STATE OF WISCONSIN

Assembly Journal

Eighty-First Regular Session

THURSDAY, May 23, 1974.

The chief clerk makes the following entries under the above date:

COMMUNICATION

State of Wisconsin
Department of State
Madison 53702

To Whom It May Concern:

Dear Sir: Acts, joint resolutions and resolutions, deposited in this office, have been numbered and published as follows:

Bill, Jt. Res. or Res. No.	Chapter No.	Publication date
Assembly Bill 559	201	May 15, 1974
Republished		May 23, 1974
Assembly Bill 925	202	May 15, 1974
Assembly Bill 1308	203	May 15, 1974
Assembly Bill 553	205	May 17, 1974
Republished		May 18, 1974
Republished		May 23, 1974
Assembly Bill 883	206	May 17, 1974
Assembly Bill 408	245	May 17, 1974
Assembly Bill 934	247	May 17, 1974
Assembly Bill 443	267	May 23, 1974

Respectfully submitted,
ROBERT C. ZIMMERMAN,
Secretary of State.

State of Wisconsin
Department of Justice
Madison

May 20, 1974

The Honorable, The Assembly
State Capitol
Madison, Wisconsin 53702

Dear Representatives:

By 1973 Assembly Resolution 44 you have asked for my opinion as to the legality of the voting procedures of the joint committee for review of administrative rules (committee) with particular reference to that committee's vote on July 9, 1973, dealing with MVD 24.03 (5).

The committee is established by sec. 13.56, Stats., and is composed of four senators and five representatives. You advise that the assembly has rules dealing with the right of an absent committee member to vote and the holding open of an executive session to permit an absent member to vote, but that the senate has no rules on these subjects. I am advised of no joint resolution establishing procedural rules for the committee, and it is evident that the rules of one house cannot bind a joint committee of both houses.

The first question is whether an absent committee member may vote. The answer is no.

Unquestionably, no action can be taken by the committee without a quorum. Section 13.45 (5), Stats., provides:

> "RULES OF PROCEDURE; QUORUM. Unless otherwise provided by law, every legislative committee or committee on which there are legislative members selected by either house or the officers thereof may adopt such rules for the conduct of its business as are necessary, but a majority of the members appointed to a committee shall constitute a quorum to do business and a majority of such quorum may act in any matter within the jurisdiction of the committee."

Thus, the committee is empowered to adopt a rule answering this question, but has not done so. Accordingly, it is necessary to look to the common law.

At common law, the quorum was required to be present. The word "quorum" evolved from the rule of the King of England by which he designated certain justices to keep the peace and provided that:

> "*** any two or more of them may inquire of and determine felonies and other misdemeanors, in which number some particular justices, or one of them, are directed to be always included, and no business to be done *without their presence.*" (Emphasis added.) See *Snider v. Rinehart* (1892), 18 Colo. 18, 31 P. 716, 718.

In *Wheeler v. River Falls Power Co.* (1906), 215 Ala. 655, 111 So. 907, 909, the court said:

> "*** The sum of it is that *** a majority of the members must attend any meeting of the committee called for legislative purposes, otherwise there is no committee competent to act, but a majority of those *present*, when legally met, may bind all the rest." (Emphasis added.)

In *United States v. Ballin* (1892), 144 U.S. 1, 6, 12 S.Ct. 507, 36 L.Ed. 321, the court said:

> "*** when a quorum is *present*, the act of a majority of the quorum is the act of the body." (Emphasis added.)

In *Wheeler, supra*, the court held that since a quorum must be present, absentee votes by mail could not be counted to make up a quorum. My research discloses no cases dealing with the situation where a quorum was present and an attempt was made to count the votes of members not present. It is my opinion, however, that to count such votes would contradict the common law principle, incorporated into sec. 13.45 (5), Stats., that a committee can act only through a majority of a quorum which is present. It is the act of a majority of the quorum present which gives validity to committee acts.

The second question is the length of time, if any, which must be allowed for a roll call vote of the committee.

