The Post-Hearing Stage of the Administrative Rule Making Process in Wisconsin: The Conservation Commission

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I. CLEARANCE REQUIREMENTS FOR RULES

Procedures have been devised by various state legislatures in recent years aimed at establishing limitations on the rule making authority of administrative agencies. They provide that an agency's rules cannot take effect until they have been approved by an officer or agency which is not connected with the agency adopting the rule. This is the so-called clearance stage in the rule making process and takes a variety of forms. It is another technique designed to check unlimited administrative discretion.

A. GENERAL PRACTICES IN WISCONSIN

One form of clearance requirement provides that a rule cannot become effective until it has been submitted to the attorney general for his approval. While no law in Wisconsin requires any agency to submit its rules to the Attorney General, at least one agency, it will
be pointed out, has adopted this procedure on its own initiative. Another type of clearance requirement provides that a rule cannot be effective until approved by the governor. A slight modification on this approach permits the governor to suspend the effective date of a rule pending a further hearing on complaints he may have received. Both of these procedures are provided for by statutes dealing with specific agencies in Wisconsin, although there is no general statute to this effect. The legislature is another body used through which to clear rules before they become effective.

While Wisconsin has had limited experience with legislative clearance of rules, an enactment of 1951 provides that any general code covering a particular subject adopted by the Board of Health or Department of Agriculture must be submitted to the Governor 30 days in advance of its proposed effective date. If any taxpayer complains to the Governor in writing concerning such a rule, the Governor is authorized to suspend the effective date of the rule until such a time as the rule is approved by the Legislature.

In 1953, however, the powers of the Legislature over administrative rules were considerably enhanced by an enactment which authorized the Legislature to invalidate rules by joint resolution. The constitutionality of this provision was questioned during the hearings of the Legislative Council Committee on Administrative Rule Making and the Committee requested an Attorney General's ruling on the matter. In an opinion issued December 28, 1954, the Attorney General ruled that the Legislature cannot by joint resolution constitutionally invalidate a rule which has been duly adopted by an administrative agency. Such a procedure, the Attorney General felt, would be con-

3 Maryland is the only state that requires all rules to be approved by the governor. See: Preliminary Report to the 1953 Legislature by the Special Joint Committee on Administrative Rule Making, May 20, 1953, Appendix D.


5 Five States—Connecticut, Kansas, Michigan, Nebraska and South Carolina—provide that any rule may be disapproved by the legislature. For the text of these statutes see: Preliminary Report of the 1953 Legislature by the Special Joint Committee on Administrative Rule Making, May 20, 1953, Appendix D. See also: B. Schwartz, Legislative Control of Administrative Rules, 30 N.Y.U. L. Rev. 1031 (1955); Note, Legislative Control of Administrative Rules 41. Col. L. Rev. 946 (1941); Note, Laying on the Table—A Device for Legislative Control over Delegated Powers, 65 Harv. L. Rev. 637 (1952); R. M. Rieser, Legislative Studies on Administrative Rule Making, 28 WIs. B. Bull. 25 (1955).

6 Wis. Laws 1951, c. 653, which became Wis. Stats. (1953) §14.225.

7 Wis. Laws 1953, c. 331. This became Wis. Stats. (1953) §227.031.

8 43 Ops. Att'y Gen. 350 (1954). Even if a separate legislative agency was established with the authority to invalidate rules, the Attorney General was of the opinion that this too would be unconstitutional because of the absence of prescribed standards which are necessary when delegating legislative authority. The opinion cited Clintonville Transfer Co. v. P.S.C., 248 Wis. 59, 21 N.W.2d 5 (1945) as authority on this point. Since a rule has the force and effect of
In addition to investigating the merits of clearance procedures in existence in Wisconsin, the Rule Making Committee of the Wisconsin Legislative Council studied other arrangements which might be utilized. One potential clearance procedure which was considered by the Committee was the establishment of a court of administrative appeals or an adjudication board for each of the large agencies in the state. A body of this type would apparently have review authority in addition to its clearance functions. This approach, however, is not common in the United States and the Committee did not explore the many facets of such an arrangement because of the doubtful constitutionality of the plan.\(^9\)

Another possibility investigated by the Committee was the creation of an independent agency similar to the California Department of Administrative Procedures. The clearance authority of such an agency appears to be primarily restricted to the form of rules rather than to their substance or legality. The Committee declined to recommend the creation of such an agency since it felt that the functions of the agency could be adequately carried out by existing Wisconsin agencies such as the Legislative Reference Library and the Revisor of Statutes.\(^10\)

Although the Rule Making Committee refused to recommend either of the two possibilities mentioned above, it did recommend the creation of a new body which in the future may play an important role in the clearance stage of the rule making process. The new Administrative Procedure Act provides for the creation of a Legislative Review Committee.\(^11\) This body has advisory powers only and can be regarded as a "watch-dog" committee. It is composed of 2 senators and 3 assemblymen,\(^12\) and its purpose is to promote proper rules and to foster better understanding on the part of the public with respect to administrative rules. The Committee is authorized to hear and investigate complaints, to subpoena witnesses and to make recommenda-

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9 See: Wis. Laws 1955, c. 221 §12.
11 Ibid.
12 Wis. Laws 1955, c. 221, §227.041.
13 The members are selected in the same fashion as standing committees of the two houses of the legislature. Terms are two years in duration. The committee will meet at the call of its chairman, or upon a call signed by two of its members, or upon a call signed by five members of the legislature.
tions stemming from its findings. A biennial report of its activities and recommendations is to be made.

B. CLEARANCE OF CONSERVATION RULES

Looking specifically at the Conservation Commission, it can be said that only two of the clearance procedures outlined — clearance by the Attorney General and by the Governor — have been utilized regarding rules of that agency. What effect the newly created Legislative Review Committee may have on conservation rules the future alone will tell.

Clearance by the Attorney General. The requirement that all conservation rules (with the exception of emergency rules when approved by the Assistant Director and the Director) be cleared with the Attorney General in regard to form and legality is relatively unique in that it is the result of Department action spelled out in the Conservation Director's letter of February 2, 1950, rather than being a statutory requirement. Additional instructions of the Director relating to clearance by the Attorney General state: "unless, because of the nature of the order and the time element involved, immediate action by the Attorney General is required, three days must be allowed to lapse before inquiry is made as to the progress of the matter in the Attorney General's office." It is the responsibility of the Assistant Director to make such an inquiry.

In practice, the Assistant Attorney General assigned to the Conservation Commission and Department rather than writing a letter of approval merely signs a small mimeographed form which is attached to the draft of the rule submitted to him. His comments, if any, are normally written on this form. However, if for some reason, a lengthy commentary would become necessary, a separate letter would be prepared which would be filed with the rule in the files of the Conservation Department. Since the procedure for drafting conservation rules is thoroughly formalized, and since the Director's letter requires the Department's counsel to draft the form of the final rule, there is seldom any necessity for the Attorney General to make any extensive comments regarding the form of the rule. There is no evidence in the Department's files, and no representative of the Department can recall any instance in which the Attorney General refused to approve a complete rule either by formal or informal opinion. There have, however, been infrequent occasions when the Attorney General has suggested that some portion of a rule be redrafted because its wording might conceivably be declared illegal.

