

TITLE XVIII.
Administrative Procedure and Review.

CHAPTER 227.

ADMINISTRATIVE PROCEDURE AND REVIEW.

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227.01 Definitions. For the purposes of this chapter:

(1) "Agency" includes the public service commission, the industrial commission (except in matters arising out of the workmen's compensation act or the unemployment compensation act), the insurance commissioner, the department of securities, the board of tax appeals (except in assessments made under chapter 76), the state board of health, the motor vehicle department, the commissioner of banks, the banking review board, the personnel board, and all other boards, commissions, departments and officers having statewide jurisdiction and authorized by statute to exercise rule-making powers or to adjudicate contested cases; but said term does not include the governor, or any military or judicial officer of the state.

(2) "Rule" means a rule, regulation, standard, or statement of policy of general application, including the amendment or repeal thereof, issued by an agency to implement, interpret or make specific the legislation enforced or administered by it, or governing its organization and procedure, but it does not include regulations concerning internal management of the agency not affecting private rights or interests.

(3) "Contested case" means a proceeding in which, after hearing required by law, the legal rights, duties or privileges of any party to such proceeding are determined or directly affected by a decision or order in such proceeding and in which the assertion by one party of any such right, duty or privilege is denied or controverted by another party to such proceeding. [1943 c. 375; 1945 c. 511; 1947 c. 411 s. 11]

227.02 Existing rule-making authority and procedure. This chapter does not change the rule-making authority now granted by statute to any agency, nor affect specific statutory provisions governing rule-making procedure. [1943 c. 375]

227.03 Registry and compilation of rules. Each agency shall file forthwith in the office of the secretary of state a certified copy of every rule adopted by it, including all rules now in effect. The secretary of state shall keep a permanent register of all such rules. Except as otherwise provided by statute, all rules hereafter adopted shall become effective upon such filing, unless a later date is specifically stated therein. Each agency shall periodically compile and make available to interested persons, upon request, all rules adopted by it and remaining in effect. [1943 c. 375]

Note: Requirements of this section interpreted and applied. 32 Atty. Gen. 359.

227.04 Right of petition for rules. Any interested person may petition an agency requesting the promulgation or amendment or repeal of any rule. Each agency shall prescribe by rule the form, content, and procedure for submission, consideration and disposition of such petitions. [1943 c. 375]

227.05 Declaratory judgment on rules. (1) Except as otherwise specifically provided by statute, the validity of any rule may be judicially determined upon petition for

a declaratory judgment addressed to the circuit court of Dane county. The court shall hear the petition and render a declaratory judgment thereon only when it appears from the petition and the evidence presented in support thereof that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner.

(2) A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question. In rendering judgment, the court shall give effect to any pertinent (a) constitutional limitations upon the powers of the agency; (b) statutory limits upon the authority of the agency; (c) if the rule in question is an interpretative rule, the limits of correct interpretation; and (d) statutory requirements concerning rule-making procedures.

(3) Whenever a decision upon the validity of a rule requires a decision upon an issue of fact concerning the applicability of the rule to the petitioner, the court shall, after deciding the pertinent legal questions, refer the case to the agency for determination of the fact issue under the declaratory ruling procedure provided in section 227.06. Review by the courts of the agency determination may thereafter be had in the manner prescribed for such cases. [1943 c. 375]

Note: A complaint by licensed osteopaths, questioning the validity of a rule of the state board of health that funds obtained from the federal children's bureau under a certain federal act should not be used to pay any person furnishing obstetrical care to wives of servicemen unless such person be licensed to practice medicine and be a graduate of certain approved medical schools, did not state a case for declaratory relief under this section, in that the allegations of the complaint and the relief demanded were concerned solely with the proper distribution of federal funds by a federal administrative board, through the state board as its agent, presenting a controversy out of reach of the state courts. *Hecker v. Gunderson*, 245 W 655, 15 NW (2d) 788.

