physicians' licenses, the Illinois Supreme Court inquired whether notice had actually been given the licensee. Because the issue was not raised the court expressed no opinion as to the constitutionality of the statute but said merely that the licensee could not be deprived of his "right to practice medicine" without being afforded an opportunity by "timely notice to defend it."67 Subsequently, in Ramsay v. Shelton,68 the court sustained a provision of the Medical Practice Act of 1917, which provided merely that no license should be revoked or refused until the holder had been given a hearing before the Department of Registration and Education, on the ground that this provision implied that the licensee must be given adequate notice of the hearing and an opportunity to defend. In a later case, however, it held that a statute providing for the revocation of insurance agents' and dealers' licenses only after "due investigation and a hearing" was invalid because no provision was made for the giving of notice of such charge to the licensee.69 Most modern Illinois statutes specifically provide for notice, as well as hearing, and direct service by registered mail.

The use of the phrase "timely notice" in the court's opinion in the McCoy case raises the question of how much notice a licensee is entitled to receive. Most of the statutes administered by the Department of Registration and Education provide that the defendant shall be notified of the charges against him at

64 Schwuhow v. Chicago, 68 Ill. 444 (1873).
65 Blunt v. Shepardson, 286 Ill. 84, 121 N.E. 263 (1918).
66 125 Ill. 289, 17 N.E. 786 (1888).
67 Ibid., at 297 and 788.
68 329 Ill. 432, 160 N.E. 769 (1928).
least ten days before the hearing. The Small Loans Act, administered by the Department of Insurance, provides for five days' notice.70 It would seem that under ordinary circumstances even this comparatively short period would be sufficient for a licensee to prepare his defense,71 and statutory provisions authorizing the grant of continuances vest discretionary power in the administrator to make allowances for unusual cases.

In the notice of the hearing the administrative agency must set out in writing the objectionable conduct with which the licensee is charged.72 Litigation has centered on the degree of specification with which these charges must be stated. In Klafter v. State Bd. of Architects73 the court said: "If the charge against the holder of a license....is not sufficiently specific to permit him to prepare properly his defense, it is the duty of the board of examiners, on request of the holder of the license or his counsel, to require the charge to be made more specific. If the discretionary power of the board is exercised with manifest injustice, the court will interfere when it is clearly shown that the discretion has been abused."74 This language indicates that the licensee must request that the charge be made more certain before he can rely on lack of specification alone as a ground for defense. In sharp contrast to this attitude is the leading case of Kalman v. Walsh.75 There a dentist was notified in writing that the Department of Registration and Education would "investigate his actions as a practitioner of dentistry...." to determine whether he had committed certain specific acts which would justify revocation of his license. "It is apparent from this writing," said the court, "that no charges, as a matter of fact, had been filed as contemplated by the statute.... The supposed 'written charges' as contained in such writing appear to be rather a galaxy of 'whethers' or 'whether or nots,' rather than written charges...."76

The requirement of the court that the notice be phrased in the form of a charge seems unnecessarily strict. The purpose of informing a licensee of the substance of the complaint against him is equally well served by a notice that in a proceeding to revoke his license inquiry would be made as to whether he had

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71 Blunt v. Shepardson, 286 Ill. 84, 121 N.E. 263 (1918).
72 Ibid. Of course, the charge, if proved, must warrant revocation on a specific statutory ground. In Braucher v. Bd. of Examiners of Architects, 209 Ill. App. 455 (1918), the Board of Examiners of Architects was authorized by statute to revoke licenses for "dishonest practices." The charge against the defendant was that he had submitted as satisfactory four sets of plans for buildings, which plans he knew to have been improperly and insufficiently drawn for the purposes intended. This charge was insufficient, the court held, to support revocation for dishonest practices since the sale of the plans constituted but one transaction. Cf. Kaeseberg v. Ricker, 177 Ill. App. 527 (1913).
73 259 Ill. 15, 102 N.E. 193 (1913).
74 Ibid., at 22 and 196; cf. State Bd. of Dental Examiners v. People ex rel. Cooper, 123 Ill. 227, 13 N.E. 201 (1887).
75 355 Ill. 341, 189 N.E. 315 (1934).
76 Ibid., at 346 and 317.
committed specific enumerated acts. Despite the further statement in the *Kalman* case that charges need not be drawn with the "refinement, niceties and subtleties of pleadings in courts of record," the court's emphasis on the necessity that "charges should be so drawn as to bring the alleged act of misconduct clearly within the purview of the statute" leads to the drafting of complaints in statutory language. Since in addition the licensee must be apprised of the details of the charge against him, the *Kalman* case has led to an increase both in length and in formality of the statement of charges and thus unduly burdened the licensing agencies.

