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Robert S. Bailey

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Air Pollution Control in Allegheny County—Will it be Smothered by Appellate Procedure?

INTRODUCTION

One of the many reactions to the recent public uproar over the state of the world's ecology was manifested in a set of strict air pollution control laws promulgated for Allegheny County.¹ In order to understand the character of these county air pollution control laws, a basic acquaintance with the enabling legislation is helpful.

The Federal government's attack on air pollution began in earnest with the passage of the Federal "Air Quality Act of 1967."² This act set up the machinery for the establishment of minimum Federal air quality standards. The act, however, specifically states that its policy is to encourage municipal, state, and interstate abatement of air pollution and that the Federal government will not impose its enforcement powers on such political subdivisions as long as they do not contradict the Federal air quality minimum standards.³ In line with this policy, the Federal act set up the tools for the state and local enforcement of air pollution standards.⁴ Pennsylvania, having complied with these Federal requisites, passed the "Air Pollution Control Act."⁵ Under this legislation the Pennsylvania Department of Health is placed in charge of air pollution control.⁶ Despite the detailed enforcement procedure established under the Pennsylvania "Air Pollution Control Act,"⁷ it allows the political subdivisions within Pennsylvania to act on enforcement of their own air pollution problems without state interference as long as the local subdivision maintains the state's minimum standards for air quality.⁸ This is the section under which

1. ALLEGHENY COUNTY, PA., HEALTH DEPT. RULES AND REGULATIONS, Article XVII [Hereinafter cited as ALL. CO. REGS.].

2. Air Quality Act of 1967, 42 U.S.C.A. § 1857 et seq. (1967).

3. *Id.*

4. *Id.* § 1857d(c) requires, among other things, a letter of intent from the state's governor to establish air quality standards within the Federal minimums and to enforce these standards.

5. PA. STAT. ANN. tit. 35, § 4001 et seq.

6. *Id.* § 4004.

7. *Id.* § 4012.

8. But such local enforcement bodies must be approved by the state "Commission"; PA. STAT. ANN. tit. 35, § 4012.

Allegheny County obtained its authority to pass and enforce its own air quality standards. The Pennsylvania "Air Pollution Control Act" also provides that such local standards can be set only after public hearings have been held. Pursuant to this requirement, Allegheny County held hearings in the spring of 1969 resulting in enough public pressure to produce the present set of air pollution standards; stricter than those imposed by the state of Pennsylvania and the Federal government.

My purpose is not to discuss the merits of the air quality standards of Allegheny County, but to assume that the standards set are desirable and to proceed to the problems of enforcing these standards. Solution to many of these problems depends on the adequacy of appropriations made for Allegheny County air pollution control. For the purposes of this discussion, however, money for proper enforcement of the Allegheny County Air Pollution Control Act (hereafter referred to as Allegheny County Regulations) is assumed to be available.⁹

The discussion will be aimed instead at the effect of appellate procedure and judicial review on the enforceability of action taken under the Allegheny County Regulations. The Allegheny County Regulations provide for enforcement to commence, in most instances, by an order issued from the Director of the Allegheny County Department of Health.¹⁰ Director's orders, therefore, result from about every act of enforcement initiated by the Allegheny County Department of Health. Such acts vary from Emergency Orders to shutdown certain industries¹¹ to the issuance of permits for the installation or operation of fuel burning equipment.¹² The ability to obtain compliance with these and other orders often depends on the ability of the orders to resist the attack of administrative and judicial appeals. In order to accomplish this resistance the Allegheny air pollution enforcement bodies, from the County Department of Health to the Board of Air Pollution Appeals and Review, must be aware of the appellate procedures and the scope of judicial review to which their orders may be

9. Under both the Federal "Air Quality Act of 1967" and the Pennsylvania "Air Pollution Control Act" appropriations to state and local air pollution control agencies are contemplated. The amount of these funds, however, will depend on annual appropriations and the method of allocating this money. Therefore, discussion of this phase of enforcement would involve mere speculation.

10. ALL. CO. REGS., § 1722.1A provides that "whenever a notice or order is given under any provision of this Article, the Director shall give said notice or order in the manner provided in this section."

11. *Id.*, § 1722.1B.

12. *Id.*, § 1718.

subject and to what extent they might contribute to the establishment of advantageous procedures. Understanding the appellate procedure and judicial review will allow the Allegheny County and Pennsylvania Departments of Health to react appropriately to insure clarity in their rules and regulations regarding appellate procedure and to handle grievances in a manner calculated to avoid reversals based on their failure to follow proper hearing procedures.¹³ Knowledge of the scope of possible judicial review will also help these agencies know the practical limits of their decision-making power and discretion.