I am aware of no statutory or constitutional provisions which dispose of this question. The common law appears to have addressed itself only to the situation where members are in the legislative chamber. In *Gaskins v. Jones* (1942), 198 S.C. 508, 18 S.E. 2d 454, 456, the court said:

> "*** As long as the members are present in the council chambers and have an opportunity to act and vote with the others, it is their duty to act, and they will be regarded as present for the purpose of making a quorum and rendering legal the action of the council."

I am aware of no requirement that the committee chairman must make a roll call or otherwise solicit the presence of absent members. Absent a requirement in the common law, the statutes, the Constitution and the procedural rules of the committee itself, it is my opinion that no time need be allowed for a roll call vote.

The third question is whether the committee's vote on July 9, 1973, concerning MVD 24.03 (5) was legal. I am informed that by a five to three vote the committee suspended MVD 24.03 (5); that by a six to two vote the committee voted to keep the roll call open to allow an absent member to vote by noon of the next day; that the absent member then voted making the vote six to three to suspend; and that later, because of questions as to this procedure, the committee again met and voted six to three to suspend. Whether the six to two vote was effective under sec. 13.45 (5), Stats., to enable the absentee vote to be counted and whether the final six to three vote cured any previous procedural irregularities need not be decided. For it is my opinion that the committee, regardless of its voting procedure, was without power to suspend those administrative rules.

Section 13.56 (2), Stats., provides that the committee may:

> "*** suspend any rule complained of by the affirmative vote of at least 6 members. If any rule is so suspended, the committee shall as soon as possible place before the legislature, at any regular session and at any special session upon the consent of the governor, a bill to repeal the suspended rule. If such bill is defeated, or fails of enactment in any other manner, the rule shall stand and the committee may not suspend it again. If the bill becomes law, the rule is repealed and shall not be enacted again unless a properly enacted law specifically authorizes the adoption of that rule. ***" (See later amendments, ch. 90, sec. 5c, and ch. 162, sec. 1, Laws of 1973.)

One of my predecessors concluded that a proposal to repeal an administrative rule by joint resolution would be invalid if enacted. 43 OAG 350 (1954). Another of my predecessors concluded that a

proposal to empower a committee of legislators to void an administrative rule would be invalid. 52 OAG 423 (1963).

I am persuaded that those opinions are correct. The reasoning is that an otherwise valid administrative rule has the force of law. A law can be repealed or voided only by presentment of a bill to the governor so that he may have an opportunity to veto it. An administrative rule being a law, an attempt to void it without presentation of a bill to the governor usurps the prerogatives of the executive by circumvention. The determination that a rule is not valid is essentially a judicial question, and that function can be delegated to an administrative agency as a quasi-judicial duty only under appropriate standards which also provide the safeguard of judicial review. I have this day issued an opinion in response to 1973 Assembly Resolution 58 which discusses the authoritative basis for these conclusions.

Section 13.56 (2), Stats., contemplates that the administrative rule is not permanently voided but is suspended and "shall stand" only if the legislature fails to pass a law repealing the rule. The natural meaning of the word "suspend" implies that the administrative rule is voided in the meantime. Only the legislature, however, by presentment of a bill to the governor, has the discretion to prevent a valid law from taking effect. As stated in *M., St. P. & S.S. M.R. Co. v. Railroad Commission* (1908), 136 Wis. 146, 163, 116 N.W. 905:

> "*** But neither the commission nor the court can be vested with discretion to determine whether the precedent law declared by the legislature shall or shall not go into effect in particular cases."

By definition, if an administrative rule is valid it is a correct interpretation or application of a law. An attempt to void such a rule is to attempt to repeal the enabling statute *pro tanto*. Since this can only be done by presentment of a bill to the governor, I conclude that the committee is constitutionally without power to suspend an administrative rule which is otherwise valid notwithstanding sec. 13.56 (2), Stats., to the contrary.

