Part IV

Agencies and the Legislature

Relationships Between Administrators and the California Legislature

*William S. Andrews**

Perhaps the most important relationship between administrators and the legislature concerns the exercise by the former of powers given them by the latter to pass what the English call "subordinate legislation," what is sometimes referred to as quasi-legislation, what we commonly term rules and regulations.

It is a tenet of constitutional law that the legislature cannot delegate its power to make laws, as that power is permanently fixed in the legislature by the constitution. This rule, however, has not been strictly followed in the field of administrative law and it is presently well established that the legislature can delegate to state administrative agencies a large measure of discretionary power which is essentially legislative in nature. Nevertheless, the delegation of uncontrolled discretion is invalid. The legislature must specify a sufficiently clear test or standard for an agency to exercise its discretion in making rules and regulations.¹ It is recognized that administrative rulemaking is "legislation" and it is becoming increasingly apparent that control by the legislature over this form of administrative action is needed to restrain unjustified departures from legislative policy.

Unfortunately, the delegation by the legislature of rule-making power is too often done in broad language such as:²

The director may adopt and enforce such rules and regulations as may be necessary to carry out the provision of this code relating to said department.

* Member, Berkeley Bar.

¹ See *Hampton & Co. v. U.S.*, 276 U.S. 394 (1928); *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935); CAL. GOVT. CODE § 11373.

² CAL. VEH. CODE § 128(b). Similarly, "The board shall establish rules and regulations governing the conduct of the industry . . ." CAL. BUS. & PROF. CODE § 9533. Fred B. Wood, Justice of the California District Court of Appeal and former California Legislative Counsel, in the Report dated June 17, 1947 of the Assembly Interim Committee on Administrative Regulations, says on this problem that the draftsman should be quite specific; *i.e.*, "The director may adopt and enforce rules for the internal management of the agency, or to interpret a statute administered by the agency," etc.

The State Bar of California was concerned about the growing power of administrative agencies, and in 1941 it was instrumental in the enactment of chapter 628, statutes of 1941, which provided for the filing of administrative rules and regulations with the Secretary of State of California and for publication of the rules by a Codification Board. Also in 1941 the Legislature directed the Judicial Council to investigate the procedures of the administrative boards and agencies and to report back, but provided no funds. The funds were provided in 1943. The Judicial Council limited its study to state agencies engaged in licensing functions and recommended that:³ (1) The Department of Professional and Vocational Standards be converted to a Department of Administrative Procedure with a staff of qualified hearing officers for use by all state agencies; (2) That an Administrative Procedure Act be enacted to cover proceedings of licensing and disciplining agencies; and (3) That the Code of Civil Procedure be amended to provide for judicial review by mandamus after a formal adjudicating decision of any agency.

These recommendations were all enacted except that instead of converting the Department of Vocational Standards, a Division of Administrative Procedure was set up within said Department.

The Assembly Interim Committee on Administrative Regulations reported on February 3, 1947 that it had studied each statutory provision which confers a quasi-legislative function upon a state agency, or prescribes a procedure for the performance of the function, or provides for administrative or judicial review of orders made or regulations issued.⁴ The committee felt there was a need for: (1) A uniform code of minimum statutory requirements for the adoption, amendment, and repeal of administrative rules and regulations and for their judicial review, in addition to the present filing and publication requirements, plus some revision of the latter; (2) More adequate statutory definitions of the nature and scope of the function delegated to the administrative agency or officer, and more certain standards to guide the administrator in exercising the quasi-legislative function, which would inform the public of the requirements which must be complied with, and which would serve to guide the courts in reviewing the acts of the administrators.

In its report the committee quoted from several of the many letters it received. In one such quote the writer said, *inter alia*:⁵

[T]he growth of administrative agencies by the Legislature in granting wide rule-making power and by the court in giving finality to their deter-

³ TENTH BIENNIAL REPORT, JUDICIAL COUNCIL OF CALIFORNIA 24 (1944).