DOES THE COUNTY'S AUTHORITY TO ESTABLISH APPELLATE PROCEDURE CONFLICT WITH STATE PROCEDURE?

As mentioned above, under many sections of the Allegheny County Regulations, enforcement is initiated by orders from the Director of the Allegheny County Dept. of Health. Although the County Regulations attempt to establish some type of appeal from these orders,¹⁴ there still remains a question of appellate procedure raised by the Pennsylvania "Air Pollution Control Act." Under its *Powers of the Department of Health*,¹⁵ one of the powers of the Pennsylvania Department is to issue orders to any person causing air pollution. Upon such order the person affected may, as stated in section 4004 (4.1), appeal that order to the Pennsylvania Air Pollution Commission within 30 days. This appeal must be in accordance with the provisions of the Pennsylvania Administrative Agency Law,¹⁶ any further appeal from the Commission's decision is to be under the procedure set up by the same Pennsylvania Administrative Agency Law.¹⁷ The question presented is whether action taken by the *Allegheny County Health Department* is subject to this appellate procedure. It may be argued that this question is answered within the Pennsylvania Air Pollution Control Act itself where it states that:

13. Such procedures as keeping a written record, allowing cross-examination of witnesses, and allowing the presence of attorneys as representatives of complainants. *See, Commonwealth v. Heindel*, 42 Pa. D. & C.2d. 205 (1967), where the Pennsylvania Air Pollution Control Commission was reversed for failure to conduct such procedures at the administrative hearing.

14. ALL. CO. REGS. § 1722.1C, which will be discussed in more detail later in this paper.

15. PA. STAT. ANN. tit. 35, § 4004.

16. PA. STAT. ANN. tit. 71, § 1710.1 et seq.

17. Note the procedure for the appeal taken in *Commonwealth v. Glenn Alden Corp.*, 418 Pa. 57, 210 A.2d 256 (1965).

The procedures for the abatement, reduction, prevention and control of Air Pollution set forth in this act shall not apply to any political subdivision of the Commonwealth which has an approved Air Pollution agency.¹⁸

This section also states, however, that such local procedures cannot conflict with Pennsylvania rules and regulations regarding air pollution control. Therefore, it remains unclear whether appellate procedure is part of a subdivision's "abatement, prevention and control of air pollution" or whether the appellate procedures set up by Allegheny County conflict with the Pennsylvania rules and regulations.

The structure of the Pennsylvania "Air Pollution Control Act" appears to give the Pennsylvania Air Pollution Commission the power to clarify these two questions. The act has nowhere clearly stated its policy regarding appellate procedure of political subdivisions. In fact, if any policy can be implied, it would be that the legislative intent was to allow all possible authority at the local level. It therefore appears that a directive from the Pennsylvania Air Pollution Control Commission specifically approving Allegheny County's appellate procedure could in no way be interpreted as either outside of the Commission's authority or in contradiction of the intent of the Act. Therefore, it is advisable for the state Commission to issue rules and regulations clearly stating their position regarding the right of a local air pollution control agency to establish its own appellate procedure. Without such clarifying regulations, the Allegheny County air pollution control agencies and persons appealing from their orders, will be forced to proceed by mere speculation and the answers to these questions will be available only after time-consuming litigation in the courts.¹⁹ Whether a court could even answer these two questions is debatable; it is not debatable that such litigation would result in undue delay in enforcement of air quality standards.

DOES THE PRESENT ALLEGHENY COUNTY APPELLATE PROCEDURE STRENGTHEN ENFORCEMENT?

Assuming for the sake of further discussion that Allegheny County is not precluded from establishing its own appellate procedure, we can then consider the effect of that procedure.

18. PA. STAT. ANN. tit. 35, § 4012.

19. *See, Retail Master Bakers v. Allegheny County*, 400 Pa. 1, 161 A.2d 36 (1960) where the Pennsylvania Supreme Court was forced to decide whether or not county health regulations contradicted state health regulations regarding bakeries. *See also, Philadelphia v. Weber*, 394 Pa. 466, 147 A.2d 326 (1959).