For example, regarding a rule governing conduct in state parks, the comment stated that the Attorney General, "would suggest that in

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15 Ibid.
Sec. 11 the words 'in an improper manner' be changed to read, 'in a disorderly manner.' Impropriety is not a crime and should not be made such by a Conservation Commission order." The rule was re-drafted to incorporate the suggestion. In another instance, the comments of the Attorney General read, "Would suggest that attention be called to the portion revised, par. (e), by underscoring same." This suggestion also was followed. In at least one instance the Attorney General called attention to a typographical error in the draft of the rule which was corrected in the final draft.

In several jurisdictions where administrative rules are submitted to the Attorney General for clearance as to their form and legality, Professor Heady has noted that a tendency appears to exist for the Attorney General to disapprove of a rule because he disagrees with its substantive provisions. A complete survey by the present writer of the comments and suggestions by the Attorney General regarding conservation rules in Wisconsin fails to reveal the existence of such a tendency in this state. This perhaps can be explained by the fact that in Wisconsin conservation rules are cleared through the Attorney General's office as a result of a policy adopted by the Conservation Department itself. In the states where the practice outlined by Professor Heady exists, clearance of rules through the Attorney General's office is required by statute.

It seems clear, however, that the office of the Attorney General plays a part in conservation policy formulation which may eventually take the form of rules, through the issuance by the Attorney General's Department of formal opinions, informal opinions or so-called law memoranda, and verbal opinions on matters of law affecting the Commission and the Department. Formal opinions are, of course, printed and bound annually, thus forming a permanent record. Duplicate copies of informal opinions, or law memoranda (whose headings, since 1951, carry the statement that the views expressed below are only those of the Assistant Attorney General writing it and should not be quoted as an Attorney General's opinion) are kept on file in the office of the Attorney General. The original typed copy is sent to the conservation official who requested it. A comparison of these opinions kept on file in the Attorney General's office and in the files of the Conservation Department, indicates that the conservation files have a most incomplete number of this type of opinions issued since 1951.

The most difficult opinions stemming from the Attorney General's

17 Rule No. M-40 (Rev. 4) (1944).
18 Rule No. M-102 (1941).
Department to pinpoint are the so-called verbal opinions. Discussions with various Assistant Attorneys General indicate that such opinions normally take the form of answering a telephone query on a point of law by merely citing the statute governing it. A study of the conservation files, however, indicates that occasionally oral opinions go beyond the scope outlined by representatives of the Attorney General's Department and result in policies which might be termed informal rule making.

For example, in a letter dated October 7, 1948, Mr. G. S. Hadland of the Conservation Department wrote Mr. Leonard Tomczyk, also of the Department, in Ashland, the following:

"Yesterday your supervisor, Mr. Allen Hanson, and myself contacted Mr. Roy Tulane of the Attorney General's Office relative to the tagging of deer hides from the Indian reservation. Pleased be advised that this Department will not tag deer hides to be sold off from the Indian reservation as we feel it would open the way for a lot of illegal traffic in venison."

Ten years earlier, the minutes of the law enforcement division of the Department for April 18, 1939, contain what is titled a verbal opinion of the Attorney General's Department with regard to a citizen's official activity. A note is appended to this opinion stating merely that the opinion was copied. The opinion states:

"A conservation warden has no authority to deputize inasmuch as the conservation warden's credentials in an official capacity are subject to the provisions of chapter 16. A sheriff or deputy sheriff may deputize a conservation warden as a citizen. When a conservation warden is acting as such emergency deputy the county shall be responsible for his activities and shall be liable for any injury which may result from such activity."

"... the state pays transportation costs of conservation wardens while on official duty, but the warden is responsible for any injury to his car which may result from such line of duty."

"... in view of the ruling of the Attorney General's office with regard to the recovery of a portion of paid fines as informer fees by a deputy sheriff, no distinction is made between a deputy sheriff and special deputy sheriff."

The role of the Attorney General's Office extends beyond the field of rule making to encompass other aspects of conservation policy formulation. At the Conservation Commission meeting of May 14, 1954, Mr. Sprecher of the Department informed the Commission of the circumstances surrounding Bill 8006, introduced into the United States House of Representatives by Representative Alvin O'Konski of Wisconsin. The provisions of the bill which sought to safeguard the rights of certain land owners in Wisconsin were being studied by the Wisconsin Attorney General, Mr. Sprecher explained. Assistant
Attorney General Tulane, Mr. Sprecher noted, had asked him to request that the Commission withhold formal action either favoring or opposing the measure until the Attorney General had an opportunity to complete his study. The Commission agreed to forego action pending completion of the Attorney General's analysis. Three months later the Commission was informed that "It was the opinion of the state's Attorney General that the bill does not furnish sufficient relief to Wisconsin landowners . . . but at any rate some relief will be provided by it." The Commission thereupon voted unanimously to support the bill.

Clearance by the Governor. The only statutory clearance requirement for conservation rules provides that rules governing the open and closed seasons and bag limits on fish and game must be approved by the Governor. This provision dates from the legislation in 1933 which first enabled the Conservation Commission to establish such rules. The rationale behind this requirement, various representatives of the Department believe, was that because of the highly controversial nature of this type of rule, it was thought that persons who disagreed with the Commission should have an opportunity to carry their grievances to the Governor. While the Governor normally approves the recommendations of the Conservation Commission, there have been occasional instances where he has exercised his prerogative to veto a rule.

An example of the Governor's rejection of rules adopted by the Conservation Commission can be seen in the controversy in 1948 over an any-deer season. During that year a committee appointed by the executive council of the Conservation Congress to represent the Congress made an extensive study of the deer situation and reported unanimously in favor of an any-deer season. The Department recommended an any-deer season, the Conservation Congress recommended an any-deer season and the Commission recommended an any-deer season. The rule establishing the any-deer season, however, was not approved by Governor Rennebohm. In the Governor's letter to the Conservation Commission, July 24, 1948, in which the Governor's disapproval was formalized, the Governor acknowledged that all the

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22 Wis. Stats. (1953) §29.174(5).
23 Wis. Laws 1933, c. 152.
conservation agencies in the state favored the Commission rule. The Governor, however, the letter pointed out, was also aware of Joint Resolution 54, S of the 1947 Legislature:

"... which recommended that the Conservation Commission adhere to and reaffirm the policy of the state governing the killing of deer — that an order by the Conservation Commission authorizing the killing of deer of either sex must first be approved by the county board of any county affected by such an order ... The Conservation Commission followed the recommendations of the Conservation Congress but rejected the recommendations of the state legislature."