227.06 Declaratory rulings. Any agency may, on petition by any interested person, and shall upon reference of a case in accordance with the provisions of section 227.05, issue a declaratory ruling with respect to the applicability to any persons, property, or state of facts of any rule or statute enforced by it. Each agency shall prescribe by rule the form, content and procedure for submission, consideration and disposition of such petitions. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions in contested cases. [1943 c. 375]

227.07 Administrative adjudication; notice and hearing. Prior to the final disposition of any contested case, all parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but this shall not preclude the informal disposition of controversies by stipulation, agreed settlement, consent orders, or default. [1943 c. 375]

227.08 Rules pertaining to procedure. Each agency shall adopt rules governing the form, content, and filing of pleadings, the form, content and service of notices, the conduct of pre-hearing conferences, and other necessary rules of procedure and practice. [1943 c. 375]

227.09 Notification of issues. Every party to a contested case shall be given a clear and concise statement of the issues involved. [1943 c. 375]

227.10 Evidence and official notice. In contested cases:

(1) Agencies shall not be bound by common law or statutory rules of evidence. They shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. They shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(3) Agencies may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice. [1943 c. 375]

227.11 Records of hearings. Each agency shall keep an official record of all proceedings in contested cases. Exhibits and testimony shall be part of the official record. [1943 c. 375]

227.12 Examination of evidence by agency. Whenever in a contested case it is impracticable for the members of the agency who participate in the decision to hear or

read all the evidence, the final decision shall not be made until a summary of the evidence prepared by the person conducting the hearing, together with his recommendations as to the findings of fact and the decision in the proceeding has been prepared and furnished to each party, and a reasonable opportunity has been afforded to each party to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before all the members who are to participate in the decision. The agency's findings of fact may be made upon the basis of such summary and the filed exceptions thereto as herein provided. The parties may by written stipulation waive compliance with this section. [1943 c. 375; 1945 c. 511]

227.13 Decisions. Every decision of an agency in a contested case shall be in writing accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each contested issue of fact without recital of evidence. [1943 c. 375]

Note: Agencies subject to the provisions of the ultimate conclusions of each con- of chapter 227 should comply with the re- tested issue of fact without recital of evi- quirement that an agency's findings shall dence. *Clintonville Transfer Line v. Public* consist of a concise and separate statement Service Comm. 248 W 59, 21 NW (2d) 5.

227.14 Service of decision. Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to his attorney of record. [1943 c. 375; 1945 c. 511]

227.15 Judicial review; orders reviewable. Administrative decisions, which directly affect the legal rights, duties or privileges of any person, whether affirmative or negative in form, except the decisions of the department of taxation, the commissioner of banks and the commissioner of savings and loan associations, shall be subject to judicial review as provided in this chapter; but if specific statutory provisions require a petition for rehearing as a condition precedent, review shall be afforded only after such petition is filed and determined. [1943 c. 375; 1945 c. 511; 1947 c. 612]

Note: See note to 111.06, citing *United R. & W. D. S. E. of A. v. Wisconsin E. R. Board*, 245 W 636, 15 NW (2d) 844.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in section 227.15 and directly affected thereby shall be entitled to judicial review thereof as provided in this chapter. Proceedings for review shall be instituted by serving a petition therefor personally or by registered mail upon the agency or one of its members or upon its secretary or clerk, and by filing such petition in the office of the clerk of the circuit court for Dane county (unless a different place of review is expressly provided by law), all within 30 days after the service of the decision of the agency upon all parties as provided in section 227.14 or in cases where a rehearing is requested within 30 days after service of the order finally disposing of the application for such rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The petition shall state the nature of the petitioner's interest, the fact showing that petitioner is aggrieved and directly affected by the decision, and the ground or grounds specified in section 227.20 upon which petitioner contends that the decision shall be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving the same as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the board of tax appeals or of the banking review board, the consumer credit review board or the credit union review board, or of the savings and loan advisory committee, the department of taxation or the commissioner of banks or the commissioner of savings and loan associations, as the case may be, shall be the named respondent. Copies of the petition shall be served, personally or by registered mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency (except in the case of the board of tax appeals and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan advisory committee) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court, in its discretion, may permit other interested persons to intervene.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance stating his position with reference to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent,

shall also be served on the named respondent and the attorney-general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as herein provided or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court. [1943 c. 375; 1945 c. 511; 1947 c. 612]

Note: In the absence of a showing that it has been aggrieved by an order, which does not direct it to do or to refrain from doing anything, a labor union is not entitled to a review thereof. *United R. & W. D. S. E. of A. v. Wisconsin E. R. Board*, 245 W 636, 15 NW (2d) 844.

