LEXSTAT CAL CODE CIV PROC § 1094.5

*** THIS SECTION IS CURRENT THROUGH THE 2007 SUPPLEMENT ***
(ALL 2006 LEGISLATION)

CODE OF CIVIL PROCEDURE
Part 3. Special Proceedings of a Civil Nature
Title 1. Writs of Review, Mandate, and Prohibition
Chapter 2. Writ of Mandate

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Cal Code Civ Proc § 1094.5 (2006)

§ 1094.5. Inquiry into validity of administrative order or decision

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to *Section 68511.3 of the Government Code* and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with *Section 32000) of the Health and Safety Code* or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with *Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code*, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by *Section 1316 of the Health and Safety Code*, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)

(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with *Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code*, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with *Section 500) of the Business and Professions Code* or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of *Section 11517 of the Government Code*; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to *Section 19576.1 or 19576.5 of the Government Code*.

(k) This section shall not apply to state employees in State Bargaining Unit 11 disciplined or rejected on probation for positive drug test results who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.

HISTORY:

Added Stats 1945 ch 868 § 1. Amended Stats 1949 ch 358 § 1; Stats 1974 ch 668 § 1; Stats 2nd Ex Sess 1975 ch 1 § 26.5; Stats 1978 ch 1348 § 1; Stats 1979 ch 199 § 1; Stats 1982 ch 193 § 4, effective May 5, 1982, ch 812 § 3; Stats 1985 ch 324 § 1; Stats 1991 ch 1090 § 5.5 (AB 1484); Stats 1992 ch 72 § 1 (AB 1525), effective May 28, 1992; Stats 1995 ch 768 § 1 (SB 544), effective October 12, 1995; Stats 1998 ch 88 § 5 (AB 528), effective June 30, 1998, ch 1024 § 5 (AB 1291), effective September 30, 1998; Stats 1999 ch 446 § 1 (AB 1013), effective September 21, 1999; Stats 2000 ch 402 § 1 (AB 649), effective September 11, 2000.

NOTES:

Amendments:

1949 Amendment:

Amended subd (f) by adding **(1)** "or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing such notice whichever occurs first" in the first sentence; and **(2)** "provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay shall be continued by operation of law for a period of twenty (20) days from the filing of such notice" at the end of the second sentence.

1974 Amendment:

Added the second proviso in the first sentence of subd (f).

1975 Amendment:

Added **(1)** "Except as provided in subdivision (g)," at the beginning of subd (f); and **(2)** subd (g).

1978 Amendment:

(1) Added the comma after "all other cases" in subd (c); **(2)** added subd (d); **(3)** redesignated former subds (d)-(g) to be subds (e)-(h); **(4)** substituted "subdivision (f)" for "subdivision (e)" in subd (e); **(5)** substituted "subdivision (h)" for "subdivision (g)" in subd (g); and **(6)** amended subd (h) by adding **(a)** "licensed hospital or any" before "licensing board"; **(b)** "that the licensed hospital or" after "suffer and"; and **(c)** "hospital or" before "agency shall" and before "agency is stayed" wherever it appears.

1979 Amendment:

Amended subd (h) by **(1)** adding "(1)" in the beginning of the subdivision; **(2)** substituting "state agency made after a hearing required by statute to be conducted under the provisions of the Administrative Procedure Act, as set forth in Part 1 (commencing with *Section 11500) of Division 3 of Title 2 of the Government Code*, conducted by the agency itself or a hearing officer on the staff of the Office of Administrative Hearings" for "licensing board respecting any person licensed pursuant to Division 2 (commencing with *Section 500) of the Business and Professions Code*, except Chapter 11 (commencing with Section 4800) thereof, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act"; **(3)** substituting "agency" for "the licensing board" after "the licensed hospital or"; **(4)** adding subd (h)(2); and **(5)** designating the former third through fifth sentences to be subd (h)(3).

1982 Amendment:

(1) Added the third, fourth, and fifth sentences of subd (a); **(2)** added "or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with *Section 32000) of the Health and Safety Code*" in subd (d); and **(3)** substituted "Chapter 5 (commencing with Section 11500) of Part 1" for "Part 1 (commencing with Section 11500)" in subd (h)(1). (As amended by Stats 1982, ch 812, compared to the section as it read prior to 1982. This section was also amended by an earlier chapter, ch 193. See *Gov C § 9605*.)

1985 Amendment:

In addition to making technical changes, amended subd (h) by substituting **(1)** "an administrative law judge" for "a hearing officer" after "agency itself or" in the first sentence of subd (h)(1); and **(2)** "administrative law judge" for "hearing officer" after "decision of the" in the second sentence of subd (h)(2).

1991 Amendment:

Added subd (i).

1992 Amendment:

Added "or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with *Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code*" in the first sentence of subd (d).

1995 Amendment:

Added subd (j).

1998 Amendment (ch 88):

(1) Substituted "that" for "which" after "relevant evidence", and after "been produced or" in subd (e), and after "decision of an agency" in the first sentence of subd (h)(2); **(2)** divided the former second sentence in subd (g) into the second and third sentences by substituting a period for "; provided that"; **(3)** amended subd (h)(1) by **(a)** deleting "provisions of the" before "Administrative Procedure Act" in the first sentence; and **(b)** dividing the former second sentence into the second and third sentences by substituting a period for "; and provided further that"; and **(4)** amended subd (j) by **(a)** deleting "only" after "subdivision shall apply" in the first sentence; **(b)** adding the second sentence; and **(c)** substituting "Section 19576.1 or 19576.2" for "Section 19576.1" in the third sentence.

1998 Amendment (1024):

Amended subd (j) by **(1)** adding the third sentence; and **(2)** substituting "Section 19576.1, 19576.2, or 19576.5" for "Section 19576.1 or 19576.2" in the fourth sentence.

1999 Amendment:

Amended subd (j) by deleting **(1)** the former second sentence which read: "Effective June 1, 1998, this subdivision shall apply to state employees in State Bargaining Unit 16."; and **(2)** ", 19576.2" after "Section 19576.1".

2000 Amendment:

Added subd (k).

Legislative Counsel's Opinions:

Welfare-judicial review. 1968 AJ 6561.

Cross References:

Time limits for review: *CCP § 1094.6*.

Power of court to direct that appeal from order granting writ shall not operate as stay: *CCP § 1110b*.

Action to compel approval of school or admit applicant to examination: *B & P C § 2174*.

Levy of civil penalty in lieu of civil prosecution: *Fd & Ag C § 12999.4*.

Judicial review of administrative adjudication: *Gov C § 11523*.

Disciplinary proceedings with State Bargaining Unit 5: *Gov C § 19576.1*.

Effect of failure to apply for hearing on right to writ: *Gov C § 19588*.

Review of cease and desist orders of San Francisco Bay Conservation and Development Commission and its executive director: *Gov C § 66639*.

Rules for litigants proceeding in forma pauperis: *Gov C § 68511.3*.

Application of provisions of this section to any judicial review of administrative procedure provided for under pest abatement districts law: *H & S C § 2861.5*.

Review of decisions of Insurance Commissioner regarding workers' compensation rating organizations: *Ins C § 11754.5*.

Review of proceeding in which a hearing was required: *Pub Res C § 21168*.

Determination of noncompliance in county administration; Notice; Sanctions; Review: *W & I C § 10605*.

Judicial review, under provisions of this section, of decision after hearing on right of applicant for, or recipient of, public services: *W & I C § 10962*.

Collateral References:

Witkin & Epstein, Criminal Law (2d ed) § 1438.

3 Witkin Summary (10th ed) Agency and Employment § § 462, 673.

5 Witkin Summary (10th ed) Torts § 229.

8 Witkin Summary (10th ed) Constitutional Law § § 894, 963, 1016, 1055, 1275, 1276.

9 Witkin Summary (10th ed) Taxation § 249.

11 Witkin Summary (10th ed) Husband and Wife § 315.

12 Witkin Summary (10th ed) Real Property § § 859, 868, 945.

1 Witkin Cal. Evidence (4th ed) Hearsay § 297.

1 Witkin Cal. Evidence (4th ed) Introduction § 56.

Witkin Procedure (4th ed), "Actions" § 324.

Cal Jur 3d (Rev) Assault and Other Wilful Torts § 326, Eminent Domain § § 82, 189, 327, Games, Contests, and Prizes § 64, Pollution and Conservation Laws § § 535, 545.

Miller & Starr, Cal Real Estate 3d § § 19:101, 25:50, 25:182, 25:185, 25:188, 25:194, 25:199, 25:200, 25:209, 25:227.

Forms:

See forms set out below, following Notes of Decisions.

Law Review Articles:

Plea to restore certiorari to review state-wide administrative bodies. *20 Cal LR 275.*

Administrative decisions and court review. *29 Cal LR 110.*

Court review of administrative decisions. *30 Cal LR 508.*

Judicial review of administrative actions. *44 Cal LR 262.*

Court review of actions of California State Water Rights Board. *45 Cal LR 683.*

Exhaustion of administrative remedies in California. *56 Cal LR 1061.*

Requirement of factual findings in administrative hearings: Enforcement of substantive standards for land use variances. *63 Cal LR 11.*

Scope of "independent judgment" review. *63 Cal LR 27.*

Noteworthy developments in California's administrative mandamus. 8 Cal Western LR 301.

Methods of judicially testing action of redevelopment agency. *8 Hast LJ 254.*

New look in judicial review of assessments. *22 Hast LJ 19.*

Organizations and administrative practice. *26 Hast LJ 89.*

Court versus adoption agency control of agency adoptions before petition for adoption filed. *26 Hast LJ 312.*

Strumsky v San Diego County Employees Retirement Association: Determining the scope of judicial review of administrative decisions in California. *26 Hast LJ 1465.*

Judicial review of administrative action, and problems of pleading and procedure in mandamus action. *42 LA Bar B 159.*

The Strumsky case: Expanding judicial review of local administrative decisions. *50 LA Bar B 65.*

A Line in the Sand: Oceanfront Landowners and the California Coastal Commission Have Been Battling over Easements Allowing Public Access to Beaches. *27 Los Angeles Lawyer 24.*

Fair Hearing: the Most Important Component of Due Process in an Administrative Hearing Is the Selection of a Fair and Impartial Adjudicator. *27 Los Angeles Lawyer 47.*

Symposium on the 25th Anniversary of the Report of the Governor's Commission to Review California Water Rights Law Part 2 of 2: Effective Management of Groundwater Resources: Below the Surface: The Governor's Commissions Recommendations on Groundwater: Treading Water Until the Next Drought. 36 McGeorge LR 435.

Land development and the environment: The Subdivision Map Act; constitutional deficiency respecting appeals from actions of planning commission. *5 Pacific LJ 89.*

Goldberg, The Constitutionality of *Code of Civil Procedure section 1094.5(d)*: Effluvium From an Old Fountainhead of Corruption. *11 Pacific LJ 1.*

Comprehensive health planning; application appeals procedures. 11 San Diego LR 370.

Judicial review of administrative agency action when there is no law to apply. 25 San Diego LR 1.

Administrative process-judicial review. *10 Santa Clara Law 276.*

The reasonable pet: an examination of the enforcement of restrictions in California common interest developments after Nahrstedt v Lakeside Village Condominium Ass'n, Inc.. *36 Santa Clara LR 793.*

Judicial review of orders of state-wide boards exercising statutory jurisdiction. *22 SCLR 49.*

Judicial review of decisions affecting eligibility for unemployment compensation. *27 SCLR 7.*

Scope of judicial review of local administrative agencies in California. *29 SCLR 332.*

Administrative "questions of law" and scope of judicial review in California. *29 SCLR 434.*

Administrative "questions of law" and the scope of judicial review in California. *29 SCLR 465.*

The extraordinary writ-friend or enemy. 29 St BJ 467.

The implications of Strumsky and Topanga for judicial review of zoning decisions. 50 St BJ 26.

Application of substantial evidence rule in reviewing administrative board decisions. *1 Stan LR 326.*

Court review of administrative decisions. *2 Stan LR 285.*

Substantial evidence rule in California administrative law. *8 Stan LR 563.*

Certiorarified mandamus reviewed. *12 Stan LR 554.*

Prisoners' rights; conclusive effect of prison documents. *25 Stan LR 29.*

Judicially Created Uncertainty: The Past, Present and Future of the California Writ of Administrative Mandamus. 24 UCD 783.

Countering prejudice in an administrative decision; judicial review. *5 UCD LR 51.*

California Board of Medical Examiners; judicial review. *5 UCD LR 120.*

California welfare fair hearings; judicial review. *5 UCD LR 555.*

Judicial review of granting or denial of variance. *5 UCLA LR 182.*

Review of determination of eligibility for unemployment compensation. *5 UCLA LR 609.*

The scope of judicial review of decisions of California administrative agencies. *42 UCLA LR 1157.*

Judicial review of quasi-legislative acts of local administrative agencies. *7 USF LR 111.*

Attorney General's Opinions:

Appeals from decisions of Department of Alcoholic Beverage Control affecting liquor licenses to be taken to Alcoholic Beverage Control Appeals Board. *25 Ops. Cal. Atty. Gen. 125.*

Unemployment insurance appeals board's simultaneous hearing procedure, pursuant to regulation, as not resulting in denial of due process of law in view of this section. *48 Ops. Cal. Atty. Gen. 117.*

Right of appeal of grandfathered or non-grandfathered applicant whose request for extension of time to commence construction of health facility has been denied by hearing body of voluntary area health planning agency; right of more than one third of board of directors of agency to appeal granting of extension of time; availability of judicial review by writ of mandate of final decision in matter rendered by Health Planning Council. *55 Ops. Cal. Atty. Gen. 200.*

Annotations:

Citizen's action against administrator of Environmental Protection Agency to compel performance of nondiscretionary duty under § 505(a)(2) of Federal Water Pollution Control Act Amendments of 1972 *(33 USCS § 1365*(a)(2). *57 ALR Fed 851.*

Hierarchy Notes:

Pt. 3 Note

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82. -Substantial Evidence 83. -In Specific Instances 84. -Employees' Rights 85. -Licenses c. DETERMINATION AND DISPOSITION OF CAUSE 86. In General 87. Harmless and Reversible Error

A. GENERALLY

1. In General

In California the remedy by mandamus has been extended so as to authorize the review of acts and decisions of administrative agencies in violation of law where no other adequate remedy is provided. *Bodinson Mfg. Bodinson Mfg. Co. v California Employment Com. (1941) 17 Cal 2d 321, 109 P2d 935.*

Mandamus pursuant to *CCP § 1094.5*, commonly denominated "administrative" mandamus, is mandamus still. It is not possessed of a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from its established principles, requirements and limitations. The full panoply of rules applicable to "ordinary" mandamus applies to "administrative" mandamus proceedings except where modified by statute. *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

Under *CCP § 1094.5*, if the decision was substantively rational, lawful, not contrary to established public policy and the proceedings were fair, a court may not substitute a judgment for that of the governing board even if it disagrees with the board's decision. *Pinhas v Summit Health, Ltd. (1989, CA9 Cal) 894 F2d 1024,* cert gr, in part *496 US 935, 110 L Ed 2d 660, 110 S Ct 3212* and affd *500 US 322, 114 L Ed 2d 366, 111 S Ct 1842.*

Writ of prohibition is the proper means to review rulings allowing discovery in *CCP § 1094.5* cases because raising the issue on appeal is not an adequate remedy. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

CCP § 1094.5 was designed to give great deference and respect to administrative orders and findings. It sets narrow limits on a party's ability to obtain a new administrative hearing, and part of those limits include narrow restrictions on discovery and augmenting the administrative record. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

The parties agreed the appeal was governed by Cal. Code Civ. Proc.1094.5, when an employee, who had been dismissed by the California Youth Authority for failing to investigate the murder of a subordinate youth counselor, contested the dismissal; the appellate court determined that the State Personnel Board (SPB) did not abuse its discretion and its decision was support by substantial evidence, the SPB was not required to give special deference to the administrative law judge's (ALJ) decision that the dismissal should be upheld, as the ALJ did not make observations of witness credibility. *California Youth Authority v State Personnel Bd. (2002, 3rd Dist) 104 Cal App 4th 575, 128 Cal Rptr 2d 514.*

In a former professor's action against a university and its former president, alleging perjury, fraud and deceit, wrongful termination in violation of public policy, breach of contract, and various violations of the Fair Housing and Employment Act, *Gov C § § 12940* et seq., on appeal the court affirmed the trial court order sustaining the demurrer to the first, second, and fourth causes of action because they were identical to claims asserted in a previous lawsuit by the professor against the university and president, in which judgment on appeal had been affirmed against the professor, and because the professor's only avenue for challenging legitimacy of the university's dismissal system was by filing for an administrative writ of mandate. *Pollock v University of Southern California (2003, 2nd Dist) 112 Cal App 4th 1416.*

2. Statutory Purpose and Effect

This section does not change the established procedure in mandamus proceedings that are prosecuted for the purpose of reviewing the actions of administrative boards; in such a proceeding, as in any other case, an answer should be filed denying such allegations as the defendants do not admit to be true and setting up any matters of defense on which they rely. *Felice v Inglewood (1948) 84 Cal App 2d 263, 190 P2d 317.*

The rule of prior cases was not changed by enactment of this section. *Southern California Jockey Club, Inc. v California Horse Racing Board (1950) 36 Cal 2d 167, 223 P2d 1.*

This section codifies procedure devised for reviewing adjudications of state-wide administrative agencies. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

This section is a codification of the procedure devised for reviewing the adjudication of state-wide administrative agencies in a series of judicial decisions, which decisions hold such a review to require a trial de novo in the superior court, or a procedure which the court concluded was substantially the equivalent of such a trial. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

It was legislative intent in framing this section to set forth procedure by which judicial review can be had by writ of mandate after formal adjudicatory decision by "any" administrative agency. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

This section contemplates that in making any final administrative order or decision as result of proceeding in which hearing is required to be given by law, that evidence be taken and that inferior tribunal, corporation board or officer have discretion in determination of facts. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

In this section Legislature has provided an appropriate method of reviewing acts of state-wide administrative and quasi-judicial agency, such as the *State Board of Equalization. People v County of Tulare (1955) 45 Cal 2d 317, 289 P2d 11.*

Section does not require every administrative agency, state or local, to formulate specific findings of fact and record them in writing. *Hansen v Civil Service Board (1957, 1st Dist) 147 Cal App 2d 732, 305 P2d 1012.*

CCP § 1094.5, relating to inquiry by mandamus into validity of administrative decision, does not embrace all attacks on administrative action and adoption of this section was neither intended to, nor does it, change historic use of writ of mandate, except as to cases that come specifically under its provisions. *Rich v State Board of Optometry (1965, 1st Dist) 235 Cal App 2d 591, 45 Cal Rptr 512.*

The legislature originally enacted *CCP § 1094.5*, as a codification of the then current approach to the judicial review of administrative decisions by writ of mandamus. *Bixby v Pierno (1971) 4 Cal 3d 130, 93 Cal Rptr 234, 481 P2d 242.*

A decision of a referee in an unemployment insurance case is not made subject to judicial review by *Unemp. Ins. Code, § 1334*, providing that such decision is final unless further appeal is initiated to the appeals board, and by *CCP § 1094.5*, providing for judicial review of any final administrative order or decision. *CCP § 1094.5*, does not purport to define a "final" administrative order, but rather, sets forth the method and procedures for judicial review of such an order, and under *Unemp. Ins. Code, § 410*, judicial review in an unemployment insurance case requires a decision by the *Unemployment Insurance Appeals Board. Du Four v Unemployment Ins. Appeals Board (1975, 2nd Dist) 49 Cal App 3d 863, 122 Cal Rptr 859.*

Although *CCP § 1094.5*, provides that a court may stay the operation of an administrative order, the statute cannot be considered to provide an absolute right to an unconditional stay, in light of the trial court's inherent power to exercise reasonable control over litigation, as well as the inherent and equitable power to achieve justice and prevent misuse of processes lawfully issued. *Venice Canals Resident Home Owners Asso. v Superior Court of Los Angeles County (1977, 2nd Dist) 72 Cal App 3d 675, 140 Cal Rptr 361.*

According to *CCP § 1094.5*, the appropriate method of reviewing facts of a quasi-judicial agency is administrative mandamus. The statute governs review by mandamus after a formal adjudicatory decision by an administrative agency, and the decisive question is whether the agency exercises an adjudicatory function in considering facts presented in an administrative hearing. The statute authorizes judicial review only of the exercise by an administrative agency of an adjudicatory or quasi-judicial function, and it was not intended that the statute apply to any quasi-legislative acts of an administrative body. Judicial review of quasi-legislative acts of an administrative agency must be made under the ordinary mandamus provisions of *CCP § 1085*, and not under administrative mandamus. *Santa Cruz v Local Agency Formation Com. (1978, 1st Dist) 76 Cal App 3d 381, 142 Cal Rptr 873.*

Unlike *CCP § 1094.5*, providing for judicial review under administrative mandamus of adjudicatory determinations by an administrative agency, *CCP § 1085*, providing for ordinary mandamus, requires no written findings of fact in relation to administrative decisions reviewable under that statute. *Santa Cruz v Local Agency Formation Com. (1978, 1st Dist) 76 Cal App 3d 381, 142 Cal Rptr 873.*

The intent of the Legislature in enacting *CCP § 1094.5* (adminstrative mandamus), was to authorize judicial review only of the exercise by an administrative agency of an adjudicatory or quasi-judicial function. Where an agency is

exercising a quasi-legislative function, however, judicial review must proceed under ordinary or traditional mandamus (*CCP § 1085*). The distinction between the quasi-legislative and quasi-judicial decision contemplates the function performed rather than the area of performance. The mere fact that an agency proceeding may contain certain characteristics of the judicial process does not convert the proceeding into a quasi-judicial function. *Langsam v City of Sausalito (1987, 1st Dist) 190 Cal App 3d 871, 235 Cal Rptr 672.*

CCP § 1094.5 (administrative mandamus), was enacted to clarify the situation regarding the procedures for judicial review of adjudicatory decisions by administrative agencies. It sets a different standard of review than traditional mandamus, to support the public policy of preventing parties from circumventing the limited review of administrative decisions. Administrative agencies are vested with quasi-judicial authority to hold hearings, take evidence, and render a decision based upon findings of fact. To allow the parties to challenge every administrative decision with another trial de novo would be a waste of both administrative and judicial resources, and the administrative hearings would be nothing more than perfunctory gestures. *Eureka Teachers Ass'n v Board of Education (1988, 1st Dist) 199 Cal App 3d 353, 244 Cal Rptr 240.*

Where a horse trainer alleged in *42 USCS § 1983* proceedings brought in federal court that he had been denied due process in ongoing state proceedings which suspended his horse racing license, abstention was warranted since the state proceedings implicated the important state interest in the regulation of horse racing and provided the trainer with an adequate forum to raise federal constitutional issues. *Baffert v Cal. Horse Racing Bd. (2003, CA9 Cal) 2003 US App LEXIS 11297, 2003 CDOS 4771, 2003* Daily Journal DAR 6067.

