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Mississippi Administrative Agencies: Should They Be Allowed to Fine Rule Violators, or Must Administrative Disciplinary Power Remain All or Nothing

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MISSISSIPPI ADMINISTRATIVE AGENCIES: SHOULD THEY BE ALLOWED TO FINE RULE VIOLATORS, OR MUST ADMINISTRATIVE DISCIPLINARY POWER REMAIN "ALL OR NOTHING?"[1]

Should state administrative agencies be allowed to impose monetary penalties? In making this determination, the following questions should be considered: (1) Do state administrative agencies already have such power under the general power conferred upon them by the legislature? (2) Is there a need for state administrative agencies to have such power, and if such need exists, how can such power be granted to state administrative agencies? and (3) What are the constitutional problems inherent in granting administrative agencies power to fine? This comment discusses the established rule, the federal rule, and the current trend in relation to the above proposed questions.

I.

Except for the Mississippi Air and Water Pollution Control Commission,[2] Mississippi state administrative agencies and boards do not have the power to impose monetary fines and penalties. Typically, state law is silent on the subject of penalties that may be imposed by a board. For example, the Board of Pharmacy's authority[3] is limited to

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[1] The Mississippi Administrative Procedures Law, MISS CODE ANN. §§ 25-43-1 to 25-43-19 (Cum. Supp. 1977) [hereinafter referred to as Code] is silent on the subject of imposing fines or monetary penalties; however, one exception is the Mississippi Air and Water Pollution Control Act, Code §§ 49-17-1 to 49-17-123 (1972 & Cum. Supp. 1977), which allows the Mississippi Air and Water Pollution Control Commission to subject violators of any of the provisions of the Act to a penalty of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000.00) for each violation. These penalties are assessed and levied by the commission after a commission hearing. All other state administrative agencies of this type have the power to deny, revoke or suspend a license or permit, but may not assess so much as a five-dollar fine.

[2] *Id.*

[3] MISS. CODE ANN. § 73-21-13 (1972), Powers and Duties of Board.

The State Board of Pharmacy shall have the power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) To regulate the practice of pharmacy.

(c) To investigate all complaints as to quality and strength of all drugs and medicines, and to take such action as said board may deem necessary to prevent the sale of drugs and medicines that are adulterated or misbranded.

(d) To inspect during business hours all retail drug stores, or places in which drugs, medicines or poisons are compounded, dispensed, held for sale, sold

assisting[4] in the prosecution of legal violations by offending members. Section 72-21-13(a) provides a general power given to many administrative agencies "to make such by-laws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public . . . ."[5] One could construe this provision as giving an agency a general power to make whatever rules are necessary to protect the public, including a rule authorizing the imposition of fines.

The problem with this interpretation is that the provision is too general to meet test guidelines established by the courts of this state,[6] along with other states,[7] when addressing similar questions. Several state courts have ruled that an administrative agency is not empowered to impose penalties for violations of duties created by the agency under a general statute permitting it to make rules.[8] The United State Supreme Court, however, has made an exception to this rule, holding that Congress may authorize an agency to issue rules, as well as assess monetary penalties for violation of such rules.[9] The

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or retailed, and to cause the prosecution of all persons whenever there appears to the state board of pharmacy to be reasonable ground for such action.

(e) To provide by proper rules and regulations for the disbursement of the funds received by the state board of pharmacy under the provisions of this chapter, to pay salaries and expenses of the members and employees of the said board, and to make payment of other expenses encountered in the interest of the public and pharmacy.

(f) To carry out the provisions of this chapter.

(g) The state board of pharmacy may have authority to employ an attorney to assist in prosecutions brought under the provisions of this chapter and for any purpose it may deem necessary.

[4] *Id.* at subsection (g).

[5] MISS. CODE ANN. § 73-21-13(a), *supra* note 3.

[6] The Mississippi Supreme Court case of Mississippi Milk Comm'n v. Winn-Dixie La., Inc., 235 So. 2d 684, 688 (Miss. 1970), held that "administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *See also* Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960) in which the Mississippi Supreme Court held, *inter alia*, that administrative officers cannot be allowed uncontrolled discretionary power to determine, within broad limits, penalties to be assessed.

