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Non-Litigation Proceedings before Administrative Agencies

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THE EXPANDING SIZE and burgeoning complexity of the federal, state, and local governments accompanied by a corresponding increase in the administrative agencies of each branch of government, have created new and perplexing problems for the attorney, whether he be in private practice, or house counsel for a large company. By necessity, the attorney is called upon to pursue and solve problems outside of the judicial branch of the government. In the past, lawyers have treated problems in the area of administrative law much as they did matters of litigation. Since the publication of "Administrative Adjudication in the State of New York," by Robert M. Benjamin,[1] the community has realized that the problems presented in dealing with an administrative agency are different from those of judicial problems.

In order to attack these problems, it is necessary to know what constitutes an administrative agency, and what constitutes administrative law.

Administrative law is the law pertaining to agencies that have the power to determine, by general regulation or individual decision, "private rights and obligations." [2] An administrative agency is a governmental authority, other than a legislative body, which affects the rights of parties through either adjudication or rule making.[3] As such, these agencies are neither legislative or judicial. They are delegations of authority from the legislative and administrative branches of the government. In any event, the agency is always created by an "enabling statute," which provides the framework by which the constitutionality of any act of the agency is determined. The attorney must have some understanding of the structure and organization of these agencies before he can proceed to solve his client's problems.

It must first be understood that there is the opportunity of judicial review of almost any administrative decision.

There are definite patterns of hierarchical subordination within an administrative agency. The underling must do what his superior tells

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[1] The Benjamin Report, As A Moreland Act Commission To Governor Lehman (1942).

[2] Final Report of the Attorney General's Committee on Administrative Procedure, p. 7 (1941).

[3] Administrative Procedure Act, 60 Stat. 237, 5 U.S.C.A. § 1001.

him to do, or lose his job. This is not true of the judicial practice. The agency not only will investigate, but it will judge also. Under Sections 5[4] and 11[5] of the Administrative Procedure Act, there is a requirement that a separation of investigative and decision making personnel be made within each agency of the federal government. However, this does not apply to state agencies,[6] and the federal agency itself may still act as prosecutor and judge.

Each agency or administrative branch has a certain jurisdiction or authority as defined by its "enabling statute." [7] The primary jurisdiction of an agency is delegated exclusively to the agency by statute, to the exclusion of the courts, but there are times when the attorney may elect between the courts or an administrative agency to solve the problem. Then the jurisdiction of the agency is "incidental." However, the administrative agency has jurisdiction to the exclusion of the courts until the administrative proceedings are ended.

The administrative agency is authorized in some cases to "promulgate" rules and regulations which are quasi-statutes. Others are only allowed to decide specific cases. In either event, the authority may be found in the "enabling statute."

The agency, in order to make its decision, must be authorized to investigate to secure the information needed. If not voluntarily produced, the agency may require reports, inspect ledgers and other record books, and subpoena witnesses and documents.[8] Under federal law, there must be express statutory authority to require reports.[9] However, in contrast to some other courts, the administrative agencies by granting an "immunity bath" to the witness, can require evidence which would tend to incriminate.[10]

With these facts in mind, and an understanding that each agency's rules and regulations have become so complex that a review of each one's statutory fabric is necessary for an individual case, the attorney is now ready to meet his client. One type of client will usually have in mind an objective he wishes to pursue, whereas another type of client has no idea how to proceed. It is with the latter type that this article will deal.

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[4] 60 Stat. 237, 5 U.S.C.A. § 1001-1011 (1946).

[5] 60 Stat. 237, 5 U.S.C.A. § 1001-1011 (1946).

[6] Model State Administrative Act, Oct. 14, 1946. Drafted by the National Conference of Commissioners on Uniform State Laws, 33 Iowa L. R. 372 (1948).

[7] Swift and Company v. United States, 316 U.S. 216 (1942).

[8] 60 Stat. 240, 5 U.S.C.A. § 1005.