**Hearing.**—Major problems with reference to the hearing concern 1) the status of the hearing officer, 2) the conduct of the hearing, 3) the rules of evidence applicable, and 4) the type of record which is required.

Under the provisions of the statutes administered by the Department of Registration and Education hearings are conducted by professional committees appointed by the director. The director is empowered to act only upon written reports of the committees. In earlier statutes no provision was made for the department to act on its own motion, and lack of such a provision induced the Illinois Supreme Court to hold in *Kalman v. Walsh* that unless written charges in the proper form had been filed with the committee by a third party the department had no jurisdiction to act. Recent amendments which have authorized the Department of Registration and Education to originate complaints have been attacked on the ground that they deprive an accused licensee of the right to be heard before an unbiased tribunal and thus deny to such person due process of law. The argument that the director is now both prosecutor and judge, since he controls the action of the committees through his power of appointment and his power to remand a case to the same or another committee whenever he disagrees with a committee's finding, was repudiated in *Tarr v. Hallihan*. It now seems apparent that until actual bias is shown, the supreme court will not draw an inference of bias from the fact that the hearing tribunal may have been instrumental in the issuance of the complaint. Of course, when competent proof of the prejudice or bias of the hearing tribunal is independently made, judicial relief is available.

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77 Ibid.

78 Ibid.

79 In *Tarr v. Hallihan*, 375 Ill. 38, 30 N.E. (2d) 421 (1940), the court in upholding a revocation proceeding in the face of a challenge that the pleadings against the defendant were not sufficiently defined and specific, said that "a mere reading of the complaints, which are too lengthy to set forth here, demonstrates that appellants were fully informed of the acts of misconduct with which they were charged. . . ." Ibid., at 43 and 423 (italics added).


81 355 Ill. 341, 189 N.E. 315 (1934).

82 Notes 5-18 supra.

83 375 Ill. 38, 30 N.E. (2d) 427 (1940).

84 State Bd. of Dental Examiners v. People ex rel. Cooper, 123 Ill. 227, 13 N.E. 201 (1887).
Consideration of licensing statutes which are not administered by the Department of Registration and Education raises other problems with respect to the hearing officer. Since the head of an administrative department which administers an occupational licensing act may often be too heavily burdened with other duties to hear all cases involving license revocation the hearing function must be delegated to employees of the department. A statute authorizing the Director of the Department of Insurance to delegate to "any salaried employee of the insurance department" the power to hold hearings to determine whether an insurance broker's license should be renewed or revoked, was held invalid in Chicagoland Agencies, Inc. v. Palmer on the ground that the statute failed to set forth any standard of competency for the hearing officer. The court suggested that the director might have designated a stenographer, bookkeeper, or janitor on salary to act as judge at the hearing. To understand the attitude of the court in this case is difficult in light of the cases in which the court has presumed that discretionary powers will be reasonably exercised by administrative officers. In amending this provision of the Insurance Brokers Act the Illinois legislature struck the term "salaried" from the act and added the phrase "specially designated for that purpose" in the hope that the court could thereby be induced to presume that the director would appoint only reasonably competent employees to act as hearing officers and thus uphold the statute.

