Where Statutory Means for Review of Administrative Order are Provided, the Failure to Exhaust Those Means Precludes a Collateral Attack Upon the Validity of the Order in the Form of a Defense to an Enforcement Proceeding.

It is a general, often-quoted principle of administrative law that a party aggrieved by administrative action must "exhaust his administrative remedies" before turning to the courts for relief. This principle has found particular acceptance where a statutory means for obtaining review is provided.

The statutes governing the Oil Conservation Commission provide a means for obtaining review of any order entered by that agency. Where the order is entered in a case heard by an examiner, any party adversely affected has an absolute right to a hearing de novo before the full Commission, provided an application is filed with the Commission within 30 days from the date of the order. (65-3-11.1) Where the order is entered in a case heard by the Commission, application for rehearing may be filed within 20 days from the date of the order, in which event the Commission may grant or refuse the rehearing. (65-3-22(a)) By 65-3-22(b) a procedure is established whereby any party to the proceedings upon rehearing may appeal to the District Court.

This statutory procedure for obtaining review is comprehensive - any order, including Order No. R-2118, can be appealed through this machinery. The subject order was entered on November 17, 1961, following a hearing before an examiner. If Mr. Etz desired to pursue the matter further, a hearing de novo before the Commission would have been afforded him as a matter of right, provided he applied for it within 30 days. He made no such application, and at the end of the 30 days the order became final. By failing to pursue and exhaust the administrative procedures available to him, by ostensibly accepting the order and allowing it to become final without

further appeal, Mr. Etz has precluded any further challenge to the validity of the order. Any attempt to defend against the enforcement of the order, therefore, is a collateral attack which must fail, there being no claim that the Commission was without jurisdiction to enter it.

In the areas of exhaustion of administrative remedies and collateral attack there is an abundance of legal precedent. In Jones v. Board of School Directors of Independent School District No. 22, 55 N.M. 195, 230 P.2d 231 (1951), a dismissed school teacher sought a declaration of his rights and damages for breach of an employment contract. His action was dismissed for failure to pursue and exhaust the statutory procedures of the Teachers' Tenure Law which would have required the teacher to request a hearing before a local board, to be followed by an appeal to the State Board of Education, then, and only then to be followed by resort to the courts for relief. From this case it appears obvious that New Mexico has accepted the principle that administrative remedies, particularly those prescribed by statute, must be pursued and exhausted before relief can be obtained in court.

In the State of Kansas, these questions have been considered in connection with appeals from orders of the Kansas Corporation Commission which is the oil and gas conservation agency in that state. In Wakefield v. State Corporation Commission, 151 Kan. 1003, 101 P.2d 880 (1940), the plaintiff had filed an independent action to enjoin the Commission from enforcing one of its proration orders. The court dismissed the action holding it to be a collateral attack upon the Commission's proration order. The court further held that the review procedure contained in the oil and gas conservation act was exclusive.

Kansas-Nebraska Natural Gas Company, Inc. v. State

Corporation Commission, 176 Kan. 561, 271 P.2d 1091, 30&GR 1686 (1954) involved an action brought in district court for a declaratory judgment upon an order of the Kansas Corporation Commission. The court dismissed the action affirming the principle that a normal appeal to the district court following an exhaustion of administrative remedies as provided by statute was the exclusive means of obtaining judicial review. Again in Columbian Fuel Corporation v. Panhandle Eastern Pipe Line Company, 176 Kan. 433, 271 P.2d 773, 30&GR 1667 (1954), the court affirmed the principles concerning exhaustion of administrative remedies and collateral attack in these words:

> "The oil and gas conservation act expressly authorizes the commission, on application or on its own motion, to interpret and enforce its own rules, orders and regulations, ... A party ... cannot bypass the court of review, ignore the statutory procedure required in such court, and in a collateral and independent action question the validity or the commission's interpretation of its own orders. If an aggrieved party desires to challenge the commission's order, or any part thereof, his remedy is before the commission and under the review statute." (Emphasis mine)

In Miller v. United States, 242 F.2d 392, (Sixth Circuit), cert den 355 U.S. 833, 78 S.Ct. 48, 2 L.Ed.2d 44 (1957), it was held in a ~~proceeding to enforce an administrative order that~~ suit to collect penalty, that admin. order appeal admin order the defendant's failure to exhaust his administrative remedies precluded even constitutional questions from being raised in defense.