

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today we're going to start an overview of the regulatory agency advocacy efforts in the state of California.

What is regulatory agency advocacy? Is it different from legislative advocacy? In my mind, it isn't. Legislative advocacy, at its core, is lobbying for or against legislation and of course you're dealing with the legislative branch of government. On the other hand, regulatory agency advocacy is lobbying for or against regulations and dealing with the executive branch of government.

Now, certainly there's a difference between the legislative process of adopting a bill and the rule-making process for adopting a regulation. So while those two processes differ, in many regards the lobbying for or against regulations or legislation is similar.

Now, why is regulatory agency advocacy important? In my mind, just because a statute has been enacted doesn't mean the battle is over. In other words, there's another bite at the apple; that is, another opportunity to limit or expand the scope of a statute. Now let's set the stage for regulatory agency advocacy.

Did you know the California state government has over 200 agencies, departments, boards, and commissions that have rule-making authority? In other words, they can make public policy through their authority to adopt regulations. And according to California's Office of Administrative Law, which oversees the rule-making process of all of these agencies and departments, there are over 500 regulations adopted each year.

Now, those 200 rule-making bodies? The regulations that they adopt, they are found in California's Code of California Regulations (CCR). In California state statutes we find a half a million individual statutes in 29 Codes. The regulations in California are found in 28 Titles. So we find our statutes in Codes and our regulations in Titles.

Now, here are those Titles, just to give you an idea of how broad they are:

- Title I: General Provisions,
- Title II: Administration,
- Title III: Food and Agriculture,
- Title IV: Business Regulations,
- Title V: Education,
- Title VI: Governor's Regulations - although there currently aren't any regulations in that Title,
- Title VII: Harbors and Navigation,
- Title VIII: Industrial Relations,
- Title IX: Rehabilitative and Developmental Services,
- Title X: Investment,
- Title XI: Law,
- Title XII: Military and Veteran's Affairs,
- Title XIII: Motor Vehicles,

- Title XIV: Natural Resources,
- Title XV: Crime Prevention and Corrections,
- Title XVI: Professional and Vocational Regulations,
- Title XVII: Public Health,
- Title XVIII: Public revenues,
- Title XIX: Public Safety,
- Title XX: Public Utilities and Energy,
- Title XXI: Public Works,
- Title: XXII: Social Security,
- Title XXIII: Waters,
- Title XXIV: Building Standards Code,
- Title XXV: Housing and Community Development,
- Title XXVI: Toxics,
- Title XXVII: Environmental Protection, and
- Title XXVIII: Managed Healthcare.

So you can see by going through the 28 Titles comprising the CCR how broad the regulations can be. Now, as you may be aware, state agencies engage in both quasi-judicial and quasi-legislative [activities]. What's the difference between quasi-judicial and quasi legislative activity?

Well, quasi-judicial is basically where the departments and agencies - and by the way I often use agency to cover all agencies, departments, boards, and commissions, but agencies are standalone entities. These departments and agencies interpret and enforce the laws that are under their jurisdiction. That's where the state rule-making bodies act in a quasi-judicial manner.

Now, for rule-making purposes they act in a quasi-legislative manner. That is, they engage in rule-making by adopting, amending, or repealing regulations. Now, as you can well imagine, California's regulatory process is a world of its own with separate rules and procedures. You should note that California's rule-making process is governed by the state APA - Administrative Procedure Act.

California's APA is premised upon the federal APA. Now, just like in the legislative process, an effective rule-making or regulatory advocate needs to know the rules, the players, and the policies in order to be effective in his or her job.

So, let me ask a basic question. How and why do certain statutes require rule-making? Well, the how is relatively easy. Statutes passed by the Legislature grant rule-making authority, either general or specific. Why do they do that? Because those statutes often need implementation by those state agencies. So, what are the general rules guiding these state agencies in their rule-making process?

Basically California law requires every state agency to satisfy certain basic minimum procedural requirements. Those again are established by the APA. And they govern the

adoption, amendment, or repeal of a regulation unless - and this is an important exemption - unless that agency is expressly exempt by statute for following the APA.

Now, note that California courts have long recognized that under our state constitution, the Legislature may, by statute, delegate quasi-legislative powers to a state agency found in the executive branch so long as adequate standards are provided to guide that agency. This is a lawful delegation of authority by the Legislature.

So, rule-making authority is governed by statute, so again, those statutes define and restrict by statute the authority of the state agencies and departments to adopt policies by rule-making. Statutes usually prescribe that authority to adopt policy. And note that it is an established principle of administrative law that an agency cannot exceed the legally prescribed authority found by statute.

Now, on the other hand we do find that there are a number of statutes that confer broad powers to some state agencies regarding what they deem as matters that directly affect the public generally. So, what are examples? Those that are given broad rule-making authority include: the California Department of Motor Vehicles - DMV, the California Air Resources Board - CARB, and the Department of Fair Employment and Housing - DFEH.

So, another fundamental question: Why do agencies adopt these regulations? Well generally, regulations are prompted by that state agency or department identifying a problem that needs to be addressed by the agency through the adoption, amendment, or repeal of regulations in an effort to either enforce or administer or interpret a statute.

Thanks for joining this podcast. We'll next get in to the types of rule-making bodies.