3. Purpose of Proceeding

Proceeding to review by mandamus revocation of license by administrative agency is a type of trial *de novo. Wisler v California State Board of Accountancy (1955, 1st Dist) 136 Cal App 2d 79, 288 P2d 322.*

The sole function of a judicial review under this section of the proceedings of a constitutional administrative agency pursuant to which an application for a license to do business has been denied is to determine whether there is substantial evidence in the record to support the board's findings and whether there has been an abuse of discretion. *Palm Springs Turf Club v California Horse Racing Board (1957, 4th Dist) 155 Cal App 2d 242, 317 P2d 713.*

Section governs review by mandamus after formal adjudicatory decision by any administrative agency, in that it calls for issuance of writ to inquire into validity of any final administrative order; decisive question is whether agency exercises adjudicatory function in considering facts presented in administrative hearing. *Prip v Santa Barbara (1963, 2nd Dist) 214 Cal App 2d 626, 29 Cal Rptr 558.*

Though since enactment of this section in 1945 administrative mandamus as proper remedy for judicial review of administrative action has not been open to question, administrative mandamus did not thereby acquire separate and distinctive legal personalty and is not remedy removed from general law of mandamus or exempted from its established principles, requirements and limitations. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

The provisions of *CCP § 1094.5*, on which review of an administrative order may be predicated, refer to any final administrative order or decision made as the result of a proceeding in which a hearing is required by law and, as in the case of applying for a writ under § 1085, a party seeking relief from an administrative order must show he is one beneficially interested as required by § 1086. *Employees Service Asso. v Grady (1966, 1st Dist) 243 Cal App 2d 817, 52 Cal Rptr 831.*

A hearing in administrative mandamus is only in a limited and qualified sense a "trial de novo;" in scope, it is more in the nature of a review than an unlimited new trial. *Schoenen v Board of Medical Examiners (1966, 2nd Dist) 245 Cal App 2d 909, 54 Cal Rptr 364.*

Administrative mandamus authorized by *CCP § 1094.5*, relating to inquiry into validity of administrative orders or decisions, authorizes judicial review only of the exercise by an administrative agency of an adjudicatory or quasi-judicial function. *Wilson v Hidden Valley Municipal Water Dist. (1967, 2nd Dist) 256 Cal App 2d 271, 63 Cal Rptr 889.*

A claim that a city's administrative agency has exercised the city's police power beyond its constitutional limits may be reviewed in a proceeding in mandamus under *CCP § 1094.5. O'Hagen v Board of Zoning Adjustment (1971, 1st Dist) 19 Cal App 3d 151, 96 Cal Rptr 484.*

Because *CCP § 1094.5*, supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. Administrative mandamus did not, by enactment of that section, acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations. *Save Oxnard Shores v California Coastal Com. (1986, 2nd Dist) 179 Cal App 3d 140, 224 Cal Rptr 425.*

A traditional writ of mandate under *CCP § 1085*, is method of compelling the performance of a legal, usually ministerial duty, whereas the purpose of an administrative mandamus proceeding, under *CCP § 1094.5*, is to review the final adjudicative action of an administrative body. However, mandamus under § 1094.5 is not removed from the general law of mandamus or exempted from the established principles, requirements, and limitations pertaining to traditional mandamus. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where modified by statute. California has consistently differentiated legislative and adjudicatory actions in the manner in which they may be reviewed. Adjudicatory matters are those in which the government's action affecting an individual is determined by facts peculiar to the individual case, whereas legislative decisions involve the adoption of a broad, generally applicable rule of conduct on the basis of general public policy. Section 1094.5 administrative mandamus is used to review adjudicatory determinations and is not available to review quasi-legislative actions of administrative agencies. Quasi-legislative acts are reviewable by traditional mandamus. *Bollengier v Doctors Medical Center (1990, 5th Dist) 222 Cal App 3d 1115, 272 Cal Rptr 273.*

Where the issue is whether a fair administrative hearing was conducted, the petitioner is entitled to an independent judicial determination of the issue; this independent review is not a trial de novo. Instead, the court renders its independent judgment on the basis of the administrative record plus such additional evidence as may be admitted under *CCP § 1094.5(e). Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

B. REQUISITES, GROUNDS, AND FACTORS GOVERNING AVAILABILITY

(1) GENERALLY

4. In General

A court will not only refuse a mandate to enforce a void order of the administrative board, but will grant the writ to compel the board to nullify or rescind its void acts. *Aylward v State Board of Chiropractic Examiners (1948) 31 Cal 2d 833, 192 P2d 929.*

If in fact findings of administrative body are insufficient to allow fair review of decision, such defect may be corrected by writ of mandate under this section. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

Sufficiency of administrative findings does not determine availability of procedure under this section, but is question to be determined on review under this section. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

Mandamus may be issued by any court to any board or person to compel performance of act which law specifically enjoins as duty resulting from office. *Cameron v Escondido (1956, 4th Dist) 138 Cal App 2d 311, 292 P2d 60.*

Appropriate method of reviewing decisions or orders of local administrative agencies, whether involving judicial functions or not, is by mandamus. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Use of writ of mandate to review local board's exercise of quasi-judicial powers invokes remedy of "administrative mandamus" pursuant to this section, rather than traditional action in mandamus under § 1085. *Allen v Humboldt County Board of Supervisors (1963, 1st Dist) 220 Cal App 2d 877, 34 Cal Rptr 232.*

Mandamus is appropriate for review of administrative order. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

One invoking remedy of administrative mandamus must establish that there is not plain, speedy, and adequate remedy in ordinary course of law and must meet requirement that he is party beneficially interested. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

Writ of mandate is appropriate for purpose of reviewing final orders and decisions of administrative agency exercising quasi-judicial powers. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

In proceeding for administrative mandamus, writ of mandate will not issue unless necessary to protect substantial right and on showing that some substantial damage will be suffered by petitioner if writ is denied. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

Though generally mandamus will not lie to control discretion of administrative board, that is, to force exercise of discretion in particular manner, it will lie to correct abuses of discretion and to force particular action by board when law clearly establishes petitioner's right to such action. *Manjares v Newton (1966) 64 Cal 2d 365, 49 Cal Rptr 805, 411 P2d 901*.

CCP § 1094.5, provides for judicial review through the medium of a proceeding in mandamus of final actions of administrative agencies in proceedings in which the law requires a hearing and evidence to be taken, and in which discretion in the determination of facts is vested in an inferior tribunal, corporation, board or officer. The sweep of this statute, however, is limited by the proposition that a writ of mandate is available under its provisions only where the petitioner has no plain, speedy, and adequate remedy at law. *Tivens v Assessment Appeals Board (1973, 2nd Dist) 31 Cal App 3d 945, 107 Cal Rptr 679.*

An action by a nonprofit corporation claiming tax-exempt status as an agent of the state, against a county or city to recover property taxes paid under protest is an action to recover taxes erroneously and illegally collected and not an action pursuant to *CCP § 1094.5*, to determine whether the local board of equalization overvalued the property. *Pacific Grove-Asilomar Operating Corp. v County of Monterey (1974, 1st Dist) 43 Cal App 3d 675, 117 Cal Rptr 874.*

A challenge of the constitutionality of an act as it is applied to an individual under the facts of a particular case by an administrative board is essentially a review of the validity of the administrative action, and, as such, is properly brought under the administrative mandamus provisions of *CCP § 1094.5*, rather than by means of a separate action for declaratory relief. *Mobil Oil Corp. v Superior Court of San Diego County (1976, 4th Dist) 59 Cal App 3d 293, 130 Cal Rptr 814.*

Administrative mandamus does not lie for review of claims rejected by the State Board of Control for money due from the state for services rendered for Medi-Cal beneficiaries. Thus, a hospital was not entitled to administrative mandamus to order the State Board of Control to reconsider the hospital's claim for money due from the state for services rendered to Medi-Cal beneficiaries without regard to any lack of compliance with the regulations of the state Department of Health. The record indicated that the hospital, a licensed nursing care facility provided services for Medi-Cal recipients without first receiving authorization required by state regulations. An action at law was available to the hospital, and all issues relevant to its right to payments for services could be litigated in such lawsuit. *Royal Convalescent Hospital, Inc. v State Board of Control (1979, 4th Dist) 99 Cal App 3d 788, 160 Cal Rptr 458.*

Administrative mandamus (*CCP § 1094.5*), and not traditional mandamus (*CCP § 1085*), was the appropriate means through which to enforce a writ of mandate ordering the State Personnel Board to afford an association of government engineers a "trial-type" hearing regarding prevailing rates for comparable service in other public employment and in private business, where the facts of the case indicated that review of the administrative record might be necessary to adequately determine a fair means of complying with the initial writ and whether the writ had in fact been complied with. Although a § 1094.5, review is not necessarily mandated simply by the fact that an administrative agency is the subject of the action, where the review necessitates looking into the administrative record itself, the trial court must proceed under § 1094.5 and not § 1085. Professional Engineers in *California Government v State Personnel Board (1980, 2nd Dist) 114 Cal App 3d 101, 170 Cal Rptr 547.*

In an action for a declaration of rights with respect to the application of a regulation of the Board of Osteopathic Examiners providing that all applicants for a license to practice osteopathic medicine must have graduated from a school approved by the board, in which the trial court granted the board's motion for summary judgment based in part on the board's decision denying plaintiff's application for a license to practice osteopathic medicine, plaintiff not being a graduate of an approved college, the Court of Appeal would not, on appeal, treat the case as if it were a proceeding for administrative mandate under *CCP § 1094.5*, and thereby rule on the correctness of the board's decision. Gov C§ 11523, prescribes a 30-day time limit for such judicial review. The present action was filed prior to the administrative proceeding, and the applicant never amended his complaint to mention it. It did not appear that he mentioned it at all except in his points and authorities filed in support of his motion for summary judgment, and even then he did not bring

before the trial court either the administrative decision or the administrative record. The applicant offered neither pleading nor proof in the trial court to support his belated request to convert the case into a proceeding in administrative mandate. *Szabo v Board of Osteopathic Examiners (1982, 2nd Dist) 129 Cal App 3d 958, 181 Cal Rptr 473.*

Administrative mandamus cases were not applicable to parole rescissions by the Board of Prison Terms because the public concern for safety and the private interest in liberty were substantially different from the interests involved in such cases; in administrative cases, the independent judgment rule in the trial court was applied only to determine whether there was a basis for the imposition of a penalty, whereas the basis for a penalty in parole matters was established by a criminal conviction. *In re Powell (1986) 42 Cal 3d 1075, 232 Cal Rptr 553, 728 P2d 1188.*

A public safety officer in a county sheriff's department, who sought a writ of mandate to overturn an arbitration award upholding his termination, was not entitled to judicial review of the arbitrator's decision pursuant to *CCP § 1094.5*, since he did not elect to pursue his administrative remedies by appealing to the county board of supervisors. Instead, the officer elected to proceed to arbitration pursuant to the memorandum of understanding (MOU) between the county and the deputy sheriff's association, which provided that an arbitrator's opinion shall be final and binding on both parties. Judicial review of arbitration awards is limited to *CCP § 1286* et seq., and the officer did not invoke that statutory scheme as a basis for judicial review. Further, since the arbitrator's opinion did not contain a monetary award, the officer could not invoke a provision of the MOU making an opinion containing a monetary award exceeding $1,000 reviewable pursuant to *CCP § 1094.5*. Also, the officer waived the issue of whether this provision of the MOU created a contract of adhesion by failing to raise it before the arbitrator. Even if he had not waived the issue, his arguments were diminished by choosing arbitration rather than an administrative hearing before the board of supervisors followed by judicial review pursuant to *CCP § 1094.5*. Finally, since the officer chose the forum in which to resolve his dispute, the case was not an appropriate one in which to refuse to enforce an arbitration award on public policy grounds. *Zazueta v County of San Benito (1995, 6th Dist) 38 Cal App 4th 106, 44 Cal Rptr 2d 678.*

An assistant professor, who was denied tenure by a private college, was limited to review by administrative mandamus (*CCP § 1094.5*), even if the college failed to hold a hearing regarding the professor's grievance or failed to take evidence as required by § 1094.5. In support of its demurrer to the professor's breach of contract complaint, the college requested that the trial court take judicial notice of a handbook and certain other documents that described the nature of the college's mandatory tenure review and grievance procedures. These documents demonstrated that the college required both a hearing and the taking of evidence in reaching its initial tenure decision and provided for a "formal hearing" upon the filing of a grievance complaint by the dissatisfied faculty member. Because the handbook governed the employment relationship, the college was required by law to provide the hearing described therein. Section 1094.5 expressly provides that it is the requirement of a hearing and taking of evidence, not whether a hearing is actually held and evidence actually taken, that triggers the availability of mandamus review. Thus, administrative mandamus was the professor's exclusive remedy for any procedural defects. *Pomona College v Superior Court (1996, 2nd Dist) 45 Cal App 4th 1716, 53 Cal Rptr 2d 662.*

A private college that denied tenure to an assistant professor did not deny the professor due process. Thus, the professors remedy was limited to a petition for administrative mandamus (CCP§ 1094.5). That section provides that the scope of inquiry in reviewing a petition for administrative mandate "shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." The use of the words "fair trial" does not mean that the professor was entitled to a formal hearing under the due process clause. First, he had not been deprived of any liberty or property interest sufficient to require a formal hearing under the due process clause. Second, the "fair trial" requirement is equivalent to a prescription that there be a fair administrative hearing. An employee grievance proceeding may be a "hearing" which triggers the availability of mandamus review. It did not matter that the grievance hearing was in no sense a trial; a hearing suffices for administrative mandamus. It appeared that hearings were held and evidence was taken during the professor's tenure review process. Whether procedural irregularities occurred during the review process, and whether they were so prejudicial as to warrant the issuance of a writ of mandate, could be ascertained by the superior court only upon the professor's presentation a writ of administrative mandamus. *Pomona College v Superior Court (1996, 2nd Dist) 45 Cal App 4th 1716, 53 Cal Rptr 2d 662.*

5. Necessity That Party Be Beneficially Interested or Aggrieved

Alcoholic beverage control appeals board was party aggrieved by judgment of superior court ordering issuance of writ of mandate commanding appeals board to vacate its decision setting aside order of state board of equalization (now

department of alcoholic beverage control), made after petition for reconsideration was granted, suspending indefinitely certain liquor licenses. *Koehn v State Board of Equalization (1958) 50 Cal 2d 432, 326 P2d 502.*

Generally, party not aggrieved is party not beneficially interested; to withhold on this basis judicial review of administrative action is to apply principle fundamental to appellate review of judicial action, from which only aggrieved parties may appeal. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

Writ will not issue where it would be of no benefit to petitioner or would enforce mere abstract right unattended by any substantial benefit, or where petitioner's rights are otherwise amply protected or petitioner is not aggrieved by administrative order or decision in question. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

In proceeding to revoke physician's license, decision of Board of Medical Examiners to adopt hearing officer's proposed order that accusation and proceedings be dismissed was entirely favorable to defendant; thus issuance of writ of mandate would not benefit defendant, would enforce no right not already protected, and would serve no useful purpose in reviewing board's decision, since defendant was not aggrieved thereby. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

A party with a beneficial interest in the subject matter of an administrative proceeding to appear and who has rightfully appeared therein may properly institute proceedings for review by mandamus. *Employees Service Asso. v Grady (1966, 1st Dist) 243 Cal App 2d 817, 52 Cal Rptr 831.*

Where a party has a beneficial interest in the subject matter of the proceedings and the right to appear, and has appeared before an administrative agency, he properly may institute proceedings for review by mandamus. *County of Los Angeles v Tax Appeals Board (1968, 2nd Dist) 267 Cal App 2d 830, 73 Cal Rptr 469.*

Only if it can be said in the light of all the evidence before the Board of Medical Examiners, including evidence offered in mitigation, that the penalty imposed by the Board was manifestly unjustified, may the Board's decision on penalty be disturbed by the courts. *Cadilla v Board of Medical Examiners (1972, 4th Dist) 26 Cal App 3d 961, 103 Cal Rptr 455.*

Denial of a welfare recipient's motion to intervene in a county's mandate proceeding under *CCP § 1094.5*, and to vacate the judgment issuing a writ of mandate setting aside a decision of the Department of Health (which had reinstated the recipient's benefits after the county had ordered them reduced), constituted an abuse of discretion, where the recipient was a person severely impaired by a mental disorder, and where the department had failed to serve him with notice of the mandate proceeding as required by *W & I C § 10962*. The recipient had acquired actual knowledge of the proceeding and had informed his attorney, who had requested copies of the moving papers, which through misdirection had not reached him until the evening before the hearing, causing the attorney's unwillingness to represent the recipient at the hearing. *County of Alameda v Lackner (1978, 1st Dist) 79 Cal App 3d 274, 144 Cal Rptr 840.*

6. Necessity of Hearing, Taking of Evidence, or Other Proceedings Before Administrative Agency

The writ of mandamus is appropriate for the purpose of inquiring into the validity of any final administrative order or decision made as a result of the proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in an inferior tribunal, corporation, board or officer. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

Where State Personnel Board assigned investigator to inquire into 10-day suspension of state employee after such employee had filed his answer to suspension, whether this constituted hearing or merely investigation is unimportant in determining whether this section is applicable since neither by statute nor by board's own rules is such hearing required and this section is applicable only when hearing and taking of evidence among other things are required. *Keeler v Superior Court of Sacramento County (1956) 46 Cal 2d 596, 297 P2d 967.*

Section or part of it is applicable only when conditions set forth in subd (a), such as hearing and taking of evidence, are present. *Keeler v Superior Court of Sacramento County (1956) 46 Cal 2d 596, 297 P2d 967.*

Mandamus provisions of section are not applicable to policeman's petition for mandamus to compel computation and payment of pension in accordance with his vested contractual rights, where no proceedings have been held before pension board. *Chapin v City Com. of Fresno (1957, 4th Dist) 149 Cal App 2d 40, 307 P2d 657.*

CCP § 1094.5, relating to inquiry by mandamus into validity of administrative decision, applies only when decision sought to be reviewed must be result of proceeding in which hearing is required by law, evidence must be taken, and determination of facts is vested in inferior tribunal, corporation, board or officer. *Rich v State Board of Optometry (1965, 1st Dist) 235 Cal App 2d 591, 45 Cal Rptr 512.*

In view of the absence of any express requirement for a hearing under the Municipal Water District Law of 1911, (*Wat Code, § 71000* et seq.) when the board of directors of a district is determining whether to grant or withhold its consent to the annexation of a part of its territory by another water district, administrative mandamus under *CCP § 1094.5* cannot be invoked for the purpose of judicially reviewing the consent to annexation proceedings before the board of directors of the district, administrative mandamus not applying unless the final administrative order or decision reviewed was made as the result of a proceeding in which by law a hearing was required to be given, evidence was required to be taken and discretion in the determination of facts was vested in the inferior tribunal. *Wilson v Hidden Valley Municipal Water Dist. (1967, 2nd Dist) 256 Cal App 2d 271, 63 Cal Rptr 889.*

A probationary entrance classification employee of a municipal railway was entitled to have a civil service commission decision dismissing him on grounds of incompetence and inattention to duties reviewed by administrative mandamus, since he was entitled to a hearing before the civil service commission in order to terminate his employment under the city charter and applicable rules of the commission, since the commission was obliged to hear any evidence presented by the opposing parties, and the employee had submitted evidence challenging the termination, and since the commission was vested with discretionary power to declare the employee dismissed or to return him to the list of eligibles. Accordingly, the trial court erroneously denied the employee's petition for administrative mandamus under *CCP § 1094.5*, which provides that the writ is available to review a decision of an agency as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the agency. *Jean v Civil Service Com. (1977, 1st Dist) 71 Cal App 3d 101, 139 Cal Rptr 303.*

CCP § 1094.5, providing for administrative mandamus, is applicable only when a hearing and the taking of evidence are required by law. However, a hearing requirement is to be implied, absent a contrary intent expressed in the provisions creating the right of appeal concerning an administrative action, where there is no specific provision for a hearing. *Chavez v Civil Service Com. (1978, 3rd Dist) 86 Cal App 3d 324, 150 Cal Rptr 197.*

Two highway patrol officers were not entitled to have a State Personnel Board decision affirming their suspension without pay for 10 days for violations of highway patrol regulations governing reimbursement of employees for overtime meals reviewed by administrative mandamus, since *Gov C § 19576*, which relates to procedures whereby permanent civil service employees may be disciplined, does not require a hearing when an employee is suspended for 10 days or less, and since the pertinent administrative rules of the State Personnel Board, which grant the hearing officer discretion to hold a hearing or conduct an investigation, do not mandate that a hearing be held. Thus, the trial court properly sustained the State Personnel Board's demurrer to the officers' petition for administrative mandamus under *CCP § 1094.5*, which provides that administrative mandamus is available to review a decision of an agency as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the agency. *Taylor v State Personnel Board (1980, 1st Dist) 101 Cal App 3d 498, 161 Cal Rptr 677.*

The judicially imposed hearing, which is required by due process even in cases involving minor suspensions of civil service employees, and during which the employee is apprised of the discipline and the reasons therefor, and given a copy of the charges and an opportunity to respond to them, is distinguishable from the type of hearing which entitles an aggrieved party to judicial review by administrative mandamus, since the hearing required by due process is not a proceeding in which evidence is required to be taken. Thus, administrative mandamus, which is available, pursuant to *CCP § 1094.5*, to review a decision made after a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the agency, was not available to review a decision of the State Personnel Board affirming the suspension without pay for 10 days of 2 highway patrol officers on the ground that a hearing was required by due process. *Taylor v State Personnel Board (1980, 1st Dist) 101 Cal App 3d 498, 161 Cal Rptr 677.*

