Judicial Review of Administrative Action in Pennsylvania: An Updated Look at Reviewability and Standing

John K. Heisey
Comment

Judicial Review of Administrative Action In Pennsylvania: An Updated Look At Reviewability and Standing

INTRODUCTION

Ever since the reformation of administrative law in this country began to burgeon with the inception of the New Deal, the primary focus has been on federal doctrine.¹ Most areas of state administrative law have been subjects of only sporadic legal commentary, and the companion concepts of reviewability and standing are not exceptions.² Yet given the large number of state and local agencies,³ their power to affect the rights of private litigants,⁴ and the impact their decisions often have on the public interest,⁵ these concepts are vital ones on the state and local levels. Together they determine

---

1. See 1 F. Cooper, State Administrative Law 1 (1965) [hereinafter cited as Cooper]. Attention has focused on federal courts because they have traditionally been the leaders in the development of administrative law while state courts have tended to lag behind. Preface to K. Davis, Administrative Law Treatise at iv (Supp. 1976). Although the impetus for change in the area of standing has generally come from the federal courts, the federal doctrine has by no means always been clear. See Berger, Standing to Sue in Public Actions: Is It a Constitutional Requirement?, 78 Yale L.J. 816, 816 (1969) (“Confusion twice-confounded reigns in the area of federal jurisdiction described as “standing to sue.”)


4. In their quasi-judicial capacity, many agencies have power equal to that of courts in terms of their ability to determine the rights of those appearing before them. Consider, for example, the power of the State Workmen's Compensation Board and the Department of Public Welfare to grant or deny compensation and welfare benefits.

5. See, e.g., Man O'War Racing Ass’n v. State Horse Racing Comm’n, 433 Pa. 432, 439-40 & n.4, 250 A.2d 172, 176 & n.4 (1969), where the supreme court noted that the commission's grant of horse racing licenses was “fraught with public interest” in that it would generate state revenue in excess of $5,000,000 per 100-day meeting.
what administrative decisions can be reviewed by the courts and who has the right to seek review.

In Pennsylvania, both concepts have undergone change in recent years. Amendments to the Administrative Agency Law (AAL)\textsuperscript{6} and enactment of the Local Agency Law (LAL)\textsuperscript{7} have broadened the avenue of statutory appeal. At the same time, the supreme court's abolition of the extraordinary remedies in favor of a petition for review\textsuperscript{8} has simplified the nonstatutory review process. The concept of who has standing to challenge an administrative decision has also been reexamined by the Pennsylvania courts. The case of \textit{William Penn Parking Garage v. City of Pittsburgh}\textsuperscript{9} may lead to significant changes in the doctrine of public interest standing, opening the judicial doors to many who have heretofore been excluded.

This comment will examine reviewability and standing in the context of Pennsylvania administrative law and attempt to gauge the impact of these recent developments.

\section{Reviewability}

During the past nine years, the law concerning methods of judicial review from administrative agency decisions has undergone a marked change in Pennsylvania. Constitutional and statutory alterations have transformed a complex and uncertain system of review into one which grants an indiscriminate right of appeal.\textsuperscript{10} The final result warrants examination, since the change has been largely ignored by legal commentators\textsuperscript{11} and since it offers a legislative example which other states, some of which remain wedded to the extensive use of extraordinary writs as a major means of review,\textsuperscript{12} would

\textsuperscript{8} For rules governing the form and use of the petition for review in appeals from decisions of Pennsylvania administrative agencies, see Pa. R. App. P. 1511-1519. The nonstatutory review process in Pennsylvania is discussed in text accompanying notes 43-58 infra.
\textsuperscript{9} 464 Pa. 168, 346 A.2d 269 (1975).
\textsuperscript{10} For an examination of Pennsylvania's process of nonstatutory review of administrative decisions as it existed prior to the changes discussed in this comment, see Reader, \textit{Judicial Review of "Final" Administrative Decisions in Pennsylvania}, 67 Dick. L. Rev. 1 (1962) [hereinafter cited as Reader].
\textsuperscript{12} The review procedures provided by some states apply only to a limited number of state agencies and often have no application to local agencies. For two examples of such statutes,
do well to imitate.

The constitutional origin of the right to review in Pennsylvania is found in article 5, section 9 of the state constitution: "There shall be a right of appeal in all cases . . . from an administrative agency to a court of record or to an appellate court . . . ." Although this section is not self-executing, the statutory revisions designed to implement it have broadened the right of appeal and have done much to alleviate the problems of pleading inherent in the system which preceded the section's adoption in 1968. Under prior law, the right to judicial review stemmed from one of two sources — the agency's enabling legislation or the Administrative Agency Law. The statute having the most widespread impact was the AAL, which granted a right to appeal from adjudications of state administrative agencies to the Dauphin County Court of Common Pleas. Like most administrative procedure acts, however, the AAL contained provisions which limited its application. "Agency," as defined by the act, included only agencies having statewide jurisdiction; local bodies were not subject to any of its provisions. More importantly, section 51(a) limited application of "all" the AAL's

see note 58 infra. Persons seeking review from agencies not covered by the statutes are left to seek review by certiorari, mandamus, prohibition, injunction, or declaratory judgment. For a discussion of some of the problems associated with these nonstatutory forms of review, see text accompanying notes 43-58 infra.