After several months of indecision on the part of the Conservation Commission, it finally decided to adopt a rule establishing a fork-horned buck season similar to the ones that had existed in the past. This rule was quickly approved by the Governor.

An earlier and slightly different example of the powers of the Governor over clearing Conservation Commission rules occurred in 1937. Governor Phillip LaFollette in this instance amended a conservation rule so that instead of providing for a five-day deer season as the rule originally stipulated, the season was reduced to three days. The Governor claimed he was acting in the interest of conservation.

Since 1952, however, it is doubtful if a Governor can use his powers to approve conservation rules in this fashion. Upon the request of then-Director Ernest Swift the Attorney General in July, 1952, ruled that the Governor of Wisconsin has no power to approve in part and reject in part Conservation Commission rules. Inasmuch as the statute did not specifically authorize him to reject portions, of an administrative rule, the Governor must, the opinion stated, approve the rule in whole or reject it entirely. The Attorney General could find no case law in Wisconsin relating to the Governor's powers to approve administrative rules. He noted, however, that the general rule states that unless the CONSTITUTION so specifies, the Governor has no power to alter a law, but must merely approve it or veto it. The WISCONSIN

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31 41 Ops. Att'y. Gen. 205 (1952) In this case, Lieutenant Governor Smith, acting in the absence of Governor Kohler vetoed part of an order prohibiting the use of rifles on upland and migratory birds.

32 For a newspaper account of this opinion by the attorney general see: Sheboygan Press, July 9, 1952.

33 59 C. J. 583, §13.
Constitution only authorizes the use of the item veto in reference to appropriations bills, and the Wisconsin Supreme Court has held\(^4\) that the item veto may only be used for appropriations bills, the Attorney General's opinion pointed out. The action of the Governor, the opinion concluded, in approving or rejecting parts of administrative rules would be a form of the item veto, and administrative rules must be regarded in the same light as statute law. There seems little doubt that this opinion places significant limitations on the clearance powers of the Governor in the rule making process.

During the 1953 session of the Legislature, Bill No. 106,A. was introduced into the assembly by Assemblyman Zellinger. It would have specifically permitted the Governor to approve parts of a bill, thus legalizing the procedures attacked by the previously mentioned opinion of the Attorney General. During its March meeting of 1953, when the Conservation Commission was planning its stand on various proposals before the Legislature affecting conservation, Commissioner Smith criticized the Zellinger bill. Smith moved that the Commission object to this bill and that this objection be presented to the Assembly committee immediately.\(^3\) This motion carried and the Zellinger measure was not enacted.

Because of his official position the Governor can sometimes play a significant part in other phases of the conservation rule making process. An especially interesting example of this occurred in 1955 concerning the always controversial rule fixing the opening date for the hunting of waterfowl. Such a rule, of course, must always conform to regulations adopted by the Secretary of Interior in accordance with provisions of the federal Migratory Bird Treaty Act,\(^3\) which fixes the maximum number of days in the waterfowl season.

The Conservation Commission regularly is faced by a dilemma in determining an opening date on waterfowl hunting because of Wisconsin’s geographic location. Hunters from northern counties insist on an early opening date, but if the Commission follows their wishes, hunters in the southern counties (where normally the shooting should be the best) will get no opportunity to hunt the northern flights of birds, since the season will be closed by the time these birds migrate to the southern counties. On the other hand, if a late opening date is set by a Commission rule, the northern hunters will get little or no shooting because the earlier freeze-up of waters in those areas forces the ducks to migrate before the season is open.

The ideal solution would be for the Commission to zone the state so that the maximum season permitted by Interior Department regu-

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\(^4\) State ex rel. Finnegan v. Dammann, 220 Wis. 143, 264 N.W. 622 (1936).
\(^3\) Conservation Commission Minutes, March 27, 1953, p. 22.
\(^3\) 16 U.S.C.A. 718.
lations could be divided to permit an early season in northern counties and a later season for the southern counties. The Interior Department, however, has refused to permit such zoning. Moreover, debates over the opening date of the waterfowl season were especially bitter during the meeting of the Twentieth Conservation Congress in June, 1955, when a late opening date for the waterfowl season was finally recommended.

In July, 1955, Governor Walter Kohler stepped into the picture. The Governor, in a letter to Secretary of Interior Douglas McKay, dated July 14, 1955, summarized the problems besetting Wisconsin and other states with similar geographic locations caused by the Interior Department's reluctance to permit a system of zoned waterfowl seasons within a state. He pointed out the "intense public interest" in this subject demonstrated by the delegates to the Conservation Congress. The Governor then went on to explain that:

"During the past several years the state of Wisconsin has shown its interest consistently in a further study of the matter of zoning individual states through the medium of the Mississippi and the National Flyway Councils. This subject was considered by our Conservation Commission at its meeting on Friday, July 8, at which time they formally requested the executive office to exert every effort possible to obtain experimental zoning for waterfowl in Wisconsin for the 1955 season. Because Wisconsin is a northern flyway state, and therefore, has no wintering population of waterfowl, it does not appear that zoning will result in any great increase in kill.

We would very much appreciate consideration by your office of this important request which has been made by the Wisconsin Conservation Commission."

Within one month following receipt of the Governor's letter the Interior Department acted. While it still did not permit a zoned season, it did authorize the extension of Wisconsin's waterfowl season to an unprecedented 70 days. Of course, whether or not the Interior Department's action was primarily traceable to the Governor's letter is a matter of speculation. However, Guido Rahr, chairman of the Wisconsin Conservation Commission addressed a letter to the Governor thanking him for his efforts in securing the long season. Rahr said the 15-day increase in the season not only permitted the northern counties to have their usual early opening date, but gave the southern hunters extra time as the end of the season neared. "We feel this season will not jeopardize our migratory waterfowl population," Rahr concluded, "but will give all sections of the state a better opportunity to enjoy this form of outdoor recreation."

II. DELAYED EFFECTIVE DATE OF RULES

A. GENERAL PRACTICES

Traditionally, the idea of a delayed effective date is to make rules available to the public before such rules become effective. It is also important, however, to keep the period between the adoption and effective date of a rule as short as possible so as not to impede the effective administration of the law. The general rule in Wisconsin prior to the legislative enactment of 1955 was that rules become effective on the day after their publication in the official state newspaper, unless the statutes specifically prescribed a different effective date or medium of publication. Moreover, the statutes pertaining to individual agencies often prescribed a later date. It is interesting to note that the statutes of California, Illinois, Kentucky, Minnesota, Missouri, Ohio and South Dakota provide a uniform delayed effective date for all rules issued by the administrative agencies of the individual states, with exceptions usually made for emergency situations.

