

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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**NASHVILLE, TENNESSEE 37202**

May 29, 2002

Opinion No. 02-071

Application of Uniform Administrative Procedures Act to Revenue Hearings  
Conducted Pursuant to Tenn. Code Ann. § 67-1-105

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**QUESTIONS**

- 1.a. Is there unavoidable conflict between the Uniform Administrative Procedures Act (“UAPA”), found at Tenn. Code Ann. § 4-5-301, *et seq.*, and Tenn. Code Ann. § 67-1-105(d)?
- 1.b. If so, does the UAPA override Tenn. Code Ann. § 67-1-105(d)?
  
2. If Tenn. Code Ann. § 67-1-105(d) is overridden by the UAPA, what is the proper procedure for issuing an order in a contested case heard by an administrative judge or hearing officer appointed by the Commissioner of Revenue under the authority of Tenn. Code Ann. § 67-1-105(b)?
  
3. Do Tenn. Code Ann. §§ 4-5-301(a)(1) and -314(a) only apply when the Commissioner personally hears contested cases under the authority of Tenn. Code Ann. § 67-1-105(b)(1) and not when she appoints an administrative judge or hearing officer to hold such hearings “in the place of and in the absence of the commissioner” under the authority of Tenn. Code Ann. § 67-1-105(b)(2)?

**OPINIONS**

- 1.a. Yes, Tenn. Code Ann. § 67-1-105(d) conflicts with the UAPA.
- 1.b. To the extent that it conflicts with the UAPA, Tenn. Code Ann. § 67-1-105(d) is superseded by the UAPA.
  
2. If a contested case is heard by an administrative judge or hearing officer appointed by the Commissioner of Revenue under the authority of Tenn. Code Ann. § 67-1-105(b)(2), the conduct of the contested case is governed by the UAPA provisions applicable to proceedings conducted by an administrative judge or hearing officer “sitting alone.” Tenn. Code Ann. § 4-5-301(a)(2) (1998). In those cases, the hearing officer is required to issue an initial order in accordance with Tenn. Code Ann. § 4-5-314(b), which is reviewable by the Commissioner pursuant to Tenn. Code Ann. § 4-5-315.

3. Tenn. Code Ann. §§ 4-5-301(a)(1) and 4-5-314(a) do not apply when the Commissioner elects to appoint an administrative judge or hearing officer to hold a contested case hearing “sitting alone,” Tenn. Code Ann. § 4-5-301(a)(2) (1998), and “in the absence of the commissioner.” Tenn. Code Ann. § 67-1-105(b)(2) (1998).

### ANALYSIS

You have asked whether the UAPA’s contested case procedures override the procedures set forth in Tenn. Code Ann. § 67-1-105 relative to certain types of hearings conducted by the Commissioner of Revenue or her designee. The UAPA’s current provisions governing the conduct of contested cases specify that a contested case hearing may be conducted either by “an administrative judge or hearing officer sitting alone,” Tenn. Code Ann. § 4-5-301(a)(2) (1998), or by “the requisite number of members of the agency . . . in the presence of an administrative judge or hearing officer.” Tenn. Code Ann. § 4-5-301(a)(1) (1998). When the hearing is conducted in the presence of agency members, the agency is required to “render a final order,” Tenn. Code Ann. § 4-5-314(a) (1998), which is then subject to judicial review by the chancery court pursuant to Tenn. Code Ann. § 4-5-322(a)(1) (1998). In contrast, when the hearing is conducted by an administrative judge or hearing officer sitting alone, the administrative judge or hearing officer is required to “render an initial order,” Tenn. Code Ann. § 4-5-314(b) (1998), which is then subject to administrative review by the agency pursuant to Tenn. Code Ann. § 4-5-315 (Supp. 2001).