13. Pa. Const. art. 5, § 9. The provision has been lauded by the Pennsylvania Supreme Court: "[Section 9] introduced a new concept to Pennsylvania jurisprudence, one which recognized the important position of administrative agencies in modern government, the quasi-judicial functions that many of them perform, and the fact that both property rights and personal rights can be seriously affected by their decisions." Smethport Area School Dist. v. Bowers, 440 Pa. 310, 314, 269 A.2d 712, 715 (1970).

14. Not all enabling statutes provided a means of review. Some were silent on reviewability while others provided that the particular agency's decision was "final" or "conclusive." See, e.g., Act of May 20, 1937, No. 193, § 4, 1937 Pa. Laws 728 (providing that awards made by the Board of Arbitration were "final and no appeal from such award to any court shall be allowed"); Act of May 15, 1933, No. 112, art. XIV, § 1406, 1933 Pa. Laws 624 (providing "[t]he decision of the Department of Banking shall be conclusive and not subject to review").


18. Id. § 1710.51(a).
provisions to forty-eight state agencies. Decisions of those bodies not enumerated in section 51(a) could not be appealed as of right unless the statute which had established the agency granted a supplemental right of appeal. For example, in *Department of Labor & Industry v. Snelling & Snelling*, the Dauphin County Orphans’ Court held that the AAL’s appeal procedures set forth in section 41 did not apply to a labor department decision denying partial refund of a license fee, since the department was not among the agencies listed in section 51(a). A second limitation, still in effect, is that the AAL’s provisions apply only to agency “adjudications,” that is, the quasi-judicial agency function. Agency rulemaking is therefore not subject to the AAL’s appeal provisions, and it is questionable whether ministerial agency actions are appealable.

19. While Pa. Stat. Ann. tit. 71, §§ 1710.51(b)-.51(d) (Purdon 1962) (amended 1963, 1968), made certain of the AAL’s provisions applicable to agencies not named in § 51(a), no mention was made in these subsections of application of the AAL’s review provisions to any agency not listed in § 51(a). The necessary inference was that those agencies not specifically named in § 51(a) were not entitled to review under the statute. See notes 20 & 21 and accompanying text infra.

20. 89 Dauph. 51 (C.P. Pa. 1968).


22. This limitation still exists, id., but its significance has been diminished by the changes in Pennsylvania’s nonstatutory review process, discussed in text accompanying notes 43-58 infra. For a discussion of what constitutes an “adjudication,” see Newport Homes, Inc. v. Kassab, 17 Pa. Commw. Ct. 317, 332 A.2d 568 (1975) (Department of Transportation’s rejection of applications for special hauling permits held to be an “adjudication”). The term is defined in the AAL as: “any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities or obligations of any or all of the parties to the proceeding in which the adjudication is made . . . .” Pa. Stat. Ann. tit. 71, § 1710.2(a) (Purdon Supp. 1977-1978).


24. Ministerial acts are those which require no exercise of discretion by the administrative tribunal. Black’s Law Dictionary 1148 (rev. 4th ed. 1968). The AAL’s broad definition of “adjudication” would seem to encompass such acts, but the courts have on occasion held the definition to include only decisions which are quasi-judicial in nature. See, e.g., Insurance Co. of N. America v. Pennsylvania Ins. Dept., 15 Pa. Commw. Ct. 462, 465-66, 327 A.2d 411, 413 (1974) (Insurance Department’s promulgation of regulation held not to be an adjudication within meaning of the AAL). It is worth noting, however, that most decisions holding that a decision must be quasi-judicial in order to qualify as an “adjudication” involve the distinction between an adjudication and a regulation rather than between an adjudication and a ministerial act. Thus, it is not clear whether ministerial acts are subject to the AAL’s review procedures.
Both the Pennsylvania legislature and the supreme court have made changes designed to eliminate at least one of these limitations and lessen the impact of the others, thereby giving effect to the broad right of appeal granted by the state constitution. To begin, the AAL now provides that its review procedures are available as of right to every administrative body which falls within the act's definition of "agency." Section 51(a) still limits application of "all" the AAL's provisions to the forty-eight named agencies, but section 51(c) now provides that section 47 does apply to agencies not listed in section 51(a). Section 47 provides that the general review procedures described in section 41 shall apply to an agency, even if the agency's enabling statute is silent on appeal procedures or expressly denies a right of appeal. Read together, then, sections 51(c), 47, and 41 provide a means of appeal from adjudications made by every Pennsylvania administrative body having statewide jurisdiction.