That an instrument, otherwise sufficient, and timely served on the public service commission for the purpose of having a review of a declaratory ruling of the commission, was designated "Notice of Appeal," rather than "Petition for Review" as provided for

by this section, did not prevent the circuit court from acquiring jurisdiction to review such ruling; and the court could order an amendment of such instrument which did nothing but change its caption to "Notice of Appeal and Petition for Review" and make the minor changes in the body thereof which were required by such change of title, even though the time for serving a petition may have expired. *Lake Superior D. P. Co. v. Public Service Comm.* 250 W 39, 26 NW (2d) 278.

227.17 Stay of proceedings. The institution of the proceeding for review shall not stay enforcement of the agency decision; but the reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in sections 189.25 and 196.43. [1943 c. 375; 1945 c. 511]

227.18 Record on review. Within 30 days after service of the petition for review upon the agency, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings in which the decision under review was made, including all pleadings, notices, testimony, exhibits, findings, decisions, orders and exceptions, therein; but by stipulation of all parties to the review proceedings the record may be shortened by eliminating any portion thereof. Any party, other than the agency, refusing to stipulate to limit the record may be taxed by the court for the additional costs. The record may be typewritten or printed. The exhibits may be typewritten, photostated or otherwise reproduced, or, upon motion of any party, or by order of the court, the original exhibits shall accompany the record. The court may require or permit subsequent corrections or additions to the record when deemed desirable. [1943 c. 375; 1945 c. 511]

227.19 Additional evidence; trial; motion to dismiss; amending petition. (1) If before the date set for trial, application is made to the circuit court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken before the agency upon such terms as the court may deem proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court the additional evidence together with any modified or new findings or decision.

(2) Proceedings for review of administrative agency decisions as provided in this chapter may be brought on for trial or hearing at any time upon not less than 10 days' notice given after the expiration of the time for service of the notices provided in section 227.16 (2).

(3) Within 20 days after the time specified in section 227.16 for filing notices of appearance in any proceeding for review, any respondent who has served such notice may move to dismiss the petition as filed upon the ground that such petition, upon its face, does not state facts sufficient to show that the petitioner named therein is aggrieved and directly affected by the decision sought to be reviewed. Upon the hearing of such motion the court may grant the petitioner leave to amend the petition if the amendment as proposed shall have been served upon all respondents prior to such hearing. If so amended the court may consider and pass upon the validity of the amended petition without further or other motion to dismiss the same by any respondent. [1943 c. 375; 1945 c. 511]

227.20 Scope of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court. The court may affirm the decision of the agency, or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the administrative findings, inferences, conclusions or decisions being:

- (a) Contrary to constitutional rights or privileges; or
- (b) In excess of the statutory authority or jurisdiction of the agency, or affected by other error of law; or
- (c) Made or promulgated upon unlawful procedure; or

- (d) Unsupported by substantial evidence in view of the entire record as submitted; or
 (e) Arbitrary or capricious.

(2) Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. The right of the appellant to challenge the constitutionality of any act or of its application to him shall not be foreclosed or impaired by the fact that he has applied for or holds a license, permit or privilege under such act. [1943 c. 375]

Note: The power exercised by the public service commission under 194.23, in holding a hearing and acting on an application of a common motor carrier for a certificate of authority to operate, is legislative and not judicial in character, so that a hearing which satisfies the requirements for a legislative hearing is sufficient. Gateway City Transfer Co. v. Public Service Comm. 245 W 304, 14 NW (2d) 6.

Under 227.20 (1) (d), on review of proceedings brought before the state department of public welfare under 49.03 (8a) (c), by Milwaukee county against Marathon county to recover for relief furnished, and in relation to an issue whether the relief recipient had been supported as a pauper during his first year of residence in Milwaukee county, the department's finding of fact, that, at all times material to these proceedings, the relief recipient's family was without funds, credits or assets to supply themselves with things they needed,

may not be disturbed unless unsupported by substantial evidence in view of the entire record as submitted. Milwaukee v. Stratford, 245 W 505, 15 NW (2d) 812.

On a review of findings of the employment relations board, the court has no jurisdiction to determine the factual issues anew if there is some evidence before the board reasonably tending to support a finding, and the court may not weigh the evidence to ascertain whether it preponderates in favor of the finding, nor substitute its judgment for that of the board even though the court might have decided the question differently had it been before the court de novo, and there is applicable the provision in the uniform administrative procedure act, that due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred on it. Ray-O-Vac Co. v. Wisconsin E. R. Board, 249 W 112, 23 NW (2d) 489.