Where an independent commission is established by statute to administer a licensing law there is less need to delegate the hearing function to subordinates. Thus the Illinois Liquor Control Act provides that no liquor dealer's license shall be revoked except after hearing by the state commission. Whether this provision may in the future be interpreted to authorize the commission to delegate the hearing function if such procedure should become necessary is doubtful. The attitude of the court in the Chicagoland Agencies case would seem to prohibit such delegation; but the fact that the commission deals with liquor licenses, so often characterized as mere privileges, may induce the court to adopt a contrary point of view with respect to this agency.

Statutory provisions governing the conduct of hearings precedent to a refusal to issue or renew a license, or to its revocation, are often vague. Most statutes administered by the Department of Registration and Education provide that the accused person "shall be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto." Statutes creating other administrative procedures are sometimes even less specific. Thus the Small Loans Act provides merely that an accused licensee be accorded a reasonable opportunity to be heard before the Department of Insurance may revoke

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86 Ibid., at 16 and 911.
his license.\footnote{IlRevStat(1941)c.74,§27.} In \textit{Ramsay v. Shelton}\footnote{329Ill.432,160N.E.769(1928);cf.Peoplev.Apfelbaum,251Ill.18,95N.E.995(1911);Klatterv.Bd.ofExaminersofArchitects,259Ill.15,102N.E.193(1913).} the supreme court sustained Section 18 of the Medical Practice Act of 1917, which provided merely that "no license ... shall be revoked or refused until the holder thereof shall have been given a hearing before the Department of Registration and Education."\footnote{Ill.L.(1917)586.} But in the Chicago\textit{land Agencies} case a provision that insurance agents' and dealers' licenses may be revoked only after "due investigation and a hearing" was declared insufficient to meet the requirements of due process. The court held that the statute was too vague because there was no provision for notice or manner of giving notice; no place was fixed for the hearing; no procedure was prescribed for the production or consideration of the evidence, subpoenaing of witnesses, administration of oaths, or the preservation of the record. In amending this statute the legislature inserted provisions for the administering of oaths, production of witnesses and evidence, and notification of the time and place for hearing, as well as a requirement that notice of the specific charge be mailed to the accused licensee. But no further provisions governing procedure at the hearing, such as the opinion quoted seemed to require, were inserted. While provisions like those inserted are now found in most of the Illinois licensing statutes, questions with respect to presentation of testimony, rules of evidence, and examination of witnesses are not dealt with in the statutes.

While it has been recognized that hearings before licensing agencies need not be as formal or as full as judicial proceedings,\footnote{Bodenweiserv.Dept.ofRegistrationandEducation,347Ill.115,120,179N.E.462,464(1931).Revocationproceedingsshouldbe"bothinformalandsummaryincharacterandfreefromtechnicalrulesobservedincourtsoflaw....thecommitteewhichhearsevidence...consist[s]ofthreelicensedrealestatebrokers.Thesenemenotlearnedinthescienceoflaw...."} yet even these hearings may not be too cursory. In \textit{Blunt v. Shepardson},\footnote{286Ill.84,121N.E.263(1918).} an accused physician was called in by the examining committee and asked what he had to say in defense to the charge that he had been convicted of violation of the Harrison Drug Act. He replied that an appeal from the conviction was pending, that he was innocent of the charge, and that therefore he believed his appeal would be successful. "Thereupon," said the court, "a few casual inquiries were made of petitioner regarding his practice of medicine in Chicago. ... This pretended hearing lasted only a few minutes and petitioner was thereupon directed to depart...."\footnote{Ibid.,at86and263.} While the court based its decision primarily on the ground that no written notice of the charges had been given the licensee, it is clear that the court was deeply impressed with the extreme informality and cursory nature of the hearing.