The UAPA’s procedures for conducting contested cases differ from the provisions of the general revenue laws, which purport to set forth the Commissioner of Revenue’s procedures for hearing

any issue or question involved in connection with either an application for and entitlement to the issuance of, or the proposed revocation of, any certificate, license, permit, privilege or right, or relating to the confiscation of any property, or any other adverse action proposed or taken to implement any revenue regulatory or registration law administered by the commissioner.

Tenn. Code Ann. § 67-1-105(a)(1) (1998). The statute describing such hearings authorizes the Commissioner to “personally hold such hearings as the commissioner may deem proper.” Tenn. Code Ann. § 67-1-105(b)(1) (1998). Alternatively, the statute authorizes the Commissioner to “designate a hearing officer who may hold such hearings in the place of and in the absence of the commissioner.” Tenn. Code Ann. § 67-1-105(b)(2) (1998). If the Commissioner herself conducts the hearing, the Commissioner is required to “issue such orders as [are justified by] the pleadings, evidence and argument.” Tenn. Code Ann. § 67-1-105(d)(1) (1998). On the other hand, if a hearing officer conducts the hearing, the hearing officer is required to submit to the Commissioner the officer’s “findings of fact, conclusions of law and proposed settlements or orders.” Tenn. Code Ann. § 67-1-105(d)(2) (1998). The Commissioner may

issue the hearing officer's proposed order as her own or, upon review of the record, the Commissioner may "issue such orders as . . . the record justifies." *Id.*

1.a. The procedures set forth in Tenn. Code Ann. 67-1-105(d) differ significantly from the UAPA's provisions because, under the UAPA, an aggrieved party is entitled to appeal a hearing officer's initial order by filing a petition with the agency within fifteen days, *see* Tenn. Code Ann. § 4-5-315(b) (Supp. 2001), while section 67-1-105(d) grants no such right of appeal. *See* Tenn. Code Ann. § 67-1-105(d) (1998). If a party seeks agency review under the UAPA's provisions, the agency is required to "afford each party an opportunity to present briefs." Tenn. Code Ann. § 4-5-315(e) (Supp. 2001). Moreover, the agency may, but is not required to, "afford each party an opportunity to present oral argument." *Id.* Within sixty days after receipt of the parties' briefs and oral argument, the agency must render either a final order or an order remanding the matter to the hearing officer for further proceedings. *See* Tenn. Code Ann. § 4-5-315(g), (h) (Supp. 2001).

Section 67-1-105 requires the Commissioner to review the hearing officer's findings of fact, conclusions of law, and proposed order. *See* Tenn. Code Ann. § 67-1-105(d)(2) (1998). Unlike the UAPA, however, the revenue statute does not grant the parties any rights to participate in the review process, such as by filing a petition for appeal, stating the bases for the appeal, submitting a brief, or presenting oral argument. *Compare* Tenn. Code Ann. § 67-1-105(d) (1998) *with* Tenn. Code Ann. § 4-5-315(b), (c), & (e) (Supp. 2001).

1.b. The UAPA was designed "to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination." Tenn. Code Ann. § 4-5-103(a) (1998). To this end, the UAPA provides that in "case of conflict between [the UAPA] and any statute, whether general or specific, [the UAPA] shall control." Tenn. Code Ann. § 4-5-103(b) (1998). Citing this provision, the courts of this state have held that, as a general rule,<sup>1</sup> the UAPA "supersedes and repeals earlier procedural statutes applicable to state agencies which conflict with it." *Ogden v. Kelley*, 594 S.W.2d 702, 704 (Tenn. 1980); *see also Mid-South Indoor Horse Racing, Inc. v. State Racing Comm'n*, 798 S.W.2d 531, 536 (Tenn. Ct. App. 1990).