[7] *See, e.g.* Glustrom v. State, 206 Ga. 734, 58 S.E.2d 534, 537 (1950), in which the Supreme Court of Georgia held that "An administrative agency of government, . . . , can have only the administrative or policing powers expressly or by necessary implication conferred upon it." Division of Family Servs. v. State, 319 So. 2d 72, 76 (Fla. App. 1975), noted that "an agency, being a creature of statute, has only those powers given to it by the legislature."

[8] State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 So. 969, 973 (1908); Tuttle v. Wood 35 S.W. 2d 1061, 1065 (Tex. Civ. App. 1930); *Ex Parte* Leslie, 87 Tex. Crim. 476, 223 S.W. 227, 229 (1920).

[9] United States v. Grimaud, 220 U.S. 506, (1911), a case in which a violation of an administrative agency rule (Department of Agriculture) was held to be a crime and noting that Congress found it impractical to provide regulations for an agency when it

power of federal administrative bodies to impose monetary penalties was firmly established in 1938 by *Helvering v. Mitchell.*[10]

Unfortunately, the states have been slow in following the lead of the federal courts in allowing administrative agencies to create and promulgate specific rules under a general grant of authority. As recently as 1975, a Florida appellate court[11] held that administrative agencies had only those powers which were granted by the legislature and defined by statute. The Mississippi Supreme Court, in *Mississippi Milk Commission v. Winn-Dixie Louisiana, Inc.,*[12] took a similar, conservative view. It held that administrative agencies could not exercise powers that were not expressly granted or necessarily implied to such agencies. More recent Mississippi case law reflects this conservative position, with the court recognizing only those powers specifically granted.[13] The ancient maxim, "expressio unius est exclusio alterius" — the expression of one thing is the exclusion of another — has enjoyed a rebirth in administrative law.[14]

The state of Washington, however, in the case of *Barry & Barry, Inc. v. State of Washington, Department of Motor Vechicles,*[15] followed the federal trend by allowing administrative agencies flexibility to tailor the penalty to the seriousness of the violation. In

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could confer such administrative power upon such agency in order for the agency to meet special needs or conditions. But, the Court noted that this holding merely conferred administrative functions upon an agency, and did not delegate legislative power to the agency.

[10]303 U.S. 391 (1938). This case allowed the Internal Revenue Service to render civil penalties of fifty per cent of tax deficiencies. This became the leading case in establishing the federal rule allowing for the imposition of monetary fines by administrative agencies.

[11]Division of Family Servs. v. State, 319 So. 2d 72, 76 (Fla. App. 1975).

[12]235 So. 2d 684, 688 (Miss. 1970).

[13]Crosby v. Barr, 198 So. 2d 571, 573 (Miss. 1967), held that for necessary implication to apply the ruling statute must clearly show intent. *See also* L. & A. Constr. Co. v. McCharen, 198 So. 2d 240, 243 (Miss. 1967), *cert. denied*, 389 U.S. 945 (1967) which quoted the rule found in 1 AM. JUR. 2d *Administrative Law* § 70 (1962): "Administrative agencies are creatures of statute and their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." South Miss. Airways v. Chicago & S. Airlines, 200 Miss. 329, 26 So. 2d 455 (1946), a case which held that the State Public Service Commission could not, by implication, supervise aeronautical carriers. While motor driven airplanes were defined as motor vehicles and common carriers, air routes could not be impliedly defined as highways.

[14]*See* Mississippi Milk Comm'n. v. Winn-Dixie La., Inc., 235 So. 2d 684, 689 (Miss. 1970).

[15]81 Wash. 2d 155, 500 P.2d 540 (1972). The Washington Supreme Court held that a strict requirement of exact legislative standards impedes administrative efficiency by destroying needed flexibility.

Mississippi, however, with the one exception,[16] attempts by agencies to impose fines for violation of agency regulations could be challenged successfully under existing judicial precedent. With case law[17] calling for specificity of statutory powers, this conclusion seems inescapable.

II.