Furthermore, because the licensing agency must determine for itself the facts on which it shall refuse to grant or revoke a license the investigatory element in
the proceedings should not be minimized. In sharp contrast to *Kalman v. Walsh*, where the court attacked a proposed investigation for the purpose of revoking a dentist's license as being in the nature of an inquisition by a grand jury is the case of *Bodenweiser v. Dept. of Registration and Education*, which presents a more realistic view. There a real estate broker's license was revoked for failure to account for money belonging to others which had come into his possession. The defendant contended in a certiorari proceeding that the board had not acted in accordance with the statutory provisions and that evidence was improperly admitted at the hearing. In reply the court said: "The record shows that on the hearing before the committee the principal inquiry was whether the appellant had failed to remit rent money coming into his possession which belonged to others. This investigation was general in character, and its chief purpose was not to detect crime but to determine whether the appellant's conduct warranted a revocation of his license as a real estate broker. Under these circumstances the committee had latitude, under the charges filed, to hear evidence of any irregularities of the appellant in failing to account for rent moneys received, in order to determine his fitness to continue in the real estate business."

Many licensing statutes give the licensee the right to be represented by counsel and the right to have testimony taken under oath. The prevailing procedure in hearings conducted by professional committees of the Department of Registration and Education permits third parties seeking to have the license revoked to be represented by counsel as well. The department has the power to subpoena any person in the state and take testimony either orally or by deposition or both. Although the issuing of subpoenas is permissive with the department, they are generally issued when requested, and this discretionary power has therefore not yet been judicially tested. Any circuit or superior court in Illinois may, upon application of the accused licensee, the relator, or the department compel the attendance of witnesses and the production of relevant documents at the hearing.

Statutory provisions in general merely provide for the introduction of evidence in administrative proceedings without any further statement of the rules of evidence which shall be applicable. The opinions in the few cases dealing with this issue have not clarified the requirements. The Illinois Supreme Court has declared that the administrative body conducting revocation proceedings should be free from the technical rules observed in courts of law. On the other hand, "the competency and materiality of the evidence" must at all times be

96 355 Ill. 341, 189 N.E. 315 (1934), discussed page 704 supra.
97 347 Ill. 115, 179 N.E. 462 (1931).
98 Ibid., at 120 and 464.
99 Contrast the Liquor Control Act, Ill. Rev. Stat. (1941) c. 43, §159, which provides only for hearing, with the Horse Racing Act, Ill. Rev. Stat. (1941) c. 8, §37c, which provides that the Racing Board shall not be bound by technical rules of evidence.
100 Schireson v. Walsh, 354 Ill. 40, 44, 187 N.E. 921, 922 (1933).
observed. In construing a statute which provided that the Department of Finance is not bound by the technical rules of evidence, the supreme court has held that the rule against leading questions and the best evidence rule are mere technical rules, but that the rule against hearsay evidence, founded as it is on the necessity of an opportunity for cross-examination, is basic and not technical. The burden of proof never shifts to the license holder but remains throughout the hearing upon the department or body making the charge. With these exceptions the court has not characterized specific rules of evidence as basic or merely technical.

Although the professional committees within the Department of Registration and Education are composed of men who are not legally trained, an attorney for the department is always present at all hearings and in practice determines the admissibility of evidence. The common law rules of exclusion are generally followed in all departmental proceedings, but the rules on best evidence, leading questions, and order of presentation of testimony and documents are not strictly observed. Moreover, an accused licensee is always given the right to cross-examine witnesses against him. Adequate safeguards against arbitrary action in revocation hearings are thus afforded by the prevailing practice of the department; danger lies rather in the direction of so limiting the evidence which the administrative body may hear that the advantages of expertness and flexibility of action are lost.

The Illinois Supreme Court has held that a record of the proceedings leading to refusal or revocation of licenses must be preserved, and that it is essential to the validity of an order that it show at least those facts essential to establish the jurisdiction of the department. To this end, licensing statutes administered by the Department of Registration and Education provide that the department must at its own expense provide a stenographer to take down the testimony and preserve a record of all proceedings at the hearing of any case. The notice of hearing, the complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the committee, and the order of the department comprise the record of the proceedings. The department is also directed to furnish a transcript of the record to any interested person upon payment of a stated fee.