The administrative review provisions of section 67-1-105 were passed in 1973, *see* 1973 Tenn. Pub. Acts 368, and thus pre-date the review provisions of the UAPA. *See* 1974 Tenn. Pub. Acts 725 (enacting UAPA in its original form); *see also* 1982 Tenn. Pub. Acts 874 (amending UAPA by adding provisions that distinguished between initial and final agency orders and that allowed for agency review of

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<sup>1</sup>Although a few exceptions to this rule exist, none of the exceptions relating to the Department of Revenue appear to be applicable to the type of proceeding described in Tenn. Code Ann. § 67-1-105. By its terms, the UAPA does not modify or repeal statutes relating to the "payment of taxes under protest and suits for the recovery thereof." Tenn. Code Ann. § 4-5-103(c) (1998). The UAPA likewise does "not apply to revenue rulings and letter rulings issued by the commissioner of revenue." Tenn. Code Ann. § 4-5-106(f) (1998). Section 67-1-105 does not encompass any of these proceedings.

initial orders). In accordance with the general rule of construction, therefore, the procedures set forth in the UAPA supersede the pre-existing statutory procedures set forth in Tenn. Code Ann. § 67-1-105 to the extent that the two statutes conflict.

This construction is not affected by any amendments made to Tenn. Code Ann. § 67-1-105 since enactment of the UAPA. Although the General Assembly made several modifications to the statute's predecessor, Tenn. Code Ann. § 67-101, none of these changes related to the administrative review provisions which now appear in Tenn. Code Ann. § 67-1-105.<sup>2</sup> In fact, the only changes made to section 67-1-105's administrative review provisions were editorial changes made by the Code Commission pursuant to its general statutory authority. *See* Tenn. Code Ann. § 1-1-108 (1994). Neither the Code Commission's editorial changes nor the General Assembly's subsequent codification of the Commission's work served to resurrect the administrative review provisions of Tenn. Code Ann. § 67-1-105. *See Pacific E. Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 955 (Tenn. Ct. App. 1995). That statute has not been changed in any substantive way since the UAPA was originally enacted in 1974.

2. If an administrative judge or hearing officer appointed by the Commissioner of Revenue under the authority of Tenn. Code Ann. § 67-1-105(b)(2) holds a contested case hearing in the absence of the Commissioner, then the conduct of the contested case is governed by the UAPA provisions applicable to proceedings conducted by an administrative judge or hearing officer "sitting alone." Tenn. Code Ann. § 4-5-301(a)(2) (1998). In such contested cases, the hearing officer is required to issue an initial order in accordance with Tenn. Code Ann. § 4-5-314(b), and the initial order is reviewable by the Commissioner pursuant to Tenn. Code Ann. § 4-5-315.

3. Tenn. Code Ann. §§ 4-5-301(a)(1) and 4-5-314(a) do not apply when the Commissioner elects to appoint an administrative judge or hearing officer to hold a contested case hearing "sitting alone," Tenn. Code Ann. § 4-5-301(a)(2) (1998), and "in the absence of the commissioner." Tenn. Code Ann. § 67-1-105(b)(2) (1998). Instead, these statutes only apply when a contested case is conducted in the presence of the Commissioner "*and* in the presence of an administrative judge or hearing officer." Tenn. Code Ann. § 4-5-301(a)(1) (1998) (emphasis added). Because the Commissioner has the statutory authority to make all final decisions of the Department of Revenue, she is the "agency" and "agency member" for purposes of Tenn. Code Ann. § 4-5-301(a)(1).

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<sup>2</sup>In addition to the administrative review provisions that now appear in Tenn. Code Ann. § 67-1-105, former Tenn. Code Ann. § 67-101 contained a number of other revenue provisions that now appear in various other sections of the code. *See, e.g.*, Tenn. Code Ann. § 67-1-102 (1998) (Commissioner's powers and duties); Tenn. Code Ann. § 67-1-103 (1998) (study of other states' tax laws); Tenn. Code Ann. § 67-1-703 (1998) (acceptance of tax payments); Tenn. Code Ann. § 67-1-802 (1998) (authority to abate penalty); Tenn. Code Ann. § 67-1-803 (1998) (authority to waive penalty).

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