The fact that most agencies in this state[18] have power only to revoke or suspend a license or certificate for violation of their rules or regulations illustrates the need for these agencies to have the flexibility to impose monetary fines. This power enables a board to curtail or completely terminate a business or professional career, but does not permit an agency to assess an adminsistrative sanction to fit a particular violation. Professor Kenneth Davis quoted from the Administrative Conference of the United States, Recommendation 72-6:

> When civil money penalties are not available, agency administrators often voice frustration at having to render harsh "all-or-nothing decisions" (*e.g.*, in license revocation proceedings), sometimes affecting innocent third parties, in cases in which enforcement purposes could better be served by a more precise measurement of culpability, and a more flexible response. In many areas of increased concern, (*e.g.*, health and safety, the environment, consumer protection) availability of civil money penalties might significantly enhance an agency's ability to achieve its statutory goals.[19]

A detailed study of the development of administrative agencies at both federal and state levels indicates that assessment of fines by administrative agencies has been a nebulous area of the law which now is being defined. In 1936 Charles Hyneman, in *Administrative Adjudication: An Analysis,* stated that "[t]he power of administrative officials to assess fines . . . is a controverted point in American constitutional law."[20] Hyneman further noted that the general rule was for the legislature to fix penalties by statute to enable the courts to provide enforcement for administrative bodies. This rationale was apparently based upon *Interstate Commerce Commission v.*

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[16] MISS. CODE ANN. §§ 25-43-1 to 25-43-19 (Cum. Supp. 1977), MISS. CODE ANN. §§ 49-17-1 to 49-17-123 (1972 & Cum. Supp. 1977), *supra* note 1.

[17] Mississippi Milk Comm'n v. Winn-Dixie, La., Inc., 235 So. 2d 684, 688 (Miss. 1970); Crosby v. Barr, 198 So. 2d 571, 573 (Miss. 1967); Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960); South Miss. Airways v. Chicago & S. Airlines, 200 Miss. 329, 26 So. 2d 455 (1946).

[18] A sampling of administrative agencies or boards which have such limited powers is found in MISS. CODE ANN. § 73-1-29 (1972 & Cum. Supp. 1977), and §§ 73-3-53, 73-5-25, 73-7-27, 73-9-61 and 73-11-19 (1972).

[19] K. DAVIS, ADMINISTRATIVE LAW OF THE SEVENTIES, Supplementing ADMINISTRATIVE LAW TREATISE § 2.13, at 35 (1976).

[20] 51 POLITICAL SCI. Q. 383, 390 (1936).

Brimson,[21] in which the Supreme Court held that an administrative agency cannot "consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment."[22]

Professor Davis stated: "The question whether a penalty may be administratively imposed does not depend upon its severity. An agency in revoking a license may exercise a power of life and death over a valuable business, but ordinarily it may not impose a ten-dollar criminal fine."[23] Although specifying "criminal fine," he also notes that "the determination of whether monetary penalties are civil or criminal is often difficult."[24]

While the rationale in *Brimson* influenced states to withhold from administrative agencies the power to impose fines, the federal government became the pacesetter with *Helvering*[25] and its progeny. The origin of the modern federal rule is found in *Elting v. North German Lloyd.*[26] In *Elting* the Supreme Court upheld the power of the Collector of Customs to impose a monetary fine for a violation of the Immigration Act of 1921.[27] After *Helvering*, the federal rule allowing the imposition of monetary fines by administrative agencies was firmly established.

Although some states[28] have recognized a need for penalties other than the harsh "all or nothing" power, the majority of states still adhere to the established rule that only courts may impose fines. However, the number of states in which administrative agencies are imposing fines continues to increase. *City of Waukegan v. Pollution Control Board*,[29] characterized as "a leading case . . . concerning the

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[21] 154 U.S. 447 (1894).

[22] *Id.* at 485.

[23] K. DAVIS, ADMINISTRATIVE LAW TREATISE § 2.13, at 134 (1958).

[24] *Id.* at 135.

[25] 303 U.S. 391 (1938).

[26] 287 U.S. 324 (1932).

[27] Pub. L. No. 6705, 42 Stat. 5 (1921), *as amended by* Act of May 11, 1922, Pub. Res. No. 67-55, § 6, 42 Stat. 540 (1922).