Invalid regulations promulgated by the Department of Social Services need not be applied or enforced in statutory "fair hearings," and if they are, judicial review may be invoked by "administrative" mandamus pursuant to *CCP § 1094.5* (*W & I C § 10962*). Furthermore, interested persons who are not entitled to such "fair hearings" because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, still may challenge invalid regulations by mandamus pursuant to *CCP § 1085*, or by action for declaratory relief pursu-

ant to *CCP § 1060* (Gov C§ 11350). *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

In an administrative mandamus proceeding pursuant to *CCP § 1094.5*, by persons evicted from apartments declared unfit for habitation by a city who sought review of a decision of the Director of the Department of Social Services denying them relocation assistance on the basis of an assertedly invalid administrative regulation, the trial court properly overruled the director's demurrer to the petition, where the petitioners had, on denial of their application by the county department of social welfare, sought and obtained a "fair hearing" pursuant to *W & I C § § 10950-10965*, and on receipt of the director's final decision rejecting their applications, had timely filed their petition for administrative mandamus, as directed by *W & I C § 10962*. The fact that one of the issues in the "fair hearing" involved an attack on the validity of administrative regulations did not transform the essentially adjudicatory determination into a "quasi-legislative" one so as to preclude review by administrative mandamus. The hearing was "a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal," within the meaning of *CCP § 1094.5*, subd. (a). *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

Review by administrative mandamus (*CCP § 1094.5*) of adjudicatory actions by administrative agencies is limited to those instances in which a hearing is required by law before the administrative agency, and it was therefore not available to review the denial by a city council of a developer's request for an extension of time to commence construction of a building as previously authorized by a municipal zoning ordinance, where such action was taken by the city council following proceedings which involved no hearing requirement, and notwithstanding the fact that a hearing, though not required, was in fact conducted. Court *House Plaza Co. v Palo Alto (1981, 1st Dist) 117 Cal App 3d 871, 173 Cal Rptr 161.*

A recommendation by the Board of Control to deny a claim for indemnity by a woman who alleged she had been erroneously convicted of a felony was subject to judicial review pursuant to *CCP § 1094.5* (administrative mandamus), where the provisions of the claims procedure (*Pen C § 4900* et seq.), calling for the submission of a claim, a hearing, the introduction of evidence, and a decision based on the evidence, plainly met the express requirements of § 1094.5. Further, the purpose of such review was to determine whether the quasi-adjudicative statutory procedures for arriving at a recommendation had been met and not to review legislative action following a board recommendation. *Diola v State Board of Control (1982, 3rd Dist) 135 Cal App 3d 580, 185 Cal Rptr 511.*

Administrative mandamus under *CCP § 1094.5*, was not available to review the decision of a county civil service commission, where a county employee had received an "Improvement Needed" evaluation for the work she had performed, and where the commission granted a hearing and determined that the "Improvement Needed" evaluation was proper. The county's civil service rules provide that an employee who has received an "Improvement Needed" evaluation rating may request a hearing before the commission pursuant to civil service commission rules. The civil service commission rules require hearings to be given upon the petition of an employee who has been discharged, suspended or reduced; however, the rules provide that in all other cases the commission may, at its discretion, grant a hearing or make its decision on the merits based on a review of written material submitted by the parties concerned. Since the employee requested a hearing on her "Improvement Needed" rating, the hearing was one which was not required by law. Rather, it was one which was granted through the commission's exercise of discretion. Thus, § 1094.5 was not the appropriate remedy for review of its decision. Instead, review was available under *CCP § 1085*, under which the standard of review was limited to determining whether the commission's decision constituted an abuse of discretion. *Weary v Civil Service Com. (1983, 2nd Dist) 140 Cal App 3d 189, 189 Cal Rptr 442.*

In an action for declaratory relief and damages by a provider of Medi-Cal services which claimed that the Department of Benefit Payments (predecessor to the Department of Health Services) erred in its valuation of equity capital (goodwill) invested by the provider in a hospital it had purchased, on which investment the provider was entitled to reimbursement from the department for a reasonable rate of return, the trial court erred in overruling the department's demurrer to the complaint. The department's decision as to the value of the goodwill resulted from a proceeding in which, by law, a hearing was required to be given, evidence was required to be taken, and discretion in the determination of facts was vested in the department. Thus, the demurrer correctly contended that a petition for writ of mandate pursuant to *CCP § 1094.5*, was the appropriate vehicle for review of the department's determination. *Pacific Coast Medical Enterprises v Department of Benefit Payments (1983, 2nd Dist) 140 Cal App 3d 197, 189 Cal Rptr 558.*

The administrative mandate procedure of *CCP § 1094.5*, rather than the traditional writ of mandate procedure of *CCP § 1085*, must be used to challenge the validity of any final administrative order or decision made in an administra-

tive proceeding in which by law a hearing is required, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior board. It is not necessary that a specific provision for a hearing and taking of evidence be stated for *CCP § 1094.5*, to apply, so long as a hearing requirement is logically implied, absent a contrary intent expressed in the provisions creating the administrative review. *Eureka Teachers Ass'n v Board of Education (1988, 1st Dist) 199 Cal App 3d 353, 244 Cal Rptr 240.*

The superior court properly determined it had jurisdiction under *CCP § 1094.5*, of a civil servant's petition for an administrative writ of mandate to compel the county civil service commission to hear on the merits her late-filed appeal of termination. It was undisputed she had a right to a hearing on timely request, the commission's untimeliness determination exhausted her administrative remedies, and she promptly sought review in the court. *Civil Service Com. v Velez (1993, 4th Dist) 14 Cal App 4th 115, 17 Cal Rptr 2d 490.*

The proper method of obtaining judicial review of most public agency decisions is by instituting a proceeding for a writ of mandate. Statutes provide for two types of review by mandate: ordinary mandate and administrative mandate (*CCP § § 1085, 1094.5*). The nature of the administrative action or decision to be reviewed determines the applicable type of mandate. In general, quasi-legislative acts are reviewed by ordinary mandate and quasi-judicial acts are reviewed by administrative mandate. But the judicial review via administrative mandate is available only if the decision resulted from a proceeding in which by law: 1) a hearing is required to be given, 2) evidence is required to be taken, and 3) discretion in the determination of facts is vested in the agency. Thus, ordinary mandate is used to review adjudicatory actions or decisions when the agency was not required to hold an evidentiary hearing. *Bunnett v Regents of University of California (1995, 6th Dist) 35 Cal App 4th 843, 41 Cal Rptr 2d 567.*

Where mother filed a petition against a county seeking a writ of administrative mandamus to compel the county's social service agency to grant her a hearing to challenge its decision to file a report with the Child Abuse Central Index (CACI) naming her as a suspected child abuser under the Child Abuse and Neglect Reporting Act, *Pen C 11164* et seq., the court held that the Act presented a very real risk of error in identifying a person as a suspected child abuser; reporting limitations, notification requirement, and expungement remedy impliedly recognized that a person named as a suspected child abuser was entitled to present a timely challenge to a previously filed report; the mother had to be given a reasonable opportunity to rebut the charge and was entitled to relief in the form of a writ of mandamus. *Burt v County of Orange (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1035.*

CCP § 1094.5 governs a case that seeks review of a proceeding that required a hearing, the taking of evidence, and discretionary administrative determination of facts; in such cases, § 1094.5 applies whether not a hearing actually was held. *Helene Curtis, Inc. v Los Angeles County Assessment Appeals Bds. (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 1252.*

Where the court held that a school employee was barred by collateral estoppel from bringing a claim against her supervisor for sexual harassment under the California Fair Employment and Housing Act, *Gov C § § 12940* et seq., because the employee failed to challenge a school board finding of no harassment by filing and pursuing a mandate action in state court, the board's hearing and determination constituted a quasi-judicial proceeding subject to review by administrative mandamus pursuant to *CCP § 1094.5* because the procedures in question called for: (1) the lodging of a complaint; (2) notice of hearing, of any decision rendered, and of the right to appeal to the next level; (3) submission of all information presented at previous levels to the board; (4) a hearing at a regular board meeting; (5) a decision by the board within 10 days; and (6) an appeal thereafter to the state department of education as well as access to other civil law remedies. *Garcia v. Los Banos Unified Sch. Dist. (2006) 418 F Supp 2d 1194, 2006 US Dist LEXIS 8683.*

7. Exhaustion of Administrative Remedies

Where an administrative remedy is provided by statute, even if the terms of the statute do not make the exhaustion of the remedy a condition of the right to resort to the court, relief must be sought from the administrative body and this remedy must be exhausted before the courts will act; this doctrine requires not merely the initiation of prescribed administrative procedures but the pursuit of them to their appropriate conclusion before judicial intervention is sought. *Woodard v Broadway Federal Sav. & Loan Asso. (1952) 111 Cal App 2d 218, 244 P2d 467.*

Where administrative remedy is provided by statute, relief must be sought from administrative body and such remedy exhausted before relief may be had under this section. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

One is not entitled to judicial relief until prescribed administrative remedy is not only invoked but exhausted. *Lynn v Duckel (1956) 46 Cal 2d 845, 299 P2d 236.*

The rules that when an administrative remedy is provided by statute, relief must be sought before the administrative body and such remedy exhausted before the court will act, and it lies within the power of the administrative agency to determine in the first instance and before judicial relief may be granted whether a given controversy falls within the statutory grant of jurisdiction, have no application where the agency is given no jurisdiction at all to make a judicial determination of the type involved. *County of Alpine v County of Tuolumne (1958) 49 Cal 2d 787, 322 P2d 449.*

Where administrative remedy is provided by statute, relief must be sought from administrative body and this remedy exhausted before courts will act. *Vogulkin v State Board of Education (1961, 1st Dist) 194 Cal App 2d 424, 15 Cal Rptr 335.*

Since jurisdiction to entertain action for judicial relief from administrative ruling is conditioned on completion of administrative procedure, court is without jurisdiction to proceed where this condition has not been met. *Franklin v Sacramento (1962, 3rd Dist) 204 Cal App 2d 450, 22 Cal Rptr 331.*

Exhaustion of administrative remedies is condition of court's jurisdiction for judicial review. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

That inquiry into validity of administrative orders or decisions provided for by this section is more restricted or more cumbersome and expensive than immediate intervention by courts furnishes no basis for departing from rule requiring exhaustion of administrative remedies where administrative remedy has been lawfully provided. *Wilson v Civil Service Com. (1964, 2nd Dist) 224 Cal App 2d 340, 36 Cal Rptr 559.*

Where an administrative remedy is provided by statute, relief must be sought from the administrative body and the remedy exhausted before the courts will act; a court violating the rule acts in excess of jurisdiction. *Hollon v Pierce (1967, 3rd Dist) 257 Cal App 2d 468, 64 Cal Rptr 808.*

If an administrative remedy is provided by statute, relief must be sought from the administrative body and such remedy exhausted before relief can be had by way of mandamus under *CCP § 1094.5*. *Ralph's Chrysler-Plymouth v New Car Dealers Policy & Appeals Board (1973) 8 Cal 3d 792, 106 Cal Rptr 169, 505 P2d 1009.*

The purpose of *CCP § 1094.5*, is to inquire into the validity of a final administrative order. Accordingly, that statute was an inappropriate mechanism by recipients of aid for dependent children to seek relief for beneifts withheld pursuant to an invalid regulation, where the class that plaintiff sought to represent did not consist only of those individuals who had completed their administrative appeals process. The appropriate vehicle for such relief was *CCP § 1085*, the traditional mandamus action, which is appropriate to enforce ministerial duties. *Lowry v Obledo (1980, 3rd Dist) 111 Cal App 3d 14, 169 Cal Rptr 732.*

In a mandamus proceeding by a police chief seeking reinstatement following his removal, the court properly granted the city's motion for summary judgment on the ground the chief had received all the relief to which he was entitled, back pay, and that he had failed to exhaust his administrative appeal rights, where the city introduced evidence to show the chief had willfully failed to attend an appeal before the city council, and where the chief's contentions that the city council was biased and not an impartial administrative tribunal and that an appeal to the council would have been a futile gesture was not supported by any evidence in the record which would indicate a triable issue. Futility is a narrow exception to the general rule of exhaustion of administrative remedies. Because the chief failed to present any evidence that he had been denied an opportunity for an administrative hearing, the chief's rights under Gov C§ 3304, guaranteeing a police officer the opportunity for an administrative appeal in connection with any decision to discipline the officer, was not violated. *Doyle v Chino (1981, 4th Dist) 117 Cal App 3d 673, 172 Cal Rptr 844.*

A writ of mandate under *CCP § 1094.5* (administrative mandamus), may be issued to review an administrative decision only if that decision is final. This requirement is regarded as an aspect of the exhaustion of remedies requirement, the normal prerequisite to judicial review of administrative law decisions. Under the doctrine of the exhaustion of administrative remedies, a party must go through the entire proceeding to a final decision on the merits of the entire controversy before resorting to the courts for relief. *Bollengier v Doctors Medical Center (1990, 5th Dist) 222 Cal App 3d 1115, 272 Cal Rptr 273.*

California provides a procedure for an applicant to seek just compensation for alleged injuries from regulatory takings. The aggrieved applicant may file an action for administrative mandamus under *CCP § 1094.5* to determine

whether the agency's regulatory restrictions constituted an impermissible taking rather than a valid exercise of its police powers; the applicant can seek damages if a taking is found either under *CCP § 1095* or, if the plaintiff wishes to preserve his right to a jury trial, by an action for inverse condemnation. Only after those avenues have been pursued and fail to yield just compensation for the alleged regulatory taking is a *42 USCS § 1983* claim ripe for adjudication. Here, the face of the complaint showed that plaintiff, whose application for a permit to build an addition to an existing single-family residence had been denied, had not exhausted those state remedies but, instead, was pursuing those remedies in a § 1983 action. *Breneric Associates v City of Del Mar (1998, 4th Dist) 69 Cal App 4th 166, 81 Cal Rptr 2d 324, 188.*

Owners of a mobile home park were entitled to bring an action under *42 USCS § 1983* against a city and others after the city's rent review commission denied the owners' requests to increase the rents on their mobile home pads, where the rent on the pads was subject to local rent regulations, and where the owners also challenged the denials pursuant to a writ of mandate action under *CCP § 1094.5*. *Galland v City of Clovis (2001) 24 Cal 4th 1003, 103 Cal Rptr 2d 711, 16 P3d 130.*

8. -Application of Doctrine

Availability of unappropriated water may not be determined under this section on ground of imminent danger before Department of Public Works considers application. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1*.

The proper remedy for reviewing the issuance of a payment by the Department of Public Works authorizing the annual appropriation of a quantity of water to a water conservation district, notwithstanding alleged unavailability of unappropriated water, is by a writ of mandate pursuant to this section; but before this remedy will lie all administrative remedies must be exhausted. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

There was no jurisdiction for judicial review of order of department of alcoholic beverage control revoking liquor license where appeal from such order was not taken to alcoholic beverage control appeals board within time allowed by law, despite fact that licensees alleged that they had exhausted all remedies provided by applicable laws and had no further adequate remedy at law or further right of appeal except to file petition for writ of mandate. *Miller v Department of Alcoholic Beverage Control (1958, 2nd Dist) 160 Cal App 2d 658, 325 P2d 601.*

Fact applicant to take civil service examination on both an open basis and promotional basis failed to appeal rejection of his application to take examination on latter basis to State Personnel Board, as provided by its rules and regulations, is fatal to his proceeding in mandamus to compel board to hold examination on promotional basis rather than open basis, and writ of prohibition should be granted to restrain trial court from proceeding with trial of mandamus action. *State Personnel Board v Superior Court of Sacramento County (1959, 3rd Dist) 175 Cal App 2d 158, 345 P2d 976.*

Property owners seeking to have county set-back ordinances declared unconstitutional as applied to their lot did not fail to exhaust their administrative remedies by not requesting board of supervisors to grant variances other than specifically measured differences from set-back lines asked for in variance sought, where to require that other specific variances must have been requested would foreclose resort to courts until all possible variances had been submitted and refused and for property owners to have asked for "some" or "any" variance would have resulted in summary dismissal for having put forth no intelligent plan. *Hoshour v County of Contra Costa (1962, 1st Dist) 203 Cal App 2d 602, 21 Cal Rptr 714.*

Granting of hearing by administrative board before adoption by it of disciplinary action does not constitute waiver by board of requirement that, before appealing to courts for relief, plaintiff must first exhaust his administrative remedy. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

Bare probability, asserted long after time for appeal from administrative ruling, that timely application for rehearing would have been denied does not excuse adherence to rule that litigant must exhaust administrative remedies before appealing to court for judicial review. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

Where no procedure was provided for reconsidering discharge of fire district's captain by district's board other than on appeal obtained pursuant to rules of fire district's commission, and where board had lost jurisdiction to grant plaintiff appeal by plaintiff's failure to make timely application for rehearing, board had no power to waive plaintiff's failure to appeal; only existing right may be waived. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

In an action against a city for damages, after the city revoked plaintiff's conditional use and building permits to build an apartment project and later issued a conditional use permit that significantly scaled back the project, the trial court properly granted the city's motion for judgment on the pleadings, where plaintiff did not exhaust his administrative remedies because he failed to seek administrative mandamus before suing for damages. A proceeding for a writ of administrative mandate (*CCP § 1094.5*) is usually the exclusive remedy for judicial review of the quasi-adjudicatory administrative action of a local-level agency. Although there is an exception to this rule, it did not apply. Plaintiff alleged the delay from revocation of the first permit caused him damage, but he did not allege that the time necessary to challenge the determination by mandamus was economically impractical. Moreover, the exception should not be applied where the landowner does not seek refund of a fee, but seeks damages arising from conditions restricting the development or requiring additional amenities. Also, plaintiff was afforded a number of hearings. *Rezai v City of Tustin (1994, 4th Dist) 26 Cal App 4th 443, 31 Cal Rptr 2d 559.*

After a real property developer, who held an option to purchase and develop a parcel of property, voluntarily dismissed, four days before trial, its action for administrative mandamus (*CCP § 1094.5*) to overturn a city's quasi-judicial decision to disapprove a vesting tentative map and a development agreement, plaintiff was precluded from pursuing additional causes of action for damages for civil rights violations and for inverse condemnation against the city and the three city councilmembers who had voted against the project. The trial court properly gave preclusive effect to the city's administrative decision, which achieved finality when plaintiff gave up its challenge to set it aside. No action in inverse condemnation seeking damages for a permanent taking may be initiated in the first instance without a challenge by mandamus to the application of the ordinance to the affected property. By dismissing its mandamus action and electing to proceed exclusively for damages, plaintiff denied defendants the opportunity to respond to an adverse judicial ruling by remedying the wrong or mitigating the damages claimed and, thus, sought to do what a landowner has no right to do, i.e., to force the city to exercise the power of eminent domain. Plaintiff could not escape responsibility for its failure to bring the mandamus action to trial before it lost its option rights. It delayed the mandamus trial to accommodate its newly retained trial attorneys until after the option ran; had plaintiff kept its trial date, the trial court would have tried the matter before the option expired. By commencing and then dismissing its action, plaintiff obtained no determination in its favor. The mere filing of the action did not provide notice to defendants that the claim had merit. *Mola Dev. Corp. v City of Seal Beach (1997, 4th Dist) 57 Cal App 4th 405, 67 Cal Rptr 2d 103.*

Where an administrative tribunal has rendered a quasi-judicial decision that could be challenged by administrative mandamus pursuant to *CCP § 1094.5*, a party's failure to pursue that remedy may collaterally estop a federal civil rights action. This is a form of res judicata, of giving collateral estoppel effect to the administrative agency's decision, because that decision has achieved finality due to the aggrieved party's failure to pursue the exclusive judicial remedy for reviewing administrative action. *Mola Dev. Corp. v City of Seal Beach (1997, 4th Dist) 57 Cal App 4th 405, 67 Cal Rptr 2d 103.*

Property owner was not required to file an administrative mandate action pursuant to *CCP § 1094.5* before any compensation could be awarded to the owner for loss of use of land pursuant to a condemnation action because (1) the city violated an injunction that led to the award by constructing a curb on the owner's land, and thus the city was not entitled to claim that the owner failed to exhaust administrative remedies by filing a court action to prevent what the city had already done, (2) the owner, by seeking to obtain an injunction, which was in substance an administrative mandate action, complied with the substance of the mandate requirement, given that the owner sought to prevent the city from taking action that otherwise would have made the city liable to pay money, (3) there was a well-established exception to the requirement for a mandate action when an irrevocable taking had already occurred, as in this case, and (4) the facts showed that the city was not using its police power to abate a nuisance on the land as claimed. *Hurwitz v City of Orange (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1600.*

In an action for wrongful termination, an employee failed to exhaust grievance procedures because he did not appeal a grievance denial to its final conclusion, a writ proceeding under *CCP § 1094.5*. *Claudio v Regents of the University of California (2005, Cal App 3rd Dist) 134 Cal App 4th 224, 35 Cal Rptr 3d 837, 2005 Cal App LEXIS 1815.*

9. -Limitations on Doctrine

Where statute provides administrative remedy and also alternative judicial remedy, rule requiring exhaustion of administrative remedy has no application if person aggrieved and having both remedies afforded him by same statute elects to use judicial one. *Muir v Steinberg (1961, 5th Dist) 197 Cal App 2d 264, 17 Cal Rptr 431.*

Exception to rule that exhaustion of administrative remedies is jurisdictional prerequisite to resort to court is made when irreparable injury will result if administrative hearing is permitted to proceed and its orders made effective without prior judicial interference; however, this exception applies only to cases concerning orders of regulatory commissions who impose confiscatory rate on public utility and is not applicable to action for damages for breach of alleged oral contract to employ administrative officer. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

A county health director's order directing a milk producer to discontinue its production of certified raw milk for sale because of the presence of bacterial organisms pathogenic to man, and providing that the order would remain in effect "until such time as you can prove to this department that the raw or unpasteurized milk from your dairy is free from pathogenic organisms and this department authorizes in writing the sale of raw milk from your dairy," set up no machinery or procedure for reviewing the order and made no provision for a hearing, amounted to no more than a statement "the order stands until you prove us wrong", could not be considered an adequate procedural remedy of review, and failure to pursue it did not preclude the producer from seeking mandate. *Alta-Dena Dairy v County of San Diego (1969, 4th Dist) 271 Cal App 2d 66, 76 Cal Rptr 510.*