A. *Section 1722 Hearings*

The Allegheny County Regulations provide in Section 1722 that: "Any person or owner who is aggrieved by a notice or order from the Director may request and shall be granted a hearing. . . ." ²⁰ This section obviously needs further clarification. Firstly, it does not tell *before what body* the hearing is to be held. Secondly, it is silent on whether or not this one hearing is to be the entire appellate procedure or merely the first step before commencing the appellate procedure setup by the state air pollution act. It seems advisable that the Allegheny County Department of Health proceed to establish clear and complete appellate procedure (within any future limitations imposed by the Pennsylvania Air Pollution Commission) from orders of the Director of the Allegheny County Department of Health. Not only would such regulations expedite appeals, they might also narrow the scope of judicial review of actions by the Allegheny County Director of Health. If the Section 1722 hearing fails to provide for the presentation of evidence from both sides, the right of cross-examination to each side, and the subsequent basing of the decisions on rational grounds clearly stated for each side to know, judicial review may go further than merely looking to see that the evidence substantially supports the findings. ²¹ The reviewing court might, in the absence of such procedural safeguards, grant the appellant a trial de novo before the court, in effect, removing enforcement and discretionary powers from the County Department of Health. Thus, in order to preserve its powers, it would behoove the Allegheny County Department of Health to provide a bona-fide hearing for those appealing under Section 1722.

B. *The Lack of Appellate Procedure from Emergency Orders*

Another question regarding appellate procedure is presented in the Allegheny County Regulations by its exclusion of the right to a Section 1722 hearing for persons whose rights are decided without a hearing pursuant to the power of the Director to issue Emergency Orders. ²² Can an aggrieved person be completely denied the right to

20. ALL. CO. REGS., § 1722.1C.

21. See later discussion on scope of Section 1722 review.

22. ALL. CO. REGS., § 1722.1C.

an administrative hearing? Pennsylvania law requires some type of orderly proceeding by an appropriate and impartial tribunal²³ and that the hearing body be bound by the fundamental concepts of fairness and constitutional due process.²⁴ These requirements, however, do not necessarily require judicial process. It does generally mean, however, that the party affected is to have notice of a hearing and an opportunity to be heard.²⁵ This Pennsylvania policy against allowing an administrative agency to become a tyranny, giving no notice of its hearings, if any, and giving no opportunity to aggrieved parties to be heard,²⁶ seems to run counter to Allegheny County's policy regarding Emergency Orders. Granting that the nature of an emergency order precludes the possibility of hearings *before* the order is enforced, some type of review hearing should be provided for parties damaged by emergency orders. It is conceded that an appeal can possibly be had before the Pennsylvania Supreme Court by writ of certiorari to obtain judicial review of an emergency order,²⁷ but it seems an unrealistic approach in most cases due to cost and consumption of time. A more immediate appeal to police the actions of the Director is necessary if arbitrary use of the emergency power is to be avoided.²⁸ In light of this consideration, it would be to the advantage of Allegheny County to set up a procedure to afford a hearing *after* an emergency order is issued and is being *obeyed*. Such a hearing, if proper procedural safeguards are afforded (representation by counsel, cross-examination of witnesses, and a requirement of a written decision stating rational grounds for sustaining an emergency order) would afford the County air pollution control agencies a greater respect for its determinations in the courts.²⁹ Without such respect, a review court

23. *State Real Estate Commission v. Fenstersheib*, 89 Dauph. 306 (1968).

24. *Taylor et. al., Appellants v. Weinstein*, 207 Pa. Super. 251, 217 A.2d 817 (1966).

25. As in *Pennsylvania Administrative Agency Law*; PA. STAT. ANN. tit. 71, § 1710.31.

26. *Hotchkiss Liquor License Case*, 169 Pa. Super. 506, 83 A.2d 398 (1951).

27. *Dauphin Deposit v. Meyers*, 401 Pa. 230, 164 A.2d 86 (1960).

28. One might argue that the criteria for the existence of an emergency is clearly established under Section 1717.2D of the Allegheny County Regulations. But within 1717.2D and 1722.1B, there is a great deal of room for discretion on the part of the Director, *e.g.*: 1. What constitutes "adverse meteorological conditions"? 2. Is there reason to believe the affected party is contributing in the least to the condition? 3. The language of 1722.1B is broader than 1717.2D and includes discretionary decisions such as when is their need for immediate action to "protect the health, safety, or welfare of the public."

29. Agencies should never underestimate the importance of maintaining the respect of the courts. In many instances, on close questions, respect by the courts can be enough for them to give the agency the benefit of the doubt and thereby sway the case. This

might grant a trial de novo for the aggrieved party, thus removing from the Allegheny County Department of Health a portion of their enforcement authority.³⁰ Clearly, the County Health Department can only hurt itself by denying post-enforcement hearings on emergency orders.

