

Appeals, and the U.S. Court of Military Appeals, all in the judicial branch; and the Tax Court of the United States in the executive branch.

(b) Also includes certain reparations orders of the ICC and the Secretary of Agriculture.

(2) Proceedings in which decisions rest solely on inspections tests, or elections: The Senate report states these are excluded "because those methods of determination do not lend themselves to the hearing process." The Attorney General's Manual construes "solely" to mean "mainly." Examples include:

- (a) Denial or revocation of seaworthiness by the Coast Guard;
- (b) Locomotive inspections by ICC;
- (c) Grain, meat, and poultry inspections by Agriculture;
- (d) Food inspections by FDA;
- (e) See also item d below.

(3) Cases in which an agency is acting as an agency for a court: Exempted because the entire process is subject to review by the court.

FTC may serve as master in chancery to a court in an antitrust suit brought by the Attorney General.

(4) Certification of employee representatives: Rests primarily on elections. Both the NLRB and the Federal Mediation Board perform this function.

COPENHAGEN, DENMARK, July 2, 1963.

Mr. HAROLD SEIDMAN,
Bureau of the Budget,
Washington, D.C.

DEAR MR. SEIDMAN: Your letter of June 25 reached me only today, having been forwarded from New York.

I have read with appreciation and interest your precisely formulated draft of a statement to Senator Long concerning the coverage of S. 1664.

Since I have the utmost confidence in you, as well as the liveliest respect for your ability, I find disagreement with you to be both difficult and distasteful. In all candor, however, I must express my strong opinion that the present approach to the reach of S. 1664 rests upon an unsure foundation.

Your analysis of the Administrative Procedure Act and your comparison of its coverage with that of S. 1664 are absolutely sound. In my view, however, it is a mistake to link the two together. The limitations embodied in the Administrative Procedure Act are desirable; in fact, if I had my choice, I would broaden them. Beyond any question, Congress was right in not fastening the requirements of the Administrative Procedure Act on the Railroad Retirement Board, the Veterans' Administration, the General Services Administration, and the other bodies that perform acts of the various types exempted from the act. It would have been outrageous to prescribe that the millions of benefactor decisions of the Veterans' Administration, for example, would have to be preceded by the same procedural formalities as might be required of the National Labor Relations Board or the Federal Trade Commission.

But that is not to say that the procedures untouched by the Administrative Procedure Act are procedures unworthy of study. Clearly, on the contrary, they do deserve consideration.

Simply as a matter of historical reference, I note that the Attorney General's Committee on Administrative Procedure did in fact prepare and publish monographs dealing with the Veterans' Administration, the Railroad Retirement Board, the Federal Employees' Liability Commission, and the Department of the Interior in its handling of such matters as are involved in the Taylor Grazing Act, the issuance of patents to public lands, and the disposal of mineral rights. While none of the matters dealt with in those monographs should be dealt with in an across-the-board manner, all of them were the subject of particularized recommendations in the committee's final report.

The Administrative Conference that concluded last December also made a few recommendations that would be outside the ambit of S. 1664. Thus, for example, it suggested to the General Services Administration that it publish or otherwise make available the decisions of its Board of Contract Appeals. No possible harm can flow, in my judgment, from the expression of ideas concerning administrative problems in addition to those dealt with by the portions of the Administrative Procedure Act you have used as the foundation stones of S. 1664.