When administrative review or remedy is provided by statute or regulation, the doctrine of exhaustion of remedies is not applicable unless the statute or regulation under which the power is exercised establishes clearly defined machinery for the submission, evaluation, and resolution of complaints by aggrieved parties; and the requirements are no less as to review of an administrative order relied upon to establish the existence of administrative review. *Alta-Dena Dairy v County of San Diego (1969, 4th Dist) 271 Cal App 2d 66, 76 Cal Rptr 510.*

In a proceeding in mandamus to compel a county to issue a building permit, the trial court's error, if any, in not requiring plaintiff to first exhaust his administrative remedies, was invited by defendants, where counsel for defendants stipulated at trial that administrative appeal did not apply to the case. *Selby Realty Co. v O'Bannon (1969, 2nd Dist) 2 Cal App 3d 917, 82 Cal Rptr 807.*

Police officer could invoke the jurisdiction of the courts under *CCP § 1094.5* to consider legal arguments that he did not raise in administrative proceedings because the police department consistently maintained that, contrary to the officer's arguments, its notification to him of its proposed disciplinary action was timely, in compliance with *Gov C § 3304(d)*. In view of the department's unyielding position, an administrative challenge on those grounds would have been futile. *Sanchez v. City of Los Angeles (2006, 2d Dist) 140 Cal App 4th 1069, 45 Cal Rptr 3d 188, 2006 Cal App LEXIS 945.*

(2) SPECIFIC INSTANCES

10. In General

Where the corporation commissioner erroneously determined that a foreign corporation had made unauthorized sales of its stock in this state and ordered the corporation to cease such sales, and sent a letter to brokers directing them not to trade in such corporation stock without his permission, it was error to deny a writ of mandate to compel the commissioner to rescind such orders. *B. C. Turf & Country Club, Ltd. v Daugherty (1949) 94 Cal App 2d 320, 210 P2d 760.*

Mandate does not lie to restrain members of the State Board of Pharmacy from enforcing certain regulations and orders against a wholesale surgical supply company, where there has been no proceeding before the board charging such company with violation of any of the board's orders or with violation of provisions of the Health and Safety Code and the Business and Professions Code; until the board has acted against such company, that is, conducted a hearing and rendered its decision, there is nothing to review. *Western Surgical Supply Co. v Affleck (1952) 110 Cal App 2d 388, 242 P2d 929.*

Whether a surgical supply company violated the Pharmacy Act, the Dangerous Drug Act, and the Poison Act by selling dangerous drugs and poisons to professional classes other than through a registered pharmacist, and whether such statutes are unconstitutional, cannot be considered by the District Court of Appeal in a proceeding for a writ of mandate to restrain members of the State Board of Pharmacy from enforcing certain regulations and orders against such company, where a determination of such question would amount to an unwarranted interference with criminal proceedings pending in the municipal courts. *Western Surgical Supply Co. v Affleck (1952) 110 Cal App 2d 388, 242 P2d 929.*

Mandamus lies to compel transfer of an unemployment insurance reserve account and rating of a business to a successor of the business who qualifies under former Unemployment Insurance Act, § 41.5, see, now, *Unempl Ins C § 1051. Ideal Hardware & Supply Co. v Department of Employment (1952) 114 Cal App 2d 443, 250 P2d 353.*

Where petitioner alleges facts which show that her alleged expulsion from a realty board was invalid did not have the effect of depriving her of the right to use the designation "realtor," she is entitled to have the administrative record of the proceedings resulting in suspension of her license for illegal use of the designation certified and reviewed by the court pursuant to this section. *Swital v Real Estate Comm'r (1953) 116 Cal App 2d 677, 254 P2d 587.*

Gov C § 11523 and this section are part of administrative law of state, and superior court has no power to circumvent procedure there provided through, by its injunctive order restraining Contractors' State License Board from taking further action in disciplinary proceeding against contractor, in effect imposing plea in abatement in administrative proceedings. *Contractors' State License Board v Superior Court of Los Angeles County (1960, 2nd Dist) 187 Cal App 2d 557, 10 Cal Rptr 95.*

Validity of decision of Commissioner of Corporations in refusing to certify that the permit was required under Corporate Securities Law for consummation of merger of two corporations was subject to review by petition for writ of mandate. *Giannini Controls Corp. v Superior Court of Los Angeles County (1966, 2nd Dist) 240 Cal App 2d 142, 49 Cal Rptr 643.*

Following the establishment of tax appeal boards, sitting as quasi-judicial bodies over disputes between taxpayers and officers of the county, the county may petition for judicial review of their decisions. *County of Los Angeles v Tax Appeals Board (1968, 2nd Dist) 267 Cal App 2d 830, 73 Cal Rptr 469.*

The action of a school board in filing a statement of need for a noncertificated teacher with the State Board of Education (Cal Adm Code, former Title 5, § 611) was not within the definition of quasi-judicial activity so as to be within the ambit of *CCP § 1094.5* (administrative mandamus); it was but a preliminary step by one governmental agency (district) enabling another (the State Board) to act; nor was there available in the law any other method of review of the accuracy of either the district's determination under the section that no qualified, certificated applicant was available or the necessarily-included determination that one whose application was on file with the district was not qualified. *Jones v Oxnard School Dist. (1969, 2nd Dist) 270 Cal App 2d 587, 75 Cal Rptr 836.*

Declaratory relief is an appropriate remedy in which to seek a declaration that the California Coastal Zone Conservation Act of 1972 is facially unconstitutional. However, insofar as real parties' challenge of the constitutionality of application of the act to them amounted to an attempt to review validity of the administrative action of the California Coastal Zone Conservation Commission's administrative action, the proper remedy was administrative mandamus, rather than declaratory relief. *State v Superior Court of Orange County (1974) 12 Cal 3d 237, 115 Cal Rptr 497, 524 P2d 1281.*

In setting a tax rate under a statutory delegation of authority, an administrative board or officer acts in a quasi-legislative capacity and though *CCP § 1094.5*, providing for administrative mandamus, applies only to administrative adjudications, not to quasi-legislative action, a party may seek review of a quasi-legislative action through *CCP § 1085*, providing for traditional mandamus. *Malibu West Swimming Club v Flournoy (1976, 3rd Dist) 60 Cal App 3d 161, 131 Cal Rptr 279.*

An unsuccessful applicant for welfare benefits may contest the validity of a regulation which mandates the denial of his application both in the "fair hearing" provided by *W & I C § 10950*, and in the subsequent judicial review under *CCP § 1094.5*. (Disapproving langauge in *Rosas v. Montgomery (1970) 10 Cal.App.3d 77, 86 [88 Cal.Rptr. 907]* to the extent it may be interpreted as approval of *CCP § 1094.5*, review of regulations which have not been applied to applicants within specific factual settings. *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

Physician, whose license had been revoked my state medical board, had sufficient opportunity to present claims to state court that medical board's proceedings violated federal constitution, since physician could petition state superior court for writ of mandate, and superior court had discretion to stay operation of administrative order pending preliminary assessment of merits. *Kenneally v Lungren (1992, CA9 Cal) 967 F2d 329.*

An administrative mandamus petition was properly addressed to the superior court where the Department of Corrections sought to overturn an administrative decision concerning the long-term involuntary medication of a state prisoner who was alleged to be a danger to others as a result of a mental disorder. The "judicial hearing" to which *Pen C §*

2600 refers is simply an administrative adjudication, like any other "in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested," which is reviewable in the first instance by the superior court. (*CCP § 1094.5*, subd. (a).) The administrative hearings are intended to relieve superior courts of the burden of proceedings as required by a California Supreme Court injunction, but not to divest them in the context of their normal jurisdiction to review administrative determinations. *Department of Corrections v Office of Admin. Hearings (1998, 1st Dist) 66 Cal App 4th 1100, 78 Cal Rptr 2d 473.*

The trial court summarily denied a petition for writ of administrative mandamus brought by a juvenile convicted of first-degree murder which challenged an order of the Youthful Offender Parole Board returning her from the California Youth Authority to the superior court for commitment to state prison. Petitioner asserted that her right to remain at CYA implicated a vested, fundamental right, compelling the trial court's independent review of the Board's action. The effect of the Board's decision to return petitioner to adult court was that she would be sentenced to state prison for 26 years to life and would not be eligible for parole for many years. Had the Board confirmed her prior placement, petitioner would have continued to receive the benefit of the trial court's sentence and would have expected to be released from custody within a few years. Given the dramatic difference in the potential length and nature of incarceration, and considering the Board's decision from the standpoint of its effect in human terms and the importance to petitioner, the board's decision must be deemed to directly affect her fundamental vested rights. Review of a decision to remove the inmate to the world of adult punishment requires the exercise of independent judgment. *Mardesich v California Youthful Offender Parole Bd. (1999, 2nd Dist) 69 Cal App 4th 1361, 82 Cal Rptr 2d 294, 1367.*

When landlords seeks damages under *42 USCS § 1983* from allegedly confiscatory rent regulation, they must show (1) that a confiscatory rent ceiling or other rent regulation was imposed and (2) that relief via a writ of mandate and a Kavanau adjustment is inadequate. *Galland v City of Clovis (2001) 24 Cal 4th 1003, 103 Cal Rptr 2d 711, 16 P3d 130.*

In an administrative mandate action against the state insurance commissioner that was instituted after the department of insurance ordered a used car finance company to stop offering a debt cancellation program until it obtained an insurance sales license, judgment was properly entered for the finance company because the debt cancellation program, an alternative to the mandatory insurance required of the finance company's customers to secure the company's loans to them, did not constitute insurance. *Automotive Funding Group, Inc. v Garamendi (2003, 2nd Dist) 114 Cal App 4th 846.*

In a hospital fair-hearing proceeding, the presiding officer should have been disqualified because there was an appearance of bias. Therefore, the trial court should have granted the doctor's petition for a writ of mandamus. *Yaqub v Salinas Valley Memorial Healthcare System (2004, Cal App 6th Dist) 2004 Cal App LEXIS 1554.*

Trial court properly denied an employer's petition for a writ of mandate because the Director of Industrial Relations did not have discretion to withdraw the assessment of a $ 100,000 penalty, where the record was uncontradicted that the employer failed to obtain workers' compensation insurance from an authorized insurer. *Starving Students, Inc. v Department of Indus. Relations (2005, Cal App 2nd Dist) 2005 Cal App LEXIS 82.*

Trial court erred in denying the petition for writ of mandate filed by the owner of a mobile home park because the ruling of the city's mobile home rent review board lacked evidentiary support. Although the board was not required to employ any specific formula, its averaging method was faulty because there was no showing that two of the figures the board relied on were within the range of reasonable rents under the fair return criterion. *H.N. & Frances C. Berger Foundation v City of Escondido (2005, Cal App 4th Dist) 2005 Cal App LEXIS 288.*

Administrative mandamus proceeding under *CCP § 1094.5* could not be used to challenge a determination that a worker was an employee for purposes of unemployment compensation because the purpose of the writ would be to restrain the collection of a tax; such a proceeding was explicitly barred by *Cal. Const., art. XIII, § 32*, and *Unempl Ins C § 1851. First Aid Services of San Diego, Inc. v California Employment Development Dept. (2005, 4th Dist) 133 Cal App 4th 1470, 35 Cal Rptr 3d 663, 2005 Cal App LEXIS 1746.*

11. Employees' Rights

Writ of mandate directing State Personnel Board to annul petitioner's dismissal and reinstate her to her position of psychiatric technician at state hospital should have been issued by court where charges on which discharge was based were inexcusable neglect of duty, wilful disobedience, and violation of Department of Mental Hygiene rules and regulations, in that petitioner had improperly restrained two mental patients, and where evidence before board at discharge hearing showed that patients involved had to be restrained, that type of restraint used was not initiated by petitioner and

its use, in general and with these patients, was known to staff physicians in charge, that orders for restraint, issued by petitioner's superiors, which did not forbid type of restraint used, were in force as to both patients when they were restrained, that petitioner had not been instructed that such restraints were considered wrong, and that petitioner was not in charge of restraining patient as to whom finding of injury was made. *Peters v Mitchell (1963, 3rd Dist) 222 Cal App 2d 852, 35 Cal Rptr 535.*

Writ of mandate ordering county retirement board to set aside its order denying application for service-connected disability retirement benefits and to reconsider matter was properly granted where court found that evidence presented to board consisted almost entirely of hearsay, that members of board expressed conclusions based on personal experience, that medical reports submitted in evidence by applicant were on their face susceptible to two conflicting constructions, and that no evidence was presented to board to show that either of two physicians who rendered medical opinions concerning causal relationship between illness of applicant and his disability had knowledge of duties performed by him in course of his employment. *Lindsay v County of San Diego Retirement Board (1964, 4th Dist) 231 Cal App 2d 156, 41 Cal Rptr 737.*

CCP § 1094.5, concerning inquiry into the validity of an administrative order or decision, applies to a review of the validity of the discharge of a civil service employee for insubordination. *Forstner v San Francisco (1966, 1st Dist) 243 Cal App 2d 625, 52 Cal Rptr 621.*

Mandamus is the appropriate relief where petitioner alleged and the trial court found that his dismissal from the office of chief of police was in violation of rights granted to him under *Gov C § § 3500-3509. Ball v City Council of Coachella (1967, 4th Dist) 252 Cal App 2d 136, 60 Cal Rptr 139.*

The trial court correctly denied a writ of mandate to require the retirement board of a county employees' retirement association to grant service-connected disability retirement to a disabled employee despite conflicting evidence as to the origin of the disability, where there was substantial evidence before the board in the form of expert medical testimony that the employee's disability did not arise in whole or in part from, or in the course of, his employment. *Grant v Board of Retirement of Kern County Employees' Retirement Asso. (1967, 5th Dist) 253 Cal App 2d 1020, 61 Cal Rptr 791.*

The remedy of mandamus is available to a probationary teacher, as well as to a permanent teacher, who has been refused re-employment, to seek restoration to a position from which he claims he was wrongfully excluded; any reason for distinguishing between a permanent and a probationary teacher in relation to a mandamus proceeding was eliminated by former Ed C § 13443 (see now *Ed C § § 44930* et seq.), which gives probationary teachers certain protection against nonrenewal of contracts which parallels the rights of permanent teachers. *Thornton v Board of Trustees (1968, 5th Dist) 262 Cal App 2d 761, 68 Cal Rptr 842.*

Mandamus was the proper procedure for review of a University of California decision to terminate a librarian's employment where, under the procedure established by the Board of Regents, the decision presented to the trial court for review was the result of a proceeding in which by the rules of the university at the time the librarian was employed, a hearing was required to be given, evidence was required to be taken, and the determination of the facts was vested in the inferior tribunal, corporation, board, or officer. *Ishimatsu v Regents of University of Cal. (1968, 1st Dist) 266 Cal App 2d 854, 72 Cal Rptr 756.*

The trial court properly denied mandamus to compel a school district to re-employ a probationary teacher, where the action was not one in which the court was authorized to exercise independent judgment on the evidence, where the evidence on charges made against the teacher, adduced at a hearing conducted pursuant to *Gov Code, § 11500* et seq., was in conflict, and where a review of the record and a consideration of the evidence supporting the decision of the hearing officer and not that conflicting therewith showed "substantial evidence" to support the findings. *American Federation of Teachers v San Lorenzo Unified School Dist. (1969, 1st Dist) 276 Cal App 2d 132, 80 Cal Rptr 758.*

A notice of dismissal sent to a probationary teacher on May 15, 1967, was not sent after full compliance with the procedures of Ed Code, § 13443, where, after timely and proper notice of dismissal was given, the proceeding initiated thereby was set aside by a writ of mandate for lack of due process and failure to conform with the statutory requirement of the opportunity to cross-examine witnesses; the mandate proceeding established the teacher's right to reemployment as a matter of law and once his status was thus established, it was presumed to continue, and he could not be dismissed except for cause and in the specific manner directed by the statute. *Ward v Freemont Unified School Dist. (1969, 1st Dist) 276 Cal App 2d 313, 80 Cal Rptr 815.*

In a proceeding in mandamus to compel a city to reinstate petitioner to the position of policeman from which he had been dismissed following a hearing before an administrative board on misconduct charges, it was not error to fail to

consider the board's contemporaneous treatment of other policemen in determining whether the penalty of dismissal constituted an abuse of the board's discretion, where he made no offer to show that the other policemen's situations were similar to his, or that the penalty of dismissal, in his case, constituted discrimination. *Marino v Los Angeles (1973, 2nd Dist) 34 Cal App 3d 461, 110 Cal Rptr 45.*

Inasmuch as there is no requirement of a hearing upon an appeal made pursuant to Cal. Admin. Code, tit. 8, § 303, subd. (e), providing that if appeal is made to the full Fair Employment Practice Commission, the commission shall review the entire file and may in its discretion hear the parties, former Lab C § 1428 (see now *Gov C § 12973*), providing that every final order or decision of the commission is subject to judicial review in accordance with the law, must be construed as requiring review of dismissals pursuant to *CCP § 1085*, providing for ordinary mandamus, rather than to *CCP § 1094.5*, providing for administrative mandamus. Meaningful judicial review of a dismissal by the commission of an employment discrimination complaint does not require formal findings of fact, provided the court has an adequate record from which it can determine whether the agency's action was arbitrary, capricious or an abuse of discretion. *Mahdavi v Fair Employment Practice Com. (1977, Cal App) 67 Cal App 3d 326, 136 Cal Rptr 421.*

Ordinary mandamus pursuant to *CCP § 1085*, and not administrative mandamus under *CCP § 1094.5*, was the proper remedy for a school teacher who contended that a school board had an obligation, even after notifying her of its final decision to terminate her at the end of the school year, to reassign her to any position which came available in the ensuing school year prior to the effective date of her termination, where the school board refused to act on the teacher's demand for reassignment when faced with that contention, and therefore refused to exercise discretion or to perform a ministerial act. *Wellbaum v Oakdale Joint Union High School Dist. (1977, 5th Dist) 70 Cal App 3d 93, 138 Cal Rptr 553.*

The remedy of administrative mandamus (*CCP § 1094.5*) is a proper means to review the University of California's decision dismissing an employee for allegedly failing to maintain appropriate work performance standards, since the university exercises adjudicatory powers derived directly from the *California Constitution. Mendoza v Regents of University of Cal. (1978, 1st Dist) 78 Cal App 3d 168, 144 Cal Rptr 117.*

In a proceeding for a writ of mandamus to vacate a city's decision suspending a police officer for three days, placing him in the status of a probationary employee for six months and reducing his pay grade by two steps, the trial court properly reviewed the matter pursuant to *CCP § 1094.5*, the administrative mandamus statute, rather than that of traditional mandate pursuant to CCP § 1085, and properly employed the independent judgment test. The record indicated that in the course of the disciplinary hearing, the city administrator was required to apply previously adopted rules to specific facts to reach a conclusion affecting the probationary and pay grade rights of the officer. *Estes v Grover City (1978, 2nd Dist) 82 Cal App 3d 509, 147 Cal Rptr 131.*

In a proceeding to dismiss a teacher on grounds of incompetency, evident unfitness for service, and violation of or refusal to obey laws and regulations, in which the district failed to comply with the requirements of former Ed. Code, § 13407 (now § 44938, prescribing procedures prior to the district's acting on charges of its employee's incompetency), there was no evidence to support the trial court's conclusion that the Commission on Professional Competence's receipt of evidence of incompetency tainted the entire proceeding against the teacher, thereby depriving him of a fair hearing on the remaining charges (*CCP § 1094.5*, subd. (b)). This was true because evidence on each charge was presented separately at the hearing on dismissal, so that evidence on the charges of evident unfitness for service, or evident unfitness and persistent violation of the rule governing corporal punishment (Board of Education Rule 2268) did not include evidence on any charges of incompetency. *Tarquin v Commission on Professional Competence (1978, 2nd Dist) 84 Cal App 3d 251, 148 Cal Rptr 522.*

A city council exceeded its jurisdiction in basing its imposition of discipline of a police sergeant on findings contrary to those of a hearing officer appointed at the request of the employee pursuant to a city ordinance, without finding that the hearing officer's decision was unsupported by substantial evidence. Under the ordinance, the hearing officer's decision with respect to the facts was binding unless and until it was found to be not founded on substantial evidence by the city council on its review of the matter. The council made no such determination except as to the officer's recommendation of limited discipline, which recommendation was not part of the decision he was called upon to make. the council's own findings, to some extent contrary to those of the hearing officer, did not constitute implied findings that the officer's findings were without support of substantial evidence; there can be substantial evidence to support findings either way on issues as to which evidence is conflicting. Thus, in reaching its determination to discipline the employee by suspension and demotion, the council did not proceed "in the manner required by law" and committed an abuse of discretion (*CCP, § 1094.5*, subd (b)). *Jackson v Pomona (1979, 2nd Dist) 100 Cal App 3d 438, 160 Cal Rptr 890.*

Administrative mandamus was not available to review the decision of the State Personnel Board affirming the suspension without pay for 10 days of 2 highway patrol officers merely because the officers were provided a hearing prior to the imposition of disciplinary measures. Administrative mandamus, pursuant to *CCP § 1094.5*, is available only when a hearing is required by law, and thus, whether the proceeding which was actually provided for the officers was a hearing or merely an investigation was unimportant, where neither *Gov C § 19576*, which relates to disciplinary proceeding against permanent civil service employees, nor the administrative rules of the State Personnel Board require a hearing when an employee is suspended for 10 days or less. *Taylor v State Personnel Board (1980, 1st Dist) 101 Cal App 3d 498, 161 Cal Rptr 677.*

The statutory standard contained in *CCP § 1094.5*, subd. (h)(1), applicable to applications for stay orders of administrative decisions regulating the medical profession, does not deny a doctor equal protection of the law, although it requires a judicial determination that the agency is unlikely to prevail ultimately on the merits, while *CCP § 1094.5*, subd. (g), applicable to other state agencies, requires only that before the issuance of a stay order the court is satisfied that it is not against the public interest. The legislative classification establishing a stricter standard in the case of a physician for determining whether an administrative revocation of the physician's license should be temporarily stayed bears a rational relationship to the unusually influential and sensitive relationship between the physician, the public and his patients which is neither unreasonable nor arbitrary. *Board of Medical Quality Assurance v Superior Court of Fresno County (1980, 5th Dist) 114 Cal App 3d 272, 170 Cal Rptr 468.*