[9] 60 Stat. 238, 5 U.S.C.A. § 1003.

[10] 60 Stat. 238, 5 U.S.C.A. § 1001.

Initial Meeting With the Client

If the client has come to the attorney in order to initiate his business under the proper legal framework, the short run position of the client can be planned within his total business objective. Unfortunately, the usual motivating source for the client seeking legal assistance is the call to compliance by a governmental agency. For example, in a meeting with officials of the Akron Office of The Ohio Bureau of Unemployment Compensation, it was brought out that this agency regularly checks all businesses to make sure that it is receiving its proper contributions.

Should a time filing be the reason for the attorney-client relationship, then compliance with the filing is primary before delving into other aspects of the corporation's existence. For many agencies, timeliness is the key to any administrative remedy. The usual length of compliance for administrative procedures is measured in terms of days, rather than in years, as it is with a statute of limitations.

Having once ascertained that the client has complied with the agency that questioned him, it would then be to the client's interest to investigate in detail his business objective. By prior discovery methods, the burden of reconstructing records, pressures of personal penalties, and fines are eliminated. The continuous visitation by different governmental agencies to check for company compliance can lead the client to close his business rather than face new agency requirements. In talks with small independent businessmen, it was emphasized that, "Had I known how many agencies were going to check me, I never would have started." [11] The record keeping function is quite demanding and causes many small firms to go out of business because these costs are not contemplated in their operating expenses.

Naturally the strongest deterrent to non-compliance with agency regulation is the threat of a personal penalty. Fines and penalties imposed upon the small business client can often turn a profitable operation into a loss, if the cost of compliance was not computed in the cost record analysis by the corporation. A notable bridge builder was forced to leave the State of Ohio because as the agency costs increased, his ability to compete lessened, and he was thus constructively eliminated in Ohio.

Reviewing Objectives With the Client

In reviewing business objectives, the lawyer can advise the client of all governmental agencies to be dealt with. The lawyer can seek out the agency and arrange for compliance. Proper short run planning can eliminate forfeitures, interest, penalties, assessments, and loss of discounts. Many times in this area alone the client can realize the saving that make the attorney's fees more palatable.

[11] Interview with Karl Byttner of Kent Molded Fiber Glass Corporation, Kent, Ohio, September 8, 1967.

Of necessity, the long run business objectives require more extensive planning. Here all the short plans take shape and show their value. Simple things instituted early can create far reaching gains at a later date.

While reviewing the long range plans, record keeping systems can be suggested. Many agencies have the right to review records dating back three and four years. The creation of such records can necessitate much loss of time to avoid fines if they are not available and complete.

Inspection by the agency granting the license is generally required. Without the freedom to inspect, the license will not be issued. Cooperation with inspectors can eliminate many problems. The inspector generally is one well versed in the field. He has a set pattern of things to look for. Knowledge of his inspection routine can avoid complications in future reviews. If the attorney, rather than the company officials, accompanies the inspector, he has the opportunity to point out satisfaction of requirements if compliance is not readily noted. Likewise, a corporate counsel is in the position to accept suggestions without taking a defensive tact.

Payment of taxes can be properly accounted for by adequate and proper documentation of tax related incomes and expenses. The need for proper and clear accounting procedures must be met. Not only are these records of necessity for taxes, but as Robert Berger[12] stated, "These records can be used for annual reports, long term planning, Securities and Exchange Commission reports, borrowing agreements, and other endeavors." Although composition of records for tax purposes is a burdensome chore, the side benefits derived can be of great value to the business entity.

Is the firm in a business that is going to require a license? A meat market can effectively be closed if the scales do not coincide with licensing requirements. Many types of licenses may be required in order to avoid a business closing or penalty payment. Vendors' licenses, city permits, equipment licenses, and health inspections exemplify licensing requirements not related to the specific business purpose. These and many more like them must be closely examined.