The County Regulations seem justified, however, in denying a party aggrieved by an emergency order the right to an appeal to a specific judicial body. Judicial review of determinations of administrative agencies is not a matter of right and it may be granted or denied at the will of the legislature as long as constitutional requisites are met.³¹ Such constitutional requisites are met by the recommended hearing procedure set forth in the preceding paragraph. The denial of formal judicial appeal is also justified because there is always the possibility of a judicial appeal to the Pennsylvania Supreme Court by writ of certiorari,³² and, in the event of arbitrary and capricious action by an agency, (which raises the issue of the agency's jurisdiction) appeal to the Pennsylvania Commonwealth Court.³³

C. Appeals From Variances—Who Has Standing?

The County Regulations have expressly established hearing and appellate procedure for persons wishing to petition for a variance from application of the emission standards.³⁴ It establishes hearings before the Board of Air Pollution Appeals and Variance Review (hereafter referred to as Appeals Board). Notice of the hearings is to be published beforehand. Upon the issuance of the Appeals Board's decision, termed "final," the section provides for appeal to the Court of Common Pleas of Allegheny County. Thus, assuming that Allegheny County has the right to establish its own appellate procedure without running afoul with the Pennsylvania "Air Pollution Control

respect is earned by an agency whose actions are characterized by freedom from bias, allowing each party his say at hearings and having a record of bringing only valid actions to court that are well documented.

30. See, *Supra.*, *Commonwealth v. Heindel*, where sloppy hearing procedure resulted in a judicial reversal of the Pennsylvania Air Pollution Control Commission's findings.

31. *Estop v. U.S.*, 327 U.S. 114 (1945).

32. *Petition of Bell*, 396 Pa. 592, 152 A.2d 731 (1959).

33. See, *Upper Darby National Bank v. Smith*, 67 Dauph. 3 (1954) where alleged arbitrary and capricious action by the agency raised the constitutional issue of whether the agency was operating within its jurisdiction.

34. ALL. CO. REGS., § 1703.1F.

Act,"³⁵ there appears to be no problem with the appellate procedure from variance decisions as such.

A question is presented under this procedure, however, regarding standing to bring an appeal before the Allegheny County Common Pleas Court.³⁶ The language of this section seems to indicate a definition of standing much broader than the standing granted under the Pennsylvania Administrative Agency Law (A.A.L.).³⁷ The A.A.L.'s language limits standing to those persons with a *direct interest*, not merely an affected party. This policy greatly limits the number of persons who can appeal.³⁸ The Allegheny County Regulations, however, by its use of "persons . . . adversely affected or aggrieved" seems to confer standing to appeal on those who may not be so directly affected, but who still may have a valid complaint.³⁹ The "persons aggrieved" language, however, has usually been held to require ownership of property in the county of appeal where zoning ordinances and annexation proceedings were involved.⁴⁰ To require ownership of property in Allegheny County in order to have standing on appeal an air pollution variance does not seem justified. While in the development of zoning laws and annexation procedures living conditions are a consideration, preservation and increase in *land value* is usually paramount, thus the logic of requiring land ownership. In air pollution control, on the other hand, living conditions are the most important consideration.⁴¹ Therefore, it would make little sense to make land ownership the criterion for allowing standing to appeal air pollution variances. In this light, the County Regulation's use of "person suffering legal wrong" as a criterion for standing also appears to imply further that

35. See earlier discussion of possible "conflicts" with state air pollution control policy as stated in PA. STAT. ANN. tit. 35, § 4012.

36. "Such appeal, . . . may be made by any person suffering legal wrong or adversely affected or aggrieved by the decision." ALL. CO. REGS., § 1703.1F10.

37. "Any person aggrieved thereby who has a direct interest in such adjudication shall have the right to appeal therefrom.;" PA. STAT. ANN. tit. 71, § 1710.41.

38. See, State Board of Funeral Directors v. Beaver Co. Funeral Directors Ass'n., 10 Pa. D. & C.2d. 704 (1958) and Petition of Associated Theatres, 27 Pa. D. & C.2d. 537 (1963).

39. See, Giammaria Liquor License Case, 166 Pa. Super. 263, 70 A.2d 402 (1950), where the court indicates the greater interest required for "person aggrieved" than for "person adversely affected."