B. CONSERVATION COMMISSION PROCEDURES

At least two specific provisions in the statutes governing conservation regulations and dealing with the effective date of rules should be pointed out here. One provides that all rules dealing with fish and game regulations will be effective following publication in the official state paper and any other newspapers that the Commission may deem feasible fairly to advise the individuals affected by the rule. The other deals in general with rules adopted by the Commission and stipulates that they must be published in at least three papers of wide circulation in the territory affected, at least one week prior to the date the rule becomes effective. The one exception to this requirement is emergency rules, concerning which the statute authorizes the commission to give such notice, "as it deems feasible" prior to the rule's effective date.

39 The staff of the Legislative Council Committee on Rule Making has, however, pointed out some of the disadvantages of a delayed effective date. First, it was felt exceptions should be made for emergency situations. Second, a delayed effective date, the staff thought, would probably fail to achieve its purpose unless it was integrated with a positive publication requirement, third, it was pointed out that a real limitation on statutory prescriptions of all effective dates (delayed or otherwise) is that many rules are merely codifications of agency practices or interpretations. In such cases the requirement for a delayed effective date, in particular, needlessly bogs down administrative action. See: Wisconsin Legislative Council, Problem Area Report No. 3, Providing Publicity for Administrative Rules, July 8, 1954, pp. 38-40.

40 Wis. Stats. (1953) §227.03(2).
41 For examples of the specific provisions relating to a variety of Wisconsin agencies see: Preliminary Report to the 1953 Legislature by the Special Joint Committee on Rule Making, May 1953, pp. 22-23 and Appendix B.
42 For the provisions and citations of the statutes of other states relating to this and other related stages in the rule making process see: Ibid. Appendix D.
44 Wis. Stats. (1953) §23.09(9).
C. Effects of the Revised Administrative Procedure Act

The new Administrative Procedure Act alters the general provision dealing with effective dates of rules as set forth in Wis. Stats. (1953), Chapter 227. The new law provides in general that a rule is effective on the first day of the month following its publication in the Wisconsin Administrative Code and Register. Four major exceptions to this general requirement, however, are set forth. The general requirement does not apply if: (1) the statute pursuant to which the rule was adopted prescribes a different effective date, (2) a later date is prescribed by the agency in a statement filed with the rule, (3) the rule is a validly adopted emergency rule, (4) the publication of the issue of the Register of which the rule is part is delayed beyond the end of the month in which such Register was designated for publication. In this event, the rule does not become effective until the day following the true date of publication which the Revisor of Statutes in this eventuality is required to stamp on the title page of each copy of that particular Register. The section concludes by noting that the "date of publication" refers to the date when copies of the Register first are mailed to persons entitled by law to receive them.

The effects of the new Act on conservation rules in this area is not entirely clear. Section 29.174(5) of the revised Act alters the publication requirements and the effective date of conservation rules to conform to the general provisions of the revised Administrative Procedure Act. This is accomplished by abolishing the provisions in old Section 29.174(5) providing that a rule affecting fish and game seasons becomes effective after publication in the state paper and any other papers the Commission may deem feasible fairly to advise the residents of the communities affected by such rules. However, the provisions of Wis. Stats. (1953), Section 26.12(1) relating to forest protection district rules remain unchanged by the new Act in respect to publication requirements and effective dates.

Bill 5, S. as originally approved by the Legislative Council, repealed the provisions of Wis. Stats. (1953), Section 23.09(9). This section provides that all rules of the Commission shall be published in at least three papers of wide circulation in the territory to be affected at least one week prior to the rule's effective date, except in cases of emergency. The general provisions of Section 227.026 of the new Act would thus have applied to these rules of the Commission insofar as publication and effective date are concerned. However, Amendment 2, S. to Bill 5, S., sponsored by Senator Paul Rogan, which abolished the provision repealing Section 23.09(9), was enacted by the legisla-
tured and signed by the Governor. Thus Section 23.09(9) continues to have the force and effect of law.

A problem which arises as a result of certain inherent ambiguities in the new law is, does Section 23.09(9) prescribe a different effective date than that contained in Section 227.026? If it is assumed that the language of Section 23.09(9) (“All rules . . . of the commission shall be published in at least three newspapers . . . in the territory affected at least one week prior to the date such rules . . . became effective.”) meets the requirement of Section 227.026(a) (which states that a rule is effective on the first day of the month following publication in the ADMINISTRATIVE REGISTER, unless “The statute pursuant to which the rule was adopted prescribes a different date,”) then it appears likely that a different effective date may be set by Section 23.09(9). Some might argue, however, that the words “at least one week prior to the date such rules become effective,” do not constitute prescribing an effective date within the meaning of Section 227.026(a).

The Legislative Council staff, it should be noted, in its Memorandum on the Effects of Amendment 2, S. to Bill 5, S. pointed out that the Conservation Department counsel said that Section 23.09(9) had always been construed by that agency to apply only to rules having local effect. As a result, the only rules adopted under this provision are those establishing fish and game refuges. From this it might appear that any problems which in the future might result from the ambiguity of the two sections referred to above would be, at best, of minor importance. This is probably true. However, if it is assumed that Section 23.09(9) establishes a different effective date than that outlined in Section 227.026, and if it is assumed that the local papers alluded to in the former section fulfill constitutional publication requirements, it is entirely possible for a local conservation rule adopted under 23.09(9) to become effective before it is published in the ADMINISTRATIVE REGISTER. Thus the attempts of the Administrative Procedure Act to achieve uniformity of practice could be defeated in this instance.

D. EMERGENCY RULES

Under normal conditions it is desirable to require a period of time between the adoption of a rule and its effective date to enable the public to learn of the rule’s provisions. Periodically, however, occasions arise which do not permit a delay between the adoption and the effective date of a rule because of their seriousness. Emergency situations such as the outbreak of a serious plant or animal disease or the existence of a forest fire hazard clearly demand prompt administrative action, and account for the existence of emergency rules. While the general provision of WISCONSIN STATUTES, Chapter 227, prior to 1955 did not spell out in detail the standards regarding emergency
rules, a variety of such provisions existed in the statutes affecting specific agencies.\textsuperscript{47} The provision authorizing the promulgation of emergency rules by the Conservation Commission has just been noted.

The need for permitting an agency to adopt emergency rules (which generally by-pass a number of phases of the rule making process) was recognized by the Legislative Council Committee on Administrative Rule Making. However, the Committee noted one danger inherent in the emergency rule procedure. It was pointed out, for example, that in Michigan, where the provisions of the administrative procedure act relating to delayed effective dates make an exception for emergency rules, the state agencies generally make a practice of adopting more and more rules as emergency rules to get around the requirements of the delayed effective date.\textsuperscript{48}

The provisions of the new Administrative Procedure Act are aimed both at permitting the adoption of necessary emergency rules and at forestalling the inordinate use of the emergency rule procedure to circumvent the general requirements of a delayed effective date. The enactment authorizes the use of emergency rules if the public peace, health, safety and welfare so require.\textsuperscript{49} Unlike regular rules, emergency rules will take effect upon publication in the official state paper. Constitutional publication requirements, the Committee believed, will thus be satisfied, and the rule can take effect without delay.\textsuperscript{50} This section also makes provision for certain supplemental notice procedures in connection with emergency rules. Copies of such a rule must be filed according to law and also mailed to members of the Legislature, and the rule will be published in summary form in the "notice" section of the Administrative Register.

