

This is Chris Micheli with the Sacramento Governmental Relations Firm of Aprea and Micheli and an Adjunct Professor at McGeorge School of Law in its Capital Lawyering Program. Today's podcast deals with state agencies and their role in public policy development.

California's agencies including departments, boards, and commissions, engage in a fair amount of public policy making, through both their rulemaking authority as well as their interpretation and enforcement of existing statutes and regulations.

The state agencies are the ones who generally the day-to-day operations of state government, and they're charged with implementing the statutes adopted by the Legislature and signed into law by the Governor.

With over 200 of these agencies in California state government, there are many state agencies that do policy development by adopting regulations and implementing statutes. They can also engage in policy making when issuing guidelines, legal opinions, management memos, and other sorts of written documents wherein they interpret and implement laws and regulations.

When dealing with a given state agency, it's important first to know whether it's a Plural Executive Agency, an Independent Agency, or a Line Authority Agency. Generally speaking, the Governor has less control over Plural Executive - his or her fellow constitutional officials - and Independent Agencies. These separate agencies are generally able to manage their daily conduct and their rule-making without supervision or oversight from the Governor.

On the other hand, the Governor has considerable authority to manage his or her Line Authority Agencies, including the ability to direct or restrict any rulemaking activities. When dealing with these State agencies that are under the Line Authority of the Governor, it's important to know where they fit in terms of the organizational hierarchy of state government.

Departments or agencies that are under larger agencies or departments are subject to supervision and coordination by those entities. Their interactions with the Governor also tend to be limited. However, when it comes to rulemaking, which is the adoption of regulations under the state's Administrative Procedure Act, the supervising or coordinating agencies usually allow significant latitude to the relevant department, board, or commission that directed by statute to adopt relevant regulations.

Generally speaking, the authority of state agencies to adopt policy through their rulemaking process is defined and often restricted by state statute. These statutes usually prescribe each agency's authority to adopt policy. Of course it's an established principle of administrative law that an agency cannot go beyond its legally prescribed authority to regulate. On the other hand, many statutes confer broad powers to some state agencies regarding matters that directly affect the public generally.

The regulations and administrative practices of these agencies often affect millions of Californians in their daily lives. Interested parties have significant access to the rulemaking activities of state agencies by virtue of the California APA. In addition, every state agency is required to annually adopt a rulemaking calendar that describes regulatory actions that the agency anticipates taking during the calendar year.

In addition, the APA is overseen by the Office of Administrative Law, and OAL's website includes helpful information for interested parties to track pending and adopted regulations. In addition, OAL produces a fabulous guidebook on the rulemaking process that's of tremendous value to those who need to get acquainted with the APA process or for anyone participating in the rulemaking process.

It's important to understand the rulemaking process, and the role of state agencies in conducting rulemaking. An interesting phenomenon is that businesses cannot rely in good-faith upon the written determinations issued by state agencies. So, state agencies' written interpretation is often not given significant legal weight by a reviewing court.

In other words, despite being charged with interpreting, implementing, and enforcing California statutes and regulations, individuals and businesses that obtain written guidance from state agencies have little to no protection from legal liability if they follow that written guidance. Now there are some state agencies that provide limited protections such as the FPPC, with advice letters to requestors. In addition the Franchise Tax Board and Board of Equalization have Chief Counsel Rulings that provide limited protection to taxpayers.

So I would note again that state agencies play a key role in public policy development in the State of California through their rulemaking activities, as well as their interpretation and enforcement of statutes and regulations.

There are both public and private influences on these agencies when they undertake public policy development. The public are through interested party's meetings and public comment on regulations. The private one is where the administration can weigh

in with their Line Authority Agencies. I hope you've gained a little bit of an understanding of state agencies and their public policy role. Thanks for joining.