



TECHNICAL BRIEF

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ADMINISTRATIVE HEARINGS: AN OPTION FOR MUNICIPAL REGULATORY FUNCTION (Part I)

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This Technical Brief, Report # 200-1203-09, May 2007, is Part I of a two-part brief which considers Administrative Hearings as an option to make municipal regulatory function more effective and efficient. It focuses on ordinance regulation, fine collection, and non-moving vehicular irregularities on which fines are imposed.

Part II, which will be distributed later this year, will focus on the advantages of de-criminalizing various moving violations or other municipally regulated “criminal” activity for which the penalty is normally a fine and rarely, if ever, is incarceration imposed. Regulating these behaviors through an administrative process by fines and/or vehicle impoundment is a more efficient use of municipal resources and endorses a more collectable revenue stream for municipalities. Questions remain whether an act of “decriminalization” is valid under Mississippi’s “home rule” statute or whether enabling legislation is necessary. A discussion of the availability of de-criminalization in the context of home rule will be provided.

Introduction.

A survey of Mississippi municipalities reveals regulatory default and neglect. Municipalities set up ordinances to guide the development of their communities, to protect their citizenry, to regulate business and commercial interests, and for other relevant regulatory reasons. Rarely, however, do they implement an effective regulatory function.

The failure to implement an effective regulatory function is a two-fold default: (1) it is a default of the community’s expectation of governance and (2) it is a default of the municipal responsibility for governance.

Municipal regulatory function is varied. It entails the regulation of non-criminal traffic violations, animal compliance in the community, fire codes, building codes, zoning codes, retail and commercial business licenses, truancy and the like. The most effective regulation function paradigm is a collaboration between the municipal department in which the regulatory function is housed and an administrative adjudication process. The administrative adjudication process is a quasi-judicial process that can be housed under the office of the Mayor/Executive or as an administrative appendage of the Municipal Court. In communities which provide services for which they charge, such as water, sewer or garbage collection, the administrative adjudication process can be authorized to handle delinquencies and termination of service issues.

Nature of the Administrative Adjudication Process.

The administrative adjudication process is a quasi-judicial process which functions under the municipal executive or the Municipal Court. However, the administrative hearing officer need not be an attorney. The process is quasi-judicial and the hearing officer has the authority to act as a presiding official and presides with a modicum of formality found in the court system. The model is streamlined to result in a more effective use of municipal resources including the municipality's existing judicial, prosecutorial and enforcement resources. This "hands-on" administrative resolution approach is designed to be user-friendly not only to lawyers who may represent those charged with regulatory violations, but to advocates and *pro se* litigants.

An administrative adjudication process may be developed in various forms. We recommend the following considerations for process development:

- The process should be open to the public.
- The process should allow those charged with regulatory violations to have representation by lawyers, advocates or *pro se* litigants, at the sole discretion of the individual who is charged with a regulatory violation.
- Formal procedures should be adopted which are identified for and shared with the constituency; easy access in printed and/or on-line form is recommended.
- The process should implement relaxed rules of evidence, as is generally accepted in administrative hearings.
- "Conferencing" procedures may optionally occur at some time prior to administrative hearings at the discretion of the hearing officer or upon request of the individual who is charged with a regulatory violation.
- Decisions following administrative hearings should include a basic formula – findings of fact, conclusions of law, administrative adjudication (fining individual charged with a regulatory violation or finding the individual not in regulatory violation).



- An administrative adjudication decision should have restricted access to appeal to Municipal Court or the governing authority of the municipality which ensures due process while maximizing efficiency.

We also recommend a “mitigation procedure” alternative available to everyone who is subject to administrative adjudication. This is an informal proceeding to explain the circumstances surrounding the commission of the regulatory infraction. In order to proceed in the mitigation procedure, an individual charged with a regulatory violation may not argue that he/she did not commit the infraction, but can explain “why” it happened – providing evidence in mitigation. The mitigation procedure, while volitional, further short-cuts the process by dealing only with the issue that the regulatory violation is acknowledged, but mitigation is considered and the adjudication is addressed accordingly. There is no appeal from a mitigation procedure.

Success in Other Jurisdictions.

Other jurisdictions have obtained successful results by implementing administrative adjudication. Most administrative adjudication schemes have a two-fold objective: (1) to apply, administer and regulate the civil ordinances enacted by the municipality and collect appropriate fees and (2) to identify and de-criminalize those offenses that are routinely and consistently being disposed of with fines or other monetary assessments (like restitution). This technical brief focuses on the first objective. A technical brief focusing on the second objective will follow.