This reading of the AAL has been accepted in Burly Construction Corp. v. Commonwealth and Newport Homes, Inc. v. Kassab, two commonwealth court cases in which adjudications by agencies not named in section 51(a) were held appealable. In both cases, the court found that section 47 counteracted the exclusion previously effected by section 51(a). Only the Pennsylvania Supreme Court, in a decision rendered less than two months after the AAL's amendment, could be said to have impliedly found otherwise. In Man O'War Racing Association v. State Horse Racing Commission, the

---

25. PA. STAT. ANN. tit. 71, § 1710.2(b) (Purdon 1962) defines "agency" as:
   any department, departmental administrative board or commission, independent
   administrative board or commission, officer or other agency of this Commonwealth,
   now in existence or hereafter created, having Statewide jurisdiction, empowered to
determine or affect private rights, privileges, immunities or obligations by regulation
or adjudication, but shall not include a court of record nor a magistrate, alderman or
justice of the peace.
section of the AAL. See note 16 supra.
29. 4 Pa. Commw. Ct. 46, 284 A.2d 841 (1971) (that Department of Justice was not among
the agencies listed in § 51(a) did not preclude appeal in light of § 47).
Department of Transportation held appealable under AAL even though department was not
named in § 51(a)).
court granted certiorari under its rule 68 1/2 to review the commission’s grant of a horse racing license. Certiorari under rule 68 1/2 was premised on the absence of a provision for statutory appeal. To satisfy this premise, the court apparently looked only to the commission’s enabling statute, which was silent regarding appeals; the court made no mention of a possible right to appeal under the AAL. It is thus arguable that the supreme court did not recognize the broad right of appeal which the AAL seems to grant. But the inference is not a necessary one. Even had the court examined the relevant AAL sections, it may still have found the right of appeal lacking in that case, since the commission’s decision had been made before the amended AAL became effective. In any case, the exact issue which confronted the commonwealth court in Burly and Newport has not yet been squarely addressed by the supreme court. It seems clear, however, that the court will eventually follow the commonwealth court decisions. The AAL’s language and the idea behind the constitutional amendment—that the importance and power of administrative agencies warrant a general right of appeal—would seem to allow no other result.

Another legislative change has done even more to broaden the

33. Rule 68 1/2 provided in part:

Where the subject matter does not fall within the statutory jurisdiction of the Superior Court, an appeal to the Supreme Court in the nature of a certiorari from a judgment, order or decree will lie only if specially allowed by the Court or by a Judge thereof, where a statute expressly provides that there shall be no appeal from the decision or order or judgment or decree of a Court, or that the decision or order or judgment or decree of a Court shall be final or conclusive or shall not be subject to review, or where the statute is silent on the question of appellate review.

34. The court did not discuss the statutes which it considered in deciding that certiorari would lie, but had it found § 47 of the AAL applicable, it seems that the court would have been precluded from granting certiorari under rule 68 1/2, since § 47 grants a statutory right of appeal.
36. In Smethport Area School Dist. v. Bowers, 440 Pa. 310, 269 A.2d 712 (1970), the supreme court had an opportunity to correct what appears to have been an erroneous conclusion made by the Dauphin County Court of Common Pleas that agencies not specifically enumerated in the AAL were not subject to the Act’s provisions. Id. at 312-13, 269 A.2d at 714. The supreme court decided that jurisdiction to review the common pleas decision lay with the superior court and remitted the case to that court without commenting on the basis of the common pleas court’s dismissal.
Comment

availability of statutory review. The 1968 enactment of the Local Agency Law\(^3^8\) has supplemented the AAL by providing a right of review from agencies of political subdivisions. Aside from providing review to an appropriate court of common pleas rather than to the commonwealth court,\(^3^9\) the LAL's review mechanism is identical to that outlined in the AAL. The right of appeal which it grants applies to decisions of all local agencies other than those whose decisions are appealable under another existing statute,\(^4^0\) but, like the AAL, it provides review only from agency adjudications.\(^4^1\) Together, then, the two statutes provide a right of appeal from the adjudications of virtually every state and local administrative agency in Pennsylvania.\(^4^2\)

This constitutional and statutory remodeling has lessened the need for persons aggrieved by an agency's decision in Pennsylvania to turn to extraordinary remedies as a means of obtaining review. The change is not inconsequential. Reliance on extraordinary remedies—certiorari, mandamus, and injunctive relief—as a means of reviewing an administrative agency's decision breeds both practical and conceptual problems—problems that persist in states which do not grant a universal right of appeal.

Certiorari was probably the most important nonstatutory tool available for obtaining review of contested administrative actions in Pennsylvania prior to the legislative revision discussed above.\(^4^3\) Like the statutory appeal provisions of Pennsylvania's two administrative procedure acts, certiorari was limited to the review of adjudications.\(^4^4\) Since it normally would not be used as a substitute for an