I have struggled to find a construction of the word "suspend" which might save the constitutionality of this subsection. If such suspension merely was notice that the committee would present a bill to the legislature for enactment, this subsection probably would be constitutional. The *American Heritage Dictionary of the*

English Language (1969), p. 1296, however, defines "suspend" as follows:

> "1. To bar for a period from a privilege, office, or position, usually as a punishment: *suspend a student from school.* 2. To cause to stop for a period; interrupt: ***. 3.a. To maintain in an undecided state; hold in abeyance: *suspend judgment.* b. To render ineffective temporarily under certain conditions: *suspend a sentence; suspend parking regulations.* ***" (Emphasis the dictionary's.)

I believe "suspend" as used in sec. 13.56 (2), Stats., means that the administrative rule is temporarily rendered ineffective.

Since a valid law can be rendered ineffective, temporarily or otherwise, only by the legislature presenting a bill to the governor, it is my opinion that the courts would hold that sec. 13.56 (2), Stats., is unconstitutional to the extent it provides otherwise inasmuch as: (a) it purports to authorize a committee of the legislature to circumvent the constitutional prerogatives of a governor to veto a proposal to repeal a valid interpretation or application of a law, and (b) it fails to provide sufficient standards or the safeguards of judicial review essential to treating the committee as a reviewing agency to which has been lawfully delegated powers of a quasi-judicial nature.

Sincerely yours,

ROBERT W. WARREN,

Attorney General

CAPTION:

The vote of an absent member of the joint committee for review of administrative rules cannot be counted. No time need be allowed for a roll call before the committee votes. Notwithstanding sec. 13.56 (2), Stats., to the contrary, the committee cannot constitutionally suspend an otherwise valid administrative rule.

May 20, 1974

The Honorable, The Assembly
State Capitol
Madison, Wisconsin 53702

Dear Representatives:

By 1973 Assembly Resolution 58 you have requested my opinion as to the power of the legislature to suspend or revoke administrative rules.

The issues posed could be ruled upon in a case pending in the state supreme court. *Wisconsin Telephone Company v. ILHR Department*, No. 595, August Term 1973. It is the normal policy of this office not to answer opinion requests on questions currently in litigation.

The reason for this policy is two-fold. First, the dignity of an attorney general's opinion, and therefore its reliability for the legislature and the public, is diminished if it appeared to be issued to influence a court. Second, this policy is compelled by respect due courts.

The particular case pending before the supreme court, however, involves the issues posed by Resolution 58 only tangentially. This office is one of the participants on behalf of a state agency and is the only party which would raise the issue. Further, I have determined to urge the court not to rule on the issue in that case inasmuch as it is not the real issue before the court.

Essentially the same issue is raised by 1973 Senate Resolution 33 and 1973 Assembly Resolution 44. I have already declined to speak to this issue in two previous opinions because of the pending litigation.

I will proceed to answer the opinion request only because of the peculiar circumstances here, to-wit: both the senate and the assembly have asked for this opinion in three separate resolutions and the issue is before the supreme court only tangentially and probably will not be ruled upon in that case.

The first question is:

> "What is the distinction, if any, between an administrative rule and a law?"

Administrative rules are basically of two kinds. The first kind interprets legislation. Such interpretation may be in the nature of

pure statutory construction, or may implement or make specific certain legislation. The second kind relates to the internal organization or procedure of an agency. These features of administrative rules are included within the statutory definition of "rule." Section 227.01 (3), Stats., provides:

> "'Rule' means a regulation, standard, statement of policy or general order *** of general application and having the effect of law, issued by an agency to implement, interpret or make specific legislation enforced or administered by such agency or to govern the organization or procedure of such agency."