The draftsman's note following Section 227.027 of the revised Act states: "Sub (2) prescribes certain supplementary publicity procedures, but the validity of the rule is not dependent on compliance with these procedures." (Emphasis added) When queried by this writer as to the significance of this statement, the Legislative Council staff commented that the choice of the emphasized word may be misleading, and that it would have been more accurate to say, the effective date of the rule is not dependent on compliance with these procedures. However, an additional problem exists regarding the wording of this section. Although it requires that emergency rules must be filed according to Section 227.023, nowhere in the revised Act is there a time


\textsuperscript{48} See: WISCONSIN LEGISLATIVE COUNCIL, Problem Area Report, No. 3, PROVIDING PUBLICITY FOR ADMINISTRATIVE RULES, July 8, 1954, p. 38.

\textsuperscript{49} Wis. LAWS 1955, c. 221, §227.027.

limit set for filing emergency rules. This is no real problem so far as regular rules are concerned since they must be filed with the Revisor of Statutes before they can be published. On the other hand, it is entirely possible for an emergency rule to be published before it is filed and since no time limit is set for filing emergency rules, the effectiveness of the filing requirement set forth in Section 227.027(2) is almost completely negated.

It is important to note that an emergency rule remains in effect only for a period of 120 days, unless during this time the regular statutory requirements of the rule making process are fulfilled. It would appear that the emergency rule making authority of the Conservation Commission as outlined in Wis. Stats. (1953), Chapter 23.09(9) would be governed by this provision in Section 227.027(1) of the new Administrative Procedure Act.

Under the provisions of the revised Act it would appear entirely possible for the Conservation Commission to adopt almost all of its rules establishing game seasons as emergency rules. This is true because the seasons established on game species seldom are longer than 120 days. If this practice were followed, however, it would defeat the intent of the emergency rule provision in the new Act. Moreover, since approval by the Governor is required for emergency conservation rules as well as for regular rules, the Governor could disapprove of a rule which he felt was promulgated as a result of faulty procedures. The Conservation Director, however, in his letter to all supervisory personnel of January 4, 1956, emphasized that provisions of the revised Act dealing with emergency rules would be used very seldom by the Conservation Department and Commission.

III. ADMINISTRATIVE REVIEW OF RULES

A. GENERAL PRACTICES

Wisconsin law sets forth procedures for reviewing administrative rules both by the courts and by the administrative agency responsible for the rule prior to the adoption of the new Administrative Procedure Act of 1955. In addition to the general statutes applying to all agencies, other statutes provided special procedures for certain agencies such as the Department of Agriculture, the Public Service Commission, the Insurance Department, Banking Department, Saving and Loan Department and the Department of Securities. Even in the presence of these specific provisions, the Legislative Council Committee on Administrative Rule Making found that with the exception of the

51 Wis. Stats. (1953) §29.174(5).

52 Wis. Stats. (1953) §§93.19; 196.405; 200.11; 203.32(16); 204.54; 115.09; 220.035(2)(b); 215.60(8); 199.22. For a general discussion of administrative review see: T. Weiss, Administrative Reconsideration, 28 N.Y.U. L. Rev. 552 (1953).
Industrial Commission, most requests for modification or agency review of rules were informal and were handled informally by the agency involved.\textsuperscript{53}

It was pointed out in the discussion of initiation of rule making, that though Wis. Stats. (1953), Section 227.04 requires each agency to provide by rules the form and procedure for individual petitions for promulgation, amendment or repeal of any rule, few agencies have adopted rules of procedures governing the submission of such petitions. Although this provision has proved to be ineffective, the procedures outlined in Section 227.04 must be regarded as establishing one form of administrative review of rules.

**B. Declaratory Rulings**

Prior to 1955, another section of the statutes pertained to administrative review of rules. This provision, which established declaratory ruling procedures stated:\textsuperscript{54}

"Any agency may, on petition by any interested person, and shall upon reference of a case in accordance with the provisions of Sec. 227.05, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by it. Each agency shall prescribe by rule the form, content and procedure for submission, consideration and disposition of such petitions. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions in contested cases."

The effectiveness of declaratory rulings is dependent on the willingness of agencies to issue them. The Legislative Council Committee on Administrative Rule Making, however, found that only 12 of the 42 agencies studied had complied with that portion of this statute requiring each agency to prescribe by rules the form and procedure for submission and disposition of petitions for declaratory rulings.\textsuperscript{55} The Committee's investigation further revealed that only 3 agencies — the Public Service Commission, the Board of Health, and the Industrial Commission — had ever received formal petitions for declaratory rulings.


\textsuperscript{54} Wis. Stats. (1953) §227.06. Wisconsin is the only state to have a provision in its Administrative Procedure Act permitting agencies to issue declaratory rulings. See: Wisconsin Legislative Council Committee on Administrative Rule Making, Limitations on Administrative Discretion, May 27, 1954, p. 13. For a general discussion of declaratory rulings see: K. C. Davis, Administrative Law, St. Paul, 1951, pp. 170-175.

rulings. Informal inquiries relating to the applicability of a rule or a specific statute to a particular fact situation or person, however, had been received occasionally by several other agencies.

The only case to reach the Wisconsin Supreme Court in which declaratory rulings were at issue involved such an informal inquiry. The situation concerned a retired state employee who had written a letter to the annuity and investment board requesting a change to another payment plan under the state retirement system. This request was denied. In the interim, however, the employee died and his administrator brought a petition in the Circuit Court for Dane County to review the agency's action denying the request. The Wisconsin Supreme Court held with respect to a challenge of the Circuit Court's jurisdiction that the letter requesting the change in payment plan could be construed as a petition for a declaratory ruling despite its informality and its failure to make any reference to a declaratory ruling. Thus, the Supreme Court concluded, the Circuit Court had jurisdiction to review the agency's action in considering the petition.56

Because of its discovery that the majority of Wisconsin agencies had not complied with the provisions of Wis. Stats. (1953), Section 227.06, regarding the adoption of rules setting forth the procedures for declaratory ruling petitions, the Legislative Council Committee on Administrative Rule Making recommended that such rules of procedure be written into the statutes.57 This recommendation became part of the newly adopted Administrative Procedure Act.58

The first subsection of Section 227.06 of the revised Act is a restatement of the present law in that it authorizes all agencies to issue declaratory rulings and to provide full opportunity for a hearing. Such rulings bind all parties concerned on the state of facts alleged unless the ruling is set aside by a court.