---

39. *Id.* § 11307.
40. "Local agency," as defined by the LAL, does not include any agency which qualifies as an "agency" under the AAL. *Id.* § 11302(2).
41. *Id.* § 11307.
42. Although the review provisions of the two acts have broad application, they do not apply to all Pennsylvania administrative decisions. The AAL does not grant a right of appeal from decisions involving the seizure or forfeiture of property, paroles, pardons, or releases from mental institutions. **PA. STAT. ANN. tit. 71, § 1710.2(a) (Purdon Supp. 1977-1978).**
43. *See, e.g.,* Keystone Raceway Corp. v. State Harness Racing Comm'n, 405 Pa. 1, 173 A.2d 97 (1961) (certiorari used to review commission's grant of harness racing license); Dauphin Deposit Trust Co. v. Myers, 388 Pa. 444, 130 A.2d 666 (1957) (certiorari used to review Department of Banking's disapproval of proposed merger plan for two banks); Newport Township School Dist. v. State Tax Equalization Bd., 366 Pa. 603, 79 A.2d 641 (1951) (certiorari used to review Board's decision).
44. *See 3 DAVIS, supra note 2, § 24.02.*
authorized appeal process, certiorari was eclipsed by the broadened scope of the statutory procedures in Pennsylvania. The change is desirable for two reasons. First, certiorari is a discretionary writ, issued primarily by the state supreme court, already occupied with a heavy load of cases. The right to review by certiorari was, therefore, never guaranteed. Second, when the writ was issued, the scope of review which courts permitted themselves to exercise varied with the terms of the particular agency's enabling statute. If the statute which had created the agency was silent on the right of appeal or did not say that the decision of the agency should be nonappealable, an appeal could be taken in the nature of broad certiorari. The court could consider the record, including the testimony, to determine whether the findings were supported by competent evidence and to correct any erroneous conclusions of law. On the other hand, if an appeal was prohibited under the agency's statute, or if the agency's decision was described as final or conclusive, review was limited to narrow certiorari; the court's inquiry could not extend beyond questions of jurisdiction, the regularity of the proceedings, and constitutional issues.

This broad versus narrow certiorari rule, a concept which emanated from the appellate review of lower court decisions, caused problems when applied to review of an administrative agency decision. It prevented some appellants from ever obtaining a full judicial review of an adverse adjudication. Also, the doctrine in effect gave

45. See Spelling, A Treatise on Injunctions and Other Extraordinary Remedies § 1892 (1901). See also Erie Human Relations Comm'n ex rel. Dunson v. Erie Ins. Exch., 465 Pa. 240, 348 A.2d 742 (1975) (availability of appeal under LAL precluded other means of review), where the court said: "'[W]here statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued, to the exclusion of other methods of redress. This is particularly true of special statutory appeals from the action of administrative bodies.'" Id. at 245, 348 A.2d at 744 (emphasis in original) (citations omitted).

46. As mentioned in text accompanying note 44 supra, certiorari is available only to review adjudications, virtually all of which are now appealable under the combined provisions of the AAL and LAL.

47. Power to issue the writ to administrative tribunals is exclusively that of the Pennsylvania Supreme Court. See Reader, supra note 10. But see Department of Labor & Indus. v. Snelling & Snelling, 89 Dauph. 51 (C.P. Pa. 1968) (court implied that certiorari could issue to an administrative agency from a court of common pleas where the agency's enabling statute expressly gives the court authority to issue the writ).


49. Id. at 437, 250 A.2d at 174.

50. See Reader, supra note 10, at 8 & n.39.
the legislature power to limit the scope of review exercised under certiorari, a result which at least one legal commentator suggested was contrary to the constitutional provision vesting judicial power in the courts. Combined, the AAL and LAL, both of which allow a scope of review similar to that which was available under broad certiorari, have eliminated these problems.

Until recently, another problem accompanied the general use of extraordinary remedies as a means of review. The specialized nature of each writ and the uncertainty of which remedy would be deemed appropriate in a given case often made it necessary for the appellant to resort to filing multiple "shotgun" pleadings in equity, mandamus, prohibition, etc. Among the nonstatutory modes of appeal, mandamus was limited to review of ministerial agency acts; prohibition issued only to prohibit an agency from assuming jurisdiction it did not have or from abusing its proper jurisdiction; and equitable relief was available to review nonadjudicatory functions which still required an exercise of discretion, such as the promulgation of rules. If the appellant proceeded under only one form of remedy and that remedy was deemed inappropriate, the result was dismissal. This problem survived the revision of the administrative procedure acts since, as already noted, the acts' review procedures, like certiorari, applied only to review of agency adjudications. The issue which most commonly arose was whether a particular agency decision was an adjudication or a regulation. The former was appealable under the AAL and LAL, while the latter was subject to review only through an action for declaratory judgment or injunctive relief.

The wasteful necessity of filing multiple pleadings has been removed by a 1976 amendment to the Pennsylvania Rules of Appellate Procedure which abolishes all distinction between the various methods of review insofar as pleading is concerned, in favor of a "petition for review." The new rule presumably does not alter the

51. Id. at 7 & n.38.
52. Concern over the necessity of using multiple pleadings is reflected in the official note to PA. R. APP. P. 1502. See the portion of the note quoted at note 56 infra.
54. See Reader, supra note 10, at 22-23.
55. Id. at 26.
56. PA. R. APP. P. 1501-1561 now dictate the procedures to be followed in seeking judicial review of governmental determinations. Rule 1502 abolishes all forms of appeal and extraordinary remedies in favor of the "petition for review." The amendment in effect shifted the
requirements necessary for the grant of a particular form of relief, but it has the advantage of allowing the court to choose the appropriate relief rather than requiring dismissal if the appellant happened to select the wrong remedy. 57

The foregoing legislative and judicial revisions provide Pennsylvania with perhaps the most comprehensive judicial review system available in the area of state administrative law. Two other states moved earlier to abandon the distinctions between the extraordinary remedies in favor of a petition for review, but the overall right to review in those states remains limited. 58 Certainly, the grant of a universal right to judicial review warrants consideration by those states which have yet to adopt it. Although the quasi-judicial role of administrative agencies is a useful one, there is little, if any, reason to deny a litigant one adjudication of his rights in a court of law. Any concern over tying up the courts with a plethora of frivolous appeals is better addressed in the context of standing, the subject of the following section.