In order to have the effect of law, administrative rules: (a) must be correct interpretations, sec. 227.014 (2) (a), Stats.; (b) must be preceded with notice and hearing, with certain exceptions, sec. 227.02, Stats.; (c) must be filed, secs. 227.01 (4) and 227.023 (1), Stats.; (d) must be published, sec. 227.025, Stats.; (e) must be authorized by enabling legislation, *Kachian v. Optometry Examining Board* (1969), 44 Wis. 2d 1, 8, 170 N.W. 2d 743; (f) must be reasonable, *Kachian, supra*; (g) must be adopted by the agency having the power to enforce the rule, *Barry Laboratories, Inc. v. State Bd. of Pharm.* (1965), 26 Wis. 2d 505, 514-516, 132 N.W. 2d 833; (h) must be of an interpretive nature, *Barry Laboratories, supra*; and (i) must have general application rather than a limited, specific application. *Frankenthal v. Wisconsin R.E. Brokers' Board* (1958), 3 Wis. 2d 249, 257b, 88 N.W. 2d 352, 89 N.W. 2d 825; *Mondovi Co-op. Equity Ass'n. v. State* (1951), 258 Wis. 505, 511, 46 N.W. 2d 825; and secs. 227.01 (4) and 227.02 (1) (d), Stats.

If otherwise valid under these criteria, an administrative rule has the full force and effect of law. See *Josam Mfg. Co. v. State Board of Health* (1965), 26 Wis. 2d 587, 596, 133 N.W. 2d 301; *Thomson v. Racine* (1943), 242 Wis. 591, 596, 9 N.W. 2d 91; and *Verbeten v. Huettl* (1948), 253 Wis. 510, 519, 34 N.W. 2d 803.

It is important to understand that administrative rules cannot create power but are made in the exercise of power given by the legislature. See *State ex rel. Democrat Printing Co. v. Schmiege* (1963), 18 Wis. 2d 325, 336, 118 N.W. 2d 845. In fact, the legislature cannot constitutionally delegate to an agency the power to determine whether there shall be a law or what its limits shall be, but may delegate only such legislative powers as are necessary to carry into effect the general legislative purpose. *Clintonville Transfer Line v. Public Service Comm.* (1945), 248 Wis. 59, 68-

69, 21 N.W. 2d 5. Such delegation must be pursuant to standards evincing an ascertainable legislative purpose and must also provide for procedural safeguards such as judicial review. See *Watchmaking Examining Bd. v. Husar* (1971), 49 Wis. 2d 526, 536, 182 N.W. 2d 257, and *State ex rel. Atty. Gen. v. Wisconsin Constructors* (1936), 222 Wis. 279, 286, 268 N.W. 238. A power to make a rule is delegated if it is "by fair implication and intendment incident to and included in the authority expressly conferred." *State ex rel. Farrell v. Schubert* (1971), 52 Wis. 2d 351, 358, 190 N.W. 2d 529, *vacated* on other grounds, 408 U.S. 915, 92 S.Ct. 2500, 33 L.Ed. 2d 327.

I conclude, therefore, that if an administrative rule is properly adopted under these criteria and is within the power of the legislature to delegate there is no material difference between it and a law.

The second question is:

> "May the legislature by joint resolution suspend or revoke an administrative rule?"

One of my predecessors has concluded that a proposal to repeal an administrative rule by joint resolution would be invalid if enacted, 43 OAG 350 (1954). The reasoning there was that since an administrative rule is a law and since a law can be repealed only by presentment of a bill to the governor, an administrative rule cannot be repealed by joint resolution. For the same reasons another of my predecessors concluded that a proposal to empower a committee of legislators to void an administrative rule would be invalid. 52 OAG 423 (1963). Accord: Opinions of the Michigan Attorney General, 1957-1958 OAG (Mich) 246 and 1967-1968 OAG (Mich) 65. See also *M. St. P. & S.S.M.R. Co. v. Railroad Comm.* (1908), 136 Wis. 146, 163, 116 N.W. 905.

I agree with my predecessors for the reasons stated in their opinions. In addition, I have considered the argument that those opinions erroneously assumed that an administrative rule is a law in the same sense as is enabling or repealing legislation. That argument would be that since an administrative rule does not become "law" by presentment of a bill to the governor it need not be repealed by presentment of a bill only.

Such an argument must fail, in my opinion, for the reason that administrative rules do not create laws but are exercises of powers pursuant to existing laws. Such rules are invalid if they exceed the

bounds of correct interpretation. Section 227.014 (2) (a), Stats. A valid rule is merely a duly adopted correct statement or application of what the law already is. Thus, to repeal a valid rule is effectively to repeal the enabling statute *pro tanto.*

An administrative rule is either a correct application of its enabling statute or it is not. If it is not, it is invalid and no joint resolution of the legislature could change that fact. If it is a correct application, it is valid and no joint resolution of the legislature could change that fact.

