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ADMINISTRATIVE APPEALS FACT SHEET

Prepared by Attorney Anthony L. Seegers

R.C. Chapter 119 Administrative Law Appellate Overview

Ohio agencies all receive their authority from Ohio statutes and can only exercise the authority and power in which they are vested by the Ohio General Assembly. State agencies have statutory authority to promulgate rules, grant, deny, and renew licenses, as well as the enforcement powers of their respective rules. Issues arise when a license is denied, a license renewal is not granted, or the agency in question has issued some notice of violation of its rule(s). When these issues transpire, it is important to have an understanding of your rights in what are typically called “119 appeals” or “administrative appeals.”

There is no inherent right to appeal a state agency’s determination or order.¹ For instance, the failing of a driver’s license cannot be appealed. The right to appeal an agency’s determination is solely a statutory right. This means that the Ohio General Assembly, when passing legislation, has determined what agencies and what agency determinations are appealable. Chapter 119 is titled “Administrative Procedure” and as the title suggests, is the chapter in Ohio Revised Code (“R.C.”) that deals with administrative procedure. Chapter 119 is also commonly referred to as the Administrative Procedure Act.

What constitutes an “agency”?

Before you can determine what can be appealed, you have to determine if the agency you want to appeal a matter from is an “agency” for purposes of Chapter 119. The question as to what is an administrative agency, also referred to as a state agency, is in fact an “agency” might seem rather apparent on its face, but as with most laws, the most apparent answer is not always the right answer.

R.C. 119.01 defines what an agency means for Chapter 119 and if your agency you want to appeal from is not in the definition or is exempt by the definition, you will not have appeal rights, at least not under Chapter 119. The basic rule is an administrative agency in Ohio is an “agency” for the purposes of Chapter 119 if:

1. the agency is specifically named in R.C. 119.01,
2. functions of the agency or commission are specifically made subject to the Administrative Procedure Act,
3. or if the agency is authorized to issue, suspend, or revoke licenses.

¹ *Lexington Supermarket, Inc. v. U.S. Dept. of Agriculture*, 84 F. Supp. 2d 886 (S.D. Ohio 1999) (applying Ohio law).

Who can appeal?

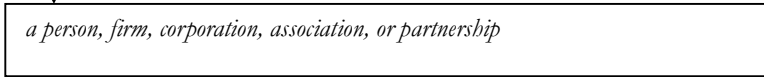
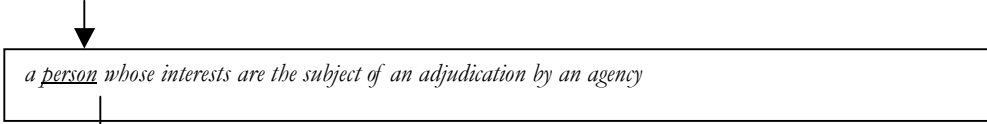
Technically, two types of “who” can appeal. The first “who” is “any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code”. This language is from R.C. 119.12 and the underlined terms are important terms that have specific meanings. Agency has already been discussed above so the other underlined terms will be explained.

Party means “a person whose interests are the subject of an adjudication by an agency”. A “person” is not just an individual like yourself or your neighbor but, for purposes of Chapter 119, means “a person, firm, corporation, association, or partnership”. So if you are a member of a limited liability corporation (LLC) for instance, your LLC can file an appeal.

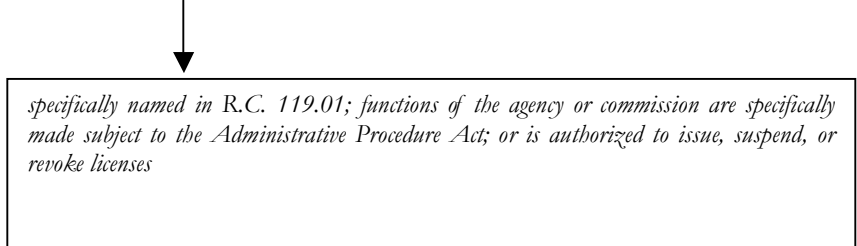
Next, adjudication means “the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.”