The second half of this section is new law, and spells out the procedural requirements for petitions for declaratory rulings. Such a petition must be in writing and must indicate the name of the agency concerned and the nature of the petition. It must also include a reference to the rule or statute at issue and a concise statement of facts describing the situation as to which the declaratory ruling is requested, the reasons for the request and the person on whom the ruling is sought to be made binding. The petition must be signed, and verified by at least one signer, and if a person signs on behalf of a corporation or association, this fact must be indicated. Moreover, it must be filed with the administrative head of the agency. "Within

56 See: Kubista v. State Annuity and Investment Board, 257 Wis. 359, 43 N.W.2d 470 (1950).
58 Wis. Laws 1955, c. 221, §227.06.
a reasonable time" after the petition has been received the agency must either deny the petition in writing or schedule a hearing. If the petition is denied the agency must "promptly" notify the petitioner of this fact and include a brief statement of the reasons for the refusal.

When compared to the liberal interpretation of petitions for declaratory rulings evidenced by the Wisconsin Supreme Court in Ku-bista v. State Annuity and Investment Board, it might be speculated that the new procedures set down in this statute may, by their formality, make it more difficult for the public to obtain review of agency action in declaratory ruling cases. For it would seem likely that a layman might inadvertently but understandably omit from his petition one of the procedural requirements spelled out in the statute. However, whether this section will formalize procedures which the Wisconsin Supreme Court permitted to be most informal will ultimately be left for that court to determine.

Another problem is still unresolved, however, regarding the role of declaratory rulings in Wisconsin. It has been pointed out that the effectiveness of declaratory rulings hinges on the willingness of agencies to issue them. Moreover, the Wisconsin Legislature by specifically including declaratory ruling provisions in its Administrative Procedure Act has indicated a belief in the efficacy of such procedures in the administrative process. Thus the question arises—is a refusal to issue a declaratory ruling judicially reviewable? Wisconsin case law affords no answer to this query, nor did the Legislative Council Committee on Administrative Rule Making go into this phase of the problem. However, the desirability of using declaratory rulings in appropriate situations and the reluctance of agencies generally to consider them might support arguments favoring judicial review of refusals to issue such rulings.

One writer has explained that a restricted approach to judicial review of refusals to issue declaratory rulings would be far from making issuance of these rulings mandatory. "The discretion to issue or not to issue would be the agency's and the court would upset that discretion only for abuse."59 One major reason militates against requiring agencies in all situations to grant declaratory rulings. Clarifying the uncertainties at which a petition for a declaratory ruling is aimed would often require extensive investigations by the agency. Clearly, the agency rather than the regulated parties should determine the use of the agency's resources. For all too frequently problems of the present overtax the capacities of the best of agencies.

C. CONSERVATION COMMISSION PROCEDURES

Looking specifically at the Conservation Commission, it may be

59 Davis, op. cit., p. 175.
said that petitions for modification or repeal of a rule may be made in two ways. First, Commission policy permits direct submission of petitions of this type to the Commission. They will be considered by the Commission in a manner which that body deems advisable and a hearing may or may not be held. The second way in which petitions may be made, of course, is through invocation of **Wisconsin Statutes**, Chapter 227. Regardless of which form of the petition procedure outlined above is utilized, the petitioner is invited to appear at a meeting of the Conservation Commission.

Although the Conservation Commission is one of only four agencies in the state that reported it had ever received formal petitions for adoption, amendment or repeal of rules, it has not adopted rules for submitting and acting on such petitions as outlined in **Wis. Stats.** (1953), Section 227.04. However, procedures for petitioning the Conservation Commission regarding the adoption, modification or repeal of certain rules are spelled out elsewhere in the statutes.

The declaratory ruling procedures outlined in **Wis. Stats.** (1953), Section 227.06, have not proved to be important in the rule making process of the Conservation Commission. This is probably best indicated by the fact that the Commission, representatives of the Department state, has never received a petition for a declaratory ruling as to the applicability of a particular rule. The explanation for the negligible role of such rulings in the area of conservation can be traced, it appears, to the fact that most Commission rules apply either to all or very large groups of citizens of the state rather than to a small and select clientele. If a petition for a declaratory ruling were made, however, representatives of the Department agree that the Director would answer it. If the Director could not answer the petition, the Commission would determine the rule’s applicability. The Conservation Commission, however, has not prescribed by rule the form, content and procedure for submission, consideration and disposition of declaratory ruling petitions as spelled out in **Wis. Stats.** (1953), Section 227.06.

At least one instance has arisen in recent years where a formalized declaratory ruling conceivably might have been issued. At its meeting of February 19, 1954, the Commission was informed by Department counsel that a petition of Roy Grant Jr. and Mary Cavanaugh had been served on the Commission. Petitioners were attempting to attack the Kutschenreuter private fish hatchery on the ground that Mr. Kutschenreuter did not hold title to the land.


61 See for example: **Wis. Stats.** (1953) §§29.174 (2) (3) (4) relating to rules effecting fish and game seasons, and **Wis. Stats.** (1953) §§77.02(1) (2) regarding rules for forest crop lands.
Department counsel informed the Commission that he had inspected the deed and found it good. In the opinion of the counsel, petitioners had not proceeded in accordance with the administrative review provision of Wis. Stats. Chapter 227. Moreover, the petition had been served on the Commission rather than the Department. Thus counsel recommended that the petition be referred to the Department for review and proper action pursuant to law. The Commission voted unanimously to refer the matter to the Department and to the Attorney General's Office for the necessary action.

At the outset of their subsequent investigation, the wording of the petition, which was of a non-legal nature, caused difficulties for both Department counsel and the Assistant Attorney General assigned to the matter. Department counsel wrote of the petition that, "It appears to be an objection to the renewal of . . . (a) private fish hatchery license." The Assistant Attorney General noted in a letter of March 22, 1954 that he had "examined the so-called petition . . . which appears to be some form of a request to . . . deny a license. . . ."

However, the Assistant Attorney General informed the Department in his letter of March 22, 1954 that though the petition obviously was not prepared by a lawyer and was somewhat difficult to follow, it did raise some questions that should be cleared up before any final disposition was made of the request. After listing these points in the form of questions, he concluded, "It would appear that if the proper answers are available for the issues raised above, this petition can be disregarded."

The Department immediately instituted an investigation to obtain the answers to the questions raised by the Assistant Attorney General. Mr. Charles N. Lloyd, who conducted the investigation for the Department informed Mr. H. T. J. Cramer of his findings in a letter dated April 9, 1954. These findings, the Attorney General stated in a note on the Department file copy of the Lloyd memorandum, disposed satisfactorily of the questions raised by him and the license application appeared in order.