II. STANDING

In Pennsylvania, as elsewhere, the fundamental concept governing the law of standing to appeal from administrative proceedings is that only those who have been adversely affected by an agency’s decision are entitled to have it reviewed by the courts. 59 The reason
underlying the concept is simple: the more remote a plaintiff's interest, the more likely it is that the machinery of the courts would not be used economically in reviewing the agency's decision.60 Allowing anyone to challenge agency decisions would, in effect, turn the courts into state and local planning bodies—a result which is neither practical nor desirable.61 But concluding that not everyone should have standing is much easier than deciding who should be entitled to judicial review. The tests formulated by the Pennsylvania Supreme Court to deal with the problem have created uncertainty as to what level of interest must be invaded before an appellant will have standing. The tests have provided only broad criteria to guide lower courts, and the criteria have, on occasion, been altered. The supreme court attempted to clarify matters in William Penn Parking Garage v. City of Pittsburgh,62 but the commonwealth court, which makes the initial standing determination in virtually every case involving a state agency, appears uncomfortable with the result.

A. Pre-William Penn Doctrine:

The Traditional Test v. Requirement of a Legal Right

A discussion of standing to challenge administrative action in Pennsylvania necessarily centers around judicial interpretation of the words “person aggrieved.” Both the AAL and LAL, as well as statutes governing procedure before specific agencies, limit standing to appellants who fit that category.63 The traditional definition of


60. Professor Stewart, in his discussion of federal standing, lists additional reasons for limiting standing. First, an agency's regulation or adjudication often represents a compromise of conflicting interests. For the agency to compromise effectively, it must know whose interests it must consider in formulating its decision. Limiting standing to challenge the agency's action alerts the agency to those interests which it must consider. Second, even if the agency has blatantly violated a statutory mandate, there is no reason to allow a disinterested person to challenge the action, since those directly affected by it may be satisfied with the result. Finally, allowing anyone to challenge an agency decision would lead to distorted construction of applicable statutes. Stewart, supra note 2, at 1734-42.

61. Id. at 1737.


“person aggrieved,” however, stems from a decision which predates the statutes. In *Lansdowne Board of Adjustment’s Appeal*, where a local board of adjustment was denied standing to appeal a lower-court reversal of its decision, the supreme court held standing would be accorded only to an appellant who could establish “‘a [direct] interest in the subject-matter of the [particular] litigation . . . . [N]ot only must a party desiring to appeal have a [direct] interest in the particular question litigated, but his interest must be immediate and pecuniary, and not a remote consequence of the judgment. The interest must also be substantial.’” The court held its test to be applicable to those who were parties to the litigation as well as to nonparties. On occasion, certain of the four criteria—direct, immediate, pecuniary, or substantial—were deemphasized by courts in order to provide standing in a particular case. But the test’s language was not altered and, in large part, it has continued vitality.

Beginning in the mid-1960’s, the supreme court began to graft onto the traditional test the requirement that the interest asserted be in the nature of a legal right. If the interest the appellant asserted was not protected either by common law or by statute, he had no standing to appeal. In adopting the legal right test, Pennsylvania courts were probably influenced by federal standing decisions in which the legal right test had been applied for several decades. In Pennsylvania, it was never clear whether the need for showing a legal right was intended as a separate requirement or merely an expression of one or more of the *Lansdowne* criteria, but it became the basis upon which many appellants were denied standing.

64. 313 Pa. 523, 170 A. 867 (1934) (challenge to a court’s reversal of the board of adjustment’s denial of a prayed-for exception to a local zoning ordinance).
65. Id. at 525, 170 A. at 868.
66. Id.
67. For example, in *In re Azarewicz*, 163 Pa. Super. Ct. 459, 62 A.2d 78 (1948), a church was held to have standing to appeal the reversal of the Liquor Control Board’s decision not to issue a license to an applicant whose establishment was located within 300 feet of the church. The court did not mention the appellant’s failure to assert a pecuniary interest in the court’s reversal. In *Commonwealth v. Abington Township*, 98 Montg. 406 (C.P. Pa. 1974), the pecuniary interest requirement was again ignored when an environmental organization was accorded standing to challenge the decision of a zoning hearing board.
68. See, e.g., *Edward Hines Yellow Pine Trustees v. U.S.*, 263 U.S. 143 (1923) (firm enjoying a competitive advantage under railroad rate structure denied standing to challenge ICC orders amending the rates); ICC v. *Diffenbaugh*, 222 U.S. 42 (1911) (grain dealers had standing to challenge ICC order forbidding railroads to honor their contracts with the dealers, since appellants alleged a contract right protected under common law).
The legal right criterion was first set forth by the supreme court in *Louden Hill Farm, Inc. v. Milk Control Commission,* an appeal brought under the Milk Control Act from the commission’s schedule of prices governing the sale of milk. The appellant, a corporation operating a chain of dairy stores, contended that retail store milk prices should be lowered in order to allow it a profit increase more in keeping with its method of production and marketing. Standing was denied on the ground that the Milk Control Act imposed a duty on the commission to provide only a reasonable return to dealers and producers. Since it did not allege its right to a reasonable return had been violated, the appellant lacked standing; the appellant had no right to demand maximized profits.