40. Appeal of Cleaver, 24 Pa. D. & C.2d. 483 (1961). See also, Pavelek v. New Sewickley Twp., 60 Mun. 86 (1968), where "person Aggrieved" under an ordinance regarding junk dealers had to have a "substantial and direct interest" in the ordinance to have standing; in this case that interest was found through appellant's property ownership.

41. The Allegheny County Regulations indicate at Section 1713 regarding Nuisances that it is its intent to encourage action by individuals and the public generally who are injured or placed at a health hazard by "air contaminants." From this section it is a fair implication to call such persons "adversely affected" within the language of Section 1703.1F10.

there be no need for land ownership. Thus, by its own language, it appears that residence or possibly mere occupational location within Allegheny County, coupled with a showing that the variance grant will affect the quality of the air the person breathes, could be all that is required to appeal to Allegheny Common Pleas Court regarding the grant of a variance.⁴²

While in one sense, such broad standing to appeal a variance is good, in another, it may present a problem of whether or not the person maintaining the appeal is enough affected to give an adequate presentation of his side of the case. (The idea that the person with the most to lose or gain will give the best argument for his side should not be lightly discarded.) To avoid the possibility that the appellant is not truly a party with a "case or controversy",⁴³ the Common Pleas Court of Allegheny County could, within the language of Article 1703.1 F 10 of the County Regulations, require the appealing party to establish a substantial case showing that he was, in fact, adversely affected or aggrieved—what could be termed a *prima facie* case for a *nuisance* suit based on the grant of the variance. Without requirements such as these, the potential advantage of having such a wide breadth of standing to appeal variances might be defeated by fictitious appellants without true interests to advocate.

THE SCOPE OF JUDICIAL REVIEW

It is important for the Allegheny County Health Department and potential appellants to know the appellate procedure for its own sake, but appellate procedure is also important because of its effect on the scope of judicial review that results. Whether the courts will grant the appellant what amounts to a trial *de novo* or merely review the agency's decision for abuse of discretion will greatly affect the day to day operation and decision-making power of the Allegheny County Health Department. Since the scope of judicial review is greatly affected by the particular appellate procedure, discussion of scope will be separated into the three basic appellate procedures discussed earlier under the Allegheny County Regulations: *A.* Appeals from 1722 hearings on Director's orders; *B.* Appeals from the Director's emer-

42. The total lack of the word "party" in the standing section destroys any argument that an appellant must have been a party at the hearing before the Appeals Board.

43. *Muskrat v. U.S.*, 219 U.S. 346 (1911).

agency orders which are not subject to 1722 hearings; and C. Variance appeals to Allegheny County Common Pleas.

A. *Appeals From 1722 Hearings*

Since there is no judicial or administrative review provided under the County Regulations from a decision at a 1722 hearing, such review will be either by the Pennsylvania Commonwealth Court on the issue of the agency's jurisdiction or by the Pennsylvania Supreme Court by writ of certiorari. In the former case, since a jurisdictional issue is raised, the sole question on review will be whether the agency was acting within its jurisdiction in the instant decision. For this inquiry, the Commonwealth Court may only look to see that the agency is not abusing its discretion, thus judicial review is limited.⁴⁴ On a writ of certiorari to the Pennsylvania Supreme Court, however, the scope of review will depend on the language of Section 1722. Pennsylvania courts have generally made a distinction between administrative decisions based on statutorily conferred discretion and those where the agency is performing this quasi-judicial function without specific statutory authority.⁴⁵ Under this distinction, courts have contended that when the legislature has conferred upon an agency a discretionary power, it was only logical that the court should seek to follow legislative intent by leaving to this agency the bulk of its discretion, thereby limiting judicial review to reversal of this agency only if it abused the discretion conferred upon it:⁴⁶ referred to as *narrow* certiorari. Specifically, the Pennsylvania Supreme Court has required the legislature, in conferring this discretion upon the agency, to state that the agency's decision shall be "final" and without a right of appeal to the courts.⁴⁷ On the other hand, when there is no such clear intent to give the agency the discretionary power and the agency has nonetheless exercised discretion, (what *Weichman* calls a "quasi-judicial" decision) then the reviewing court should look to see if this decision is supported by substantial evidence: a degree of review referred to as *broad* certiorari. With this distinction in mind, we must look to the language of the Allegheny County Regulations, namely Section

44. *Id.*, *Upper Darby National Bank v. Smith*, 67 Dauph. 3 (1954).

45. *Pennsylvania State Police v. Weichman*, 86 Dauph. 323 (1966).