[28] Four states, as of this writing, have recently followed the federal rule. The states and the dates each adopted the federal rule allowing administrative agencies to impose monetary fines are: New York (1976), Texas (1975), Nevada (1973) and New Jersey (1952). This does not include state environmental protection agencies, since most such agencies already have the power to impose fines.

[29] 57 Ill. 2d 166, 311 N.E.2d 146, 153 (1974), a case in which the Supreme Court of Illinois upheld the power of an administrative board to impose civil monetary penalties, and held that: "The legislature may confer those powers upon an administrative agency that are reasonably necessary to accomplish the legislative purpose of the agency . . . ." The court stated the issue as follows: "Was the authority given the Board to impose monetary penalties under the Environmental Protection Act (Ill. Rev. Stat. 1971, Ch. 111-½, para. 1033(b), 1042) a delegation of judicial power in violation of the separation-of-powers provision of the Constitution of Illinois or in violation of the Constitution of the United States?" *Id.* at 147.

imposition of fines by administrative agencies,"[30] is illustrative of this trend.

Initially the authorities were in conflict concerning the validity of statutes which permitted administrative agencies to determine the amount of fines for violation of their regulations. However, *Commonwealth v. Diaz*[31] and other state decisions indicate that a state administrative agency can impose monetary penalties for a non-criminal act when the agency is acting within specific statutory guidelines and adequate judicial review is provided.

III.

Important areas concerning the application of constitutional safeguards to agency imposition of fines are as follows: (1) due process, (2) right to jury trial, (3) the delegation of such power, and (4) the separation of prosecutorial and adjudicative functions.

Due process. As early as 1932 the United States Supreme Court dealt with the problem of due process in determinations by administrative agencies or boards. The concept that due process could be found in an administrative, as well as a judicial, body was first applied in *Elting.*[32] In 1954 the United States Supreme Court in *Barsky v. Board of Regents of the University of State of New York*[33] reaffirmed the principle that due process of law could be afforded by administrative process.

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[30] K. DAVIS, *supra* note 21 § 2.13, at 36.

[31] 326 Mass. 525, 95 N.E.2d 666 (1950). The court held that the statute was invalid, not because the court felt that the state administrative agency could not impose penalities within defined limits, but because the defined limits in this statute were excessive.

[32] 287 U.S. 329, 335 (1932). This case held, *inter alia*, that "due process of law does not require that the courts, rather than administrative officers, be charged, in any case, with determining the facts upon which the imposition of such a fine depends."

[33] 347 U.S. 442 (1954). The issue in this case involved an administrative agency revoking a license to practice without judicial due process. The court voiced the opinion that:

> It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of a state's police power. The state's discretion in that field extends naturally to the regulation of all professions concerned with health. In Title VIII of its Education Law, the State of New York regulates many fields of professional practice, including medicine, osteopathy, physiotherapy, dentistry, veterinary medicine, pharmacy, nursing, podiatry, and optometry. New York has had long experience with the supervision of standards of medical practice by representatives of that profession exercising wide discretion as to the discipline to be applied. It has established detailed procedures for investigations, hearings, and reviews with ample opportunity for the accused practitioner to have his case thoroughly considered and reviewed.

Id. at 449.

The Court, having satisfied itself with the administrative due process afforded by the Board of Regents, was able to align administrative due process as applied in this case with the due process procedure normally afforded in a court of law.

State courts began to accept this concept of due process within an administrative framework after the Supreme Court of Alabama in *Almon v. Morgan County*[34] held, *inter alia*, that:

> [T]he constitutional requirement of due process does not require judicial determination by a court constituted as at common law, but it may be had by an administrative tribunal and in a summary manner, if procedural due process is accorded, and the right to jury trial is not violated.[35]

More recently, increasing numbers of state courts[36] have held that the imposition of monetary fines by administrative agencies does not necessarily deny the offender due process of law.[37]

Right to a jury trial. In 1937 the United States Supreme Court in *NLRB v. Laughlin Steel Corp.*[38] decided that an administrative hearing with an administrative tribunal rather than a jury did not constitute a violation of the seventh amendment. The Third Circuit as late as 1974 addressed the constitutionality of the absence of trial by jury in a proceeding before an administrative agency in *Irey v. Occupational Safety and Health Review Commission.*[39] In *Irey* the court held that the seventh amendment[40] is not applicable to an administrative adjudication.[41] Illinois followed the lead established in *Laughlin* and

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[34]245 Ala. 241, 16 So. 2d 511 (1944).