Licensing statutes administered by other agencies are often less specific with respect to preservation of a record of the proceedings. Thus the Liquor Control Commission is merely required to "reduce all evidence offered [at hearings] to

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102 Ibid., at 44 and 922; cf. Bodenweiser v. Dept. of Registration and Education, 347 Ill. 155, 179 N.E. 462 (1931).
103 Novicki v. Dept. of Finance, 373 Ill. 342, 26 N.E. (2d) 130 (1940).
105 Blunt v. Shepardson, 286 Ill. 84, 121 N.E. 263 (1918); People v. McCoy, 125 Ill. 289, 17 N.E. 786 (1888); see 30 Ill. L. Rev. 788 (1936).
writing." Under the Small Loans Act the Department of Insurance must prepare and keep on file a written copy of each order or decision of revocation, containing the findings and the reasons supporting the revocation; but under the act providing for the licensing of insurance agents and brokers a transcript of the record of the hearing need be prepared by the Director of Insurance only after a petition for review has been filed.

Rehearing and Administrative Review.—Occupational licensing statutes administered by the Department of Registration and Education provide that within twenty days after the report of the professional committee has been served upon an accused person, he may file a written motion for rehearing specifying his particular grounds. The director is empowered to order a rehearing whenever he is satisfied that substantial justice has not been done. Until the expiration of the twenty-day period in which petitions for rehearing may be filed the director may not act on the committee's recommendation.

Provision for an administrative appeal is found in the Liquor Control Act. The action of any local commission "granting or refusing to grant a license, revoking or refusing to revoke a license or refusing to grant a hearing upon a complaint to revoke a license" may be appealed within twenty days to the state commission, which hears the case de novo.

It is a well established rule in the federal courts that no person aggrieved by the action of administrative officers may seek judicial relief until he has exhausted all available administrative remedies. The statute governing licensing procedure in the Department of Registration and Education impliedly enacts the exhaustion rule by providing that no "order of suspension or revocation shall be set aside or vacated on any ground not specified in the written motion for rehearing." This phrasing achieves the goal suggested by the rationale of the exhaustion rule, that administrative agencies should have the opportunity to reconsider and correct their actions before being called upon to defend them in the courts and that as a matter of comity courts should not interfere until the administrator has finally determined the issues to be litigated.

In Bodenweiser v. Dept. of Registration and Education a real estate broker sought review by statutory certiorari of the proceedings in which his license was revoked. The supreme court refused to allow issues to be raised on appeal which had not been raised in the petition for rehearing. And in Schireson v. Walsh the court extended the application of the statute to issues concerning the jurisdiction of the department which had not been raised in the petition for rehearing. Although

109 See Berger, Exhaustion of Administrative Remedies, 48 Yale L. J. 981 (1939); Appealability of Interlocutory Orders of Independent Federal Administrative Agencies, 8 Univ. Chi. L. Rev. 113 (1941).
110 347 Ill. 115, 179 N.E. 462 (1931).
112 354 Ill. 40, 187 N.E. 921 (1933).
the exhaustion rule might well be applied by courts in the absence of statute, no Illinois case involving an occupational licensing agency in which this was done has been found.

**JUDICIAL REVIEW**

The Illinois court has held that when notice and hearing in an administrative proceeding are provided for by statute the due process clause does not require provision in the statute for judicial review. Nevertheless, Illinois statutes creating licensing agencies almost invariably provide for a method by which an aggrieved party may obtain judicial review of the licensing agency's action. These provisions supplement the extraordinary common law and equitable remedies often available to parties aggrieved by arbitrary action of occupational licensing officers.

