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Fall 9-1-2012

PSCI 461.01: Administrative Law

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PSCI 461, Administrative Law (Fall 2012)

Overview of course: Administrative law is the part of constitutional law that deals with the work of public administrators. Its principles are closely related to the doctrines of separation of powers and due process. The traditional divisions of administrative law are the delegation doctrine (relationship of an agency to the legislature), judicial review (relationship of an agency to the courts), rulemaking (procedures an agency follows when it makes rules that have the force of law), and adjudication (procedures an agency follows when it resolves disputes between the agency and a regulated party). Other concerns of administrative law are public access to the records of agencies and the informal discretion of administrators.

Instructor: Professor James Lopach, LA 349, 243-2946, james.lopach@umontana.edu

Text: Steven Cann, *Administrative Law*, 4th edition, Sage Publications, 2006

Class format: Students are expected to complete reading assignments (approximately 10 pages) prior to each meeting and participate in class discussion. Class discussion will concentrate on case principles, evolution of doctrine, and practical problems. The instructor will lecture to introduce new material and will serve as discussion leader.

Examinations and learning goals: There will be 3 examinations. Each will use definition and short-essay questions. The 2 midterms are scheduled for October 3 and October 19. The final examination is scheduled for December 11 at 8:00 a.m. The course's learning goals, assessed by class discussion and examination, are correct understanding of the nature and evolution of administrative law principles, accurate case analysis, and effective oral and written expression.

Grading: Each of the two midterm examinations can earn 25 points, and the final examination can earn 50 points. The instructor, at his discretion, can award up to ten extra-credit points for excellence in class attendance and participation. The course grades will be determined as follows: A = 94-100; A- = 90-93; B+ = 87-89; B = 83-86; B- = 80-82; C+ = 77-79; C = 73-76; C- = 70-72; D+ = 67-69; D = 63-66; D- + 60-62; F = 59 and below. For the credit/no-credit grading option, a grade of D- and above will count as "credit."

Important Days: Labor Day, September 3; Election Day, November 12; Thanksgiving Break, November 21-23; last class day, December 7

Required graduate increment and optional PSCI 400 assignments: Graduate students and undergraduates enrolled in PSCI 400 must complete an annotated bibliography and 2 technical writing projects (see directions for all 3 projects below). Grades will be based on content (clarity and accuracy) and writing quality (grammar, diction, syntax, and logical development). Each student must meet with the instructor prior to starting each of the 3 projects to discuss its aim, scope, sources, method of citation, and writing style. Any 2 of the 3 projects, after they are corrected and graded, may be rewritten and resubmitted for a better grade.

Annotated Bibliography Project

Write a paragraph on each of the following 14 administrative law sources (the total project will take about 7 pages). Each of these paragraphs must do three things: 1) discuss the work's purpose as an administrative law source book; 2) discuss how the work is organized; and 3) give a concrete and detailed example of how a public administrator could use beneficially a specific part or section of the source, for which you give the complete citation. All of the works are found in the UM law library; most are available in the Mansfield Library. Many of the Montana works can be accessed through links at www.lawlibrary.state.mt.us. Other public-domain works are available on the Internet at various locations. The assignment is due September 28.

1. Session Laws of Montana (1) (2)
2. Montana Code Annotated (1) (2)
3. Montana Reporter (1) (2) or State Reporter (2)
4. Pacific Reporter (2)
5. Administrative Rules of Montana (1) (2)
6. United States Statutes at Large (1) (2)
7. United States Code (1) (2) or United States Code Annotated (2)
8. U.S. Reports (1) (2) or Supreme Court Reporter (2) or Lawyers' Edition of the U.S. Supreme Court Reports (2)
9. Federal Register (1) (2)
10. Code of Federal Regulations (1) (2)
11. American Jurisprudence (2) or Corpus Juris Secundum (2)
12. K. Davis and R. Pierce, Administrative Law Treatise (2)
13. Montana Administrative Procedure Act (MCA, 2-4-101) (1) (2)
14. Administrative Law Review (2)

(1) Available in the Mansfield Library

(2) Available in the UM Law Library

Administrative Rules Project

Situation. The institutional setting is the Montana Board of Land Commissioners (MBLC). Assume that you work for the Board, which has given you the assignment of implementing the rulemaking authorization in Montana Code Annotated 76-12-101 through 112 (locate and read these statutory provisions carefully). As a Board employee, you are to draft for public hearing proposed rules governing natural areas on school trust lands from the three perspectives of fee generation, recreational use, and conservation.

Work product. The work product is a draft of proposed rules concerning which the MBLC, prior to adoption, will hold a public hearing. Your product should be at least five manuscript pages (double-spaced, standard margins) and formatted as legislative rules. The draft rules must cover **one** of the following four topics: (1) over-night camping in natural areas; (2) water recreation in natural areas; (3) winter recreation in natural areas; or (4) hiking and nature viewing in natural areas. Assume that all of these topics are within the MBLC's authority. A "real world" package of draft rules would include an introductory section concerning statutory authorization and intent, but this section is not to be included in your project. In your draft rules, use "may" for the permissive and "shall" for the mandatory. Also, in order to assign responsibility clearly, use the active instead of the passive voice, unless in using the passive voice you identify the responsible party by a prepositional phrase.

Sources. The following sources could be of use to you: interviews with employees of state agencies; pertinent sections of the Administrative Rules of Montana, Code of Federal Regulations, and Montana Code Annotated; and a variety of studies and reports concerning natural resource management. Your work product may be derivative, but it may not be a verbatim lifting of existing state and federal regulations. At the end of your project you must include a list of "Sources Used."

Deadline. The assignment is due November 9.

Adjudicatory Hearing Project

Situation. The governmental setting is your choice - any State of Montana agency. You should assume that this state agency is not covered by a government-wide personnel policy or by a collective bargaining agreement. You should also assume that you are the head of the agency and that the agency lacks a formal policy concerning the procedure to be used for terminating the employment of a civil-service employee who is beyond the probationary period. As head of the agency, you are writing a memorandum to the agency attorney that explains your concern that the agency lacks such a policy and provides for the attorney's review and comment a termination procedure that you have drafted.

Work product. Your work product will be a five-page memorandum to the agency attorney that contains three things: (1) a summary of the situation the agency is confronting (that is, no policy/procedure and an impending personnel problem); (2) your draft of a suggested adjudicatory procedure for terminating non-probationary civil service employees, which is formatted as you would expect the final policy to be formatted and contains such key procedural ingredients as notice requirements, use of a hearing board or hearing officer, the steps in the termination hearing, the hearing's degree of formality, the recommendation of the board or hearing officer to the agency head, the agency head's final decision and statement of reasons, administrative appeal, judicial review, and a reasonable timetable for these various steps; and (3) your legal justification for your draft procedure and your request that the agency attorney review and comment on your draft. In your draft adjudicatory procedure, be sure to use the word "may" for the permissive and the word "shall" for the mandatory, and generally use the active voice instead of the passive voice to assign clearly responsibility for implementing the various procedural steps.

Sources. The following sources could be of use to you: the federal and Montana administrative procedure acts; disciplinary and termination sections of public collective bargaining agreements; personnel policies of federal, state and local government agencies; Goldberg v. Kelly, 397 U.S. 254 (1970); and Mathews v. Eldridge, 424 U.S. 319 (1976). Even though you may rely heavily on these sources, your work product may not be a verbatim lifting of material. In a short "Sources" note at the end of your project, identify the materials you consulted and used.

Deadline. The assignment is due December 3.