It does not follow that when an agency modifies or repeals its own rules it voids an enabling statute *pro tanto.* For such agency action, to be valid, must be predicated on better interpreting or applying already established legislative policy in view of changing circumstances or new knowledge. Further, there is often more than one correct way to apply or interpret legislative policy. Not only are agency repeals subject to the standards of the applicable enabling legislation, they also are subject to judicial review. See secs. 227.01 (3) and 227.05, Stats. As concluded in my answer to your third question, *infra*, the legislature could empower itself or a committee of its members to affirm or set aside an agency's rule if the legislature or the committee were subject to proper standards and safeguards. Under such standards and safeguards, the legislature or a committee of its members could affirm or set aside an administrative rule in view of changing circumstances, new knowledge, or simply as a reviewing agency examining old knowledge and circumstances in the context of established statutory policy. To repeal an administrative rule other than pursuant to such standards or in the absence of such safeguards, however, is to abrogate what is, by definition, a valid statutory interpretation or application. Therefore, it is to unconstitutionally encroach on executive or judicial functions or both, as is more fully explained in my answer to your third question, *infra.*

I perceive no material distinction between repealing a law and suspending or revoking it. The effect is the same, to-wit: to take what has been law and make it no longer law. Thus, I conclude that the legislature may not by joint resolution suspend or revoke an administrative rule, absent proper standards and safeguards.

The third question is:

> "May the legislature by law authorize the legislature, by joint resolution, to suspend or revoke an administrative rule?"

No law, including a valid administrative rule, can be suspended or revoked by joint resolution of the legislature. The reason is that such a joint resolution deprives the executive branch of government the opportunity to exercise its power to veto an act of the legislature. Such a joint resolution, therefore, unconstitutionally encroaches on the executive branch of government.

Such encroachment cannot be validated by a statute, even if a particular governor were to approve such a statute. The constitution vests the veto power in the executive. Article V, sec. 10, Wis. Const. A governor could no more constitutionally approve the delegation of executive veto power to another branch of government than the legislature or the supreme court could approve the delegation of their respective powers to another branch of government.

Thus, the legislature cannot by law authorize the legislature by joint resolution to "suspend or revoke" an administrative rule. A constitutional amendment would be necessary to grant such a power.

The reason an administrative rule can have the force of law is because the legislature has by law provided that administrative agencies have the power to make rules which are valid to the extent they do not exceed the bounds of correct interpretation. I have given consideration to the argument that the legislature could make such rule-making power contingent upon approval by some body either as a condition precedent or subsequent, and that such body might be the legislature acting by joint resolution. On this argument the power given to the legislature by joint resolution would not be to "suspend or revoke" an administrative rule, but would be to "affirm or set aside" such rule as a super agency, as it were, or as another level of administrative review. Such affirmance or setting aside would not be in the nature of voiding a law, as is the case with suspension or revocation, but would be in the nature of a quasi-judicial determination of the validity of an administrative rule as a correct or incorrect interpretation or application of the relevant enabling legislation.

My predecessor dismissed this possibility because such a reviewing agency would not be acting pursuant to ascertainable standards. 43 OAG at 352. I agree with his analysis to the extent such a delegation would not restrict the legislature to act pursuant to such standards. I consider, however, the possibility of a law delegating such power but providing that its exercise be pursuant to proper standards. The question facing the legislature as such a

reviewing agency would not be the policy of the enabling law or the policy of the administrative rule, those questions being not at all delegable, but the correctness of a particular administrative rule as an interpretation or application of established legislative policy under standards already legislated.