The businessmen must have reviewed for them many acts prior to entering business; without knowing the requirements an employer can suffer.[13] The Fair Employment Practices Act[14] advises of many employ-

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[12] Partner, Price, Waterhouse, and Company, Jan. 30, 1967; Lecture Business Planning Seminar, Cleveland-Marshall Law School.

[13] Interview, *supra* note 11. This manufacturer located extra work to enable his employees to earn a small supplemental income. After completion of the job, inspectors from the Wage and Hour and Public Contracts Division of the U.S. Department of Labor assessed him for failing to pay proper compensating overtime wages.

[14] Ohio Rev. Code § 4112.01-4112.99, as amended Oct. 30, 1965.

ment aspects that must be studied. Is the employer discriminating because of color, sex, and age? Does the employer maintain proper payroll records? Many questions can be asked regarding the rights of the employee. These rights are stringently enforced and all employers must be cognizant of them. The underlying purpose of these administrative safeguards is public welfare. With this in mind, the employer can better realize the necessity of compliance.

The building which houses the business can also be a source of administrative control. Both the exterior and interior of the building can be covered by regulatory acts that must be reviewed. Proper protections against risks must become standard operating practice. The need for proper floor space is a small thing that can be regulated. If the firm elects to manufacture one product for sale in inter-state commerce, and one for sale in intra-state commerce, in order to avoid federal restrictions, the floor space must be clearly designated. Should these products be mixed, all will be considered inter-state business, and thus regulated by federal control. If these regulations are not complied with, the attorney will be called upon to answer at a hearing for non-compliance, and must then be ready to protect the firm.

The product presents many regulatory problems: can it be produced; what safety requirements must be maintained; what administrative agencies can inspect? A group of such questions can be graphically noted in the recent case involving the Rand Development Corporation.[15] When one agency of the government decided it had a case against this firm, suddenly other agencies came to the same conclusion. This points to the need to keep all segments of business in an orderly fashion.

Application to an Administrative Agency

Often the business entity does not have the choice of regulation by a state or federal agency. It is found that where the federal government has elected to enter the field, the state government has no power to regulate. This is exemplified by the Truck Mud Flaps case.[16]

There are a few exceptional cases in which the firm may elect to comply with the regulations of one or the other governmental agency. This is an area where the attorney can guide his client if he knows the long run business objective. If the plan calls solely for intra-state development, he might well advise to be licensed solely by the state and not by the federal government. Generally it is believed that where the federal government has entered the field, the rules for compliance are more strict, and thus create a cost factor. However, should a company plan on going inter-state, it must make the business decision of whether to set up its initial plan under the federal or state framework.

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[15] Civil Case No. 67-97 (Federal District Court, Northern District of Ohio, 1967).

[16] Bibb v. Navajo Freight Lines Inc., 359 U.S. 520 (1959).

Perhaps the most obvious compliance is the most neglected. That is, did the firm complete the proper filing? In the Business Planning Seminar taught at Cleveland-Marshall Law School, government officials who were guest lecturers stressed the willingness of government agencies to answer questions. Both Mr. Frederick Lentz[17] and Mr. Nicholas Kiraly[18] stated the position that they welcome questions before a filing is made. Thus if the attorney has a question, a personal visit or phone call to the agency will enable the attorney to complete the proper documents.

Mr. Lentz,[19] in his Seminar presentation, pointed out the need to include the exact filing fee. Therefore it behooves the attorney to make the proper computation if a fee is to be required.

Timeliness of a filing is without question a mandatory requirement. Exemplification of this is filing for a State Tax refund after a business has learned of an error in the original filing. If this filing is not made within 90 days after discovery of the error, the right to recovery is lost.[20]

Clarity in the completion of any business form should not be overlooked. Speak the language of the agency with whose rules you are seeking compliance. For example, *Commerce Clearing House Federal Tax Reporter* is a useful tool in aiding an attorney in the proper presentation of his position regarding tax matters.