⁴ Report, California Assembly Interim Committee on Administrative Regulation (Assembly Journal, Feb. 3, 1947, p. 54).

⁵ *Id.* at 59.

minations have [*sic*] become the Frankenstein of the democratic government and are [*sic*] essentially destroying the basic concept of separation of powers to the executive, judicial, and legislative branches.

In 1947 legislation was enacted⁶ providing a procedure for adoption of administrative regulations. The regular procedure to be followed by a state agency in adopting a regulation under the Administrative Procedure Act consists of giving public notice of the proposed adoption, repeal, or rescission; holding a public proceeding; formal adoption; and filing such regulation, repeal, or rescission with the Secretary of State.

The Senate Interim Committee on Administrative Regulations rendered a report⁷ in 1953 in which it found that the actual practices followed by many administrative agencies in adopting or repealing regulations were far removed from those outlined above as the regular procedure. The agencies were misusing their emergency regulatory power to adopt regulations without notice, and were adopting "policies," "manuals," "instructions," and other modes of statutory interpretation claiming that such were not "regulations" within the meaning of the Administrative Procedure Act. Another method of circumvention of the rule-making procedures was to designate as internal management directives all matters which the agency does not wish to adopt by formal procedures under the Administrative Procedure Act.

The specific findings and recommendations of this committee, being of unusual interest, are more fully summarized by the writer as follows:

Findings:

- (1) State agencies make excessive use of emergency procedure with the result that rules and regulations are put into immediate effect without public hearing, notice, or opportunity to object.
- (2) State agencies, to avoid the formal procedures of the Administrative Procedure Act, adopt informal rules called policies or interpretations which have the effect of rules but are not adopted on public notice, are not available to the public, are not subject to judicial review,⁸ and are subject to momentary change.
- (3) The Legislature has made too broad grants of rule-making power and hasn't kept itself informed on the use or abuse of this power.
- (4) Many administrative agencies (particularly licensing ones) have lost sight of the fact they exist for the public and adopt regulations ignoring the public interest.

⁶ Cal. Stat. 1947, c. 1425.

⁷ Second Preliminary and Partial Report, California Senate Interim Committee on Administrative Regulations (1953). In a report of this same committee dated March, 1955, (note 9 *infra*), it set forth the test it used to determine whether a rule or regulation, regardless of name, was one covered by the APA. Basically, the test was: did the rule or regulation affect the public? was it used by an agency employee in dealing with the public?

⁸ But query: May they not be subject to judicial review? Is this conclusion really correct?

(5) Copies of regulations filed with Secretary of State often are not copies of the true text of the regulations.

(6) The Administrative Procedure Act does not provide adequate safeguards to the public against arbitrary action of an agency.

Recommendations:

(1) Prohibit agencies from adopting emergency regulations except in case of true emergency. Require the facts creating the emergency to be established.

(2) Broaden the definition of "regulation" so that administrative interpretations of statutory law, though called policies or guides to enforcement, are subject to the formal procedures of the Administrative Procedure Act when such policies or guides affect the public.

(3) The Legislature should examine the rule-making authority of all agencies to see if the limits within which the agency can sub-legislate are properly defined, and should limit the rule-making power where it is found to be too broad.

(4) Agencies should be reindoctrinated with the fact they exist at the will of the Legislature and for the public. The public interest should be adequately represented on all agencies regulating businesses and professions.

(5) The seriousness of rule-making and the necessity for an adequate public record for the information of the public should be brought home to the agencies.

(6) The Legislature should consider providing relief from arbitrary agency action, through the Legislature, but without formal action by it when not in session.

The question now arises whether Committee investigations and reports have had any effect on the administrative agencies? Apparently they have. The 1955 Senate Committee Report⁹ states that the Department of Employment tried to remove regulatory material from its manuals and have it properly adopted. Many agencies, having learned from the Report what they were supposed to do, are trying to follow the proper procedure. Some, like the Franchise Tax Board, still insist on adopting a great many regulations without notice or hearing as emergency regulations.

