E&MLF

Chapter 17

Cite as 17 *E. Min. L. Inst.* ch. 17 (1997)

The Courts and the Commissions: Recent Developments in Judicial Review of Oil and Gas Agency Orders

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Synopsis

§ 17.01 Introduction.

The rules, regulations, and orders of conservation agencies, like other administrative agencies, will be subject to review by a court. Judicial review of agency action, whether rule or adjudication, is generally available in each of the producing states by a specific grant. The grant will state the court that may hear the case, and it will provide a time limit within which the suit must be brought. There may be a parallel or conflicting provision for judicial review in the state's administrative procedure act.

Technical matters are given to agencies so that they may bring specialization and expertise to complex problems and a uniformity of treatment that might not be available if the state committed such matters to the courts. The agencies often undertake quasi-judicial functions that the legislature assigns to them in the first instance. As a result of these factors, there is often a high degree of deference from the courts to the conservation agencies. The relationship is similar to that between a court of appeals and a trial court.

Judicial review is available, but that review generally is of a limited character. This is because there are several interrelated doctrines, either statutory or judicial in character, which make litigation against a state conservation agency sometimes difficult for the litigant. These principles go to the heart of the relationship between the courts and the agencies and to the allocation of functions between them by the legislature. Review will be confined to the court(s) and the time specified by the statute authorizing review; a party must exhaust all administrative remedies before invoking review; even when a court is empowered to hear a matter, it may defer to the agency by requiring the parties to obtain a decision or guidance first from the agency; and when a court does review the decision of the agency it will give substantial deference to the factual determinations of the agency and also generally to the rulings of the agency on questions that are of mixed fact and law.

Most producing states recognize the great significance that an agency order may have for the business planning of the oil and gas industry and for an individual's property rights. Millions of dollars for the drilling of a well will be expended on the basis of a pooling order. Similarly, lease assignments, royalty conveyances and other property transactions will be made in reliance on the agency decision, which can affect those property rights. Judicial review that might set aside an agency order should be undertaken promptly because of the reliance that is placed on the agency's order; indeed, the agency decision is as much law as a statute of the legislature or the decision of a trial judge, and the affected parties are bound to adhere to the agency's decision. Typically, a statute for review of the conservation agency's action will specify that the suit for review or appeal must be commenced within a limited time period, such as 30 or 60 days from the time when the rule or order was promulgated or when notice of the order was mailed to or received by the affected party. When the statute does not specify a time in which review must be sought, a court will find that it must be brought within a reasonable time. A court might also apply the doctrine of laches to bar a suit by a claimant.[1]

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[1] *See, e.g.*, *Combs v. State*, 526 S.W.2d 648, 52 *Oil & Gas Rev.* 552 (Tex. Civ. App. 1975), *writ ref'd n.r.e., cert. denied*, 426 U.S. 922 (1976), which held that judicial review was to be limited to a reasonable time, and *Railroad Comm'n v. Aluminum Co. of America*, 380 S.W.2d 599, 20 *Oil & Gas Rev.* 880 (Tex. 1964), which was to the same effect and