The best business dissolution agreements are of no value if the instrument ends prior to the dissolution of the business. Most business terminations are not done on an amicable basis; for this reason alone, it is best to spell out the distribution proceedings in order to eliminate as much hostility as possible. If the parties have a basis from which to work a dissolution does not have to be an adverse proceeding.

Many business records are instituted on the advice of the attorney in conjunction with an attorney. The attorney knows what records are required by specific agencies. Well planned records can alleviate costly compliance procedures at a later date.

Agency Investigation

When the governmental agency either appears at the firm's door or sends a request for compliance or to review records, the attorney should be consulted. Many business people think they can handle this procedure, but at this point, the aid of an attorney is most valuable.

The attorney should be able to narrow the specific issue, and represent the client in a favorable atmosphere in the matter. By reviewing

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[17] Corporate Counsel for the Secretary of State, State of Ohio, January 16, 1967; Lecture, Business Planning Seminar, Cleveland-Marshall Law School.

[18] Deputy Commissioner of the Division of Securities, State of Ohio, January 23, 1967; Lecture, Business Planning Seminar, Cleveland-Marshall Law School.

[19] *Supra* note 17.

[20] Ohio Rev. Code, § 5739.07 (1953).

the specific request, the attorney should be able to locate that information being requested. With continued dealings with an agency, the request can be answered promptly, as compliance procedures are known.

Many governmental agencies edit publications that explain compliance procedures. The Public Utilities Commission publication[21] goes so far as to show the desired lease agreement that the commission accepts. By following this type of agency aid, problems can be averted. With the publication of procedures required, the attorney can review the records to see if there is compliance.

Many administrative problems can be eliminated by seeking the aid of lawyers who specialize in practice before specific agencies. By calling in such a specialist, the attorney will assure the client of the maximum protection before such an agency.[22]

Should the business entity have an inside employee, who although he is not a lawyer, has had a great deal of experience in handling problems before the reviewing agency, this man should be an asset in outlining the ways to succeed before such an agency.

Limitations in the authority to inquire are found in the power granted to the agency. If there is any question, an agent should be asked to elaborate on the authority under which he is acting. A review of this authority can be done at the local office or at the library. By the use of mail or phone, the enabling statute will be furnished.

In most state agencies, the party reviewing the situation has no authority to decide and give an answer to the question. Although the agent does not have specific authority, the commissioner of the agency will generally follow his recommendations. Determining the history of acceptance or rejection by the specific commissioner's agent can be of aid on the issues in question.

Some agency rulings cannot be appealed, and therefore knowing the full appellate procedure is very important. Facts determined by the Workmen's Compensation Board as to an injury, cannot be the issue of an appellate proceeding. An article by Michael Pavick[23] vividly points out the need to think before you speak, and to report facts clearly. If the facts are not reported in such a manner as would warrant a claim, no amount of appellate proceedings can revive the claim.

Many times the attorney alone can best speak for the business firm. He understands the need for exactness, and can better choose his words to reflect the needs of the firm, and also satisfy the requirement of the

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21 Code of Rules and Regulations of the Public Utilities Commission, Sec. 7.09 (1962).

22 Interview in Akron, Ohio, with Michael Pavick, Attorney and Former Member of the Industrial Commission of Ohio, June 20, 1967. Mr. Pavick pointed out not only the need to know the present law, but also the prior laws. The manner in which present laws apply is mandatory knowledge for one to proceed with a problem before the specific agency.

23 Cleveland Building and Construction Trades Journal, OEIU 333 (1958).

agency. As often as it is advantageous to appear alone before a technical agency, it is best to bring a business associate who can clearly explain the technical procedures, so the agency can understand that compliance is met.

Adjudication

With the issue defined, and the company compliance methods known, often compliance rather than adjudication is the proper choice for the business.