What could the legislature do about correcting an improper rule made by an agency? It could:

(1) Repeal the rule expressly by statute. This has been done, for instance, with respect to the unemployment insurance definition of agricul-

⁹ First Report, California Senate Interim Committee on Administrative Regulations 17 (1955). This Senate committee report was considerably less castigatory of agency practices than the 1953 Report, note 7 *supra*, but did state that the agencies still grossly abuse their power by not following the APA: *e.g.*, in adopting rules and regulations without notice or hearing as emergency regulations when there is no emergency; in labelling matters "house rules," or policies or guidance statements when they are really interpretations of statutes affecting the public.

tural workers by statute to exclude those whom the agency had included by regulation;

- (2) Repeal the agency's authority to make rules;
- (3) Reduce or eliminate the agency's appropriation in the budget;¹⁰
- (4) Refuse approval for nominees for agency positions;¹¹
- (5) Conduct an investigation of the agency;
- (6) Reorganize or abolish the agency.

While an investigation may in itself bring an agency into line these last two methods of correction usually go together. A number of years ago there was quite a furor over the administration of the Franchise Tax Commissioner's office. The Legislature made an investigation which resulted in a complete reorganization of this department and the creation of the Franchise Tax Board. More recent was the Assembly committee's investigation of alcoholic beverage control which resulted in the removal of this function from the Board of Equalization and the establishment of a separate Department of Alcoholic Beverage Control.

One often runs across examples of these traditional legislative controls of administrative agencies: (1) special legislation to remedy administrative abuses, (2) pursestring frugality in budgetary appropriations, (3) committee investigations, and (4) vetoing or approving personnel appointments. In 1955 a number of bills were introduced in the California Legislature making the Administrative Procedure Act applicable to certain agencies so that their adoption of regulations and hearings would be in accord with the Act.¹² Another example of special legislation arose out of recent hearings of an assembly interim committee, which concluded that the Highway Commission was not giving due consideration to the wishes of the people in locating freeways. So at the first Extraordinary Session of 1956, legislation was introduced and passed¹³ which requires that on the request of a city or county the Highway Commission or Department shall consider the effect on property values of the various alternative routes for the proposed highway or freeway.

In the 1956 budget session just concluded, the Senate, provoked perhaps at the Board of Equalization's attempting to equalize real property assessments in 1955, deleted from the budget the appropriation for appraisers' salaries. This issue was eventually compromised. Earlier, in 1947, the Legislature converted the Reconstruction and Reemployment Com-

¹⁰ In the 1955 regular session a very strong effort was made to abolish the California Aeronautics Administration by cutting it out of the budget—it finally survived, but with a very small appropriation.

¹¹ This gets more publicity at the federal level, but in Governor Olsen's administration a number of appointments were held up by the California Senate.

¹² See Senate Bills 510-521, 1955 Regular Session of California Legislature.

¹³ Cal. Stat. 1956, c. 69 (CAL. STS. & HWYS. CODE § 75.5).

mission to the Planning and Research Agency. Then in 1949 the Legislature failed to appropriate any money for this agency. From 1949 to 1953 the agency was on the statute books but was not in existence because it had no money. Finally in 1953 the enabling statutes were repealed and the State Planning Office disappeared completely.

The Senate Interim Committee on Administrative Regulations has been acting as something of a watchdog on the various departments and agencies and has been conducting a continuous investigation of their administrative procedures. In this writer's opinion this has resulted in considerable procedural improvement by most agencies and departments. Sometimes such investigations can be of immediate benefit. For example, the Structural Pest Control Board, following one of its unpublished regulations, denied a man the right to take an examination to become an inspector. He knew nothing about this non-published regulation and in trying to find out what the regulation was, he was referred to the senate committee. The committee pointed out to the Structural Pest Control Board that its regulation was invalid for lack of compliance with the Administrative Procedure Act. The board thereupon allowed the applicant to take the examination, which he passed with flying colors. In another investigation in which the committee had considerable difficulty with a state board resort was made to the issuance of subpoenas to the board members to appear before the committee. The very threat of the subpoenas, however, was enough to bring about a reorganization of the board and a correction of its bad practices so their actual use became unnecessary.