**Appeal.**—In *Aurora v. Schoeberlein*, the separation of powers provision of the Illinois Constitution was held to invalidate legislation authorizing a trial de novo on appeal for those cases arising out of administrative action which could not have been determined by the court under its original jurisdiction. The court said: "The cases in which appeals from non-judicial bodies to courts have been recognized have involved individual or property rights of which the court had jurisdiction under some other form of procedure, and belonged to classes of cases in which the court, acting judicially, could afford a remedy." Since it has been held that licenses to engage in reputable occupations confer valuable rights which will be protected against arbitrary action by the courts in the absence of a statutory remedy, the decision in the Schoeberlein case does not restrict the power of the legislature to provide for trials de novo on appeal from licensing agencies dealing with such occupations. But in view of judicial characterization of licenses to engage in "less respectable" occupations as conferring mere privileges on a holder, a statutory provision conferring the right to a trial de novo on appeal upon such licenses may be declared invalid. Although licenses issued under the Small Loans Act probably fall within the former rather than the latter type, the provision for "appeal" in that statute restricts the scope of judicial review to the "reasonableness and lawfulness" of the department's orders. While this provision may result from excessive legislative caution, modern commentators have almost uniformly contended that it is preferable as a matter of policy that there should be no judicial trial de novo of matters once deter-

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117 230 Ill. 496, 82 N.E. 860 (1907).
minded by any occupational licensing agency. But the significance of this statutory restriction of the scope of review on appeal has not been discussed in the Illinois court's opinions. The similarity of these appeal provisions to the more common statutory provisions for the use of certiorari as a method of achieving judicial review of the action of licensing officers may indicate that decisions concerning the latter provisions are applicable to the former.

Certiorari.—At common law the writ of certiorari was issued to compel an inferior body exercising judicial functions to send up the record of a proceeding. The limitation of the writ to the review of judicial determinations prevents its utilization for the review of rules and regulations made by licensing authorities. This limitation should not, however, be applied to restrict judicial review of action by such authorities in the issuance, renewal, or revocation of occupational licenses, whether such action be termed "quasi-judicial" or "administrative" for other purposes.

On common law certiorari the court could consider only the record, and new evidence could not be introduced. Only questions of jurisdiction could be determined; certiorari did not lie to correct errors of law or of fact, except where a particular finding of fact was essential to the jurisdiction of the agency. Early restrictive definitions of "jurisdictional" facts precluded consideration of the reasonableness of administrative orders. But the scope of review on common law certiorari has been greatly expanded by the Illinois courts through the

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Statutory authorizations for judicial review of the reasonableness and lawfulness of administrative rules and regulations are merely legislative enactments of the standard which the courts had employed in the absence of statutory provisions. People v. McGinley, 329 Ill. 173, 160 N.E. 186 (1928); People v. Witte, 315 Ill. 282, 146 N.E. 178 (1924); People v. Kane, 263 Ill. 235, 123 N.E. 265 (1919); Kettles v. People, 221 Ill. 221, 77 N.E. 472 (1906). Inquiry as to the reasonableness of an administrative rule is essential if an administrative agency is to be confined to action within its statutory authority, since a grant of discretionary power to a licensing officer is often upheld by the courts on the theory that the exercise of such power is subject to either an express or implied limitation of reasonableness.

Professor Freund suggested that the distinction between judicial and non-judicial determination for the purpose of granting certiorari should depend upon whether or not the administrative officer acted after notice and hearing. Ibid., at 263. But since the Illinois courts do not require notice and hearing before revocation of "privilege" licenses, see page 703 supra, this distinction would prevent review by certiorari of arbitrary revocation of licenses of this type. Since, as has been previously indicated, revocation may affect both classes of licensees alike, page 703 supra, certiorari should lie in both cases. This result would be achieved if the distinction between judicial and non-judicial action for this purpose were made to depend upon whether the administrative action was addressed to a particular party or was of general application.

See Blunt v. Shépardson, 286 Ill. 84, 121 N.E. 263 (1918).
device of terming "jurisdictional" facts which were not originally so considered.127

A more satisfactory method of expanding the scope of review on certiorari was provided by the legislature in occupational licensing statutes administered by the Department of Registration and Education. These statutes provided that the circuit or superior court of the county in which the accused person resides shall have the power to review any order of revocation or suspension of the department and "all questions of law and fact thereon by writ of certiorari."228 In order to effectuate the policy of these statutes it is necessary that the record certified to the court, unlike the record at common law, include findings of fact and statements of the evidence supporting these findings. But the statutes are silent on whether the court may substitute its opinion for that of the administrator in determining whether an administrative finding is supported by the evidence, or whether the findings must be sustained if supported by "any evidence," by "substantial evidence," or by the "preponderance of evidence."