Jurisdictions which have implemented administrative adjudication point to the following advantages:

1. Administrative adjudication affords a more effective use of judicial, prosecutorial and enforcement resources.
2. Administrative adjudication does not require prolonged and tedious arraignment proceedings.
3. Administrative adjudication dispenses with the need for witnesses; the violation can be proved by the administrative charge document. Because it is not a criminal violation, there is no necessity that the individual charged with the regulatory violation confront the accuser.
4. Administrative adjudication is speedier than judicial adjudications because rules of evidence do not apply.
5. Administrative adjudication reduces the frustration level of taxpayers who are charged by streamlining the process and encouraging resolution through monetary assessment.
6. Administrative adjudication reduces municipal court congestion.

7. Administrative adjudication provides an effective means of collecting revenues which have been long overlooked by municipal default of enforcement of regulatory functions.
8. Jurisdictions which have provided an on-line function on the jurisdiction's website with an ability to pay fines via credit or debit card have established enhanced and more timely collectability.

For assistance in evaluating policy decisions and drafting an Administrative Adjudication Ordinance for your community in order to assist in your municipality's regulatory function, contact Lydia Quarles at the Stennis Institute of Government.

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STENNIS INSTITUTE SUGGESTIONS

I.

SUGGESTED POLICY and IMPLEMENTATION GUIDELINES for ADOPTION OF AN ADMINISTRATIVE ADJUDICATION PROCESS

1. Notify the Public of the Consideration of an Administrative Adjudication Process

Example:

The City of _____ is considering the establishment an Administrative Adjudication Process under [the office of the Mayor/the division of the Municipal Court]. If established, it shall begin operation on the _____ day of _____, 200_. The Administrative Adjudication Process will be used when any municipal department charges an individual with a regulatory violation citing the violation of an identified City of _____ ordinance. An Administrative Hearings Officer will be provided to make an administrative determination and provide an administrative decision in the form and order suggested by the ordinance adopted by the City of _____ which establishes the city's Administrative Adjudication Process. The Administrative Adjudication Process will also be used for non-moving traffic violations which are ticketed by the police department of the city, such as parking violations, seat belt violations, motorcycle helmet violations, inspection sticker violations, equipment violations and the like.

The Administrative Adjudication Process is a civil process and the violation which is brought to the process for resolution will not result in a criminal conviction. The Administrative Adjudication Process has no jurisdiction of criminal actions.



2. Develop and Disseminate Ordinance to Community for Consideration

Stennis has provided a “generic” Administrative Adjudication Process ordinance as a starting place for development of a suitable ordinance for your municipality. Develop the ordinance through the procedures normally used by your municipality. As any new/alternative methodology, it must be explained to the community and the process made transparent and accessible to all. We suggest that the ordinance be made available in City Hall and/or on-line at least one month prior to any hearing on the ordinance, giving the public notice of the availability and the dates of public hearing as soon as possible by placing notice in local newspapers and/or on-line.

When developing your ordinance, it will be required that you analyze existing ordinances in order to determine the regulatory offenses that will be diverted to administrative adjudication. The better practice is to identify each regulatory function which will be diverted. The value of this practice is two-fold. (1) It is clear for the citizenry. (2) It promotes inter-departmental awareness and responsibility for the regulatory function, and identifies the individual who are responsible for regulatory function in order to afford instruction and training in the process.

3. Establish Dates for Public Hearing on Ordinance

It is suggested that there be a separate public hearing date for this ordinance, or that the hearing, if established on a regular, rather than a special called meeting of the city’s regulatory board, be set on a meeting date when there are few business items on the agenda. This ordinance is likely to require a high degree of explanation to assure citizens that it is, in actuality, citizen-friendly. New and foreign processes are often feared for no particular reason and some portions of the process may be misunderstood unless explained simply and correctly.

4. Schedule Vote on the Ordinance

Allow some time to pass between the public hearing(s) and the scheduled vote so that the members of the community who are interested in the workings of the ordinance will have time to consider/articulate their opinions. Often the articulations of citizen concern will reveal a fact or situation unique to your community which will need to be addressed in your ordinance.