There is an interesting story in connection with legislative control through approval of appointments. One of California's past governors made an important appointment without first checking with the senator from the district from which the appointee came. It so happened that there were two men of the same name seeking the appointment in this district. One was an excellent man for the job and the other not. The governor made a mistake and appointed the wrong man, which would not have happened if he had checked with the senator first. The Senate, at the request of the senator concerned, took no action toward confirming the appointment. After some time had elapsed the governor sent a man to find out why. The senator refused to talk to the man. Finally the governor himself came up and talked to the senator and the senator pointed out to him that he had appointed the wrong man. The appointment was withdrawn and the correct appointment made. I doubt if that governor ever made another appointment without first checking with the appropriate senator.

A different version of this last-mentioned method of legislative control was used in creating the Department of Alcoholic Beverage Control. The Legislature reserved the power to remove the director of the new agency

"for dereliction of duty or corruption or incompetency."¹⁴ This same power of removal was reserved in the creation of the Department of Water Resources in the First Extraordinary Session of 1956.¹⁵ While this may be considered by some to be an interference with the executive branch of the government,¹⁶ it can be perhaps justified as being analogous to impeachment.

Are these various, more or less standard methods of legislative control over administrative agencies sufficient in view of the increasing power to pass quasi-legislation which the Legislature is granting to these departments and agencies? A number of states feel that they are not. North Dakota,¹⁷ Connecticut,¹⁸ Indiana,¹⁹ Iowa,²⁰ Maryland,²¹ Minnesota,²² Nebraska,²³ Pennsylvania,²⁴ Tennessee²⁵ and Michigan²⁶ require approval by the state attorney general before administrative rules or regulations become effective.²⁷

Michigan since 1947 has had a plan of legislative review whereby a joint committee of both houses of the legislature considers all rules. These rules are approved or disapproved by concurrent resolution during a session. Between sessions the joint committee approves or suspends operations of the rule until the next legislative session, and such action is effective indefinitely if the legislature does not act, which is usually the case.²⁸ In practice the committee has only considered rules to which there are objections and so the committee hearings have become adversary proceedings. This method of legislative review is not producing any noticeable improvement in administrative rule-making, while it has slowed down the rule-making process and has resulted in much fewer formal rules.

Wisconsin has considered various methods of legislative controls. One suggestion was that the agency might adopt a regulation which would be effective until the next session of the legislature but would be of no effect

¹⁴ CAL. CONST. art. XX, § 22 (1943).

¹⁵ Cal. Stat. 1956, c. 52 (CAL. WATER CODE § 150).

¹⁶ See CAL. CONST. art. III (1943).

¹⁷ N. D. REV. CODE § 28-3202 (1943).

¹⁸ CONN. GEN. STAT. §§ 282, 285 (1949).

¹⁹ IND. ANN. STAT. § 60-1505 (Burns 1951).

²⁰ IOWA CODE ANN. § 17A.2 (Supp. 1953).

²¹ MD. ANN. CODE art. 41, § 9 (1951).

²² MINN. STAT. § 15.042(4) (1953).

²³ NEB. REV. STAT. § 84-905.01 (1950).

²⁴ PA. STAT. ANN. tit. 71, § 7110.21 (Purdon 1953 Supp.).

²⁵ TENN. CODE ANN. § 1034.21-2 (Williams 1934) (1943 Replacement).

²⁶ MICH. COMP. LAWS § 27.74 (1948).