On this advice from the Assistant Attorney General, the Department informed Mr. Grant in a letter of April 15, 1954 that there was no basis on which to refuse to issue the license to Mr. Kutschenreuter. The Department advised Mr. Grant that he could start action in the

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62 In a letter to the Director dated January 22, 1954, counsel earlier had informed the Director that Mr. Kutschenreuter had first been issued a license in 1946 and it had been regularly renewed. Department files revealed, the counsel concluded, that Mr. Kutschenreuter had complied with statute law and Department rules regarding filing reports on his operations and in making his applications for license renewal.

63 Conservation Commission Minutes, February 19, 1954, p. 3.

64 Inter-Department Memorandum, To: Ernest Swift, From: Emil Kaminski, January 22, 1954.
local courts if he felt the ownership of the land was improper. No court action was started, and the entire matter never went back to the Commission for further action.

It might be argued that here was a situation that should have been handled specifically by declaratory ruling procedures. This is not to suggest that there was anything substantively wrong with the disposition of this case. At the time this matter arose, however, the Commission had not prescribed by rule the form, content and procedures for submission and disposition of petitions for declaratory rulings. Apart from this, analyzing this case is difficult because the record does not make clear exactly why counsel for the Department felt the petition did not conform to procedures required in the Wisconsin Administrative Procedure Act. Certainly, in light of the Wisconsin Supreme Court's reasoning in the Kubista case, it would be difficult to maintain that this could not be regarded as a petition for a declaratory ruling merely because it was written in non-legal language or because it made no reference to a declaratory ruling.

If an extremely narrow view of the declaratory ruling statute is taken, it might be argued, of course, that since this case involved licensing, it was on the order of a "contested case" dispute rather than one involving a rule or statute. On the other hand, it might be claimed that though the case was not disposed of by anything formally entitled a declaratory ruling, what in fact was issued was basically a declaratory ruling which ruled against petitioner, but informed him that he had exhausted his administrative remedies and might now proceed in the courts. In either case, it seems clear that the function of a declaratory ruling has not been fully appreciated in the administrative process of the Wisconsin Conservation Commission and Department.

It can be concluded that the formal procedures outlined in the pre-1955 Wisconsin Administrative Procedure Act have not played a significant part in administrative review of conservation rules. But the procedures resulting from Commission policy, which are of a more informal nature, provided an extremely important technique by which rules of the Commission are reviewed by that agency. Under the policy of the Commission, the petitioner merely appears before the Commission at one of its regular meetings and makes known his views regarding the modification, amendment or repeal of a rule. About the only formality involved is for the petitioner to notify the Director of his desire to appear, so that the Director may arrange a place on the agenda for this matter. (The requirement to notify the Director is not inflexible and under certain circumstances it will be waived.) The Commission reserves the right to determine if the petitioner's presentation shall be oral or written. Normally, a limited oral presentation is permitted, unless previously scheduled Commission business
prohibits the use of the time necessary for such a presentation. The Commission, as previously noted, determines whether a separate hearing shall be held to obtain the various opinions on a petition to amend or repeal a rule.

There is ample evidence to indicate that the Commission is deeply concerned with granting the widest leeway to those who petition that body seeking review or reconsideration of rules. An example of the informal procedures followed by the Commission which facilitate the efforts of groups seeking administrative review of conservation rules may be seen by an occurrence several years ago. At its July, 1953, meeting the Commission was informed by the Director that officials of the Town of Plum Lake had requested to appear before the Commission to seek modification of a Commission rule. Chairman Guido Rahr informed the Commission that these officials would be heard at 11:45 A.M. When that time arrived, the chairman inquired whether any of the representatives from the Town of Plum Lake were present. There was no response at that time. Periodically during the remainder of the meeting, the chairman interrupted proceedings to inquire whether the Plum Lake officials were present and ready to appear. The local officials, however, did not put in an appearance at this meeting.65

Another example of the Commission's concern with facilitating administrative review of conservation rules must be noted. When discussing the draft of the handbook on Commission policies and procedures which was being prepared by the Department, Commissioner Smith observed that no provision authorizing the right of appeal to the Commission was included in the draft. Thereupon, Smith moved that an amendment be added to Administrative Directive and Transmittal Letter No. 10 allowing any individual or group the right of appeal to the Commission on a policy recommendation in cases where the Director believes a proposed policy statement unnecessary or where he disapproves of the prepared text. This motion was unanimously adopted.66

The Commission is particularly sensitive to charges that it is impeding anyone seeking to challenge its policies. Mr. Wallace Grange appeared before this body at its meeting of August, 1954, in connection with his pending case in the Dane County Circuit Court testing the legality of the Commission rule permitting managed goose hunting on the Horicon Marsh. His suit against the Commission, Grange complained, had been held up due to deliberate delays and obstruction by Wisconsin conservation officials. Grange cited as an example of such

obstruction the difficulty he had experienced in arranging for an adverse examination of past-Director Swift.\textsuperscript{67}

Following the Grange charges, Chairman Rahr instructed the Department to make immediately accessible to Mr. Grange all available materials on the subject so that the legal aspects of the controversy could be determined without delay. Later in the meeting, the chairman was to note that it was understood that if the case went against the Commission in the Dane County Circuit Court, the hunt would be stopped even before any appeal might be taken to a higher court.\textsuperscript{68}

Commissioner Smith broke in to say that any delays in the case should be blamed on an Assistant Attorney General and not on the Department or Director. At the September meeting of the Commission, Smith was to note that these remarks had been misconstrued to be unduly critical of the Attorney General's Office and he asked that the minutes of the last meeting containing his statements be modified to put his views in their proper perspective.\textsuperscript{69}

The effectiveness of the Commission-adopted procedure in bringing about modification or repeal of existing rules or proposed rules in their final form cannot be denied. However, it is difficult to generalize as to the role of these procedures on all aspects of conservation. There is some evidence that certain individuals or groups have been especially effective in obtaining alterations in rules.\textsuperscript{70}

For example, various representatives of fishermen's groups in Dodge County during the past few years have been successful in obtaining amendments to the rule abolishing the bag-limits on bullheads throughout the state, so that a bag limit of 25 bullheads was fixed for Beaver Dam Lake and Fox Lake in Dodge County.\textsuperscript{71} At its July, 1955 meeting, the Commission again adopted this amendment in the face of recommendations by the Department and the Conservation Congress favoring a statewide rule establishing a no bag-limit on bullheads. It is interesting to note, that while representatives of the Dodge County group were present prior to the opening of the Commission meeting in July and engaged in conversations with several commissioners, they made no formal plea to amend the rule during the actual meeting.

