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Today's topic: "When Can People Participate in the Rulemaking Process with California State Agencies?"

Interested parties have a number of opportunities to participate in the rulemaking activities of state agencies by virtue of the state's APA. The California Administrative Procedure Act is patterned after the federal APA, and the two key tenets of the APA at the federal level and at the state level are, one, public notice, and two, public participation.

One of the initial ways interested parties can track what those administrative agencies, departments, boards, and commissions are doing is to look at their Rulemaking Calendar.

Under existing law, Government Code Section 11017.6, every state agency is required to annually adopt a Rulemaking Calendar. Basically, the Rulemaking Calendar describes regulatory actions that the agency anticipates taking during the upcoming calendar year.

The second means is that interested parties can sign up for the interested party mailing list with relevant state agencies of interest to them.

State agencies and departments and boards and commissions utilize these interested parties mailing lists in order to track those who are interested in particular subject matters. Before commencing a rulemaking, those state agencies and departments mail a notice to interested parties to let them know that they are contemplating regulatory action in a particular area.

Keeping in mind that central principle of the APA is that a state agency has to consider recommendations and objections from the public before they can adopt any new or make any changes to existing regulations and unless specifically exempted from the APA.

By the way, you should consult the Office of Administrative Law, OAL's website at www.oal.ca.gov. It's got an excellent website and it has one of the publications that is very handy.

The OAL publishes a resource guide that is titled, "How to Participate in the Rulemaking Process -- The Statutes, Regulations and Case Law that You Need to Make Your Voice Heard in the California Rulemaking Process"

The first thing to know about participating in the rulemaking process is: what is a regulation?

A regulation is essentially a form of legislation, which is why we call this quasi-legislative activity of a rulemaking agency. It has the force and effect of law, provided that it's

adopted in accordance with required procedures pursuant to the State APA, and of course provided that it's within the scope of authority that's granted by statute.

Now, it's important to understand what is a regulation because if it isn't a regulation, then it doesn't have to comport with the APA, which means that there isn't the public notice and opportunity to comment that's otherwise afforded to regulations.

According to OAL, a regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency in order to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

If a rulemaking meets the definition of a regulation, then it has to comport with the APA. This of course provides opportunities to comment, both verbally and in writing.

Now you have to know when the formal rulemaking process begins. That occurs when a state agency publishes a Notice of Proposed Action in the California Regulatory Notice Register, which by the way, you can find on that OAL website.

In addition, the agency has to mail the notice of the proposed action to those persons who have requested notice of regulatory actions, and of course, post that notice on their website. That is why you want to sign up for the interested parties mailing list. By the way, there is a link to all the agencies that undertake rulemaking on the OAL website.

Now, how can the public comment on a formal rulemaking? There's two ways. The first is in writing, the second is in an oral hearing.

The APA, again the State Administrative Procedure Act, requires a minimum of a 45-day period for the public to comment to the agency, in writing, on the proposed regulation.

Now, some state agencies do post a public hearing at the end of that 45-day comment period. However, some choose not to do so, either because they don't think it's necessary, perhaps it'll be a non-controversial regulation that they've proposed, or for whatever reason.

However, under existing law, if a state agency receives a request in writing from any person requesting a public hearing, then the state agency must conduct a public hearing.

Those are the two instances where somebody can submit comments, again, verbally at the public hearing on the proposed rulemaking, and/or the written comment. If there's a public hearing, I would recommend that you participate in both the public hearing as well as the written comments.

Now, what happens with those written comments?

Here's an interesting digression from the legislative process. Wouldn't it be nice if legislators had to respond to every comment, either verbal comments or written

comments, that were submitted on a particular bill, and justify why they chose to take amendment or not to take amendments? Of course, such procedures don't occur in the legislative process.

However, in the regulatory process, they do. In other words, when a rulemaking agency receives public comments, either verbally in a public hearing, or in written comments, the rulemaking body has to summarize and respond to all timely received comments that are directed at the rulemaking that they've undertaken.

For each comment that they've received, again in writing or verbally at a hearing, that agency has to include either an explanation of how the proposed action has been changed to accommodate the individual comment made, or the agency has to state the reasons for rejecting the comment.

Now, when the state agency summarizes and responds to public comments, the agency has to demonstrate that it understood and considered the written or verbal comment. The summary in response to those comments is then included as part of the rulemaking file in a document that we call The Final Statement of Reasons.

Now, when does that formal rulemaking process conclude? It's when the regulation has been adopted.

An agency, by the way, under the state APA, has one full year in which to complete the rulemaking process, and complete their full rulemaking file to the Office of Administrative Law. If the agency fails to comply with that and finished its rulemaking within one year, then they have to start all over again.

I hope you've enjoyed this podcast. We'll come back with another one on the rulemaking process.