The determination that an administrative rule is or is not authorized by an enabling statute is a judicial act. See 2 Am. Jur. 2d, *Administrative Law*, sec. 656, p. 517; *Northwestern Wis. Elec. Co. v. Public Service Comm.* (1946), 248 Wis. 479, 485, 22 N.W. 2d 472, 23 N.W. 2d 459; and *John F. Jelke Co. v. Beck* (1932), 208 Wis. 650, 664, 242 N.W. 576. The legislature may bestow such quasi-judicial powers on agencies as are incidental to their administration of particular statutes. *State ex rel. Volden v. Haas* (1953), 264 Wis. 127, 132, 58 N.W. 2d 577, and *Holland v. Cedar Grove* (1939), 230 Wis. 177, 188, 282 N.W. 111. Agency determinations which are quasi-judicial in nature, however, must be subject to review by the courts. See *Family Finance Corp. v. Sniadach* (1967), 37 Wis. 2d 163, 176, 154 N.W. 2d 259, *reversed* on other grounds, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 2d 349. See also *Boynton Cab Co. v. Giese* (1941), 237 Wis. 237, 296 N.W. 630, and *Watchmaking Examining Bd., supra*, 49 Wis. 2d at 536.

While quasi-judicial powers may be delegated, certain strictly judicial functions cannot be at all delegated. See *Wendlandt v. Industrial Comm.* (1949), 256 Wis. 62, 67, 39 N.W. 2d 854. The question becomes whether the determination that an administrative rule is authorized by enabling legislation, or is a correct interpretation or application thereof, is such a strictly judicial function which cannot be delegated.

I conclude that the courts are likely to hold that such a function can be delegated. The very act of making a rule pre-supposes an agency's quasi-judicial determination that the rule is so authorized and correct. That determination may be delegated since rule-making itself is delegable. Rule-making, then, involves both quasi-judicial and quasi-legislative functions. Further, I see no qualitative difference between an examiner's quasi-judicial decision which becomes the decision of the agency absent a petition for review, see secs. 111.07 (5) and 102.18 (3), Stats., and an agency's rule which is subject to quasi-judicial review by another agency.

It is imperative, however, that judicial review be retained. Article 7, sec. 2, Wis. Const., vests the state's judicial power in the courts. The legislature is not competent to empower itself by joint resolution, a committee of its members or an agency to be the final

arbiter of the judicial question whether a rule of an agency is valid under the proper criteria. The legislature would usurp judicial prerogatives were it to empower any body other than a court the final authority to determine the validity of an administrative rule.

Therefore, I conclude that no law can empower the legislature to suspend or revoke, by joint resolution, an administrative rule on policy grounds. On the other hand, I conclude that the legislature can be empowered to affirm or set aside an administrative rule by joint resolution if: (a) the delegation restricts the legislature to application of the standards already established by the relevant enabling law, and (b) the legislature's joint resolution determination is subject to judicial review at the instance of a party with sufficient standing.

The fourth question is:

> "May the legislature by joint resolution or law authorize a committee or joint committee of the legislature to suspend or revoke an administrative rule?"

Because of the analysis above, the answer to this question must be no. No valid administrative rule can be suspended or revoked by the legislature by joint resolution or by a committee or joint committee of the legislature. Such a rule, however, could be subject to affirmance or setting aside as a matter of administrative review by such committees acting pursuant to the standards and qualifications discussed in my answer to the third question.

I wish to comment on the wisdom of any proposal to vest quasi-judicial powers in the legislature or in a committee composed of legislators. I am aware that members of both houses feel that certain administrative rules do not in fact reflect the intendment of the original legislation. The feeling is that although these rules may be tested in the courts, see sec. 227.05, Stats., there is need for quicker disposition.

It is this type of need that led to the creation of administrative agencies in the first place. An additional advantage to the administrative system has also been the expertise that develops so that rights are determined quickly and objectively. I urge that the legislature create an additional, independent reviewing agency composed of appropriate professionals before it gives this function to itself or to a committee of its members.

The fifth question is:

> "What is the distinction, if any, between a policy pronouncement issued by an administrator or administrative agency and an administrative rule?"

Section 227.01 (3), Stats., includes "statement of policy" within the very definition of an administrative rule:

> "'Rule' means a regulation, standard, *statement of policy* or general order *** of general application and having the effect of law, *issued by an agency* ***." (Emphasis added.)

