

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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## KANSAS ADMINISTRATIVE PROCEDURE ACT

Administrative law addresses actions that arise out of state agencies and for the purpose of hearings by state agencies. Generally, agencies are charged with executing action to further legislative policies and purposes. These powers typically are delegated by statute. Administrative procedure guiding agencies generally is simpler and less formal than judicial procedure. One of the purposes of administrative remedies is to allow individuals to resolve their disputes in a less cumbersome and less expensive way than by a trial in court. In addition, administrative actions are adjudicatory in nature. An adjudicatory hearing is a proceeding before an administrative agency in which the rights and duties of the person involved are determined after notice and opportunity to be heard.

A Revised Model State Administrative Procedure Act was drafted in Kansas in 1961 and revised in 1981. According to the 1981 revision, the Model Act applied to all agencies not expressly exempted and, further, it warned that it only created procedural rights and imposed procedural duties. A procedural act does not create substantive legal rights. Such substantive legal rights can exist only by statute, by the agency's rules and regulations, or by some constitutional command.

The Kansas Administrative Procedure Act (KAPA), KSA 77-501, *et seq.*, was enacted in 1984 and became effective July 1, 1985. Under KAPA, the object is to conduct fair and impartial hearings for people who contest state agency actions that have impacted their legal rights. The Kansas Judicial Review Act (KJRA), KSA 77-601, *et seq.*, was enacted as a companion piece of legislation. The Kansas Judicial Council was actively involved with the enactment of KAPA and recommended that KAPA apply to all state agencies. The Council also recommended that KJRA be enacted as the appeal act for all agency actions. These acts, however, were enacted to be more restrictive.

Consistency of agency action has been cited as a major purpose of an administrative procedure act. Along the same lines of reasoning, fairness often is mentioned as a major purpose of KAPA as the same rules apply to all parties, who are to be given full opportunity to proceed under the Act. Further, it is purported to exclude most agency bias when independent hearing examiners are used.

In 1997, the Office of Administrative Hearings (OAH) within the Department of Administration was established for the purpose of conducting administrative hearings for the Department of Social and Rehabilitation Services (now Department for Children and Families). During the 1997 Interim, the Special Committee on Judiciary, after a study of the centralized office concept, recommended that the administrative hearing officers of all state agencies covered by KAPA be transferred to OAH.

The Legislative Division of Post Audit conducted an audit (March 2001) titled "Centralized Administrative Hearings: Reviewing the Advantages and Disadvantages." According to the audit, proponents of centralized administrative hearings indicated that such a measure would promote both fairness and the perception of fairness by eliminating the conflict

of interest that exists when a hearing officer works for the agency that is party to the proceeding. Efficiency of operation and economic feasibility also were cited as reasons for the centralized hearing mechanism. Opposition to the measure was noted by the concern that hearing officers will become generalists without adequate technical expertise in particular subject matter areas.

As a result of the Post Audit, the OAH took action that included:

- Handling cases on a timely basis;
- Establishing an equitable system of billing;
- Reporting estimated income from all sources in the OAH budget; and
- Ensuring participants involved in the hearing process are aware of OAH's independence from the Department of Social and Rehabilitation Services.

In 2004, SB 141 was enacted, extending the responsibility for conducting administrative hearings for nearly all state agencies to the OAH over a five-year phase-in schedule beginning July 1, 2005, and concluding July 1, 2009. Since July 1, 2009, the OAH has existed as a free-standing agency, separate from the Department of Administration.

In 2007, SB 351 was enacted, requiring all agencies, boards, and commissions to utilize the OAH for hearings held in accordance with the KAPA on and after July 1, 2009.

In 2009, SB 87 was enacted, making a number of additions and amendments to KAPA and KJRA. The bill was based upon recommendations by the Kansas Judicial Council's Administrative Procedure Advisory Committee and included provisions protecting victim privacy; clarifying computation of time and other procedural matters; exempting the State Court of Tax Appeals from KAPA; addressing conflicts of interest; and clarifying jurisdiction, standards of review, and burdens of proof.