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## Cooper: State Administrative Law

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*American Bar Association*

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## RECENT BOOKS

STATE ADMINISTRATIVE LAW. 2 vols. By *Frank E. Cooper*. Indianapolis: Bobbs-Merrill. 1965. Pp. xlii, 951. \$35.00.

No area of administrative law has been more neglected while so much in need of expert attention than that of the procedures by which state administrative agencies adopt rules and reach decisions. With the publication of Professor Frank E. Cooper's two-volume *State Administrative Law*, however, the profession has gained a comprehensive and praiseworthy survey of the processes of these agencies; this treatise may well become recognized as the leading authority in its field.

The treatise's most important contribution is its analysis of state statutory and case law in the light of the Revised Model State Administrative Procedure Act. This act, originally drafted in 1946 by the National Conference of Commissioners on Uniform State Laws and revised in 1961, has been used as the basis of legislation in about twenty-five states.<sup>1</sup>

Professor Cooper is unquestionably qualified to evaluate this aspect of state administrative law, having served as a consultant to the committee which acted for the Commissioners in preparing the Revised Model Act. Throughout the two volumes, he has drawn liberally upon his knowledge of the intent of the Commissioners in using a particular word, phrase, or approach, indicating whether a section of the Model Act was deliberately drafted in general terms or whether the language reflects a belief on the part of the draftsmen that state procedures require an approach different from that of the Federal Administrative Procedure Act.<sup>2</sup> The analysis of state laws and court decisions in terms of the various sections of the Revised Model Act will be of great service to the practitioner. Reports of most of the states have been checked page by page for the period from 1958 to 1963 to find decisions not indexed by the digests. Many older state cases are also cited, supplementing the author's discussion of most of the landmark federal and state decisions.

As important as the abundance of court decisions covered in the text and footnotes are Professor Cooper's comparative studies of state legislation. A section-by-section analysis is made of state statutory law, which is compared with the provisions of both versions of the Model Act, as well as the Federal Act. This study should prove equally useful for the student, lawyer, or judge searching for a decision construing language similar, if not identical, to that with which he is concerned.

Apart from the aspects of state administrative law treated by the

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1. 1 COOPER, STATE ADMINISTRATIVE LAW 13 (1965).
  2. 60 Stat. 237 (1946), as amended 5 U.S.C. §§ 1000-11 (1964).

Model Act, Professor Cooper devotes his first three chapters to a consideration of the importance of state administrative agencies in the lives of the average citizen and lawyer, the concept of separation of powers, and the necessity of controlling administrative discretion. Most noteworthy is the discussion of meaningful and objective standards in administrative enabling acts. Professor Cooper suggests that eleven factors play a predominant role in a court's determination of whether a grant of legislative or judicial power to a state agency is invalid for want of proper limitations upon the agency's discretion. He is careful to warn that the outcome of the case cannot be predicted by keeping a box score on these points, but insists with much logic and force that these factors often sway the course of judicial decision. Without doubt these eleven factors, singly or in combination, will become the stated rationale for the outcome of many future cases, with Mr. Cooper's treatise as authority for the result.

Several other chapters should be singled out for special comment. Chapter XVII, "Timing of the Application for Judicial Review," is one of the most helpful. Here Mr. Cooper considers the "doctrine of prior resort," his synonym for primary jurisdiction; the requirement of exhaustion of administrative remedies; the doctrine of estoppel, which he believes to be "savagely harsh"; and the questions of when an agency's order becomes final and how to preserve the necessary grounds of appeal. The cases summarized in this chapter and the conclusion reached should provide good working guides for both lawyers and courts.

One of the subjects most written about and discussed in the field of administrative law is the scope of review of evidence. Professor Cooper treats this matter at length. After detailing four reasons why the "substantial evidence" rule has proved unsatisfactory, Professor Cooper considers the "clearly erroneous" rule incorporated in the Revised Model Act. He then sets forth a detailed examination of the state court cases, suggesting a few generalities which are applied by state courts to determine the sufficiency of the evidence supporting administrative findings of fact. Once more, however, the author is careful to point out that these tests are subject to important limitations and exceptions.

The treatise concludes with the text of the Revised Model Act and the section-by-section commentary appended by the Commissioners.

A final word must be said concerning the style and format of the text. The table of contents, found in the front of each volume, is a most useful research tool because of Mr. Cooper's full and explicit chapter, section, and subsection headings. The table of cases runs over fifty-five pages, and a table of statutes, keyed both to page and

footnotes, covers twenty-nine pages. Professor Cooper's prose is sturdy and informative yet occasionally interlarded with light touches: "Administrative proceedings at times assume the character of a seamless web (or as some would have it, a seamless web) . . . ."

In conclusion, *State Administrative Law* is a work of great value and usefulness. Anyone concerned with problems in the field will be richly rewarded for reading Professor Cooper's penetrating analyses.

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Association, Section of  
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