No reported cases in which the question is discussed in relation to these statutes have been found. This omission is surprising in view of the controversy which has been engendered by federal legislation providing that administrative findings of fact should be accorded a specified degree of finality on review. Some licensing statutes, however, not administered by the Department of Registration and Education, specify the degree of finality to be accorded administrative findings of fact.229 These statutes likewise remain uninterpreted by the courts.

Mandamus.—Mandamus is said to lie only to compel action which is ministerial in character. If the administrative officer has discretion to determine whether or not he should perform a particular act, mandamus will lie to compel him to act only if he refuses to do so after having made a determination favorable to a complainant, or if his determination against action is so flagrant as to be characterized as an abuse of discretion.230 Thus, in People ex rel. Sheppard v. Bd. of Dental Examiners,231 where an applicant for mandamus to compel the issuance of a license claimed that he had graduated from a reputable dental college and was therefore entitled to a license, the supreme court sustained the board's demurrer to the complaint, saying, "The demurrer here does not admit that the Board found that the college at which the relator was graduated was reputable, although it does admit that to be the fact. But since the Board can—

127 Compare Schireson v. Walsh, 354 Ill. 40, 187 N.E. 921 (1933), and Bodenweiser v. Dept. of Registration and Education, 347 Ill. 115, 179 N.E. 462 (1931), with Braucher v. Bd. of Examiners of Architects, 209 Ill. App. 455 (1918), and Kaeseberg v. Ricker, 177 Ill. App. 527 (1913).


129 See, e.g., Ill. Rev. Stat. (1941) c. 95, §272 (Illinois Truck Act); ibid., at c. 8, §37c (Illinois Horse Racing Act).

130 State Bd. of Dental Examiners v. People ex rel. Cooper, 123 Ill. 227, 13 N.E. 201 (1887); see Hart, Introduction to Administrative Law 438 (1940).

131 110 Ill. 180 (1884).
not be compelled to decide the question that way, although the evidence might clearly sustain it in doing so, there is no ground for mandamus.\textsuperscript{32} If the court had overruled the demurrer it would have decided in effect that the college was reputable before the board had exercised the discretion vested in it by the statute. Where the board has in good faith determined that a particular college is not reputable, mandamus will not issue.\textsuperscript{33} But where the board’s action is based on prejudice, fraud, or caprice, the court will issue mandamus. Thus in \textit{State Bd. of Dental Examiners v. People ex rel. Cooper},\textsuperscript{134} the plaintiff averred that he had complied with all statutory requirements, that he had graduated from a reputable college and that a license had been refused him solely because four members of the board were interested in a rival institution and were therefore prejudiced against him. The circuit court overruled the board’s demurrer, since it appeared that the board had admitted that they had determined that the college from which the plaintiff had graduated was reputable. The supreme court affirmed the judgment, severely criticizing the board’s action. But where a statute is construed to permit no discretion, mandamus will issue to compel the administrator to comply with the terms of the statute.\textsuperscript{35} In \textit{People ex rel. Sucherman v. State Bd. of Pharmacy},\textsuperscript{136} mandamus was granted to compel the renewal of a license when the board’s refusal to renew was based upon a reason not specified in the statute.