A client may not have the time to bring his records up to date to avoid the cost of compliance. The cost of adding a new employee, or overtime to others, may not warrant the additional records, as the tax imposed is not as great. Likewise, the space and procedures devoted to a non-business position might be too demanding.

The non-business loss to the company can be far greater than the administrative gain. Thus, many alleged opportunities are lost. The firm might not wish to reveal their records to take advantage of opportunities. Often the time involved to gain compliance is such that a firm will not stand to gain. If the firm succeeds in litigations, what happens to their public image? Likewise can they go broke defending a minor point? When questions such as these are answered, the lawyer can show the client all the ramifications of a proceeding, and then allow an intelligent business decision to be made.

In each agency authority, the appellate proceedings of claims are fully explained. This is as individual as the agency itself. Some matters must be instituted at the local level, and others go right before the commissioner in the state capital.

The individual client may not wish to publicly announce his position, and thus the attorney should advise him of the record filings required, if appellate proceedings are entered into. Many facts go outside the business community, and are viewed indifferently; thus, it becomes the attorney's duty to point out the personal factors involved.

Reversal of position is not an easy matter. After clear reappraisal of the entire picture, and the recent holdings and adverse rulings, new factors might be shown to exist. In this reevaluation, a step by step review is required. Again, all factors must be considered. The alternatives must be presented to the client.

Although the eventual business decision is one that must be made by the client, the decision as to the proper legal step should be pointed out to the client along with possible conclusions. When the client has had the opportunity to review the principal legal position pointed out by the attorney, the future course of action can be chosen.

Agency Examples

Internal Revenue Service

An agency which affects all business is the Internal Revenue Service. The prevailing attitude of this branch of the federal government can best be shown by this statement made by Commissioner Mortimer Caplan before the Subcommittee of the Committee on Appropriation, U. S. Senate:[24]

> It (our tax system) is manned by decent dedicated people who . . . are seeking to administer the law vigorously, but in a reasonable manner with full regard to the rights and convenience of taxpayers; they are attempting to provide better services for taxpayers, while at the same time curtailing tax abuses which serve to undermine confidence in the soundness and integrity of our self-assessment system.

The business client when faced with a tax problem initially comes in contact with the Field Audit. The general procedure of this division is to notify the business [taxpayer] by form letter or telephone that he is being audited, and what specific years are involved. The agent will state that he desires to see the books and records necessary to the preparation of the tax return. It is at this point best to advise the client to call the attorney before an appointment for the audit is completed. At the meeting the agent asks the representative to explain how the books and records are operated in order to determine income and expense. After the examination, the agent will give a list of questions that require answers. Clear answers can eliminate future proceedings.

When the proposed adjustments by the agent are not accepted by the taxpayer, the case is written up by the agent with his proposed adjustments. If the attorney is discussing the tax liability of the client, he must show the agent a Power of Attorney to represent him in tax matters. If suggestions are within reason, the revenue agent will accept them. At this level, the attorney can tell by the tenor of the conversation whether to express fully all his thoughts on the issue in hand, or to allow the revenue agent to submit a report.

In a Seminar discussion[25] it was stated that as the hazard of litigation increases, the authority of the revenue agent to negotiate comes more to the fore.

The review staff of the Centralized Review checks the report of the submitting agent. At this point, the recommendation is either accepted or rejected. If there appears to be a question, it is sent back to the agent for additional work.

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[24] Doris, The American Way in Taxation, 83 (1963).

[25] Business Planning Seminar, Cleveland-Marshall Law School, February 2, 1967; tape recordings of the Seminar are available in the files of the Law Review.

At the next level, if the claim by the business client is denied, the informal conference procedure is instituted. At this level, the conferee has more latitude than the agent did, and therefore the attorney would have a better opportunity of arriving at an acceptable settlement. At this juncture, the hazards of litigation come into play, but only slightly. Also, at this point, the law comes into play to a greater extent. If the claim is denied at the informal conference, the attorney can then go to the Appellate Division. Here the hazard of litigation becomes important.