There is some question as to whether the appellant in *Louden Hill* could have satisfied even the traditional *Lansdowne* standard. Since the commission’s schedule did increase the appellant’s profits, though not to the level the appellant desired, it seems that the “pecuniary” interest may have been lacking. But the court clearly based its decision on the absence of a legally protected right. Justices Roberts, Bell, and Jones dissented, characterizing the majority’s construction of “person aggrieved” as “unreasonably strained and narrow.” The dissenters argued that application of a legal right test confused the question of standing with the merits of the appellant’s appeal.

The soundness of this latter criticism is borne out by at least one subsequent lower court decision. In *John F. Davis Co. v. Pennsylvania Milk Control Commission,* the Dauphin County Court of Common Pleas denied standing to a restaurant owner who complained that the Milk Control Commission’s pricing scheme created for bakeries an arbitrary and discriminatory exception to the

---

70. *Id.* at 550, 217 A.2d at 736.
71. *Id.* at 552, 217 A.2d at 737.
72. The court did not address the issue of whether a pecuniary interest existed. It is possible, however, that the court did not conceive pecuniary “interest” as the equivalent of pecuniary “injury.” In that case, even though the appellant benefitted from the commission’s order, the pecuniary interest requirement would have been satisfied. In his dissent to the *Louden Hill* decision, Justice Roberts did assert that the appellant had a pecuniary interest in the commission’s order. 420 Pa. at 552, 217 A.2d at 737 (Roberts, J., dissenting).
73. *Id.* at 551, 217 A.2d at 737.
74. *Id.* at 552, 217 A.2d at 737.
75. *Id.*
scheme's price-fixing provisions, an exception unavailable to restaurants or cafeterias. The court first quoted the Lansdowne test and found the appellant's interest too speculative to accord him standing. But the court went on to hold that the appellant lacked standing because it had suffered no invasion of a legal right.\footnote{Id. at 611.} In so holding, the court dealt with the merits of the appellant's claim that the regulation was arbitrary and discriminatory. Thus, the application of a legal right test does seem to blur the distinction between an appellant's standing and the merits of his appeal. Deciding whether a legal right exists involves an examination of the appellant's statutory and common law rights vis a vis the agency, a process which is little different from examining the appeal on its merits.\footnote{For a discussion of the legal right test as it developed in the federal courts, see 3 Davis, supra note 2, § 22.04.}

Whether a court's consideration of the merits as a separate issue rather than as part of the standing determination would ever lead to a different result in a case is difficult to judge. Theoretically, the result should \emph{not} differ. An appellant denied standing because he could not assert an interest in the nature of a legal right would have been no better off if standing had been granted; he would have had to prove an invasion of his legal rights to obtain some form of relief. On the other hand, it is arguable that his claim of an invaded right, particularly if a constitutional right, may be accorded less thorough consideration if examined as part of the standing determination rather than on the merits of his appeal. Furthermore, denying an appellant relief on the theory he had no standing to challenge the administrative action may unnecessarily leave the appellant feeling that the merits of his claim were never fully considered, even though they were in fact dealt with in the standing context.

A further limitation stemming from strict adherence to a legal right test for standing is that, occasionally, an agency decision may invade the legal rights of a large number of people, without injuring any one of them to any great degree. If a class action were difficult to organize, the injured persons might at least agree to allow a person having a substantial economic interest in the case to act as a surrogate for them, even though the surrogate could not himself claim invasion of a legally protected right. This idea apparently has
not been advanced in more than one Pennsylvania case, but it is obvious that it would not meet with favor in courts applying the test advanced in *Louden Hill* and its progeny, since the person bringing the appeal could allege no invasion of his legal rights.

While some Pennsylvania courts have applied the legal right criterion, others have ignored it, basing their decisions solely on the criteria announced in *Lansdowne*. At least one common pleas court seems to have followed neither standard, granting a plaintiff standing even though it had no pecuniary interest in the agency's decision and had not asserted the invasion of a legal right.

Faced with this...
confusion among the lower courts, the Pennsylvania Supreme Court, in 1975, attempted to clarify the proper test for standing.

B. The William Penn Decision

William Penn Parking Garage v. City of Pittsburgh was an appeal from the adoption of a local ordinance imposing a tax on all patrons of "non-residential parking places" in the amount of twenty percent of the price paid for storage of their vehicles. Two groups of petitioners were involved: nine operators of commercial parking facilities and fifty-five city residents. The petitioners contended the tax was confiscatory, discriminatory, and excessive.

