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PSC 461.01: Administrative Law

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PSC 461 Administrative Law
Fall 2005

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 (the relationship of an agency to the legislature), judicial review (the relationship of an agency to the courts), rulemaking (the procedures an agency follows when it makes law), and adjudication (the procedures an agency follows when it resolves disputes). Newer concerns of administrative law are public access to the records of agencies and the informal discretion of bureaucrats.

Text: Steven Cann, Administrative Law, 3rd edition.

Grade: Each of the two examinations can earn a maximum of 50 points. The instructor, at his discretion, can award up to 10 extra-credit points for excellence in class recitation. 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."

Reading: 7 to 10 pages per class meeting

Writing: Each student enrolled in PSC 300, 400, or 596 will complete two technical writing projects and an annotated bibliography. Written work will be graded for content (clarity and validity) and writing quality (grammar, diction, syntax, and logical organization).

Format: Students are expected to complete reading assignments and participate in class discussion. Class discussion will concentrate on case principles, evolution of doctrine, and practical problems. The instructor will be discussion leader and will lecture as required.

Examinations: The midterm examination date will be October 10. The final examination, which will cover material from the first test to the end of the course, is scheduled for Friday, Dec. 16 at 8:00 AM. Each examination will use definition questions to test knowledge of key principles and doctrines and short-essay questions to test analytical reasoning.

Instructor: James Lopach, LA348, 243-4829 james.lopach@umontana.edu

Holidays: Sept. 5, Nov. 11, Nov. 23-25

Annotated Bibliography Project

Write a short paragraph on each of the following 14 administrative law sources which discusses the work's purpose and organization and gives a concrete example of how a public administrator would use a specific part of the source. 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 Monday, October 3.

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, Administrative Law Treatise, 3rd edition (1994) (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 Law Library

Administrative Rules Project

Problem. 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 MCA 76-12-101 through 112 (locate and read carefully). Accordingly, you are to draft for public hearing proposed rules governing natural areas on school trust lands from the 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 approximately three manuscript pages (double-spaced, standard margins) and formatted as legislative rules. The draft rules should 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" package of draft rules would include an introductory section concerning statutory authorization and intent, but this section is not part of your assignment. In your draft rules, use "may" for the permissive and "shall" for the mandatory and use active instead of passive voice.

Sources. The following sources could be of use to you: interviews with employees of state agencies; pertinent sections of 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.

Deadline. The assignment is due Friday, November 4.

Adjudicatory Hearing Project

Problem. The setting is a state government department (your choice). Assume that the department is not covered by a government-wide personnel policy or by a collective bargaining agreement. Assume that you are the head of the department and are concerned that you do not have a formal policy concerning the procedure to be used when terminating the employment of a civil-service employee who is beyond the probationary period. As department head, you are writing a memorandum to the department's attorney explaining your concern because of the lack of a policy and providing, for the attorney's comment, a draft of a suggested termination procedure.

Work product. Your work product is a three-page memorandum to the department attorney. It contains a summary of the problem you face and 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 appear. The key procedural ingredients should include notice requirements, use of a hearing board or hearing officer, the steps in the termination hearing and its degree of formality, the recommendation of the board or hearing officer to the agency head, the head's final decision and statement of reasons, administrative appeal, and judicial review. In your draft of a suggested procedure, be sure to use the words "may" for the permissive and "shall" for the mandatory, use active instead of passive voice, and provide a reasonable timetable for 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; federal, state or local government personnel policies; Goldberg v. Kelly, 397 U.S. 254 (1970); Mathews v. Eldridge, 424 U.S. 319 (1976). Even though you may rely on these sources, your work product may not be a verbatim lifting of material.

Deadline. The assignment is due Friday, December 2.