²⁷ WISCONSIN LEGISLATIVE COUNCIL, RESEARCH REPORT ON ADMINISTRATIVE RULE MAKING 136 (vol. II, pt. II 1955).

²⁸ MICH. ADMIN. CODE § 24.78b-e (1954); Second Preliminary and Partial Report, California Senate Interim Committee on Administrative Regulations 26 (1953) suggests it might be desirable for California to adopt this Michigan method of legislative review.

thereafter unless adopted by the legislature.²⁹ It would seem that under such a system few controversial rules would be passed by the legislature; and what is to prevent a department after the session from readopting a regulation not adopted by the legislature? In the 1955 revision of their Administrative Procedure Act the Wisconsin legislature created a joint committee of two senators and three assemblymen to hold hearings on administrative regulations.³⁰ The committee is advisory only, but it is anticipated that its advice will carry considerable weight with both the legislature and the administrative agencies. The revision also provides that copies of all rules and matter pertaining thereto shall be sent to the legislators. Wisconsin allows emergency rules but they are only effective for 120 days, which gives an agency ample time to hold public hearings and adopt rules in the regular and normal way. California would do well to adopt such a requirement.³¹

Indiana and Nebraska require the governor to approve agency rules.³² Nebraska and Connecticut, in addition to Michigan, have also required that agency rules be submitted to the legislature.³³ Kansas, Virginia and Wisconsin do not require submission of rules but authorize the legislature to annul any agency rule by resolution.³⁴ The Nebraska legislature can change agency rules;³⁵ the Wisconsin legislature can suggest changes which would result in the rule's approval.³⁶ In England all rules must be placed before Parliament for a period of forty days after which they become effective if not annulled within said forty days. Sometimes Parliament provides by statute that an agency's rules must be approved by the House of Commons before they become effective. The House of Commons has a screening committee to review all rules.³⁷

California is somewhat of a double problem in that a number of its administrative agencies are established by the constitution and theoretically

²⁹ WISCONSIN LEGISLATIVE COUNCIL, RESEARCH REPORT ON ADMINISTRATIVE RULE MAKING 139 (vol. II, pt. II, 1955).

³⁰ Wis. Session Laws c. 221 (1955). For further discussion of the 1955 changes in Wisconsin APA see Helstad, *Legislative Controls of Administrative Rule Making*, 41 A.B.A.J. 1048 (1955).

³¹ A bill (Senate Bill 518) was introduced in the 1955 regular session of the California Legislature to limit the effectiveness of emergency rules to ninety days. Unfortunately, it was not passed.

³² IND. ANN. STAT. § 60-1505 (Burns 1951); NEB. REV. STAT. § 84-908 (Cum. Supp. 1955).

³³ NEB. REV. STAT. § 84-904 (Cum. Supp. 1955); CONN. REV. GEN. STAT. § 285 (1949); MICH. COMP. LAWS § 24.78(b) (1948).

³⁴ KAN. GEN. STAT. ANN. § 77-410 (1949); VA. CODE ANN. § 9-6.9(d) (Supp. 1954); WIS. STAT. § 227.031 (1953).

³⁵ NEB. REV. STAT. § 84-904 (Cum. Supp. 1955).

³⁶ WIS. STAT. § 14.225 (1953).

³⁷ Schwartz, *Legislative Controls of Administrative Rules and Regulations: I. The American Experience*, 30 N.Y.U.L. REV. 1031, 1032-33 (1955).

are not subject to legislative control.³⁸ Though the Legislature cannot abolish such agencies it can exercise some control over them. The State Board of Equalization is a case in point. Under Article XIII of the constitution, the State Board of Equalization is required to equalize property assessments throughout the state. Between 1937 and 1949, the board failed to perform this duty and so, by chapter 1466 of the Statutes of 1949 the Legislature directed the State Board of Equalization to proceed with the equalization. However, at the same time the effectiveness of this chapter 1466 was postponed for two years, and at each regular session since then its effectiveness has been postponed another two years. Nevertheless, last year the board proceeded to direct fourteen counties to raise their assessments to conform with a state-wide average. The Senate thereupon in the recent 1956 budget session cut all appraisers from the budget item for the State Board of Equalization. This, had it gone through, would have prevented the Board of Equalization from continuing with its equalization of assessments. The budget as finally approved contains an item for appraisers, though not for as many as the Board of Equalization had asked.