46. *Id.*

47. *Swank v. Myers*, 386 Pa. 331, 126 A.2d 267 (1956) and *Man O' War Racing Ass'n. v. State Horse Racing Commission*, 433 Pa. 432, 250 A.2d 172 (1969), *reviewed at* 8 Duq. L. REV. 161 (1970).

1722, to see if any discretion of the judicial nature is conferred upon the hearing body. Since Section 1722 is not worded so as to confer upon the hearing body a broad discretion or to make the hearing decision final and not subject to judicial review, the scope of review to the Supreme Court should be *broad* certiorari, looking to see that the decision is based on substantial evidence.

B. Appeals From Emergency Orders

The scope of review of emergency orders of the Director appears to follow the pattern of review of 1722 hearings. Since there can be an appeal to the Commonwealth Court on the jurisdictional issue, its review is limited to the single issue of abuse of discretion. With the Supreme Court review by writ of certiorari, the scope will be *broad* since no language in the Allegheny County Regulations specifically makes the Director's emergency orders final or not subject to judicial review.

C. Appeals From Variance Decisions

The big question that arises when variance appeals are taken to the Allegheny County Common Pleas Court is the scope of review that will be made of the Appeals Board's decisions. Under the Pennsylvania Motor Vehicle Code,⁴⁸ where an appeal is provided to the common pleas court of the defendant's county from the Secretary of Revenue's decision to suspend a license, the action of the common pleas court is to grant a trial de novo, considering anew all of the evidence pro and con regarding the suspension.⁴⁹ The wording of this statute, however, indicates that the appeal to the common pleas court is to take the form of a trial de novo,⁵⁰ while the Allegheny Regulations are silent regarding the scope of the review in the Court of Common Pleas. Thus, it appears that a trial de novo should *not* be implied from the silence of the Allegheny County Regulations.⁵¹ A

48. PA. STAT. ANN. tit. 75, § 192(b).

49. Commonwealth v. Antolich, 194 Pa. Super. 300, 166 A.2d 541 (1961); Commonwealth v. Herzog, 359 Pa. 641, 60 A.2d 37 (1948).

50. PA. STAT. ANN. tit. 75, § 192.

51. See, Booker Hotel Corp. Liquor License Case, 175 Pa. Super. 89, 103 A.2d 486 (1954), where the court held that in the absence of specific language granting to the reviewing court the right to grant a trial de novo, the reviewing common pleas court is not to take new testimony, but to only use the testimony taken by the board and review for abuse of discretion.

better approach to finding the appropriate scope of judicial review by Common Pleas Court is by drawing an analogy between an appeal to Common Pleas Court and an appeal by writ of certiorari to the Pennsylvania Supreme Court. As mentioned earlier, the scope of the Supreme Court's review on certiorari depends on the degree of discretion conferred upon the agency by the appropriate statute. It is submitted that the Allegheny County Common Pleas Court should use this method of determining its scope of review. Applying this test, it is clear that the Allegheny County Regulations intended to confer a high degree of discretion upon the Appeals Board. This deduction that such was their intent comes not only from the use of the word "final" in reference to the Appeals Board's decisions, but also from the power conferred upon the Board to subpoena witnesses, to administer any oaths necessary for testimony, and to use broad discretionary powers *specifically* conferred on the Appeals Board by Section 1704. Wide discretion having clearly been conferred upon the Appeals Board, the scope of the Allegheny County Common Pleas Court's review on Board decisions should be limited to an inquiry as to whether or not the Board has abused its discretion.⁵²

SUMMARY

There remain many questions unanswered regarding appellate procedure, but many can be answered through *positive* action by the Pennsylvania Air Pollution Control Commission and by the Pennsylvania and Allegheny County Departments of Health. It might be argued that these agencies are without authority to take any action to establish appellate procedure and that any action by them in this direction may end up in a legal battle over whether or not it is solely a legislative decision. What appears *more certain*, however, is that if they fail to act on these problems of appellate procedure and the potential conflicts between state and county action, they will *surely* end up in long, time-consuming court battles that will put enforcement of the Allegheny County air quality standards at a standstill.

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52. See, *Mutual Supply Co. Appeal*, 366 Pa. 424, 77 A.2d 612 (1951) where Allegheny County Common Pleas Court granted a full hearing on an appeal from a Board of Adjustments decision on a zoning variance because the controlling law specifically provided for trial de novo at Common Pleas. See also, *Crawford Zoning Case*, 358 Pa. 636, 57 A.2d 862 (1948), where the scope of a board's decision at Delaware County Common Pleas was solely whether the board abused its discretion.