The court of common pleas denied the appellants standing to challenge the ordinance. The court considered the operators' complaint that the tax would cause them to lose patronage to be too speculative and remote. As to the individual appellants, the court held that even if they appealed as users of parking facilities who would be required to pay the tax, their interest was no different from that of any other member of the general public and was therefore insufficient to accord them standing.

The commonwealth court reversed, holding that the operators' complaint of lost profits and the individuals' assertion that they would be forced to pay the tax were clearly sufficient to accord them standing, both interests being direct and pecuniary. The city then appealed the standing issue to the Pennsylvania Supreme Court.

In an opinion written by Justice Roberts, author of the dissent in Louden Hill, the supreme court affirmed the commonwealth court's grant of standing. The court reexamined the Lansdowne test, along with its added legal right requirement, and made two substantial changes in the Pennsylvania standing doctrine. First, the court concluded the "pecuniary" criterion added nothing to the requirement that an appellant's interest be "substantial," and declared it to be an inappropriate consideration in deciding the issue of standing.

The court said it was "clear that some interests will suffice to confer

85. See id. at 511, 314 A.2d at 324 (commonwealth court's discussion of the common pleas decision).
86. Id.
87. Id.
88. Id. at 512-13, 314 A.2d at 325.
89. 464 Pa. at 195, 346 A.2d at 282.
standing even though they are neither pecuniary nor readily translatable into pecuniary terms." Second, the court formally abandoned the legal right requirement.

In addition, the court attempted to clarify the remaining Lansdowne criteria. It said the "direct" requirement meant nothing more than that the appellant must show the alleged harm is or will be caused by the matter being appealed—the equivalent of cause-in-fact. The court further explained the "immediate" and "not a remote consequence of the judgment" criteria as intended to reflect a single concern—that the alleged injury be proximately caused by the decision being appealed.

C. An Analysis of William Penn and Its Impact

The most striking aspect of the William Penn decision is that

---

90. Id. at 193, 346 A.2d at 281.
91. The court said: "The requirement of a 'legal interest' tends to conceal the necessary construction of the legal rules relied upon by the challenger and therefore is not a useful guide to the determination of standing questions." Id. at 202, 346 A.2d at 286.
92. The "directness" test used by the court amounts to a "but for" test of causation. In defining the "direct" criterion, the court referred to Warth v. Seldin, 422 U.S. 490 (1975), where those seeking to challenge a local zoning ordinance as exclusionary were denied standing because they failed to show that they would have been able to obtain housing within the zoned community were it not for the alleged unconstitutional ordinance. The Supreme Court there said:

We may assume ... that respondents' actions have contributed, perhaps substantially, to the cost of housing in Penfield. But there remains the question whether petitioners' inability to locate suitable housing in Penfield reasonably can be said ... to have resulted ... from respondents' alleged constitutional and statutory infractions. Petitioners must allege facts from which it reasonably could be inferred that, absent the respondents' restrictive zoning practices, there is a substantial probability that they would have been able to purchase or lease in Penfield and that, if the court affords the relief requested, the asserted inability of petitioners will be removed.

Id. at 503 (emphasis added). See 464 Pa. at 196, 346 A.2d at 282-83.

The Pennsylvania Supreme Court also cited Linda R.S. v. Richard D., 410 U.S. 614 (1973), where a woman was denied standing to challenge a Texas nonsupport statute which allegedly discriminated against illegitimate children. The court held the plaintiff had shown an injury to herself, but had failed to show how a nondiscriminatory statute would have assisted her in obtaining support payments, since action under the criminal statute would be dependent on the discretion of the prosecutor.

Assuming the court has adopted the test of causation used in Ward and Linda R.S., a showing that the alleged act is a substantial factor in causing the alleged harm will probably not make an appellant's interest direct enough to accord him standing.

93. The court offered two generalizations to guide lower courts in determining what interests are immediate: (1) as the causal connection grows more remote, the likelihood of standing diminishes, and (2) standing will be found more readily where protection of the type of interest asserted is among the policies underlying the legal rule relied upon by the person claiming to be "aggrieved" by the agency's decision. 464 Pa. at 197-99, 346 A.2d at 283-84.
neither of the changes the supreme court made in the existing test for standing was essential to its resolution of the case. A finding of standing could easily have been made without altering the test used in *Louden Hill*. Both groups of petitioners asserted a pecuniary interest in the outcome of the litigation; the parking lot operators claimed they would lose profits if the ordinance were enforced and the individual citizens complained they would be among those required to pay the tax. Both groups also arguably asserted an invasion of their legal rights. The operators claimed the tax unconstitutionally discriminated against them in favor of the public parking authority; the parking lot users asserted the tax was excessive, unreasonable, and unconscionable.

It should also be noted that the matter being appealed in *William Penn* was not the decision of an administrative agency in the sense that term is used in the AAL, but an appeal from a legislative enactment. Whatever bearing the decision has on standing to appeal administrative decisions, therefore, stems from the supreme court's reliance on federal decisions involving judicial review of administrative action in formulating its test.