At this point, the Tax Court is the next step in the usual chain. I was advised by one revenue agent that if the Tax Court had rendered adverse decisions to the issues at hand, it would be advisable to agree to the issues at the agent level, and file claim form 843 for a refund, and upon the rejection of the claim proceed to District Court where the chances of winning the issues may be greater. After the agent arrives at his proposed adjustment, and if the client should find it unacceptable, then it might be to the client's interest to call in a tax specialist.

An agent recognizes that it is his duty to answer any questions asked. Should he see a way that he can recommend to the taxpayer an accounting method to make the records clearer for future tax audits, he may express his ideas. However, he realizes he is not setting up an accounting system for the taxpayer.

The prevailing attitude is one of helpfulness, but it should be kept in mind that personalities come into play, and conflict should be avoided. From discussions with agents, it is this writer's opinion that the taxpayer should try to explain fully on the tax return any items that may be highly susceptible to audit in order to avoid the possibility of examination of the entire return.

Although the Internal Revenue Service is an agency of review, it is based upon cooperation between the taxpayer and the agent. The attorney can best aid his client to bring his cooperation to the fore.

State of Ohio Department of Taxation

Like the Internal Revenue Service, the State of Ohio Department of Taxation also depends to a great extent upon voluntary compliance. Unlike the federal system, the state has investigators who routinely check businesses for the proper licenses and filings. Unlike the federal system, the state does not maintain an "information counter."

Viewing the topic from the position that the taxpayer is looking for a refund, the taxpayer must first complete the form ST 185. If the refund is for a car tax payment, the form filed is ST 185B. Both of these forms require a written explanation. As stated earlier, speaking the language of the agent is important. Because of the space limitation, the

wording is not of prime importance. The instructions at the bottom of the form tell what is needed for a proper filing.

Perhaps the biggest problem is acting upon the refund in a timely manner. The statute has limited refunds solely to those filed within 90 days of discovery of illegal or erroneous payment and only up to a four year period after payment of the tax.[26] The way the State attempts to keep track of the discovery period is to have the agent deliver the form personally. The other method used is to have the agent who mails the form keep a listing of when it is mailed.

Bruce W. Miller[27] said that his method was to personally screen the applicant over the phone, and if there was merit, he would then make personal contact. He admitted that he tried to talk people out of the refund because the taxpayer would open the door to have offset against the refund any state tax found to be deficient. For this reason, if there is a clear claim, it would be best to have the attorney handle the matter.

In the event the business is entitled to a refund under Section 5739.07 or 5739.071 of the Revised Code, and is indebted to the state for any sales, use, or highway use tax, the amount of such indebtedness shall be certified to the auditor of the state, by the tax commissioner, along with his determination upon the application for refund. Although the ST 185 form will generally not be permitted to be altered, and the upper limit of the return is the amount stated on the form, Mr. James Thomasson[28] stated that he has seen one large retailer amend his filing as many as three times.

At a meeting with Ralph Grossjean,[29] advice was given that should the taxpayer reject the holding of the commissioner, his next conference will be with the supervisor of the first agent. If the supervisor maintains the same recommendations as the original agent, a hearing will be conducted. The next alternative is a hearing within a 50 mile radius of the taxpayer's residence or in Columbus. Mr. Grossjean[30] added that there are local lawyers who routinely avoid the local procedures, and go directly to the hearings in Columbus.

The agents felt that the best level for negotiations is the Board of Tax Appeals in Columbus. The reason that the skills of the attorney are valuable at the Board of Tax Appeals is that this Board is not under the control of the State Tax Commissioner. The decisions of the Board of Tax Appeals are not overruled by the State Courts unless the decision is illegal or unreasonable.

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[26] Ohio Rev. Code § 5739.07 (1953).

[27] Tax Commissioner's Agent; Interview at Akron, Ohio, Jan. 28, 1967.