Putting this all together, one could diagram the language as:

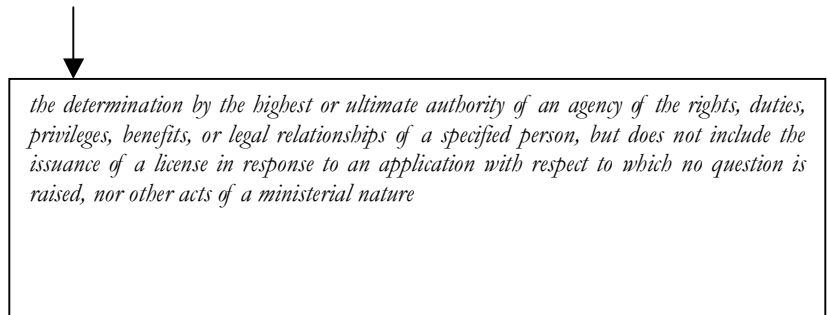
“any party



adversely affected by any order of an agency



issued pursuant to an adjudication



denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code.”

The second “who” is “any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county...”²

What can be appealed?

As stated above, an order of an agency issued:

1. after the highest authority of the agency has made a determination denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license;
2. or after any other adjudication.

It is important to note that the highest authority of the agency has to have issued an order. The highest authority for most state agencies will be the Director of that agency.

Where and when can you appeal?

After receiving an adverse order from an agency, you can appeal to the common pleas court where you reside or where your business is located or to the common pleas court of Franklin County.

Where, When, and What do you appeal?

The Where

This is perhaps one of the most litigated issues in Chapter 119 case law- perfecting the notice of appeal. Perfecting the notice of appeal is the process of where, when, what and how you file your notice of appeal.

R.C. 119.12 sets forth the where, when, what and how to file your notice of appeal. It is important to file your **original** “notice of appeal” with the **agency** that issued the order from which you are appealing.³ You also are required to file a **copy** of your “notice of appeal” with the county common pleas court to which you are appealing. **IF YOU FILE THE ORIGINAL NOTICE OF APPEAL WITH THE COMMON PLEAS COURT AND THE COPY WITH THE AGENCY YOUR APPEAL WILL BE DISMISSED!**

The When

You have to file your notice of appeal *within fifteen days after the mailing of the notice of the agency’s order* unless another section of the Ohio Revised Code pertaining to that particular agency you are appealing from states otherwise. **IF YOU DO NOT TIMELY FILE YOUR NOTICE OF APPEAL WITH THE AGENCY YOUR APPEAL WILL BE DISMISSED!**

Once the fifteen-day requirement has begun to run, it is satisfied by filing the **original** notice of appeal with the administrative agency. “File” as used in the R.C. 119.12 means actual

² This language excludes exceptions for appeals from orders of the fire marshal, the state personnel board of review or a municipal or civil service township civil service commission. These appeals do not have to be made in Franklin County.

³ *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877.

receipt of notice of appeal by the agency. Putting a notice of appeal in the mail is not the same as filing a notice of appeal with the agency whose order is being appealed.

For example, state agency X mails its order to you on May 14 and you receive it three days later on May 17. You have to file your notice of appeal *within fifteen days* of May 14. Your original notice of appeal has to have been *received* by the agency by May 29. You also have to file a copy of your notice of appeal with the county common pleas court in which you are appealing to within the same fifteen days as your filing of your original notice of appeal with the agency.

The What

You are appealing the order issued by the agency that has adversely affected you. The Notice of Appeal you file with the agency you are appealing from has to state the order you are appealing and the grounds or reasons for your appeal.

Keep in mind that if you file a notice of appeal, the provisions or enforcement action(s) in the order you are appealing are not suspended pending your appeal. For instance, agency X issues an order that orders you to pay a fine, institute a management plan, and submit an application for a permit. These provisions in the order will not automatically be suspended pending your appeal. Therefore, you should request a “stay” of the order pending your appeal.