It seems that the use of mandamus has not unduly hampered administrative action, since, for the most part, the courts have not interfered with administrative discretion and, indeed, have liberally interpreted statutory provisions as vesting discretionary power in administrative officers.\textsuperscript{37}

\textbf{Injunction.—} Injunction is a proper remedy when a licensee claims that the statute under which an administrative body seeks to act is unconstitutional,\textsuperscript{138} or that the proposed action is beyond the authority conferred by the statute.\textsuperscript{139}

\textsuperscript{132} Ibid., at 186 (italics added).
\textsuperscript{133} People ex rel. Bader v. Hallihan, 284 Ill. App. 54, 1 N.E. (2d) 415 (1936).
\textsuperscript{134} 123 Ill. 227, 13 N.E. 201 (1887).
\textsuperscript{135} Douglas v. People ex rel. Ruddy, 225 Ill. 536, 80 N.E. 341 (1907). A writ of mandamus will not issue, however, where no satisfactory result can be achieved. People v. Illinois Racing Com’n, 303 Ill. App. 654, 25 N.E. (2d) 839 (1940) (mandamus refused because period of license had expired).
\textsuperscript{137} People ex rel. Sheppard v. State Bd. of Dental Examiners, 110 Ill. 180 (1884); People v. Heilman Co., 263 Ill. App. 574 (1931).
\textsuperscript{138} Scully v. Hallihan, 365 Ill. 185, 6 N.E. (2d) 176 (1936); Banghart v. Walsh, 339 Ill. 132, 271 N.E. 154 (1939); Doe v. Jones, 327 Ill. 387, 158 N.E. 703 (1927); Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696 (1926).
\textsuperscript{139} Ramsay v. Shelton, 329 Ill. 432, 160 N.E. 769 (1928); State Bd. of Health v. Ross, 191 Ill. 87, 60 N.E. 811 (1901); Audia v. Chicago, 235 Ill. App. 613 (1925); see Fidelity Investment Ass’n v. Emmerson, 235 Ill. App. 9 (1924).
But before an injunction will issue, equity jurisdiction must be established. Therefore a petitioner must exhaust his administrative and legal remedies before he may seek equitable relief, and it must also be shown that irreparable injury will be suffered if an injunction is not issued. In cases not involving licenses the Illinois courts have held that the availability of an extraordinary legal remedy will bar a suit for injunction, but it is uncertain whether these holdings apply when occupational licenses are involved. The courts have usually assumed that the revocation of an occupational license by an unauthorized administrative officer will result in irreparable injury. It has also been assumed that the mere holding of a hearing by an unauthorized professional committee will so injure an occupational licensee as to justify the issuance of an injunction. But an injunction will not issue to interfere with the exercise of the discretionary powers which an administrative agency is conceded to possess.

Thus remedy by injunction supplements the use of mandamus, certiorari, and appeal in a scheme of judicial review which affords persons subject to the jurisdiction of occupational licensing authorities a degree of judicial review consistent with the successful performance by administrative officers of the functions allotted to them.

THE ADMISSIBILITY OF CHARACTER EVIDENCE IN DETERMINING SENTENCE

During the nineteenth and twentieth centuries American criminal legislation has shifted from the fixed sentence type of criminal statute to the discretionary

140 Doe v. Jones, 327 Ill. 387, 158 N.E. 703 (1927); Fidelity Investment Ass'n v. Emmerson, 235 Ill. App. 9 (1924).


142 New Haven Clock Co. v. Kochersperger, 175 Ill. 383, 51 N.E. 629 (1898); Fletcher v. Tuttle, 151 Ill. 41, 37 N.E. 683 (1894); Rockford Amusement & Refreshment Co. v. Baldwin, 252 Ill. App. 1 (1929).

143 Notes 129 and 130 supra.


145 Klafter v. State Bd. of Examiners of Architects, 259 Ill. 75, 102 N.E. 193 (1913); see Fidelity Investment Ass'n v. Emmerson, 235 Ill. App. 9 (1924).

In the seventeenth century practically all felonies called for the death sentence. 4 Bl. Comm. *98. In Blackstone's day Parliament had provided that the death sentence should be imposed in not less than 160 different crimes. Ibid., at *17. Indeed, it appears that variations in punishment according to the severity of the crime were only to be found in the manner in which the death sentence was to be imposed. Ibid., at *61, *92, *93, *97.