The superior court properly denied a petition for peremptory writ of mandate sought by a city police chief under *CCP § 1085*, to require the city to either rescind its decision to assign him to a new position or to grant him an administrative appeal of that decision. The chief was transferred to the new position pending a hearing on his application for disability retirement, which was ultimately denied. The city's decisions to reassign the officer and its subsequent denial of his application for disability retirement affected his employment and were clearly adjudicatory. Therefore, the trial court properly determined the officer was required to petition for relief under *CCP § 1094.5*, rather than under § 1085. *Tielsch v City of Anaheim (1984, 4th Dist) 160 Cal App 3d 570, 206 Cal Rptr 738.*

Whether a petitioner must proceed under *CCP § 1094.5*, to obtain judicial review of a local agency's action, or is entitled to petition under § 1085 depends on the type of action undertaken by the local agency. Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts. The former may be reviewed by ordinary mandate under § 1085, but the adjudicatory nature of the latter act requires that judicial review proceed pursuant to § 1094.5. *Tielsch v City of Anaheim (1984, 4th Dist) 160 Cal App 3d 570, 206 Cal Rptr 738.*

The trial court properly sustained without leave to amend defendants' demurrer to a complaint by a former city employee for firing her in retaliation for exercising her right to protest unsafe working conditions and rules, where she failed to have the decision of the civil service commission upholding her dismissal judicially reviewed by bringing a petition for a writ of administrative mandamus pursuant to CCP § 1094.5, a proper remedy for contesting decisions regarding public employee discipline. Causes of action for intentional infliction of emotional distress in violation of public policy were also precluded, as they were predicated on the impropriety of her termination. Emotional distress caused by the termination did not represent a separate injury but was a consequence of the termination, and the consequential damages did not support a separate cause of action. To maintain a lawsuit for such damages, it was incumbent on plaintiff to first seek judicial review of the commission's ruling that the termination was proper. Failure to seek administrative mandamus could not be excused on the alleged ground it would have been a futile exercise. *Swartzendruber v City of San Diego (1992, 4th Dist) 3 Cal App 4th 896, 5 Cal Rptr 2d 64.*

A county employee did not state a cause of action for violation of federal civil rights *(42 USCS § 1983)* against the county employees retirement association and other defendants who delayed in awarding the employee her disability retirement. The employee alleged that defendants violated her substantive due process rights by "acting arbitrarily," that is, by initially denying her application without a rational basis, and by not reconsidering her application when all the evidence before the board compelled the conclusion that she was entitled to a disability retirement. Inasmuch as the board ultimately did reconsider the application and did in fact, as the complaint itself alleged, award the employee a full service-connected disability retirement, effective as of the date of her last regular pay, it was not true that the employee was denied a fundamental vested right. The employee could state no facts to overcome the fact that her vested right was vindicated. *Masters v San Bernardino County Employees Retirement Assn. (1995, 4th Dist) 32 Cal App 4th 30, 37 Cal Rptr 2d 860.*

A party's failure to pursue a writ of administrative mandate (*CCP § 1094.5*) where an administrative tribunal has rendered a quasi-judicial decision may collaterally estop a federal civil rights action. This is a form of res judicata, of giving collateral estoppel effect to the administrative agency's decision, because that decision has achieved finality due to the aggrieved party's failure to pursue the exclusive judicial remedy for reviewing administrative action. The theory of issue preclusion is that when a state agency acting in a proceeding in a judicial capacity resolves disputed issues of fact properly before it which the parties have had adequate opportunity to litigate, federal courts must give the agency's fact-finding the same preclusive effect it would have in state courts. Where the governmental action being challenged by a federal civil rights lawsuit is not the result of a quasi-judicial hearing, the exhaustion of remedies rule does not apply and does not require the plaintiff first to seek another state judicial remedy, such as ordinary mandamus pursuant to *CCP § 1085*. Generally, a federal civil rights plaintiff is not required to exhaust state administrative and judicial remedies. *McDaniel v Board of Educ. (1996, 2nd Dist) 44 Cal App 4th 1618, 52 Cal Rptr 2d 448.*

The trial court erred in sustaining defendant school district's demurrer to an employee's complaint, alleging, under federal civil rights law, the district's retaliatory denial of early retirement, on the ground that the action was barred by plaintiff's failure to seek review of defendant's conduct by a writ of administrative mandate. *CCP § 1094.5* (administrative mandate), did not apply to this case. Section 1094.5 applies only to any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer. In this case, plaintiff asked for early retirement, and it was denied on the ground the application was late. Plaintiff then filed a formal claim and was notified by a letter of the rejection. The record did not show that plaintiff's claim was one on which the law required a hearing to be given and evidence taken. Where the governmental action being challenged by a federal civil rights lawsuit is not the result of a quasi-judicial hearing, the exhaustion of remedies rule does not apply and does not require the plaintiff first to seek another state judicial remedy. *McDaniel v Board of Educ. (1996, 2nd Dist) 44 Cal App 4th 1618, 52 Cal Rptr 2d 448.*

If the order or decision of the agency substantially affects a fundamental vested right, the trial court, in determining under *CCP § 1094.5* whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. Discipline imposed on city employees affects their fundamental vested right in their employment. Accordingly, the superior court is required to exercise its independent judgment on the evidence and find an abuse of discretion if the agency's findings of the employee's misconduct were not supported by the weight of the evidence. *Kazensky v City of Merced (1998, 5th Dist) 65 Cal App 4th 44, 76 Cal Rptr 2d 356.*

In an action brought by a public employee against a city and its civil service commission under the California Fair Employment and Housing Act (FEHA; *Gov C § § 12900* et seq.) for alleged gender discrimination in the cancellation of civil service examinations and eligible lists on which the employee had placed number one, the trial court properly denied the petitions for traditional and administrative mandate (*CCP § § 1085, 1094.5*), finding the cancellation nondiscriminatory and supported by the administratively determined adverse impact on African-American applicants. It was undisputable that the city's civil service commission had ultimate discretion under the charter to devise, administer and assess the tests, and then to adopt or not adopt them or the tentative eligibility lists. The undisputed finding of adverse impact was, on its face, a sufficient reason to exercise discretion to cancel the tests. There was no legal duty to adopt the tests or to try to validate them. A court cannot, for the benefit of one protected group, compel a validation study through administrative mandate where an agency has properly exercised its discretion to cancel an employment test shown to have adverse impacts on another protected group. *Harris v Civil Service Com. (1998, 1st Dist) 65 Cal App 4th 1356, 77 Cal Rptr 2d 366.*

A permanent sanitation district employee's right to continue his public employment was a fundamental vested right within the meaning of the rule requiring the trial court to exercise its independent judgment in reviewing an administrative decision affecting such a right (CCP§ 1094.5; administrative mandamus). *Los Angeles County Employees Asso. v Sanitation Dist. No. 2 (1979, 2nd Dist) 89 Cal App 3d 294, 152 Cal Rptr 415.*

Where a terminated university employee wrote a letter of complaint to the university's chancellor and received a response from the chancellor, which stated that the employee was a "probationary employee" and thus could be released at any time at the discretion of the university, the employee was not required to challenge the rejection of her "grievance" in a mandamus action under *CCP § 1094.5* in order to exhaust her judicial remedies for her claim of a due process violation under *Cal Const Art I § 7*; the requirement that adverse administrative decisions be overturned through mandamus proceedings, which was grounded in the doctrine of collateral estoppel, did not apply because none of the

issues raised by the employee were previously decided by the university. *Dao v Univ. of Cal. (2004, ND Cal) 2004 US Dist LEXIS 16828.*

Memorandum of understanding between a union and a public employer did not result in a final decision and was not an agreement to arbitrate, for purposes of *CCP § 1281.2*, because it contained a clause providing for appeal of a hearing officer's decision under *CCP § 1094.5*. *American Federation of State, County & Municipal Employees, Local 1902 v Metropolitan Water District of Southern California (2005, Cal App 2nd Dist) 2005 Cal App LEXIS 129.*

Administrative hearing that a municipal employee received following his termination for violation of a nondiscrimination policy satisfied the requirements of procedural due process for purposes of *CCP § 1094.5(b)* because the hearing occurred before an impartial decision maker, the employee was represented by counsel at the proceedings, the testimony of witnesses was submitted under oath, the hearings occurred on five dates over the course of four months, and there was a court reporter and a record. *Rosas v Town of Windsor (2005, ND Cal) 2005 US Dist LEXIS 27949.*

12. Land Use

The principle that mandamus will not lie to control the discretion of an administrative board but only to correct an abuse of discretion did not apply to an action of an Urban Renewal Agency in determining that only one bidder qualified for a redevelopment project, where, to require renewal of bids would serve only to delay the selection already made and to give the realtor, who had had an opportunity to submit a plan equally with the one chosen, an unfair advantage by providing it with an opportunity to revise and upgrade its plans, and where a contract had not yet been awarded so that there would be an opportunity at the time of the final action of the administrative body to direct its attention to any abuse of discretion. *Old Town Development Corp. v Urban Renewal Agency (1967, 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426.*

In a mandamus proceeding by a developer against a municipal Urban Renewal Agency to compel it to rescind a resolution selecting a competing developer as the only one qualified to proceed with an alternative redevelopment plan, the same considerations which precluded relief in mandamus prevented recovery for breach of contract, where all proposals were at all times by the terms of the agency request for bidders subject to the right of the agency to reject any proposal. *Old Town Development Corp. v Urban Renewal Agency (1967, 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426.*

The trial court properly refused to issue a writ of mandamus to interfere with proceedings taken by an Urban Renewal Agency where the questions raised in such proceedings were within the scope of the discretion of the agency to determine. *Old Town Development Corp. v Urban Renewal Agency (1967, 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426.*

A city zoning ordinance is not subject to constitutional attack in an administrative mandamus proceeding, the proper remedy being an action for declaratory relief, which upon proper allegations may be joined with a mandamus proceeding. *Gong v Fremont (1967, 1st Dist) 250 Cal App 2d 568, 58 Cal Rptr 664.*

After county officials had denied a building permit for a one-family residence because the applicant's grantor, by subdividing his land into more than four parcels without filing a subdivision map, had violated the Subdivision Map Act (*Bus & Prof Code, § 11500* et seq.) and similar provisions in the relevant county ordinance, a peremptory writ was properly issued requiring the officials to consider the permit application without reference to the subdivision map requirement, where it was undisputed that the applicants had neither actual nor constructive notice of other sales by the grantor, where, further, an amendment to the ordinance purporting to authorize denial of a permit without reference to any knowledge on the part of the purchaser-applicant became effective only after this particular applicant's permit had been denied, and where the writ fully protected other legitimate concerns of the county, such as zoning, building and lot-size limitations. *Keizer v Adams (1969) 1 Cal App 3d 86, 81 Cal Rptr 484, Modified 2 Cal 3d 976, 88 Cal Rptr 183, 471 P2d 983.*

CCP § 1094.5, governing judicial review of administrative agencies' adjudicatory decisions by mandamus, applies to the review of zoning variances awarded by bodies such as the *Los Angeles County Regional Planning Commission. Topanga Asso. for Scenic Community v County of Los Angeles (1974) 11 Cal 3d 506, 113 Cal Rptr 836, 522 P2d 12.*

The proper method to test the validity of conditions in a building permit is a proceeding in mandamus under *CCP § 1094.5*. Accordingly, landowners who complied with assertedly invalid conditions in a building permit "under protest" and constructed the improvements required under the conditions, could not maintain an action in inverse condemnation against the city to recover the costs of such improvements, and the trial court therefore properly granted the city judg-

ment on the pleadings. A landowner who accepts a building permit and complies with its conditions waives the right to assert the invalidity of the conditions and to sue the issuing public entity for the costs of complying with them, even though economic detriment may result to the landowner from the delay in pursuing a mandamus remedy. *Pfeiffer v La Mesa (1977, 4th Dist) 69 Cal App 3d 74, 137 Cal Rptr 804.*

Approval of a tentative subdivision map is a quasi-judicial act subject to judicial review for abuse of discretion under *CCP § 1094.5*. *Youngblood v Board of Supervisors (1978) 22 Cal 3d 644, 150 Cal Rptr 242, 586 P2d 556.*

An action challenging a zoning ordinance or decision on grounds of failure to prepare an environmental impact report must be brought through administrative mandamus in accordance with *CCP § 1094.5*. *Pan Pacific Properties, Inc. v County of Santa Cruz (1978, 1st Dist) 81 Cal App 3d 244, 146 Cal Rptr 428.*

An administrative decision denying a petition for a zoning variance is reviewable only on a petition for writ of administrative mandate (*CCP § 1094.5*). *Viso v State (1979, 3rd Dist) 92 Cal App 3d 15, 154 Cal Rptr 580.*

A complaint filed against the state and a regional planning agency by a property owner whose land was reclassified from low density residential to general forest and whose application for a variance was thereafter denied did not state a cause of action in administrative mandate (*CCP § 1094.5*), where plaintiff failed to allege facts that would entitle him to a variance (Gov C§ 65906), and where there were no allegations that the agency had proceeded without or in excess of its jurisdiction, that it had denied him a fair hearing, or that it had prejudicially abused its discretion. *Viso v State (1979, 3rd Dist) 92 Cal App 3d 15, 154 Cal Rptr 580.*

City council members were not disqualified from considering and voting on a proposed subdivision by reason of campaign contributions made to the council members by the real estate developer, its engineering firm and its attorneys, and thus the trial court, on review of the council's action correctly determined that approval of members of the council who had received the contributions did not deny plaintiffs a fair hearing within the meaning of *CCP § 1094.5*, the administrative mandamus statute. The Political Reform Act of 1974, Gov C§ 81000 et seq., dealing comprehensively with the problems of campaign contribution and conflict of interest, does not prevent a city council member from acting upon a matter involving the contributor. Furthermore, to disqualify a city council member from acting on a development proposal because the developer had made a campaign contribution to that member would threaten constitutionally protected political speech and associational freedoms. *Woodland Hills Residents Asso. v City Council of Los Angeles (1980) 26 Cal 3d 938, 164 Cal Rptr 255, 609 P2d 1029.*

In an action by a developer against a city, the trial court erred in its conclusion that the denial of the developer's application for rezoning property was a quasi-judicial act reviewable under *CCP § 1094.5* (administrative mandamus), rather than a legislative act reviewable under *CCP § 1085* (ordinary mandamus). Although a decision granting a variance, a conditional use permit, or an exception to use is an administrative act, a decision on an application for rezoning is a legislative act. *Toso v Santa Barbara (1980, 2nd Dist) 101 Cal App 3d 934, 162 Cal Rptr 210.*

A city council's partial termination of a land preservation agreement it had entered into with an agricultural property owner pursuant to the Williamson Act (Gov C§ 51200 et seq.) was adjudicatory rather than legislative in nature and was therefore reviewable in an administraive mandamus proceeding pursuant to *CCP § 1094.5*. Administrative mandamus is appropriate "for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal" (*CCP § 1094.5*, subd. (a)), and the Williamson Act clearly requires a public hearing (Gov C§ 51284) and discretionary weighing of evidence in order to make required findings (*Gov C § 51282*). The adjudicatory nature of the proceeding is further shown by the facts that it must be initiated by the landowner, that the council sits as arbiter, hearing evidence from proponents and opponents, and that in every case the ultimate decision directly affects only one parcel of land. *Sierra Club v Hayward (1981) 28 Cal 3d 840, 171 Cal Rptr 619, 623 P2d 180.*

In a proceeding brought against a city by the owners of certain land therein alleging an abuse of discretion by the city council in denying a requested zoning variance and seeking a writ of mandate, pursuant to *CCP § 1094.5*, commanding the city council to grant the variance, the trial court erred in issuing a writ of mandate ordering the city to grant the variance where there was substantial evidence before the city council to support its findings that the landowners had not met their burden of proving hardship; i.e., no similar variance had ever been granted, other neighboring property owners were subject to the same restrictions, and the variance would be destructive of the public policy reflected by the ordinance. *PMI Mortgage Ins. Co. v City of Pacific Grove (1981, 1st Dist) 128 Cal App 3d 724, 179 Cal Rptr 185.*

The trial court erred in sustaining, without leave to amend, a demurrer to a complaint against a county by a mine operator and manufacturer for a declaration that a proposed change in mining and processing operations did not require an Environmental Impact Report (EIR) and was exempt from the EIR process. The trial court sustained the demurrer on the ground that the requested declaration related only to the propriety of an administrative decision which was reviewable only in administrative mandamus under *CCP § 1094.5*. However, the trial type public hearing required by *Pub. Resources Code, § 21168*, to make *CCP § 1094.5*, applicable to an action attacking a determination on grounds of noncompliance with CEQA was not required in the instant case, since the controlling county guidelines for implementation of CEQA did not require a hearing at which evidence was required to be taken. Therefore, administrative mandamus was not available and an action for declaratory relief was proper. *Lightweight Processing Co. v County of Ventura (1982, 2nd Dist) 133 Cal App 3d 1042, 184 Cal Rptr 479.*

Landowners' declaratory relief action against the California Coastal Commission for refusal to approve a plan to grade a rear portion of their lot in a coastal community was not barred by failure to file a writ of mandate within 60 days, pursuant to Pub Res C§ 30610, since the Commission did not have jurisdiction over the lot. *Pub Res C § 30610.1* requires the Commission to designate areas in the coastal zone where construction of a single-family residence on a vacant lot meeting certain criteria would not require a coastal development permit. Following that designation, a local government with jurisdiction over a lot issues a written certification that the lot is exempt from the coastal development permit requirement, pursuant to § 30610.2(a), because the lot meets the criteria specified in § 30610.1(c). By placing part of the lot within the single-family residence area, the Commission forfeited its control and its discretion to approve or disapprove construction on the lot. *Buckley v California Coastal Com. (1998, 2nd Dist) 68 Cal App 4th 178, 80 Cal Rptr 2d 562, 188.*

Local Agency Formation Commissions (LAFCOs) are administrative bodies created pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (*Gov C § § 56000* et seq.) to control the process of municipality expansion. The purposes of the act are to encourage planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within those patterns, and to discourage urban sprawl and encourage the orderly formation and development of local agencies based on local conditions and circumstances. A LAFCO annexation determination is quasi-legislative; judicial review thus arises under the ordinary mandamus provisions of *CCP § 1085*, rather than the administrative mandamus provisions of *CCP § 1094.5*. *Sierra Club v San Joaquin Local Agency Formation Com. (1999) 21 Cal 4th 489, 495, 87 Cal Rptr 2d 702, 981 P2d 543.*

In a case where the city granted a variance to a gas station owner permitting him to expand the station's existing operations to include a car detailing service, the evidence in the record was insufficient to support a finding of financial hardship as there was no evidence demonstrating that the property could not be put to effective use as a gasoline station without the car detailing operation, and the zoning administrator's interpretation of the finding requiring comparison of other comparable property in the same zone and vicinity, when none existed, contradicted the plain language of the provision in the municipal code and could not stand undisturbed; thus, the zoning administrator should have denied the application for a variance and the trial court improperly denied the landowner's petition for a writ of mandamus under *CCP § 1094.5*. *Stolman v City of Los Angeles (2003, 2nd Dist) 114 Cal App 4th 916.*

In a case brought by plaintiff corporation under, inter alia, § 704 of the Telecommunications Act of 1996 *(47 USCS § 332* (c) (7)), alleging that defendants, a city and its employees, acting in their official capacities, unlawfully denied the corporation's application for a conditional use permit, where the evidence supporting the denial was not substantial, administrative mandamus was appropriate. At &*T Wireless Servs. of Cal. LLC v City of Carlsbad (2003, SD Cal) 2003 US Dist LEXIS 19853.*

General purpose of promoting certainty for property owners and local governments regarding land use decisions supports application of *Gov C § 65009(c)* to both permit grants and permit denials. *Guru Nanak Sikh Soc'y v County of Sutter (2003, ED Cal) 2003 US Dist LEXIS 25716.*

Zoning restriction on development of "big box" retail stores with full service grocery departments bore a reasonable relationship to the general welfare and, thus, was a constitutional exercise the city's police power. The court noted that traditional mandamus under *CCP § 1085* was the proper remedy for the constitutional challenge, rather than administrative mandamus under *CCP § 1094.5*. *Wal-mart Stores v. City of Turlock (2006, 5th Dist) 138 Cal App 4th 273, 41 Cal Rptr 3d 420, 2006 Cal App LEXIS 474.*

13. Water Rights

Erroneous determination of Department of Public Works as to availability of unappropriated water should be corrected on review of such determination. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

Issuance of permit to use unappropriated water, despite protest on ground of unavailability of such water may be reviewed under this section. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

If Water Rights Board decided erroneously or without substantial evidence in approving application of public utility district and rejecting that of United States, judicial review was available to United States on exhaustion of its administrative remedy and filing of petition for writ of mandate; but if board acted within its jurisdiction, its decisions were not subject to collateral attack by *United States. United States v Fallbrook Pub. Util. Dist. (1958, SD Cal) 165 F Supp 806.*

On review of awards made by Water Rights Board, appellate court disposes of matter in conformity with law existing at time of its decision. *Johnson Rancho County Water Dist. v State Water Rights Board (1965, 3rd Dist) 235 Cal App 2d 863, 45 Cal Rptr 589.*

On appellate review of validity of Water Rights Board award of appropriative water rights for integrated water development plan which precluded construction of specific project enumerated in California Water Plan, a modification of plan made after board's decision eliminating project, was reason for upholding validity of board's award *Johnson Rancho County Water Dist. v State Water Rights Board (1965, 3rd Dist) 235 Cal App 2d 863, 45 Cal Rptr 589.*

By declaring a water shortage emergency condition and enacting a moratorium on new water service, a municipal water district acts in a legislative, rather than an adjudicatory, capacity. Such action by a water district is not subject to judicial review under *CCP § 1094.5* but is reviewable only by means of ordinary mandate under *CCP § 1085*, in which case the court is limited to a determination whether the district's actions were arbitrary, capricious, or entirely lacking in evidentiary support or whether the district failed to follow the procedure and give the notices required by law. *Swanson v Marin Municipal Water Dist. (1976, 1st Dist) 56 Cal App 3d 512, 128 Cal Rptr 485.*