[35]*Id.* at 515. The court went on to give its idea of procedural due process in stating: "Procedural due process, broadly speaking, contemplates the rudimentary requirements of fair play, whether in a court or an administrative authority, which include a fair and open hearing before a legally constituted court or other authority, with notice and opportunity to present evidence and argument; representation by counsel, if desired; and information as to the claims of the opposing party, with reasonable opportunity to controvert them. *Id.* at 515. *See, e.g.*, Morgan v. United States, 304 U.S. 1 (1938); Shields v. Utah Idaho Cont. R.C., 305 U.S. 177 (1938); Garrett v. Reid, 244 Ala. 254, 13 So. 2d 97(1943); Frahn v. Greyling Realization Corp., 239 Ala. 580, 195 So. 758 (1940).

[36]*See, e.g.*, City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E.2d 146 (1974); City of Monmouth v. Environmental Protection Agency, 10 Ill. App. 3d 823, 295 N.E.2d 136 (1973); Ford v. Environmental Protection Agency, 9 Ill. App. 3d 711, 292 N.E.2d 540 (1973); Yakima County Clean Air Auth. v. Glascam Builders, Inc., 85 Wash. 2d 255, 534 P.2d 33 (1975).

[37]*Id. See also* Huntington v. State Water Comm'n. 137 W. Va. 786, 73 S.E.2d 833 (1953); State Bd. of Health v. Greenville, 86 Ohio St. 1, 98 N.E. 1019 (1912).

[38]301 U.S. 1 (1937). An administrative award of back pay was challenged as violative of the Constitution. The Supreme Court held that the seventh amendment to the United States Constitution had no application when the proceeding is not in the nature of a suit at common law.

[39]519 F.2d 1200 (3d Cir. 1974).

[40]U.S. CONST. amend. VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

[41]519 F.2d 1200, 1216 (3d Cir. 1974). The plaintiff brought suit challenging the assessment of a civil penalty for a willful violation of the Occupational Safety and

Irey in a line of cases[42] which upheld denial of trial by jury when state administrative agencies took civil disciplinary measures against violators.

Delegation of Power. The established rule is that Congress may authorize an agency to issue regulations, the violation of which is criminal, as well as to fix monetary fines for civil penalties.[43] A recent decision in the federal courts upholding the delegation of what is normally considered legislative or judicial powers is found in *Equal Employment Opportunity Commission v. Raymond Metal Products Co.*[44] Overturning the district court's decision, the Fourth Circuit held that delegation and sub-delegation of disciplinary powers was not an improper and unlawful delegation of authority where no statute specifically delegates such power.

The United States Supreme Court, in the case of *Fleming v. Mohawk Wrecking & Lumber Co.*, upheld the delegation of certain powers which prior to the *Fleming* ruling were held to be reserved for judicial and legislative bodies. In *Fleming* the court held that the Office of Price Administration could sign and issue subpoenas and, in doing so, voted that when rule making power was conferred upon an agency under statute, such conference carried with it the power to delegate particular functions necessary to accomplish the purpose of the agency.[45]

A number of states are now following this established federal rule. The Supreme Court of Washington in 1972[46] upheld the delegation of power to set and impose monetary fines by an administrative agency.

Separation of Prosecutorial and Adjudicative Functions. While actually falling within the confines of due process in the constitutional context, this area should be addressed as a separate issue. Professor

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Health Act and, *inter alia*, questioned the constitutionality of assessment of such penalty without affording plaintiff a trial before a jury. The court answered that particular challenge by its reply that,

> The application of the seventh amendment to judicial proceedings traditionally depended on whether the suit was legal or equitable in nature. Parsons v. Bedford, 28 U.S. (3 Pet.) 433 (1830). If a statute creates a new remedy which is to be processed in the courts, that distinction is pertinent and may determine whether a jury trial is required. Curtis v. Loether, 415 U.S. 189 (1974). But, if the proceeding is before an administrative agency, rather than in the courts, the Supreme Court has held that the seventh amendment does not apply.