The Legislature could also probably control the manner in which a constitutional agency exercises its powers. Perhaps the plenary power which the constitution gives the Legislature over the Public Utilities Commission and the Industrial Accident Commission should be extended to all constitutional agencies. If, on the other hand, that plenary power should be removed so that no constitutional agencies were subject to complete legislative control, some of the present constitutional agencies should be removed from the constitution so that they would be subject to supervision by the Legislature.

In addition to all the above-mentioned more or less formal relationships between administrators and the Legislature, there are, of course, the informal ones. Assemblymen and senators frequently call a department or agency to make an inquiry on behalf of a constituent, or perhaps to try to get him quicker or better treatment. Practically speaking, the effectiveness of this appeal depends to some extent on the personalities involved. A prominent and leading legislator will get better service than an obscure one.

³⁸ State agencies whose power comes from some constitutional provision under which the Legislature acted: State Personnel Bd., art. XXIV, §§ 2-3; Dept. of Social Welfare, art. XXVII; State Athletic Comm., art. IV, § 25¾; Fish & Game Comm., art. IV, § 25½; Horse Racing Bd., art. IV, § 25a; State Bd. of Education, art. IX, § 7; Industrial Welfare Comm., art. XX, § 17½; Dept. of Correction, art. X, § 7; Bd. of Administration of State Employees Retirement System, art. IV, § 22a; Bureau of Weights and Measures (Dept. of Agriculture), art. XI, § 14; Dept. of Employment, art. XVI, § 11. Other constitutional agencies are: Public Utilities Comm.; State Bd. of Health; State Bd. of Equalization; and Dept. of Alcoholic Beverages Control. In addition there is the Osteopathic and Chiropractic Bd. which was created by initiative. See Kleps, *Certiorarified Mandamus: Court Review of California Administrative Decisions*, 2 STAN. L. REV. 285, 293 (1950).

Likewise, whether such relationships are good or bad, whether any impropriety exists or whether any improper favoritism is shown, will depend on the individuals concerned. Actually under our system of government the most effective way for a person to approach an agency is through someone like a legislator—a person familiar with the best procedures.

Legislators on interim committees often work very closely with departments in attempting to work out legislation. For example, the Assembly Transportation Committee has a close relationship with the Division of Highways and the Department of Motor Vehicles in attempting to draft good legislation on traffic problems. The Senate Finance Committee and the Assembly Ways and Means Committee also work closely with the Department of Finance.³⁹

Another type of administrative-legislative relationship which should be mentioned is exemplified by the State Allocation Board and the Wildlife Conservation Board, which are composed of legislators and appointees of the Governor. Though by statute the power is vested in the non-legislative members, in actual practice the legislators have as much to say and as much influence on the decisions as if they had a vote.

Sometimes the Legislature influences agencies in other ways. One Senate committee had been receiving a decided lack of cooperation from a department. The committee chairman finally spoke to the Governor and shortly thereafter the committee found a noticeable improvement in the department's attitude.

In the first extraordinary session of 1956 several House resolutions were adopted which were aimed at correcting some departmental policy, regulation, or statutory interpretation.⁴⁰ It remains to be seen how effective

³⁹ Beneficial results other than legislation can grow out of such relationships. For example, these committees pushed the Department of Finance into buying modern business machines for State agencies.

⁴⁰ *E.g.*, H.R. No. 9, First Extraordinary Session 1956 (Assembly Journal, March 14, 1956, p. 91), reads as follows: "Relating to notice to interested legislators of public hearings.