C. SCOPE AND EXTENT OF REVIEW

(1) GENERALLY

14. In General

Review of an administrative order by means of mandamus is governed by the provision in subd. (b) of this section. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

Where rendition of administrative regulation involves highly technical matters requiring assistance of skilled and trained experts and economists and gathering of large amounts of statistical data and information, courts should let administrative boards and officers work out their problems with as little judicial interference as possible. *Pitts v Perluss (1962) 58 Cal 2d 824, 27 Cal Rptr 19, 377 P2d 83.*

On appeal from decision of administrative board, issues are limited to those set out in pretrial order; such order sets up contentions of parties, supersedes issues raised by pleadings, and controls subsequent course of case. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

In administrative mandamus proceedings, inquiry extends to whether agency has proceeded without or in excess of jurisdiction, whether there was fair trial, and whether there was any prejudicial abuse of discretion. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Rules governing construction of administrative decisions are quite different from those relating to judicial findings and require great liberality to support order made. *Jack P. Meyers, Inc. v Alcoholic Beverage Control Appeals Board (1965, 2nd Dist) 238 Cal App 2d 869, 48 Cal Rptr 259.*

In administrative proceedings conducted by laymen, strict rules of procedure do not apply, and failure of city civil service commission to comply strictly with procedural rules relating to discharge of fireman should not compel reversal of judgment upholding commission's findings. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

CCP § 1094.5, establishing the remedy of"administrative mandamus," is applicable only where the agency has been called upon to make a factual determination in the exercise of a quasi-judicial function, and administrative action is subject to review under that statute only as to certain aspects specified in Subsection (b): want or excess of jurisdiction; whether there was a fair trial; and whether there was prejudicial abuse of discretion. *Gong v Fremont (1967, 1st Dist) 250 Cal App 2d 568, 58 Cal Rptr 664.*

The question whether or not the right affected by a decision of a statewide administrative agency not clothed with constitutional quasi-judicial powers is vested or not, insofar as that matter governs the nature of judicial review of the decision pursuant to *CCP § 1094.5*, is decided by the courts on a case-by-case basis. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

Under *CCP § 1094.5*, authorizing inquiry by the superior court into any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, when the subject matter under review is the decision of a local or county administrative agency which by law is required to give a hearing, the power of the court is strictly limited; it may not exercise its independent judgment, or allow a trial de novo on the issues formerly before the agency, nor may it control a discretion lawfully entrusted to that body; its review is limited to a determination whether the agency abused its discretion or acted in an arbitrary or capricious manner without substantial evidence other than that adduced below, nor may it weigh that evidence. *Upton v Gray (1969, 1st Dist) 269 Cal App 2d 352, 74 Cal Rptr 783.*

Inasmuch as administrative mandamus, under *CCP § 1094.5*, lies only where a hearing is required by law, and evidence is required to be taken, and determination of the facts is the responsibility of the administrative agency, that statute applies only to a body's quasi-judicial and administrative functions. *Winkelman v Tiburon (1973, 1st Dist) 32 Cal App 3d 834, 108 Cal Rptr 415.*

W & I C § 10962, which provides for review under *CCP § 1094.5*, of a final administrative decision of the Director of the Department of Social Welfare on the petition of the applicant or recipient or the affected county, praying "for a review of the entire proceedings in the matter, upon questions of law involved in the case," does not require review of a decision on an application for benefits under the substantial evidence standard rather than the independent judgment standard; it leaves to the courts the determination of the proper standard of review. The term "upon questions of law" in *W & I C § 10962*, is to be interpreted as commensurate with the inquiry under *CCP § 1094.5*, subd. (b), which extends to whether the administrative agency has proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether there was prejudicial abuse of discretion, and, under § 1094.5, subd. (c), it is for the courts to establish the appropriate standard of review in determining whether there has been an abuse of discretion. *Frink v Prod (1982) 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476.*

Although a literal interpretation of *CCP § 1094.5*, subd. (a) (inquiry into validity of administrative order or decision made as result of proceeding with specified characteristics), leads to the conclusion that the administrative "trial" or hearing is limited to the actual proceeding in which evidence is received and considered, the question of whether the trial was "fair" encompasses posthearing actions of the agency as well. *Vollstedt v City of Stockton (1990, 3rd Dist) 220 Cal App 3d 265, 269 Cal Rptr 404.*

In reviewing contentions raised by a petitioner who brings a writ of mandate to overturn an administrative order or decision, the ultimate question is whether there was any prejudicial abuse of discretion (*CCP § 1094.5*, subd. (b)). By "abuse of discretion" is meant that the findings were not supported by substantial evidence or that the administrative agency did not proceed in the manner required by law. *Fort Mojave Indian Tribe v Department of Health Services (1995, 2nd Dist) 38 Cal App 4th 1574, 45 Cal Rptr 2d 822.*

In writ proceedings where a former county employee challenged her discharge from employment, the trial court erred in determining the discharge was an excessive penalty and in reinstating the employee to her position. The trial court abused its discretion by substituting its own judgment for that of the county Civil Service Commission (the Commission), which had determined that discharge was an appropriate penalty for the employee's dishonest application for food stamp benefits. Following the employee's amended petition for writ of mandate, the trial court received the employee's supplemental evidence, where for the first time, she raised the issue of disparate treatment by the department in which she was employed. In entertaining this issue, the trial court committed error. In administrative mandamus actions brought under *CCP § 1094.5*, appellate review is limited to issues in the record at the administrative level. It is fundamental that the review of administrative proceedings provided by *CCP § 1094.5* is confined to the issues appearing in the record of that body as made out by the parties to the proceedings, though additional evidence, in a proper case, may

be received. It was never contemplated that a party to an administrative hearing should withhold any defense then available to her or make only a perfunctory or "skeleton" showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court. The rule compelling a party to present all legitimate issues before the administrative tribunal is required in order to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play. The employee did not raise the issue of alleged disparate treatment by the department at the Commission level. She first raised the issue in the administrative mandamus proceeding. However, the Commission subsequently had the opportunity to consider the issue because the trial court directed a limited remand for that purpose. Therefore, the trial court's enlarging of the scope of the issues was harmless. *Pegues v Civil Service Com. (1998, 2nd Dist) 67 Cal App 4th 95, 78 Cal Rptr 2d 705.*

Upon review of an administrative agency's finding as to culpability in a mandamus proceeding (here, whether an employee committed misconduct as alleged), the superior court has extensive powers of review. The trial court examines whether the decision of the agency is supported by the findings and whether the findings are supported by the evidence in the administrative record. It exercises its independent judgment on the evidence and examines the entire administrative record and reviews evidence both in support of, and in conflict with, the agency's findings. The trial court resolves evidentiary conflicts and is required to assess witnesses' credibility and to arrive at its own independent findings of fact. *Deegan v City of Mountain View (1999, IAC) 72 Cal App 4th 37, 84 Cal Rptr 2d 690, 45.*

Court's standard of review regarding a legislative determination that a street was unnecessary was governed by *CCP § 1085*; *CCP § 1094.5* did not apply because the action involved was legislative in nature. *Citizens for Improved Sorrento Access, Inc. v City of San Diego (2004, Cal App 4th Dist) 2004 Cal App LEXIS 741.*

15. Authority, Power, and Function of Court

Courts in judicial review proceedings are confined to question of determining whether administrative tribunal's decision is supported by findings and findings are supported by substantial evidence in light of entire record. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

Chief issue in mandamus proceeding to review conduct of local administrative tribunal is whether person affected has been accorded hearing as prescribed by law and whether there is substantial evidence to support tribunal's determination. *Dresser v Torrance (1956, 2nd Dist) 140 Cal App 2d 42, 294 P2d 962.*

On application for writ of mandate to review order of local quasi-judicial body, trial court does not have the right to judge intrinsic value of evidence or reweigh it; court's power is confined to whether there was substantial evidence before commission to support its findings. *Damiani v Albert (1957) 48 Cal 2d 15, 306 P2d 780.*

On mandamus to test proper exercise of discretion vested in local administrative board, reviewing court has no power to exercise independent judgment on facts; superior court's power to review in such cases is limited to determining whether there was substantial evidence before board to support its decision; it is improper for court to have trial de novo or to make its own findings on the evidence. *Albonico v Madera Irrig. Dist. (1960) 53 Cal 2d 735, 3 Cal Rptr 343, 350 P2d 95.*

In proceeding to determine validity of administrative action, if respondent is statewide agency exercising judicial functions conferred directly on it by Constitution, separation of powers clause of Constitution does not apply and court's power of review is governed by "substantial evidence" rule used in civil adversary litigation. *Greenblatt v Martin (1961, 1st Dist) 189 Cal App 2d 787, 11 Cal Rptr 669.*

Court's sole function is to determine from review of record whether there is sufficient evidence to sustain administrative body's ruling, in proceeding, governed by this section, to obtain writ of mandate for purpose of inquiring into validity of final administrative order or decision. *Rapp v Napa County Planning Com. (1962, 1st Dist) 204 Cal App 2d 695, 22 Cal Rptr 643.*

With respect to the judicial review of administrative decisions, *CCP § 1094.5*, empowers the Supreme Court to establish standards for determining which of such decisions require an independent judgment review and which call for only a substantial evidence review of the entire administrative record. *Bixby v Pierno (1971) 4 Cal 3d 130, 93 Cal Rptr 234, 481 P2d 242.*

Mandamus lay to compel rendition and entry of a final judgment in a proceeding in which a writ for administrative mandamus was sought, and in which the only order or judgment made after a trial was had consisted of a minute order

reciting that the petition seeking the writ was denied. *Hadley v Superior Court of San Bernardino County (1972, 4th Dist) 29 Cal App 3d 389, 105 Cal Rptr 500.*

In mandamus proceedings under *CCP § 1094.5*, to review a decision of the Board of Medical Examiners relating to the revocation of a license to practice, the trial court will exercise an independent judgment on the evidence before it. On appeal from the trial court's judgment, conflicts will be resolved in favor of the trial court, legitimate and reasonable inferences will be indulged to sustain its decision, and if supported by competent, credible evidence, the decision will be affirmed. *McLaughlin v Board of Medical Examiners (1973, 2nd Dist) 35 Cal App 3d 1010, 111 Cal Rptr 353.*

In reviewing an administrative decision where no limited trial de novo is authorized by law, the trial court itself exercises an essentially appellate function in that only errors of law appearing on the administrative record are subject to its cognizance. In such a case, therefore, the trial and appellate courts occupy identical positions with regard to the administrative record, and the function of the appellate court, like that of the trial court, is to determine whether that record is free from legal error. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

Case-by-case determinations dictate whether the "substantial evidence in light of the whole record" or "independent judgment on the evidence" test applies in administrative mandamus under *CCP § 1094.5*, subd. (c). In each case the court must decide whether a "fundamental vested right" has been substantially affected by the administrative agency's decision. *Mobil Oil Corp. v Superior Court of San Diego County (1976, 4th Dist) 59 Cal App 3d 293, 130 Cal Rptr 814.*

The inquiry in an administrative mandamus proceeding is limited to whether the administrative body acted without or in excess of its jurisdiction, whether there was a fair trial, and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the administrative agency has not proceeded as required by law, if the order or decision is not supported by the findings, or if the findings are not suppported by the evidence. In order to prevail against a general demurrer, a petition for writ of mandate must allege facts showing entitlement to relief on one of these grounds, and allegations that the acts of a commission or board were arbitrary, capricious, fraudulent, wrongful and unlawful, like other adjectival descriptions of such proceedings, constitute mere conclusions of law which are not admitted by demurrer. *Bell v Mountain View (1977, 1st Dist) 66 Cal App 3d 332, 136 Cal Rptr 8.*

CCP § 1094.5, pertaining to judicial review of administrative decisions, governed mandamus proceedings to review a city council's denial of a building permit on environmental grounds, and the scope of review did not provide for the exercise of independent judgment on the evidence or a reweighing thereof. Nevertheless, it was the duty of the trial court vigorously to examine the record to determine not only if the findings supported the city council's decisions, but also to determine whether substantial evidence supported such findings, and the absence of either determination was an abuse of discretion. *Gabric v Rancho Palos Verdes (1977, 2nd Dist) 73 Cal App 3d 183, 140 Cal Rptr 619.*

If the subject before an administrative agency or its decision substantially affects a fundamental vested right, the court, in determining under *CCP § 1094.5*, whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. If, on the other hand, the order or decision does not substantially affect a fundamental vested right, the trial court's inquiry will be limited to a determination of whether or not the findings are supported by the substantial evidence in light of the whole record. It is manifest that the difference between the two standards of judicial review is of substantial significance. *Coldwell Banker & Co. v Department of Ins. (1980, 2nd Dist) 102 Cal App 3d 381, 162 Cal Rptr 487.*

The Legislature has the constitutional authority to establish the appropriate standard by which the courts may issue an order staying the operation of an administrative order. Thus, *CCP § 1094.5*, subd. (h)(1), which authorizes the court to stay the administrative revocation of a medical doctor's license, provided that such stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the agency is unlikely to prevail ultimately on the merits, constitutes neither an unconstitutional grant of judicial power to an administrative agency nor an unconstitutional invasion of the judiciary's power in violation of the separation of powers doctrine. *Board of Medical Quality Assurance v Superior Court of Fresno County (1980, 5th Dist) 114 Cal App 3d 272, 170 Cal Rptr 468.*

The statutory standard contained in *CCP § 1094.5*, subd. (h)(1), which authorizes a court reviewing the administrative revocation of a medical doctor's license to stay the revocation upon a showing that the "agency is unlikely to prevail ultimately on the merits," requires more than a conclusion that a possible viable defense exists. The statute mandates a preliminary assessment of the merits of a petition for administrative mandamus and a conclusion that the petitioner is likely to obtain relief. Thus, the trial court exceeded its jurisdiction in issuing an order staying revocation of a doctor's

license on the basis of its interpretation of that statutory phrase as meaning that a stay order is warranted where there has been a prima facie showing of a possible viable defense, which if accepted by the reviewing court, would cause that court to reach a different decision. *Board of Medical Quality Assurance v Superior Court of Fresno County (1980, 5th Dist) 114 Cal App 3d 272, 170 Cal Rptr 468.*

The rule that entitlement to a writ of mandate is largely controlled by equitable principles is applicable to administrative mandamus under *CCP § 1094.5*. *Curtin v Department of Motor Vehicles (1981, 1st Dist) 123 Cal App 3d 481, 176 Cal Rptr 690.*

In an administrative mandamus proceeding (*CCP § 1094.5*) by an applicant for benefits under the Aid to the Totally Disabled program who sought vacation of an administrative decision denying benefits, the record established reversible error in the trial court's upholding of the administrative decision, where, though the court found the decision was supported by substantial evidence, it also found that the weight of the evidence was contrary to the decision. Though prior appellate rulings required trial courts to apply the substantial evidence standard in reviewing decisions denying applications for welfare benefits, while holding the independent judgment standard applicable with respect to decisions terminating benefits, the right of the needy applicant to welfare benefits is as fundamental as the right of a recipient to continued benefits. Though the right of a welfare applicant may not be a vested property right in the traditional sense, the statutory public assistance programs provide protection to citizens who through economic adversity are in need, and should be viewed as residual rights possessed by all of the citizenry to be exercised when circumstances require. Thus, the independent judgment standard should be applied to decisions denying applications for welfare benefits. (Overruling *Tripp v. Swoap (1976) 17 Cal.3d 671, 676 [131 Cal.Rptr. 789, 552 P.2d 749]* and *Bertch v. Social Welfare Dept. (1955) 45 Cal.2d 529 [289 P.2d 485]*, and disapproving *Ferreria v. Swoap (1976) 62 Cal.App.3d 875, 881 [133 Cal.Rptr. 449], Millen v. Swoap (1976) 58 Cal.App.3d 943, 947-948 [130 Cal.Rptr. 387], Repko v. Carleson (1975) 48 Cal.App.3d 249, 265-266 [122 Cal.Rptr. 29], Henderling v. Carleson (1974) 36 Cal.App.3d 561, 567 [111 Cal.Rptr. 612], County of Madera v. Carleson (1973) 32 Cal.App.3d 764, 767 [108 Cal.Rptr. 515], Taylor v. Martin (1972) 28 Cal.App.3d 1057, 1059 [105 Cal.Rptr. 211], Stratton-King v. Martin (1972) 28 Cal.App.3d 686, 690 [104 Cal.Rptr. 916]*, and *County of Contra Costa v. Social Welfare Board (1962) 199 Cal.App.2d 468, 473 [18 Cal.Rptr. 573]*, insofar as they are inconsistent with the views expressed in the opinion.) *Frink v Prod (1982) 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476.*

The trial court erred and exceeded its jurisdiction in ruling that decisions by a municipal rent control board as to rent decreases were stayed pending final adjudication on appeal on an across-the-board basis. In making its determinations, the board did not authorize tenants to withhold rent as compensation for the landlord's failures. Instead, its hearing officer made a factual determination, on the evidence, of the appropriate maximum allowable rent to be charged in the future only. The board's decisions were subject to review via administrative mandamus under *CCP § § 1094.5, 1094.6*, which provide a means for the imposition of a stay in appropriate cases. The blanket stay throughout the review process usurped the power of the reviewing court to implement the mandate of *CCP § 1094.5*, subd. (g), under which no stay may be imposed that would be against the public interest. However, the trial court properly prohibited the enforcement of rent decrease determinations until the board's decision was final, since the board possessed the power to adjust rents, and the hearing officer was merely the preliminary factfinder. *Sterling v Santa Monica Rent Control Bd. (1985, 2nd Dist) 168 Cal App 3d 176, 214 Cal Rptr 71.*

CCP § 1094.5 (judicial review of adjudicatory decisions by administrative agencies), clearly contemplates that at a minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision. Implicit in the section is the requirement that the agency that renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *J. L. Thomas, Inc. v County of Los Angeles (1991, 2nd Dist) 232 Cal App 3d 916, 283 Cal Rptr 815.*

Under *CCP § 1094.5* (petition for writ of administrative mandate), in all cases concerning a fundamental vested right, the trial court must exercise an independent review of the evidence admitted at the administrative hearing, and it shall find an abuse of discretion if the findings are not supported by the evidence. *O'Connor v State Teachers' Retirement System (1996, 2nd Dist) 43 Cal App 4th 1610, 51 Cal Rptr 2d 540.*

In reviewing a decision under Gov C § 1094.5, the appellate court reviews the trial court's findings of fact for substantial evidence in the administrative record, and reviews the administrative agency's penalty decision for abuse of discretion. Here, the trial court found, based on an independent review of the administrative record, that the record fully supported the findings of a city manager regarding plaintiff former probationary police officer and that the city manager

did not abuse his discretion in deciding to terminate the officer. In particular, and without limiting its holding regarding the city manager's findings, the court found that on or about September 8, 1995, the officer was involved in a hit and run accident after having been drinking and that the weight of the evidence supported the findings that the officer subsequently lied about his involvement in the hit and run. Accordingly, the trial court did not err in denying the officer's petition for a writ of administrative mandate. Nor did the officer show that his termination constituted an abuse of discretion. An appellate court is not free to substitute its discretion for that of the administrative agency where reasonable minds may differ with regard to the appropriate disciplinary action. Here, the officer was engaged in criminal conduct when he fled the scene of the accident. He also lied during the investigation of the hit-and-run. Such conduct showed a lack of credibility and honesty, a breach of trust, and extremely poor judgment; it justified termination. *Ziegler v City of South Pasadena (1999, 2nd Dist) 73 Cal App 4th 391, 395, 86 Cal Rptr 2d 424.*

Under *Cal. Civ. Proc. Code § 1094.5*, a state court may issue a writ of mandate setting aside an administrative decision. *Embury v King (2001, ND Cal) 191 F. Supp. 2d 1071; 2001 U.S. Dist. LEXIS 22175.*

While the administrative record did not show that an attorney, who was the city's advocate for the initial denial of the renewal permit application of adult establishment operators, actually gave a hearing officer advice or assistance during a review of the denial of the application, the court took judicial notice, under *Cal. Evid. Code § 452(g)*, that communications between bench officers and their staff on matters of law and procedure were normally not reported, and the omission in the hearing officer's declaration concerning these allegations created an inference, under *Cal. Evid. Code § 1221*, that the attorney did advise the hearing officer, and because the hearing officer's declaration was directly related to whether the hearing was fair, the trial court was required to exercise its independent judgment to decide such an issue, and under Cal. *Code Civ. Proc. § 1094.5(e)*, was empowered to admit relevant and admissible evidence on the issue, and thus erred by refusing to admit the hearing officer's declaration; however, given the circumstances, there was substantial evidence to support the conclusion that, in addition to taking an active part in the renewal application process, the attorney also participated in the administrative review of the denial by advising the hearing officer, which hearing violated the operators' procedural due process rights. *Nightlife Partners, Ltd. v City of Beverly Hills (2003, 2nd Dist) 108 Cal App 4th 81, 133 Cal Rptr 2d 234.*

In case in which a party filed an action under *42 USCS § 1983* challenging the fairness of administrative proceedings before a county board, after abandoning a mandamus action under *CCP § 1094.5(b)*, the Utah Construction factors, allowing a federal court to give preclusive effect to the state administrative body's findings, were established because the party had an adequate opportunity to litigate his unfairness claims in the mandamus action as he could have shown a basis for augmenting the administrative record. *Hatler v Tuolomne County (2003, CA9 Cal) 2003 US App LEXIS 22535.*

Court rejected the contention by the City of Los Angeles, joined by a homeowner who obtained a building permit based on an erroneous calculation of the required front-yard setback, that the trial court exceeded its authority when it ordered the City to revoke the three permits issued to the homeowner. The City argued that because CCP§ 1094.5 permitted the court to order the City to reconsider its decision and to take further action, but prohibited the court from issuing a writ to limit or control in any way the discretion legally vested in the City, the trial court should have remanded the matter back to the City to reconsider its action in light of the trial court's decision, which was to recalculate the front yard setback; however, the City's argument missed the point that, as the trial court found, there was no discretion involved in the application of the formula to the measurements at issue in the case. *Horwitz v City of Los Angeles (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 2144.*