Thus, if a statement of policy, or policy pronouncement, is otherwise valid under the criteria discussed in answer to the first question, it is no different than any other administrative rule and has the full force of law. If such pronouncement is not otherwise valid, however, as where it has not been duly filed and published, it does not have the force of law and is a legal nullity.

The fact that a policy pronouncement is a legal nullity does not preclude judicial review thereof if that pronouncement is treated by the agency as though it were a validly adopted rule. In other words, if the effect is to apply the statute generally according to such policy pronouncement, judicial review cannot be defeated by the failure of the agency to properly adopt the policy as a rule. See *Frankenthal* and *Barry Laboratories*, *supra.*

The *italicized* language from sec. 227.01 (3), Stats., *supra*, also makes it clear that a policy statement which has the force and effect of law is that which is issued by the agency. Rule-making authority is given only to agencies. Section 227.014, Stats. Since only agencies can adopt rules, the power to do so cannot be delegated to a subordinate. *Park Bldg. Corp. v. Industrial Comm.* (1960), 9 Wis. 2d 78, 86, 100 N.W. 2d 571. Even a letter from the chief officer of an agency claiming to state agency policy is not official agency action, and in order to avoid confusion the court gave this admonition in *Universal Org. of M. F., S. & A.P. v. WERC* (1969), 42 Wis. 2d 315, 323, 166 N.W. 2d 239:

> "*** We suggest that, when letters of inquiry are answered by letters of individual commissioners, such letters contain a disclaimer of official commission action so that it is clear to all, particularly laymen, that no 'decision' is involved."

I conclude, then, that: (a) there is no material difference between an otherwise valid administrative rule and an otherwise

valid policy pronouncement by an agency; and (b) there is a material difference between an otherwise valid administrative rule and a policy pronouncement by an administrator inasmuch as the former has the force of law and the latter does not.

Sincerely yours,
ROBERT W. WARREN,
Attorney General

CAPTION:

Since there is no difference between an otherwise valid administrative rule and a law, such a rule cannot be suspended or revoked by joint resolution of the legislature and no statute can grant the legislature the power to do so. The legislature could, however, by law empower itself or a committee of its members to function as an administrative review agency, provided that the delegation of power restricted such review to a determination whether the administrative rule was a correct application or interpretation of the relevant enabling legislation and provided that such determination is subject to judicial review. There is no material distinction between an otherwise valid administrative rule and an otherwise valid policy pronouncement by an agency inasmuch as they both have the force of law, but the policy pronouncements of administrators do not have the force of law. Judicial review of a policy pronouncement cannot be defeated merely by the failure of the administrative agency to properly adopt the same as a rule.

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison 53702

To the Honorable, the Assembly:

The following bills, originating in the assembly, have been approved, signed and deposited in the office of the Secretary of State:

Assembly Bill	Chapter No.	Date Approved
632	262	May 15, 1974
953	264	May 16, 1974
1354	265	May 16, 1974
443	267	May 17, 1974

499	268	May 20, 1974
646	274	May 20, 1974
878	275	May 20, 1974
987	276	May 20, 1974
1079	277	May 20, 1974
1090	278	May 20, 1974
1116	279	May 20, 1974
1246	280	May 20, 1974
1275	281	May 20, 1974
1362	282	May 20, 1974
1511	283	May 20, 1974
1300	284	May 20, 1974

Sincerely,
PATRICK J. LUCEY,
Governor.

GOVERNOR'S VETO MESSAGES

May 20, 1974

To the Honorable, the Assembly:

I am returning **Assembly Bill 1340** without my approval.

This bill was introduced on October 19, 1973, to extend for that year only the latest date (from November 20 to November 29) by which a municipality was to publish the amount of its tax levy.

This bill did not pass until March 28, 1974, four months after the publication date which it would have affected. Therefore, the bill has no effect and I am disapproving it on that basis.

Sincerely,
PATRICK J. LUCEY,
Governor.