[28] Tax Commissioner's Agent; Interview at Akron, Ohio, March 4, 1967.

[29] Tax Commissioner's Agent; Interview at Akron, Ohio, April 1, 1967.

[30] *Ibid.*

Preparation seems to be the factor that most impresses State tax officials, and permits the attorney to effectively negotiate the tax claim for his client.

Bureau of Workmen's Compensation

Another agency of the Ohio State Government that is important to the employer is the Bureau of Workmen's Compensation. Under this agency, there are two departments that require much skillful dealing. The Bureau of Workmen's Compensation and the Industrial Commission both work in similar fields.

Mr. Mark Glick[31] stated that dealing with the actuarial section of the Workmen's Compensation Board is perhaps the area that requires the most careful analysis. One accident incorrectly listed and tabulated into the corporate rate structure can cause the entire rate picture to be out of line. As was pointed out earlier, a large bridge builder was put in a position where he could not negotiate for contracts because his Workmen's Compensation rates were so high.

The hearings before the commissioner is another area where the skill of the attorney can be used to advantage by the client. Although this is a field where anyone can represent himself, or have a lay person represent him, it is best to have an attorney. The rules of evidence apply, but because of the fact that lay people come before the board, these rules are not strictly enforced.

Due to the fact that laymen represent the parties so often, the rules of evidence cannot be effectively used in these hearings. Mr. Glick[32] stated that he believed that 90% of the hearings had at least one party represented by a nonlegal representative. Most often, the non-lawyer is a Union official attempting to help his fellow worker.

Mr. Pavick[33] discussed the fact that many labor unions do not have a man that can properly explain to the members the need for exactness in completing the necessary forms after the accident. He noted that the United Rubber Workers do a fine job in explaining the right to the Union member, but that other Unions are not so well equipped.

The personnel man responsible for the handling of such claims can have a strong influence in the rate structure of the firm for the following years. If an employee completes the initial forms improperly, no appellate procedure will eliminate this error. From an employer standpoint, an employee who can be induced to take his insurance benefits can aid the firm in the later rate structure because he cannot file a Workmen's Compensation claim.

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[31] Attorney, Interview at Akron, Ohio, April 10, 1967.

[32] *Ibid.*

[33] *Supra* note 22.

Because the rate structure has such a profound influence on future job costs, the employer must take steps to guard against increasing rates.[34] Mr. Glick[35] alluded to an example of a machine shop that he represents, where the accident frequency is very high. The cost per claim can have the effect of raising the entire payroll to a level where acceptable bids cannot be profitably submitted.

There is a publication entitled *A Practical Handbook on Ohio Workmen's Compensation Problems*[36] that seems to be the guide book for the Union man to obtain answers to his questions.

Employers are keenly aware of the fact that there are times when claim costs go up, such as an election period, or a time when public safety is being stressed. The severity of each claim, not just the fact that there is a claim, is considered in employer ratings.

Workmen's Compensation is an area where proper education of the employer and planning of procedures before an accident occurs can effect a saving for the business client. It is to the client's advantage not to take this area lightly, and to be ready for claims.

The attorney who can effectively reduce the cost per claim and guard the actuarial table for the business, has done the job required of him.

Conclusion

The most prominent fact noted by this study was the way in which I was received by agency officials, and by attorneys practicing in the specialized areas discussed. These people were most kind with their time and practical answers to problems stated.

It is apparent that the best way to seek advice to solve a problem before an agency is to go to the agency itself, inquire about the problem at hand, and the solution will be clear to the attorney. These people are in a service function, and most fully realize this; thus, they will give help freely. By clarifying the issue for the client, the attorney also makes the problem less complex and quicker to resolve for the agency. This should be the role of the attorney in a non-litigation matter before an administrative agency.

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[34] Young, Workmen's Compensation Law of Ohio, 208 (1963).

[35] *Supra* note 34.

[36] Published by Ohio AFL-CIO (1963).