16. -To Compel Exercise of Discretion

While the superior court in reviewing the determination of a state-wide administrative board may grant a qualified trial de novo, giving a strong presumption of validity to the findings of the board or officer, where such board has not acted or has refused to grant a hearing, the court has no power to try de novo the factual issue the determination of which is conferred on the board, but is limited to ordering the board to act, if an abuse of discretion is shown to exist. *McDonough v Garrison (1945) 68 Cal App 2d 318, 156 P2d 983* (disapproved on other grounds by *Kowis v Howard, 3 Cal 4th 888, 12 Cal Rptr 2d 728, 838 P2d 250).*

A writ of mandate may not be employed to compel a public administrative agency possessing discretionary power to act in a particular manner; the court in response to appropriate application may compel such agency to act but it may not substitute its discretion for the discretion properly vested in the administrative agency. *Conroy v Civil Service Com. (1946) 75 Cal App 2d 450, 171 P2d 500.*

The writ of mandate is not a writ of right to be freely issued whenever a court disagrees with a policy of administrative action; it is limited to compelling the performance of an act which the law specifically enjoins as a duty, and where a statute gives an administrative body discretion to act under certain circumstances, mandamus will not lie to compel the exercise of that discretion in a particular manner, but only to order the correction of arbitrary or capricious action. *Hunt v State Board of Chiropractic Examiners (1948) 87 Cal App 2d 98, 196 P2d 77.*

Writ of mandate may not issue to compel officer or board to act in any particular way except in performance of ministerial duties and never to control exercise of discretion unless it has been abused. *Cameron v Escondido (1956, 4th Dist) 138 Cal App 2d 311, 292 P2d 60.*

Mandamus will issue to compel court or quasi-judicial body to act on matter properly brought before it, but will not lie to compel it to act in particular manner unless situation presented is one in which such court or body can exercise its discretion in but one way. *Sladovich v County of Fresno (1958, 4th Dist) 158 Cal App 2d 230, 322 P2d 565.*

17. Presenting and Reserving Questions Below

Where the State Social Welfare Board lacked jurisdiction to determine the amount and type of relief to be paid by a county to applicants for indigent relief, it was not necessary for the county to seek a rehearing before such board as a condition precedent to the maintenance of a mandamus proceeding to compel it to set aside orders purporting to determine such matters. *County of Los Angeles v Department of Social Welfare (1953) 41 Cal 2d 455, 260 P2d 41.*

It was not contemplated that party to an administrative hearing should withhold any defense then available to him or make only a perfunctory showing and thereafter obtain an unlimited trial de novo on expended issues in a review under this section. *Bohn v Watson (1954, 2nd Dist) 130 Cal App 2d 24, 278 P2d 454.*

No objection is required to introduction of photographs in evidence at hearing before administrative board on ground that they were obtained by illegal search and seizure where hearing was had prior to decision in *People v Cahan (1955) 44 Cal 2d 434, 282 P2d 905.*

On appeal from judgment sustaining determination of an Alcoholic Beverage appeals tribunal, counsel, having failed to complain of hearsay, conclusions and the like at hearing, could not raise such objections before reviewing court. *Fromberg v Department of Alcoholic Beverage Control (1959, 2nd Dist) 169 Cal App 2d 230, 337 P2d 123.*

In mandamus proceeding to review determination of Unemployment Insurance Appeals Board denying claimant unemployment insurance benefits for certain weeks, where claim for damages against Department of Employment was made for first time in trial court, claim was properly denied, since trial court was limited to hearing and deciding matters presented to board. *Fermin v Department of Employment (1963, 3rd Dist) 214 Cal App 2d 586, 29 Cal Rptr 642.*

The trial court in an administrative mandamus proceeding should not have considered the issue of lack of foundation for the admission of exhibits in evidence, where that issue was not raised in the petition for mandate nor in the petitioner's brief in the superior court. *Borror v Department of Invest., Div. of Real Estate (1971, 1st Dist) 15 Cal App 3d 531, 92 Cal Rptr 525.*

In an action by a city employee alleging employment discrimination in which plaintiff sought a writ of administrative mandamus (*CCP § 1094.5*), the trial court's order granting the city's motion for summary judgment, based on a finding that the doctrine of laches barred the § 1094.5 petition, was subject to de novo review. Reviewing the matter under the deferential abuse of discretion standard was error. *Johnson v City of Loma Linda (2000) 24 Cal 4th 61, 99 Cal Rptr 2d 316, 5 P3d 874.*

18. Agencies Reviewable

Actions of county civil service commission may be reviewed by mandamus. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

Remedy of administrative mandamus and procedure relative to it prescribed by this section are not limited to agencies enumerated in Administrative Procedure Act or those adopting procedure of act, but are applicable to any administrative agency, state-wide or local. *Allen v Humboldt County Board of Supervisors (1963, 1st Dist) 220 Cal App 2d 877, 34 Cal Rptr 232.*

In distinguishing between quasi-legislative and adjudicatory determinations by a public agency, to determine whether a reviewing court must proceed in ordinary mandamus under *CCP § 1085*, or under CCP§ 1094.5, legislative

action is the formulation of rules to be applied in all future cases while an adjudicatory act involves the application of rules to a specific set of existing facts. An act undertaking to determine a question of right or obligation or of property, is to that extent a judicial one. Hence, permit proceedings under the California Coastal Zone Conservation Act of 1972 are to be considered adjudicatory or quasi-judicial, requiring permit and exemption decisions by the coastal commission to be reviewed under *CCP § 1094.5*. *Patterson v Central Coast Regional Com. (1976, 1st Dist) 58 Cal App 3d 833, 130 Cal Rptr 169.*

In a proceeding brought pursuant to *CCP § 1085*, dealing with so-called "traditional mandate," by a physician and surgeon seeking review of a decision of the board of directors of a private hospital refusing to reappoint him to its medical staff, the trial court properly treated the proceeding essentially as though it had been brought pursuant to the provisions of *CCP § 1094.5*, dealing with so-called "administrative mandate." The decision of the board came within the terms of *CCP § 1094.5*, as a final adjudicatory order resulting from a proceeding in which a hearing is required, evidence is required to be taken and "discretion in the determination of facts is vested in the... board." The statute is not by its language or legislative history limited to review of administrative decisions by governmental agencies, and the rules for the conduct of hearings by private hospital boards are substantially the same as those provided by statute for hearings by public hospital boards. *Anton v San Antonio Community Hospital (1977) 19 Cal 3d 802, 140 Cal Rptr 442, 567 P2d 1162.*

The action of a coastal commission on application for a permit is quasi-judicial in nature, and is therefore reviewable by one of the two standards found in *CCP § 1094.5*. *Coronado v California Coastal Zone Conservation Com. (1977, 4th Dist) 69 Cal App 3d 570, 138 Cal Rptr 241*.

Under former Gov C § 4107, subd. (a)(1) (see now *Pub Con C § 4107*), a public agency has the initial jurisdiction to decide when a prime contractor can make a substitution for a subcontractor. Thus, where such an agency had determined that substitution was proper, the subcontractor's sole remedy was administrative mandamus pursuant to CCP§ 1094.5. An action for damages for breach of statutory duty is not permitted unless the decision of the awarding authority is set aside by mandamus. *Interior Systems, Inc. v Del E. Webb Corp. (1981, 2nd Dist) 121 Cal App 3d 312, 175 Cal Rptr 301*.

An action in which plaintiff contended that a district trade union wrongfully removed him from his elected office of financial secretary for the union was properly deemed by the trial court as a proceeding in the nature of administrative mandamus under *CCP § 1094.5*. Consequently, plaintiff was not entitled to a jury trial. *Bray v International Molders & Allied Workers Union (1984, 1st Dist) 155 Cal App 3d 608, 202 Cal Rptr 269.*

CCP § 1094.5, providing for administrative mandamus proceedings, applies to nongovernmental administrative agencies. *Bray v International Molders & Allied Workers Union (1984, 1st Dist) 155 Cal App 3d 608, 202 Cal Rptr 269.*

The trial court erred in overruling defendant college's demurrer to an assistant professor's complaint for damages arising from defendant's declining to offer plaintiff lifetime academic tenure. Administrative mandamus review (*CCP § 1094.5*) was plaintiff's exclusive remedy, and thus defendant was entitled to have its demurrer sustained. Section 1094.5 applies to nongovernmental administrative agencies and to public university employment decisions. Important public policy interests are served by providing a uniform practice of judicial, rather than jury, review of quasi-judicial administrative decisions to deny lifetime academic tenure, since tenure decisions in an academic setting involve a combination of factors that tend to set them apart from employment decisions generally. These factors affect the quality of education at the institution, and therefore the decisions are best made within the university by the candidate's peers. Thus, because de novo review by lay juries of the merits of tenure candidacies will severely impact these freedoms, absent discrimination, judicial review of tenure decisions is limited to evaluating the fairness of the administrative hearing in an administrative mandamus action. Further, it was irrelevant that plaintiff alleged breach of contract and defendant's failure to follow its policies, since those allegations still required the trier of fact to decide whether defendant should have granted plaintiff lifetime tenure. *Pomona College v Superior Court (1996, 2nd Dist) 45 Cal App 4th 1716, 53 Cal Rptr 2d 662.*

Administrative mandamus review pursuant to *CCP § 1094.5*, applies to nongovernmental administrative agencies. Nothing in the statutory language or supporting legislative materials leads to an assumption that mandate review via *CCP § 1094.5*, is available only with respect to administrative decisions by governmental agencies. CCP§ 1094.5, is by its terms made applicable to "any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." This language is not limited to governmental agencies. Moreover, the statute's language appears to have been drawn directly from the terms of *CCP § 1085*, dealing with tradi-

tional mandate. *CCP § 1085*, mandate is available not only to compel official acts on the part of governmental agencies, but also to compel nongovernmental bodies or officers to perform their legal duties. It follows that *CCP § 1094.5*, was intended to apply to the same spectrum of agencies. *Pomona College v Superior Court (1996, 2nd Dist) 45 Cal App 4th 1716, 53 Cal Rptr 2d 662.*

19. -State-wide Statutory Agencies

Proceedings before the state personnel board in connection with the dismissal of a civil service employee are of the type envisioned by this section, and mandamus will lie to review the board's decision. See *Gov C § 19570* et seq. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981*.

The action of the State Board of Pharmacy in directing its employees to sign various criminal complaints against a wholesale surgical supply company does not constitute the enforcement of "orders and regulations" of the board so as to subject such action to review in a mandate proceeding; the board or its members or employees are not charged with the prosecution and judicial determination of the criminal proceedings, the ultimate outcome of which rests with the prosecuting attorneys and the courts wherein the charges are pending. *Western Surgical Supply Co. v Affleck (1952) 110 Cal App 2d 388, 242 P2d 929.*

Action of State Board of Equalization in ordering an increase in assessment of all taxable property within a county affected by its order is reviewable in superior court under provisions of this section. *People v County of Tulare (1955) 45 Cal 2d 317, 289 P2d 11*.

Under this section, mandamus in superior court is proper procedure to review decision of Alcoholic Beverages Control Appeals Board reversing order of State Board of Equalization indefinitely suspending liquor license. *Koehn v State Board of Equalization (1958, 1st Dist) 166 Cal App 2d 109, 333 P2d 125.*

Administrative mandamus under this section, was proper remedy by which county could challenge Social Welfare Board for abuse of discretion in deciding that county should reinstate Aid to Needy Children grant to named person for benefit of her daughter. *County of Contra Costa v Social Welfare Board (1962, 1st Dist) 199 Cal App 2d 468, 18 Cal Rptr 573* (disapproved on other grounds by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

Section provides appropriate method of reviewing acts of statewide administrative and quasi-judicial agency, such as *State Board of Equalization. County of Tuolumne v State Board of Equalization (1962, 5th Dist) 206 Cal App 2d 352, 24 Cal Rptr 113.*

Following approval by the California Coastal Commission of a local coastal program (LCP) for a large coastal development plan, several interested parties and public interest groups filed a petition for a writ of mandate challenging the LCP, and named the commission, landowners, and others as real parties in interest. The trial court was obligated to determine whether substantial evidence supported the administrative agency's findings and whether the findings supported the agency's decision. The Court of Appeal's role is precisely the same as that of the trial court. In an administrative mandamus action where no limited trial de novo is authorized by law, the trial and appellate courts occupy in essence identical positions with regard to the administrative record, exercising the appellate function of determining whether the record is free from legal error. *Bolsa Chica Land Trust v Superior Court (1999, 4th Dist) 71 Cal App 4th 493, 83 Cal Rptr 2d 850, 502.*

State civil service employee has the right to judicial review of a decision by the *California State Personnel Board. Association of California State Attorneys & Administrative Law Judges v Department of Personnel Adminstration (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 957.*

Courts should review whether the California Department of Forestry and Fire Protection (CDF) conducted a thorough investigation and disclosed all that it reasonably could prior to accepting a finding that certain information is speculative. A finding by CDF or any other public agency that information is speculative does not necessarily mean that a legally adequate investigation was conducted before the finding was made. *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection (2006, 5th Dist) 139 Cal App 4th 165, 43 Cal Rptr 3d 363, 2006 Cal App LEXIS 765.*

20. -Local Agencies

Validity of proceedings and action taken by Regional Planning Commission can be determined in examination of record either by writ of review or mandamus under this section, and not by action in mandamus under§ 1085. *Triangle Ranch, Inc. v Union Oil Co. (1955, 2nd Dist) 135 Cal App 2d 428, 287 P2d 537.*

Mandamus lies to secure judicial determination of validity of local medical association's expulsion of member for alleged violation of *Principles of Medical Ethics of American Medical Association. Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

This section was intended as a codification of rules previously evolved for the review of decisions of administrative agencies; the duty of the city's administrative department controlling the issuance of building permits is ministerial and mandatory, and on refusal to discharge such duty, mandamus may be invoked independently of this section, and is not confined to a review of the record made by an officer who has held no hearing and has no duty to do so. *Munns v Stenman (1957, 2nd Dist) 152 Cal App 2d 543, 314 P2d 67.*

Both mandamus and certiorari are available in proper cases to review determinations of city boards and councils relating to street assessments. *Maxwell v Santa Rosa (1959) 53 Cal 2d 274, 1 Cal Rptr 334, 347 P2d 678.*

While city has power through its administrative agency to abate nuisances and within constitutional limits to force property owners to abate conditions which in fact constitute nuisances or hazards to public health or safety, and it cannot be assumed that city will attempt to exercise this power beyond its constitutional limits, aggrieved owners, if it did so, would have adequate remedy under this section, and by appeal from any adverse decision against them. *Dunitz v Los Angeles (1959, 2nd Dist) 170 Cal App 2d 399, 338 P2d 1001.*

Mandamus is appropriate remedy to test proper exercise of discretion by the board of municipal water district to include appellant's property in proposed special assessment improvement district. *San Diego Gas& Electric Co. v Sinclair (1963, 4th Dist) 214 Cal App 2d 778, 29 Cal Rptr 769.*

Where local board exercises quasi-judicial powers, as in county planning commission's determination of application for zoning variance, either certiorari or mandamus is appropriate remedy to review its action and test proper exercise by it of discretion with which it is invested. *Allen v Humboldt County Board of Supervisors (1963, 1st Dist) 220 Cal App 2d 877, 34 Cal Rptr 232.*

Review of planning commission proceedings regarding a conditional use permit is appropriate under *CCP § 1094.5*, authorizing the review of administrative decisions by mandamus. *Scott v Indian Wells (1972) 6 Cal 3d 541, 99 Cal Rptr 745, 492 P2d 1137.*

Administrative mandamus, under *CCP § 1094.5*, is the appropriate method for the consideration of a contention that a city had refused to issue a building permit to plaintiff except on compliance with an assertedly invalid condition. *Selby Realty Co. v San Buenaventura (1973) 10 Cal 3d 110, 109 Cal Rptr 799, 514 P2d 111.*

Administrative mandamus, as provided for in *CCP § 1094.5*, is not an appropriate procedure for obtaining judicial review of the propriety of a real property tax assessment. *Tivens v Assessment Appeals Board (1973, 2nd Dist) 31 Cal App 3d 945, 107 Cal Rptr 679.*

The adoption of a master plan ordinance is a legislative act and, therefore, is not subject to review by administrative mandamus under *CCP § 1094.5*. *Winkelman v Tiburon (1973, 1st Dist) 32 Cal App 3d 834, 108 Cal Rptr 415.*

Administrative mandamus under *CCP § 1094.5* is appropriate to review a city council's quasi-judicial determination of an application for a permit for a planned unit shopping center development. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

CCP § 1094.5, subd. (d), providing for the issuance of a writ of administrative mandate to private hospital boards if the findings of the boards are not supported by substantial evidence, applied to a proceeding for a writ of administrative mandate (*CCP § 1094.5*) by a physician to review an order by a nonprofit hospital and its board of directors denying the physician a clinical privilege. The term "private hospital" as used in the statute, was meant to refer to hospitals organized as nonprofit corporations. *Smith v Vallejo General Hospital (1985, 1st Dist) 170 Cal App 3d 450, 216 Cal Rptr 189.*

(2) QUESTIONS OPEN TO REVIEW

a. GENERALLY

21. In General

No distinction between so-called jurisdictional facts and other facts on which administrative adjudication depends need be made where review is of determination of state-wide administrative agency. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

Clear indication that boards jurisdiction has been exhausted after expiration of certain period must exist before court will find such loss of power. *Anderson v Pittenger (1961, 2nd Dist) 197 Cal App 2d 188, 17 Cal Rptr 54.*

Real parties' failure to challenge the constitutionality of the California Coastal Zone Conservation Act of 1972 in proceedings before the California Coastal Zone Conservation Commission when they applied for a permit to develop certain coastal lands did not preclude them from doing so in administrative mandamus proceedings to review the commission's denial of a permit. *State v Superior Court of Orange County (1974) 12 Cal 3d 237, 115 Cal Rptr 497, 524 P2d 1281.*

Actions of an administrative agency which are adjudicatory in character are judicially reviewable by administrative mandamus as provided in *CCP § 1094.5*. An agency acts in an adjudicatory capacity when, after a hearing, it applies previously adopted rules to an agency-determined state of facts to reach a conclusion affecting the rights of a specific person. Where the administrative adjudicatory action affects a fundamental vested right, the court, in determining whether there has been an abuse of discretion for failure of the evidence to support the findings, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. *Estes v Grover City (1978, 2nd Dist) 82 Cal App 3d 509, 147 Cal Rptr 131.*

The adjudicatory functions regulated by administrative mandamus are those which involve a fact-finding process, followed by a decision which imposes a tax upon an individual, a disciplinary burden, suspension of employment, revocation of license or credential, or denial to him of a permit or license which is a necessary prerequisite for the individual to engage in certain activities. *Royal Convalescent Hospital, Inc. v State Board of Control (1979, 4th Dist) 99 Cal App 3d 788, 160 Cal Rptr 458.*

The validity of an administration regulation, in whole or in part, as applied to a petitioner in an administrative mandamus proceeding, may be challenged therein by that petitioner where the basis of the challenge is that the regulation or some portion thereof is not a reasonable interpretation of the statute and is therefore void. "Abuse of discretion" within the meaning of *CCP § 1094.5*, is established if the administrative agency has not proceeded in the manner required by law. Proceeding pursuant to an invalid regulation is not proceeding in the manner required by law. *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

22. Review of Quasi-Legislative Acts

This statute does not apply to acts of the Director of Agriculture in making findings and a marketing order pursuant to the Marketing Act of 1937, nor to any quasi-legislative acts of an administrative body; this statute was intended by the Judicial Council proposing such legislation to apply only to adjudicatory decisions of administrative bodies. *Brock v Superior Court of San Francisco (1952) 109 Cal App 2d 594, 241 P2d 283.*

The de novo type of review does not apply to quasi-legislative acts of administrative officers, and judicial review is limited to an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and to give the notices required by law. *Brock v Superior Court of San Francisco (1952) 109 Cal App 2d 594, 241 P2d 283.*

In determining the scope of the review by the courts of the quasi-legislative acts of administrative officers, consideration must be given to the fact that courts must not usurp legislative power and thereby violate the separation of powers provision of the constitution. *Brock v Superior Court of San Francisco (1952) 109 Cal App 2d 594, 241 P2d 283.*

Section does not authorize suit by taxpayers seeking to annul city's action in annexing certain uninhabited territory, statute providing for judicial review of administrative orders or decisions, not legislative action, and city council's action in adopting and annexing ordinance is legislative and not administrative. *Wine v Council of Los Angeles (1960, 2nd Dist) 177 Cal App 2d 157, 2 Cal Rptr 94* (disapproved on other grounds by *The Pines v Santa Monica, 29 Cal 3d 656, 175 Cal Rptr 336, 630 P2d 521).*

With respect whether writ of mandate will issue, the fixing or refixing of rates for a public service is legislative, or at least quasi legislative. *City Council of Santa Barbara v Superior Court of Santa Barbara County (1960, 2nd Dist) 179 Cal App 2d 389, 3 Cal Rptr 796.*

Judicial review of quasi-legislative acts of administrative agency is limited to examination of proceedings before officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow procedure and give notices required by law. *Pitts v Perluss (1962) 58 Cal 2d 824, 27 Cal Rptr 19, 377 P2d 83.*

When it is claimed that findings of administrative agency are not supported by evidence, abuse of discretion is established in cases where court is authorized by law to exercise its independent judgment on evidence by court's determination that findings are not supported by weight of evidence, or in cases where court is not authorized to exercise its independent judgment on evidence by court's determination that findings are not supported by substantial evidence in light of whole record. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

The board of directors of a water district under the Municipal Water District Law of 1911 (*Wat Code, § 71000*, et seq.), was exercising quasi-legislative powers rather than quasi-judicial powers in passing on petitioners' two petitions, one for exclusion of lands from the district, the other for consent to annexation of said lands to another district, and judicial review of such action must be made under ordinary mandamus (*CCP § 1085*), and not under administrative mandamus (*CCP § 1094.5*). *Wilson v Hidden Valley Municipal Water Dist. (1967, 2nd Dist) 256 Cal App 2d 271, 63 Cal Rptr 889.*