227.21 Appeals. Any party, including the agency, may secure a review of the final judgment of the circuit court by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in other civil cases, except that the time for appeal shall be limited to 30 days from the notice of entry of the judgment. [1943 c. 375]

Note: When a matter involving a decision of an administrative agency is brought before the supreme court on appeal from an order of the circuit court made in a proceeding to review under chapter 227, the supreme court deals with the order of the circuit court, and the question presented

is whether the circuit court erred in its determination, and the supreme court does not reverse or modify the order or decision of the commission. Clintonville Transfer Line v. Public Service Comm. 248 W 59, 21 NW (2d) 5.

227.22 Public utility assessments. This chapter shall not apply to assessments made under chapter 76 or to decisions of the board of tax appeals upon the review of such assessments. [1943 c. 375]

227.23 Uniformity of interpretation. Sections 227.01 to 227.21 inclusive shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states that enact it. [1943 c. 375]

227.24 Short title. Sections 227.01 to 227.21 may be cited as the Uniform Administrative Procedure Act. [1943 c. 375]

227.25 Certification of certain cases from the circuit court of Dane county to other circuits. Any action or proceeding for the review of any order of an administrative officer, commission, department or other administrative tribunal of the state required by law to be instituted in or taken to the circuit court of Dane county except action or appeal for the review of any order of the industrial commission which shall have been so instituted or taken and shall not have been called for trial or hearing within 6 months after such proceeding or action has been instituted, and the trial or hearing of which shall not have been continued by stipulation of the parties or by order of the court for cause shown, shall on the application of either party on 5 days' written notice to the other be certified and transmitted for trial to the circuit court of the county of the residence or principal place of business of the plaintiff or petitioner, where such action or proceeding shall have the precedence over all ordinary civil actions. Unless written objection shall be filed within such 5-day period, the order certifying and transmitting such proceeding shall be entered without hearing. The plaintiff or petitioner shall pay to the clerk of the circuit court of Dane county a fee of \$2 for transmitting the record. [1941 c. 194; 1943 c. 375; 1945 c. 511]

227.26 Jurisdiction of state courts to determine validity of laws when attacked in federal court and to stay enforcement. Whenever a suit praying for an interlocutory injunction shall have been begun in a federal district court to restrain any department, board, commission or officer from enforcing or administering any statute or administrative order of this state, or to set aside or enjoin such suit or administrative order, such department, board, commission or officer, or the attorney-general, may bring a suit to enforce such statute or order in the circuit court of Dane county at any time before the

hearing on the application for an interlocutory injunction in the suit in the federal court. Jurisdiction is hereby conferred upon the circuit court of Dane county and on the supreme court, on appeal, to entertain such suit with the powers herein granted. The circuit court shall, when such suit is brought, grant a stay of proceedings by any state department, board, commission or officer under such statute or order pending the determination of such suit in the courts of the state. The circuit court of Dane county upon the bringing of such suit therein shall at once cause a notice thereof, together with a copy of the stay order by it granted, to be sent to the federal district court in which the action was originally begun. An appeal may be taken within ten days after the termination of the suit in the circuit court to the supreme court of the state, and such appeal shall be in every way expedited and set for an early hearing. [1931 c. 280; 1943 c. 375]

Note: This section authorizes any department, board, commission or officer sought to be restrained, or the attorney-general, to bring, in the circuit court for Dane county, a suit to enforce any state statute assailed, presumably on constitutional grounds, in any federal district court, at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Department of Agriculture and Markets v. Laux, 223 W 287, 270 NW 548.

This section does not in any real sense confer jurisdiction of the subject matter of the action that has not already been conferred by the constitution, but prescribes the venue of the action and, in the situations specified, authorizes suit by the proper department, board, commission, or officer. Where a foreign insurance company com-

menced an action in the federal court seeking to restrain the commissioner from enforcing, in accordance with his understanding of them, state statutes regulating the insurance business in Wisconsin, the situation was sufficiently within this section to authorize the commissioner to bring an action thereunder to enforce the state statutes, as against the contention that, since there was no formal order of denial of license by the commissioner at the time the action in the federal court was commenced, there was no attempt by the company to restrain enforcement of any "order" and the contingency on which the commissioner's authority to bring an action never happened. *Duel v. State Farm Mut. Auto Ins. Co.*, 240 W 161, 1 NW (2d) 837, 2 NW (2d) 871.

227.27 [Created by Supreme Court Order effective July 1, 1945; repealed by 1945 c. 511]