"WHEREAS, The people and the courts of the State of California have recognized that it is necessary for the Legislature and the members thereof to be fully informed on many subjects in order that effective legislation may be enacted; and

"WHEREAS, To carry out this obligation to the people and to their individual constituents it is necessary for individual Legislators, from time to time, to attend the meetings of various public agencies to observe how particular matters, issues or cases are handled and disposed of by such agencies; and

"WHEREAS, While many state officers and agencies cooperate fully with members of the Legislature in this respect by responding to the Legislators' requests for information concerning the time and place at which particular matters will be heard or considered, other state officers and agencies have either ignored such requests or have furnished the desired information at so late a date as to render it virtually impossible for the legislator to attend; now, therefore, be it

"Resolved by the Assembly of the State of California, That the Assembly hereby requests every state office and agency (whether created by statute or Constitution) to forward, upon a

they will be, even though department officials have been heard to testify at committee hearings that they consider resolutions a mandate to them to act in accord therewith.

CONCLUSION

The joint legislative committee already used by some states to review administrative rules and regulations has been recommended to the California Legislature.⁴¹ Such a committee could review agencies periodically to see if they were interpreting statutes in accord with legislative intent. The present Senate committee has neither the staff nor the time to cover the substance of regulations to see if an agency is acting within the scope of the legislative intent and within the agency's power. As matters stand today, a department may thwart the Legislature's desires by carefully writing its rules to get around the statute.⁴² Or an agency or department, failing to persuade the Legislature to enact a piece of legislation, will simply adopt a rule or regulation doing what the bill would have done had it been enacted. Periodic review would tend to prevent this.

The courts presume all regulations to be reasonable and will not find otherwise unless clearly shown that a rule or regulation is arbitrary and capricious.⁴³ The result is that many rules and regulations have the force and effect of law.⁴⁴ Another difficulty is that the courts have said that the Legislature adopts prior administrative rulings by amendment of a statute when actually the Legislature seldom, if ever, knows anything of the rulings. Because of these assumptions by the courts the Legislature should give sub-legislative power to an administrative agency only in a most cautious and specific manner. The Legislature should exert greater control over the rule-making process; it is questionable if present controls are adequate.

Approval by the Legislature before a rule becomes effective would probably not be practical. However, consideration should be given to allowing

Legislator's request, written notice of the time, date and location of every public hearing within a reasonable time prior to the date set for such hearing; and be it further

"Resolved, That the Chief Clerk of the Assembly is hereby directed to transmit suitably prepared copies of this resolution to the Honorable Goodwin J. Knight, Governor of California."

⁴¹ Report, California Assembly Interim Committee on Administrative Regulation (Assembly Journal, Feb. 3, 1947).

⁴² See *General Electric Co. v. State Bd. of Equalization*, 111 Cal. App.2d 180, 244 P.2d 427 (1952) where plaintiff unsuccessfully contended that the state board's rule conflicted with the statute involved.

⁴³ When the validity of a regulation is questioned it may be on grounds of either constitutionality or not being within the statutory authority of the agency. A rule may be found to be invalid for the latter reason without being found to be arbitrary and capricious.

⁴⁴ In the writer's opinion a rule or regulation should always be of less importance than a statute, for an agency's interpretation of a statute by regulation should have no more weight with the court than anyone else's interpretation.

the California Legislature to annul by concurrent resolution any agency or department rule or regulation. A joint legislative committee authorized to review periodically agency regulations as to their substance, and the extent to which legislative intent is being correctly followed would appear to be desirable. It would be a great improvement if the Legislature would remove the broad rule-making power now granted many agencies by statute and substitute language delegating the power to sub-legislate only as specified. Generally speaking it is believed that the public would be delighted to see the California Legislature adopt and put into effect the heretofore listed recommendations of its 1953 Senate Interim Committee on Administrative Regulations.⁴⁵

⁴⁵ See text at note 7 *supra*.