Week Five Lecture

**Administrative Law**

As a discipline, administrative law has a few layers of definition. It is important to note that administrative law, as a body of law, is relatively new compared to other bodies of law. Administrative law developed as the size and bureaucracy of the American government grew. Much of this early development happened in the late 1800’s and reached a maturity in the New Deal Era. As the American bureaucracy (federal government) grew and made decisions, largely in response to the actions of large and powerful industries, the court cases, primarily, which were decided in response to these developments, created the body of law known as administrative law.   
  
As a simple definition, administrative law looks at the process, or procedure, of how fair and accurate the government (federal, state, and local) is in making decisions during the implementation of law. There are a couple of facets of administrative law that are worth noting: due process and the rulemaking process.

**Due Process**

The concept of due process originates in the U.S. Constitution: the Fifth Amendment, regarding the actions of the federal government, and the 14th Amendment, regarding the actions of state and local governments. It states that “no person shall… be deprived of life, liberty, or property, without due process of law” (U.S. Const. amend. V). In other words, before the government (federal, state, or local) attempts to take your life (i.e. execute you), liberty (i.e. place you in jail), or property (i.e. take your property or money), you, as a citizen, must be given an opportunity to contest the government’s actions and provide evidence to contradict their claims. In short, the government cannot take something from you without you being allowed a chance to stop them.   
  
This becomes important for administrative law because many of the cases that make up administrative law deal with the how fairly or appropriately the government attempted to take something from a citizen or entity. This concept of “taking” applies to many different notions: it could be a veteran being denied benefits from the Veterans Administration without a hearing; it could be a student being suspended (i.e. being denied access to school and education) from school without the parents being allowed to object; or it could be a homeowner not permitted to pay their property taxes before their home has a tax lien placed on it and it is sold at auction. These concerns can apply to businesses as well.

**Rulemaking Process**

The Rulemaking Process is governed by the Administrative Procedure Act of 1946 (APA). The APA was created by Congress to force governmental agencies to follow a process so that rulemaking is fair and equitable. The APA defines *rulemaking* as “[A]gency action which regulates the future conduct of either groups of persons or a single person; it is essentially legislative in nature, not only because it operates in the future but because it is primarily concerned with policy considerations” (Clark, 1947).

In general, there are some steps that a governmental agency needs to follow in order for their rules to be considered fairly created:

1. Notice: The agency must publically announce that it intends to make a decision or make a new set of rules on a particular subject.
2. Comments and Consideration: That agency must allow sufficient time for the public and stakeholders to offer their comments on the proposed rules. Additionally, the agency must address each issue or concern that the commenting public raises.
3. Publication of Final Rule: The final rule or decision of the agency must be published so that the public is aware of the new decision of the governmental agency.

Many industries are regulated by the government. That makes knowing the governmental rulemaking process essential. For example, and as a cross-over into environmental law, the Environmental Protection Agency is seeking to implement carbon limits on U.S. power plants and the EPA has begun its rulemaking process to that end (Zerrenner, 2014). Many businesses will be affected by these rules.

All of the above features of administrative law are important to be aware of, even if you are working in the private sector.

***Forbes School of Business Faculty***

References

Administrative Procedure Act of 1946, 5 USC § 500 *et seq.*

Clark, T. (1947). *Attorney General’s manual on the Administrative Procedure Act.* Leavenworth: Federal Prison Industries, Inc.

U.S. Const. amend. V.

Zerrenner, K. (2014, August 13). [EPA’s state-by-state carbon limits indicate smart policy, not arbitrary rulemaking](http://www.forbes.com/sites/edfenergyexchange/2014/08/13/epas-state-by-state-carbon-limits-indicate-smart-policy-not-arbitrary-rulemaking/).  *Forbes*. Retrieved from http://www.forbes.com/sites/edfenergyexchange/2014/08/13/epas-state-by-state-carbon-limits-indicate-smart-policy-not-arbitrary-rulemaking/