\textsuperscript{67} For a record of this incident see: Conservation Commission Minutes, August 13, 1954, p. 26.
\textsuperscript{68} Ibid., p. 32.
\textsuperscript{69} See: Conservation Commission Minutes, September 10, 1954, p. 2.
\textsuperscript{70} This should not be considered unusual in the administrative process. One writer has noted when speaking of agencies in general that conferences of an unofficial character may be a far more influential element of interest representation in the determination of policy than are formal public hearings. See: A. Leiserson, Administrative Regulation, CHICAGO, 1942, pp. 54-55 and 89-92.
\textsuperscript{71} For a discussion of the pressures brought by the Beaver Dam Fishermen's Club and the Fox Lake Fishermen's Club for retaining the bag limit on bullheads see: Conservation Commission Minutes, July 9, 1954, p. 18.
D. Effects of the Revised Administrative Procedure Act

The provisions of the new Administrative Procedure Act will not, in fact, materially alter present practices relating to the administrative review of Conservation Commission rules by the agency itself. While it is true that the new Act alters the procedures to be followed concerning declaratory ruling petitions, it has been stressed that petitions for declaratory rulings have played little or no part in the administrative review of conservation rules. Moreover, no change has been made by the new Act in the specific statutes establishing procedures for petitioning the Conservation Commission regarding the modification or repeal of rules relating to fish and game seasons and forest crop lands.²²

The one significant change wrought by the new Act regarding review of rules by administrative agencies relates to those situations where the form of petition for amendment or repeal of a conservation rule is not spelled out elsewhere in the statutes. It has been previously noted that the new Act provides in such cases that any municipality or any five persons having an interest in the rule may petition the Commission requesting amendment or repeal of such rule.²³ This section clearly explains the form such petitions must take. “Within a reasonable time” following receipt of such petition the Commission must either deny the petition in writing or proceed with the requested rule making. If the petition is denied, the Commission’s letter of denial must contain a “brief” explanation for the Commission action.

The changes instituted by this section, however, would seem to be more apparent than real. Past practices of the Commission, while not formalized, have been very liberal in permitting even a single individual to appear before the Commission to request the modification or repeal of its rules. The new law, though formalizing the petition procedures, does not seem destined to permit any greater public participation in initiating administrative review of conservation rules, although it may well have this effect so far as the rules of other agencies are concerned. The new law, however, would seem to assure the petitioner of at least obtaining the satisfaction of receiving a formal letter explaining why his petition for amendment or repeal of a rule was turned down by the Conservation Commission. Under past practices, the reasons for the Commission’s refusal to act were not always clear.

IV. Summary

A number of states have adopted clearance requirements for administrative rules which provide, in essence, that a rule cannot take

²² See: Wis. Stats. (1953) §§29.174(2) (3) (4) and §77.02(1) (2). See also: Wis. Laws 1955, c. 221, §227.015(1).
²³ Wis. Laws 1955, c. 221, §227.015.
effect until it has been approved by an officer or agency which is not connected with the agency adopting the rule. The officers or agencies most frequently designated through which rules must be cleared are the attorney general, the governor and the legislature (either as a whole or through a special legislative review committee.) Wisconsin has no general statute requiring clearance of rules by any officer or agency.

All Wisconsin conservation rules with the exception of emergency rules must be cleared through the Attorney General. This practice, however, is the result of a policy adopted by the Conservation Department and is not required by law. The only statutory clearance provision for conservation rules which existed prior to 1955 required that rules governing the open and closed seasons and bag limits on fish and game must be approved by the Governor.

The newly revised Wisconsin Administrative Procedure Act, however, provides for the creation of a Legislative Review Committee to act as a "watch-dog" over all administrative rules. The Committee has advisory powers only, and its purpose is to promote proper rules and to foster better understanding on the part of the public with respect to administrative rules. It is, of course, still too early to determine the role of this Committee in regard to conservation rules. Nonetheless, it might be speculated that because of their controversial nature and the large number of people affected by them, certain classes of conservation rules will, by their very nature, have a tendency to come to the Committee's attention regularly.

The theory behind delayed effective dates for rules is that such a delay permits a rule to be made available to the public before it becomes effective, thus forewarning the public of coming regulations. Prior to the adoption of the revised Wisconsin Administrative Procedure Act, the general rule was that administrative rules became effective the day after publication in the official state newspaper unless the statute specifically prescribed a different medium or effective date. One statute relating to effective dates of conservation rules, before 1955, provided that all rules dealing with fish and game regulation would take effect after publication in the official state paper and any other papers that the Commission might deem advisable fairly to advise the individuals affected by the rule. Another provision dealing in general with rules of the Commission stipulated that they must be published in at least three papers of wide circulation in the territory affected at least one week prior to the date the rule became effective. Emergency rules, however, are excepted from this requirement.

The revised Administrative Procedure Act now provides that in general a rule is effective on the first day of the month following publication in the Administrative Code and Register. Almost all
conservation rules, with the exception of those establishing fish and game refuges and forest protection districts will be governed by this provision. In the latter two cases, additional publication of notice in local newspapers is required.

Although it is normally desirable to require a delay between the adoption of a rule and its effective date, certain situations such as the outbreak of a serious plant or animal disease do not permit a delayed effective date. To meet such exigencies, the revised Administrative Procedure Act establishes procedures for promulgating emergency rules. These rules may frequently bypass the hearing stage in the rule making process, and become effective following publication in the official state newspaper. Emergency rules, however, remain in effect only 120 days unless during this period the regular statutory requirements of the rule making process are fulfilled. This provision is aimed at preventing the over-use of emergency rules to circumvent the general requirements of a delayed effective date. Nonetheless, it would be possible for the Conservation Commission to adopt almost all of its rules governing game seasons as emergency rules, since such seasons seldom are over 120 days in duration.

The original Wisconsin Administrative Procedure Act provided two major methods of administrative review of an agency’s rules. Wis. Stats. (1953), Section 227.04, required each agency to provide by rules the form and procedure for individual petitions for amendment, repeal or promulgation of any rule. However, very few agencies (of which the Conservation Commission was not one) adopted rules of procedure governing the submission of such petitions, and most requests for modification of rules were received and handled by the agency on an informal basis. The revised Administrative Procedure Act spells out the necessary procedures governing the submission of such petitions.

The second major method of administrative review contained in the original Administrative Procedure Act was the authority granted all agencies to issue declaratory rulings. The effectiveness of declaratory ruling procedures is dependent on the willingness of agencies to issue them and the field study of the Legislative Council revealed that only three agencies had ever received formal petitions for declaratory rulings. The Conservation Commission was not one of these agencies. The revised Administrative Procedure Act specifically outlines the procedures to be followed and the form that a petition for a declaratory ruling must take.

In addition to the procedures for administrative review outlined in the Administrative Procedure Act, Conservation Commission policy permits direct submission of petitions for modification or repeal of conservation rules. They will be considered by the Commission in a
manner which that body deems advisable. Few, if any, formal require-
ments govern this method of administrative review. While it is im-
possible to document the precise effectiveness of this method of re-
view, there is some indication that certain individuals and groups have
been especially effective in obtaining their wishes when using this
technique. It would appear, that in the absence of formal standards
governing this method of review, personality plays an important role.