These two observations probably account for some of the hesitance with which the commonwealth court has applied *William Penn* to appeals from administrative bodies. The commonwealth court's first opportunity to discuss *William Penn* came more than a year after that decision. In *Snelling v. Department of Transportation*, the court was faced with an appeal from the Secretary of Transportation's issuance of highway occupancy permits needed for the construction of certain highway improvements. The petitioners were the City of Allentown, the Allentown-Lehigh County Chamber of Commerce, a local sporting goods store, and several individual appellants. The court dismissed the city's complaint on the ground that no municipality had standing to assert the claims of its individ-

---

94. This fact was noted in Justice Eagen's concurring opinion, in which he labeled the majority's elimination of the pecuniary requirement "inappropriate." 464 Pa. at 221, 346 A.2d at 296 (Eagen, J., concurring). See also Note, 37 U. Pitt. L. Rev. 767 (1976).

95. In concluding that the pecuniary requirement was unnecessary, the court referred to United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973) (plaintiffs alleging injury to environmental interests accorded standing) and Sierra Club v. Morton, 405 U.S. 727 (1972) (environmental interests sufficient to accord plaintiffs standing). 464 Pa. at 193 n.20, 346 A.2d at 281 n.20.


97. Id. at 278, 366 A.2d at 1300.
The court applied the *William Penn* standard in denying the other petitioners standing. The court quoted at length from *William Penn*'s discussion of the "direct" and "immediate" part of the test and found the claims of the chamber of commerce and the sporting goods store—that they would suffer a loss of business due to a rerouting of traffic—satisfied neither criterion. The individuals' claims that the construction would create a safety and health hazard for them was also held insufficient to accord standing. But the court seemed less than confident in applying the *William Penn* test. After making its standing determination, the court went on to discuss at length the merits of the petitioners' appeal, so as to provide additional grounds for reaching a similar result "in the event that a higher court concludes that we have incorrectly determined the standing issue."

The commonwealth court's most recent discussion of standing to appeal an administrative decision came in *Western Pennsylvania Conservancy v. Pennsylvania Department of Environmental Resources*. In that case, a land development corporation challenged the standing of the Conservancy, an environmental group, to appeal a settlement agreement entered into between the development corporation and the Environmental Hearing Board (EHB). The court held the action of the development corporation was moot, but nevertheless commented on the Conservancy's standing to challenge the EHB's decision: despite its status as "'an environmental organization whose members use and enjoy state parks,'" the Conservancy probably lacked standing to challenge an agreement that could have resulted in harm to state parks. Whether the Conservancy would have had standing under the test promulgated in *William Penn* is questionable, but the commonwealth court's dicta that standing would have been denied did not even include a reference to *William Penn*. Instead, noting that the federal cases may support a finding of standing in such a case, the court said it saw

---

98. Id. at 281, 366 A.2d at 1301. Other jurisdictions have taken a contrary position on the standing of municipalities. See *Cooper*, supra note 1, at 547-48 and cases cited therein.

99. After quoting from *William Penn*, the court offered no explanation of how the *William Penn* test applied to the facts of the case before it. It merely stated its conclusion that the interests of these petitioners were "highly speculative at best." 27 Pa. Commw. Ct. at 283-84, 366 A.2d at 1302-03.

100. Id.


102. Id. at 209, 367 A.2d at 1150.
no reason "to depart from the somewhat stricter standard, developed in the Pennsylvania cases, with respect to who is a 'person aggrieved' by an administrative adjudication," citing Louden Hill and two other pre-William Penn decisions. Whether the court's failure to cite William Penn represents a belief that the supreme court's test is inapplicable to review of administrative adjudications is unclear. Whatever the court's rationale, however, the discussion in Conservancy creates some uncertainty as to which test is being applied by the commonwealth court.

If the William Penn test is applied to appeals from administrative decisions, the availability of appeal will be considerably broadened, particularly for those seeking to challenge environmental decisions, and the concept of surrogate standing will no doubt be adopted. Pennsylvania will have an enlightened standing doctrine comparable to that used today in the federal courts.

CONCLUSION

The legislative and judicial changes effected in Pennsylvania's administrative law doctrines of reviewability and standing provide a system of review consistent with the prominent role administrative tribunals play in modern government. Those who suffer a substantial adverse effect from administrative action in Pennsylvania are assured in nearly every case of at least one judicial hearing on the merits of their claim.

JOHN K. HEISEY

103. The court also cited Community College v. Fox, 20 Pa. Commw. Ct. 335, 342 A.2d 468 (1975) (landowners had standing to challenge issuance of sewage permit which would adversely affect their land) and Committee to Preserve Mill Creek v. Secretary of Health, 3 Pa. Commw. Ct. 200, 281 A.2d 468 (1971) (group of citizens denied standing to challenge issuance of sewage disposal permit, since the group, as opposed to its individual members, owned no property in the area). Id. at 209, 367 A.2d at 1150.

104. In its opinion in the William Penn case, the commonwealth court said: "Case law concerning parties aggrieved entitled to appeal administrative orders is of doubtful precedential value here." This, however, may not support the conclusion that the court would conversely deem William Penn inapplicable to appeals from administrative agencies. It would seem that standing should be accorded at least as readily when the challenge is to the action of a nonelected administrative body as it is when an act of the legislature is challenged.