Id. at 1216.

[42] *See, e.g.*, Weldon Coop. Grain Co. v. Pollution Control Bd., 25 Ill. App. 3d 83, 322 N.E.2d. 524 (1975); Illinois Power Co. v. Currie, 28 Ill. App. 3d 1079, 329 N.E.2d 296 (1975); City of Monmouth v. Pollution Control Bd.,[57] Ill. 2d 482, 313 N.E.2d 161 (1974); Ford v. Environmental Protection Agency, 9 Ill. App. 3d 711, 292 N.E.2d 540 (1973).

[43] K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 2.13, at 138 (1958).

[44] 530 F.2d 590, 594 (1976).

[45] 331 U.S. 3 (1947).

[46] Rody v. Hollis, 500 P. 2d 97 (1972).

Davis in his *Administrative Law Text*[47] noted that the separation of functions was an unsettled point of controversy. Davis recognized the difficulty which courts have experienced in reconciling the established rule in *Bonham's Case*[48] with the current need for viable administrative tribunals. Case law dealing with this constitutional issue has been inconsistent.

While both state and federal courts generally reject the combining of adjudicative and prosecutorial powers, exceptions to the general rule are found in both court systems. Although the Administrative Procedure Act[49] explicitly states that investigative or prosecuting functions may not be combined with adjudicative functions, the United States Supreme Court, in *Marcello v. Bonds*,[50] held that due process of law does not require the application of the separation of functions requirements of the act to deportation proceedings. The Court, taking exception to the general rule and the Administrative Procedure Act, stated that it followed "deportation tradition." Davis, in his above-mentioned treatise, cited *Marcello* as the "best single authority" that "due process is not violated in a deportation case by supervision of adjudicating officers by officers charged with investigating and prosecuting functions."[51] Three state courts also have approved combining adjudicative, prosecutorial and investigative powers.[52] If administrative agencies are to perform effectively the statutory functions designated to them, the combining of the functions, although the minority position, appears to be the better solution.

IV.

With the one noted exception, Mississippi administrative agencies do not have the power to impose monetary fines upon violators of ad-

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[47] For an excellent in-depth treatment of this issue, *See*, K. DAVIS, ADMINISTRATIVE LAW TEXT §§ 13.01 to 13.04, 13.08 (1972).

[48] "No man shall be a judge in his own cause." 8 Co. 114a, 118a(1610), *Quoted in* K. Davis, *supra* note 47 at 254.

[49] 5 U.S.C. §§ 551-559, 701-706, 1305, 3105, 3344, 6362, 7562, 5 U.S.C. § 554 (1970).

[50] 349 U.S. 302 (1955).

[51] K. DAVIS, ADMINISTRATIVE LAW TREATISE §13.05, at 175.

[52] In Griggs v. Board of Trustees of Merced Union High School Dist., 37 Cal. Rptr. 194, 198, 389 P.2d 722, 726 (1964), the California Supreme Court noted that, "In an administrative proceeding . . . , the combination of adjudicating functions with prosecuting or investigating functions will ordinarily not constitute a denial of due process. . . ." Koelling v. Board of Trustees of Mary Frances Skiff Memorial Hosp., 259 Iowa 1185, 146 N.W.2d 284 (1967), a case in which the Supreme Court of Iowa held that it was not a violation of due process when an attorney for an administrative agency was involved in the investigation and the meeting when the matter was adjuidicated. Fireman's and Policeman's Civil Service Comm'n. v. Hamman, 404 S.W.2d 308 (Tex. 1966), where the Texas Supreme Court held, *inter alia*, that a suspended police officer was not denied due process in an administrative hearing because one of the agency members had participated in the investigation as well as the adjudication of the case.

ministrative rules and regulations. Such power could be granted, and in some states[53] has been granted. The "all or nothing" concept, followed by the majority of states, is analogous to a state criminal court which is equipped only with punishments designed for capital crimes and must apply such extreme measures to those who commit misdemeanors, or, in the alternative, since there would be no punishment to fit the crime, allow the miscreants to go completely free. Mississippi should properly equip its administrative agencies with the power to impose monetary penalties so that they may become more effective regulating agencies.

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[53] *Supra* note 28.