5. Schedule a Voluntary Roll-Out Process

We recommend that the procedure be applied at the option of the individual charged with a regulatory violation for an initial period. This will allow the charged violator to opt to use the new procedure or use the municipal court procedure which has traditionally been available. This will require that the Municipal Judge and Prosecutor, as well as law enforcers and regulators, be well versed in the process and have the ability to explain the option available to the charged individual. If your city does not have pro-active individuals in this position, a roll-out process is not recommended.

6. Consider Additional Options:

Mitigation Procedure.

Mitigation procedures have been discussed previously, and fill the specific need that citizens have to be “understood”. It allows a citizen to convey why he/she was acting in a way that he/she normally would not. It allows a citizen to convey that he/she is a law abiding citizen and that it was only on this occasion that he/she would violate one of the city’s ordinances. It promotes citizen buy-in to the quality of life that the community seeks, and it promotes good feelings about the process.

Teen Accountability Procedure.

Several cities in other jurisdictions which have developed an administrative adjudication process have developed a separate (optional or not, depending on the jurisdiction) “teen accountability procedure” which introduces young violators to the process and demands either “community service” or “traffic school” in lieu of fines.

SUGGESTIONS FOR QUALITIES OF AN ADMINISTRATIVE HEARING OFFICER

An Administrative Hearing Officer need not be legally trained, but must have characteristics and competencies consistent with the requirements of the office. In particular, the following characteristics and competencies should be appreciated and achieved in the selection of the Administrative Hearing Officer:

- The ability to give full attention to what other people are saying, taking time to understand the points being made, asking questions that are appropriate, and not interrupting at inappropriate times;
- The ability to understand written sentences and paragraphs in work related documents;
- The ability to use logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems;
- The ability to consider the relative costs and benefits of potential actions and to choose the most appropriate one;
- The ability to talk to others and convey information effectively;
- The ability to communicate effectively in writing as appropriate for the needs of the audience;
- The ability to understand the implications of new information for both current and future problem solving and decision-making;



- The ability to identify complex problems and review related information to develop and evaluate options and implement solutions;
- The ability to remain aware of others' reactions and to comprehend why they react as they do;
- The ability to bring others together and reconcile differences;
- A general knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules and the democratic political process;
- A specific familiarity with the ordinances of the enacting jurisdiction;
- A general knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources;
- The ability to combine pieces of information to form general conclusions;
- The ability to apply general rules to specific problems to produce answers that make sense;
- The ability to timely produce administrative decisions consistent with the requirements of the ordinance;
- The ability to determine the existence and amount of liability according to current laws, administrative or judicial pronouncements and available evidence;
- The ability to explain to claimants how they can appeal rulings that go against them;
- The ability to monitor and direct the activities of the administrative proceedings to insure that they are conducted fairly and that the rights of all parties are safeguarded;
- The ability to recognize conflicts of interest and understand responsibilities of recusal.

The majority of jurisdictions which have utilized an administrative hearing officer have made it a part-time position with a salary between \$25 and \$45 per hour. These jurisdictions generally afford two AAP schedules a week, one during the work-day and the other after 5 p.m. in the evening, to afford employed citizens the option of appearing without the necessity of being absent from their jobs. Most jurisdictions find that, after adjudicative and administrative procedures are developed and instituted, the hearing officer's attention is required between 20 and 32 hours per week, based on population of community, breadth of regulatory function, and quality/quantity of support staff.

ABOUT THE AUTHOR:

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Lydia Quarles is a Senior Policy Analyst at the John C. Stennis Institute of Government, Mississippi State University. She received her *Juris Doctorate* in 1975 from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in 1972 and 1971 respectively, in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers' Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute.

Quarles remains active in bar work, and currently chairs the Women in the Profession Committee, a standing committee of the Mississippi Bar. She also serves as co-chair of the Mississippi Supreme Court's "Gender Fairness Implementation Study Committee" and acts as the Chief Operating Officer of the Workers' Compensation Section of the Mississippi Bar. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, a member of the Mississippi School for Math and Science Foundation Board and a member of the MUW Alumni Board. Quarles was recently honored by the American Bar Association's Administrative Law and Regulatory Practice Section, receiving the Mary C. Lawton Award for lasting contributions to the Mississippi Workers' Compensation Commission in the areas of alternative dispute resolution and access for Hispanic workers.

In 2004, Quarles was named one of Mississippi's 50 Leading Business Women by the Mississippi Business Journal; the Journal recognized her service to the State as a Commissioner as well as entrepreneurial skills developed in her property management business in Starkville, Spruill Property Management, LLC

ABOUT THE INSTITUTE:

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.



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