A water district may properly be formed and maintained under the Municipal Water District Act of 1911 (*Wat Code, § § 71000* et seq.) for largely negative purposes as well as for positive purposes. The fact that a district was formed and has been maintained to prevent the importation of water from another water district and the subdivision and urbanization of the district which the great majority of people within it feel would inevitably occur, does not remove the usual limitations of judicial mandamus review of quasi-legislative action by the district, not subject to administrative mandamus. *Wilson v Hidden Valley Municipal Water Dist. (1967, 2nd Dist) 256 Cal App 2d 271, 63 Cal Rptr 889.*

In an action by a county board of supervisors seeking a writ of mandate relating to the funding, timing, and priorities of certain highway construction projects, neither traditional mandamus (*CCP § 1085*), nor administrative mandamus (*CCP § 1094.5*), was available to plaintiff, and the action was properly dismissed, where the relief prayed for sought to rescind quasi-legislative acts already undertaken by the commission not in abuse of its authority but pursuant to delegatory statutes prescribing legally adequate standards, and sought also to compel affirmative quasi-legislative action with regard to one of the projects concerned. *Board of Supervisors v California Highway Com. (1976, 3rd Dist) 57 Cal App 3d 952, 129 Cal Rptr 504.*

A petition for a writ of mandate under *CCP § 1085*, rather than under *CCP § 1094.5*, is appropriate to review administrative action of an agency acting in a legislative capacity. *Davies v Contractors' State License Board (1978, 1st Dist) 79 Cal App 3d 940, 145 Cal Rptr 284.*

The "quasi-legislative," that is, the"rule-making" or "policy-making," proceedings and determinations of a nonprofit hospital corporation are reviewable by traditional mandamus (*CCP § 1085*), rather than by administrative mandamus (CCP§ 1094.5). The trial court in such a proceeding, therefore, is not to exercise its independent judgment on the evidence, but is to limit its inquiry to an examination of the proceedings so as to determine whether the action taken was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the hospital failed to follow the procedure and give the notices required by law, or whether the action taken was otherwise unlawful or contrary to established public policy. *Lewin v St. Joseph Hospital (1978, 4th Dist) 82 Cal App 3d 368, 146 Cal Rptr 892.*

A mandamus proceeding instituted by a physician to compel a private hospital to permit the physician to use the hospital's chronic renal hemodialysis facility was a proceeding for traditional mandate (*CCP § 1085*), rather than a proceeding in administrative mandamus (*CCP § 1094.5*), where the challenged hearing and decision of the hospital's executive committee and board of trustees concerned the question of whether the hospital should continue its "closed-staff" rule governing operation of the facility, a matter clearly "quasi-legislative" in nature, rather than the question of application of such a rule to the petitioner physician individually. *Lewin v St. Joseph Hospital (1978, 4th Dist) 82 Cal App 3d 368, 146 Cal Rptr 892.*

In an action by a developer against a city, the trial court erred in its conclusion that the denial of the developer's application for rezoning property was a quasi-judicial act reviewable under *CCP § 1094.5* (administrative mandamus), rather than a legislative act reviewable under *CCP § 1085* (ordinary mandamus). Although a decision granting a vari-

ance, a conditional use permit, or an exception to use is an administrative act, a decision on an application for rezoning is a legislative act. *Toso v Santa Barbara (1980, 2nd Dist) 101 Cal App 3d 934, 162 Cal Rptr 210.*

Where a statute empowers an administrative agency to adopt regulations, such regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. The task of a reviewing court in such a case is to decide whether the agency reasonably interpreted the legislative mandate. Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rule-making function which requires a high degree of technical skill and expertise. There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. *Woods v Superior Court of Butte County (1981) 28 Cal 3d 668, 170 Cal Rptr 484, 620 P2d 1032.*

Actions taken by a city in its legislative capacity in rejecting a developer's request for a one-year extension of the time allowed by a municipal zoning ordinance for the commencement of a building project, though not reviewable by administrative mandamus (*CCP § 1094.5*), was reviewable under *CCP § 1085*, which provides for the traditional writ of mandate. Such judicial review was limited to an examination of the proceedings to determine whether the city's actions were arbitrary or capricious, or entirely lacking in evidentiary support, or whether the city failed to follow the procedure and give the notices required by law, and required that the legislative determination of the city be upheld if there was any reasonable basis to support it, the motives of the city council in making the determination being of no relevance. Court *House Plaza Co. v Palo Alto (1981, 1st Dist) 117 Cal App 3d 871, 173 Cal Rptr 161.*

The statutory provision for administrative mandamus, *CCP § 1094.5*, is used to review adjudicatory determinations. This form of mandamus is not available to review quasi-legislative actions of administrative agencies. Quasi-legislative acts are reviewable only by an action for declaratory relief (*CCP § 1060*) or for traditional mandamus (*CCP § 1085*.) *Saleeby v State Bar (1985) 39 Cal 3d 547, 216 Cal Rptr 367, 702 P2d 525.*

Unless (1) a hearing, (2) the taking of evidence and (3) discretion to determine facts are all required by law (*CCP § 1094.5*, subd. (a)), the review of an administrative agency decision can be had only by traditional mandate (*CCP § 1085*). Those three elements codify the essence of adjudicatory function, as opposed to legislative or quasi-legislative function, in an administrative body. *Harris v Civil Service Com. (1998, 1st Dist) 65 Cal App 4th 1356, 77 Cal Rptr 2d 366.*

23. Penalties

Propriety of penalty imposed by administrative agency is vested in discretion of such agency, and its decision thereon will not be disturbed in mandamus proceedings unless there has been clear abuse of discretion. *Martin v Alcoholic Beverage Control Appeals Board (1959) 52 Cal 2d 287, 341 P2d 296.*

In mandamus proceeding to review administrative order, determination of penalty by administrative body will not be disturbed unless there has been abuse of discretion. *Magit v Board of Medical Examiners (1961) 57 Cal 2d 74, 17 Cal Rptr 488, 366 P2d 816.*

In reviewing penalty imposed by administrative body which is duly constituted to announce and enforce such penalties, neither trial court nor appellate court is free to substitute its own discretion as to matter; nor can reviewing court interfere with imposition of penalty by administrative tribunal because in court's own evaluation of circumstances penalty appears to be too harsh. Such interference will only be sanctioned when there is arbitrary, capricious, or patently abusive exercise of discretion. *Brown v Gordon (1966, 1st Dist) 240 Cal App 2d 659, 49 Cal Rptr 901.*

Unlike a factual attack on administrative findings, the claim of their inadequacy to support a penalty evokes review of identical scope in the trial and appellate courts. *Doyle v Board of Barber Examiners (1966, 3rd Dist) 244 Cal App 2d 521, 53 Cal Rptr 420.*

In a mandamus proceeding to compel the Civil Service Commission to restore the job of a county employee who had been discharged after stealing $1 from the employee's coffee fund, the court had jurisdiction to hear and determine the issue raised as to whether the severity of the penalty imposed constituted an abuse of discretion (*CCP § 1094.5*). *Carroll v Civil Service Com. (1970, 5th Dist) 11 Cal App 3d 727, 90 Cal Rptr 128.*

The trial court did not err in denying a physician's petition for writ of mandamus seeking an order setting aside the Medical Board of California's revocation of the physicians license even though the Board based the discipline at least in part on the physician's plea of guilty to soliciting the subornation of perjury in a criminal proceeding in which the physician's conviction was later reduced to a misdemeanor and still later dismissed. Contrary to the physician's contentions, *B*

& P C § 2236.1(d) is not limited to felony convictions, and for the Board to rely on an expunged misdemeanor conviction, it was not necessary that § 2236 expressly authorize discipline on that basis. Decisions of the California courts have consistently upheld denial of a license or the right to pursue a particular profession on the basis of an expunged conviction and have done so without relying on statutory language expressly permitting consideration of expunged convictions. *Krain v Medical Bd. (1999, 1st Dist) 71 Cal App 4th 1416, 84 Cal Rptr 2d 586, 1418, 1420.*

b. ARBITRARY, CAPRICIOUS, OR UNREASONABLE ACTION; ABUSE OF DISCRETION

24. In General

The rule that state-wide administrative officers and boards are vested with a high discretion in working out their problems, and that an abuse of discretion must appear very clearly before the courts will interfere, is applicable to local administrative boards. *Nishkian v Long Beach (1951) 103 Cal App 2d 749, 230 P2d 156.*

On the hearing of charges of unprofessional conduct, an administrative board does not abuse its discretion in dismissing without prejudice charges on which no evidence is offered. *Kendall v Board of Osteopathic Examiners (1951) 105 Cal App 2d 239, 233 P2d 107.*

Mandamus is appropriate remedy to test proper exercise of discretion vested in local board, but court's power of review is confined to determining whether there was substantial evidence before board to support its decision. *Atchison, T. & S. F. R. Co. v Kings County Water Dist. (1956) 47 Cal 2d 140, 302 P2d 1.*

Administrative boards are vested with high discretion, and its abuse must clearly appear before courts will interfere. *Department of Alcoholic Beverage Control v Alcoholic Beverage Control Appeals Board (1959, 2nd Dist) 169 Cal App 2d 785, 338 P2d 50.*

If local administrative board bases its order solely on incompetent hearsay evidence, it acts arbitrarily, capriciously and in abuse of its discretion, and its order cannot stand. *Stout v Department of Employment (1959, 2nd Dist) 172 Cal App 2d 666, 342 P2d 918.*

Mandamus is appropriate remedy to test proper exercise of discretion vested in local administrative board. *Albonico v Madera Irrigation Dist. (1960) 53 Cal 2d 735, 3 Cal Rptr 343, 350 P2d 95.*

Where discretion vested in administrative agency or board has not been exercised, definite thing commanded is to act, and limits of discretion have been exceeded, definite thing commanded is to act within such limits. *Walters v Pine Cove County Water Dist. (1960, 4th Dist) 177 Cal App 2d 498, 2 Cal Rptr 253.*

In reviewing acts of local administrative boards, courts are limited to determining whether there has been abuse of discretion and are without power to try issues de novo or to compel boards to act in particular manner. *Rapp v Napa County Planning Com. (1962, 1st Dist) 204 Cal App 2d 695, 22 Cal Rptr 643.*

Abuse of discretion in administrative proceeding is established if agency has not proceeded in manner required by law, order or decision of agency is not supported by findings, or findings are not supported by evidence. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

In determining whether administrative board has abused its discretion, court may not substitute its judgment for that of board, and where reasonable minds may disagree as to wisdom of board's action, its determination must be upheld. *Manjares v Newton (1966) 64 Cal 2d 365, 49 Cal Rptr 805, 411 P2d 901.*

The choice of sanctions is a discretion legally vested in an administrative agency, within the meaning of *CCP § 1094.5*, subd. (e), governing review of an administrative decision by proceedings in mandamus. *Cadilla v Board of Medical Examiners (1972, 4th Dist) 26 Cal App 3d 961, 103 Cal Rptr 455.*

Proceeding pursuant to an invalid regulation is not proceeding in the manner required by law, within the meaning of *CCP § 1094.5*, which states that judicial inquiry thereunder extends to the question whether there was any prejudicial abuse of discretion by an administrative agency and that such abuse may be established if the agency has not proceeded in the manner required by law. *Verdugo Hills Hospital, Inc. v Department of Health (1979, 2nd Dist) 88 Cal App 3d 957, 152 Cal Rptr 263.*

Administrative mandate tests a decision for abuse of discretion, defining this as (1) the agency not proceeding in the manner required by law, (2) the decision not being supported by its findings or (3) its findings not being supported

by substantial evidence. (*CCP § 1094.5*, subd. (b)). The judicial review of any findings requires a deferential view of the record in their favor. *Harris v Civil Service Com. (1998, 1st Dist) 65 Cal App 4th 1356, 77 Cal Rptr 2d 366.*

Rent control regime that permits landlords to challenge confiscatory regulations in state court via a writ of mandamus, and which permits the timely adjustment of future rents to compensate for any regulatory lags that may have occurred, is one that passes judicial muster. *Galland v City of Clovis (2001) 24 Cal 4th 1003, 103 Cal Rptr 2d 711, 16 P3d 130.*

In determining whether to grant a writ pursuant to *CCP § 1094.5(b)*, a trial court inquires whether there was a prejudicial abuse of discretion in the administrative agency's decision; where there is a claim that the findings are not supported by the evidence and, in matters where the court does not exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record under *CCP § 1094.5(c). Cobb v San Francisco Residential Rent Stabilizatin & Arbitration Bd. (2002, 1st Dist) 98 Cal App 4th 345, 119 Cal Rptr 2d 741.*

25. In Specific Instances

It was proper to deny a motion for an alternative writ of mandate for the purpose of reviewing a decision of a county board of supervisors which granted an application for the establishment of a cemetery, where it appeared that the hearing before such board was not so arbitrarily, capriciously and prejudicially held as in effect to afford petitioner no hearing at all, especially where at such hearing he expressed satisfaction with the hearing and offered no objection to its procedure. *Patterson v Board of Supervisors (1947) 79 Cal App 2d 670, 180 P2d 945.*

It was not an abuse of discretion to deny a petition to interfere with the continued hearings of an administrative agency, where the petitioner had been informed of the continuance and had knowledge of the exact date of the hearing at least three days before it was held. *McPheeters v Board of Medical Examiners (1947) 82 Cal App 2d 709, 187 P2d 116.*

Where representatives of the contractors' state license board investigating complaints as to work done by a contractor instructed the complainants not to pay anything to the contractor or enter into any agreement with him, and undertook to advise the complainants as to what course to pursue generally, such interference by the board's representatives was unfair, officious, and a breach of authority, and a writ of mandate to obtain a court review of the order suspending the contractor's license was issued. *Terminix Co. v Contractors' State License Board of Dep't of Professional& Vocational Standards (1948) 84 Cal App 2d 167, 190 P2d 24.*

On the hearing before a city council of an application for a permit to conduct a business at a given location, the action of the council in refusing the permit was not arbitrary, capricious, or discriminatory as to the applicant, where prior to his application for a permit an application by another party to conduct a like business at the same location had been denied, and where the council had received numerous objections from residents of the area to the establishment of such a business at that location and as a result had adopted a resolution that it would not look with favor on applications for permits to conduct such a business in that area. *Felice v Inglewood (1948) 84 Cal App 2d 263, 190 P2d 317.*

Where judgment directing Board of Medical Examiners to vacate order revoking petitioner's license to practice medicine commanded board, which had improperly considered petitioner's conviction for violation of narcotics law after it had been reversed by appellate court, to reconsider case in light of court's findings and to take further action as is especially enjoined by law, cause was not remanded to board for sole purpose of reconsidering case after elimination of void judgment, and board, on reconsideration of matter having eliminated conviction but not having eliminated evidence relative thereto, abused its discretion in not permitting petitioner to introduce additional evidence for purpose of denying, explaining or impeaching testimony received at preliminary examination in case in which conviction was had. *Whitlow v State Board of Medical Examiners (1954) 128 Cal App 2d 671, 276 P2d 61.*

In a mandamus proceeding, the court will not interfere with the discretion and deliberation of a rate-making authority unless its action is fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion. *Sladovich v County of Fresno (1958, 4th Dist) 158 Cal App 2d 230, 322 P2d 565.*

Decision of municipal body to grant or deny building ordinance or construction code variance will not be disturbed by courts in absence of clear and convincing showing of abuse of discretion. *Siller v Board of Supervisors (1962) 58 Cal 2d 479, 25 Cal Rptr 73, 375 P2d 41.*

Because a license revocation proceeding is in the nature of a penalty depriving the subject of the right to practice his profession, involving the seriousness of loss of livelihood, the scope of the hearing and the trial court review for proceedings of such kind is exceedingly broad, and a hearing officer's application of the doctrines of res judicata and collateral estoppel by a prior civil judgment against the licensee and his limited consideration of the evidence solely in mitigation, deprived the licensee of the full and fair hearing required by the statute. *Lundborg v Director of Dep't of Professional & Vocational Standards (1967, 1st Dist) 257 Cal App 2d 141, 64 Cal Rptr 650.*

The action of the Department of Alcoholic Beverage Control in revoking an on-sale, general bona fide eating place license could not be approved on the basis that "topless" waitresses are per se contrary to public welfare or morals, and the trial court properly determined that the department's decision was necessarily arbitrary and an abuse of discretion within *CCP § 1094.5*, subd (b). *Boreta Enterprises, Inc. v Department of Alcoholic Beverage Control (1970) 2 Cal 3d 85, 84 Cal Rptr 113, 465 P2d 1.*

In reviewing the penalty imposed by an administrative body which is duly constituted to announce and enforce penalties, neither a trial court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal on the ground that, in the court's own evaluation of the circumstances, the penalty appears to be too harsh. Such interference will be sanctioned only where there is an arbitrary, capricious or patently abusive exercise of discretion. And the foregoing principles apply whether the statewide administrative tribunal is or is not constitutionally authorized to exercise judicial functions. *Cadilla v Board of Medical Examiners (1972, 4th Dist) 26 Cal App 3d 961, 103 Cal Rptr 455.*

It was not a manifest abuse of discretion for the Board of Medical Examiners to revoke the license of a physician specializing in pediatrics who had been convicted of child molestation, in violation of former Pen C § 647a (see now *Pen C § 647.6*), on the ground that he had been guilty of unprofessional conduct in having suffered a conviction of a crime involving moral turpitude. *Cadilla v Board of Medical Examiners (1972, 4th Dist) 26 Cal App 3d 961, 103 Cal Rptr 455.*

Under *CCP § 1094.5*, providing for an inquiry into the validity of an administrative order or decision, a claimed abuse of an administrative board's discretion in ordering a penalty subjects the penalty to judicial review, and if the claimed abuse is substantiated, a writ may issue requiring the board's reconsideration. *Collins v Board of Medical Examiners (1972, 2nd Dist) 29 Cal App 3d 439, 105 Cal Rptr 634.*

In determining the applicable standard of judicial review with respect to an administrative decision, it is the weighing of both the fundamental nature and the vested nature of the right at issue which determines whether or not independent judgment review is required. Thus, the substantial evidence rule was the standard of judicial review applicable to a public hospital's decision denying a plastic surgeon's initial application for hospital privileges. Although the degree of fundamentalness was substantial, since access to a hospital may be crucial to a doctor's livelihood, the applicant did not have a vested right, and his license to practice did not determine qualification for hospital privileges or establish competence to engage in a specialty. Further the determination of the standards to be applied in granting privileges involved a legislative judgment, and just as courts have largely deferred to administrative expertise in determining whether an applicant is qualified to practice a profession in the first instance, so too should they defer to administrative expertise in determining whether a professional is qualified to take on the additional responsibilities involved in a grant of hospital privileges. *Unterthiner v Desert Hospital Dist. (1983) 33 Cal 3d 285, 188 Cal Rptr 590, 656 P2d 554.*

Abuse of discretion on a state agency's part was not shown by the agency's deletion of certain view corridor requirements in landowners' coastal building permits in exchange for the dedication of a parcel of land for public beach access; the agency had the authority to approve this modification pursuant to its mandate, under *Cal. Pub. Res. Code § 30001.5*, subd. (c) of the California Coastal Act, *Cal. Pub. Res. Code § 30000* et seq., to maximize public access whenever possible. *La Costa Beach Homeowners' Assn. v California Coastal Com. (2002, 2nd Dist) 101 Cal App 4th 804, 124 Cal Rptr 2d 618.*

Trial court erred in denying the tenant of commercial property an administrative writ of mandate where the city council reversed the city zoning administrator's grant of the tenant's request for modifications of the city's land use restrictions. The tenant was denied due process because the council members were inattentive during the hearing. *Lacy St. Hospitality Serv., Inc. v City of Los Angeles (2004, 2nd Dist) 125 Cal App 4th 526.*

In approving timber harvesting plans, the California Department of Forestry and Fire Protection abused its discretion under the standard of *CCP § 1094.5* because it failed to meet the requirements of the Forest Practice Rules, in that it did not direct the submitter to separately tailor assessment areas for the California spotted owl and the Pacific fisher

based on the characteristics of each species and its habitat. *Ebbetts Pass Forest Watch v. California Dep't of Forestry & Fire Protection (2006, 5th Dist) 2006 Cal App LEXIS 532.*

Disclosures made by the California Department of Forestry and Fire Protection's (CDF) in its approval of timber harvesting plans (THP's) were prejudicially inadequate where they inaccurately described the State's pesticide regulatory program, which led to the overly broad conclusion that compliance with label directions and other restrictions in applying registered herbicides would preclude a finding that such application would have a significant adverse effect on the environment. Also, CDF relied upon information about herbicide use that was not disclosed in the administrative record, and the inadequate disclosures affected the usefulness of the THP's and official responses as informative documents, while adequate disclosures might have shown that further details of the prospective herbicide use were reasonably foreseeable. *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection (2006, 5th Dist) 139 Cal App 4th 165, 43 Cal Rptr 3d 363, 2006 Cal App LEXIS 765.*

California Department of Forestry and Fire Protection (CDF) abused its discretion when it approved timber harvesting plans (THP's) because CDF did not direct the timber harvester to comply with *Cal. Code Regs. tit. 14, § 952.9,* Technical Rule Addendum No. 2, which states that biological assessment areas will vary with the species being evaluated and its habitat, and thus requires a THP submitter to separately tailor an assessment area for each species based on the characteristics of that species and its habitat and to explain why the assessment area chosen was appropriate, in a case in which environmental groups challenging the THP's were concerned with the impacts on the California spotted owl and the Pacific fisher. Furthermore, the error in selecting assessment areas necessarily caused the required explanation of the rationale for establishing the assessment areas to be inadequate. *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection (2006, 5th Dist) 139 Cal App 4th 165, 43 Cal Rptr 3d 363, 2006 Cal App LEXIS 765.*

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26. -Employees' Rights

A petition for a writ of mandate to compel restoration of a former officer to his position on a police force did not show that the administrative board abused its discretion in finding the petitioner guilty of neglect of duty, where such officer was granted military leave to enlist in the Coast Guard, after having been disenrolled therefrom he failed to return to duty within the charter limit of ninety days, and during that interim he was not in the armed services but in the merchant marine. *Redding v Los Angeles (1947) 81 Cal App 2d 888, 185 P2d 430.*

The state personnel board's failure to consider a proper defense set up by the party charged in dismissal proceedings, or to make findings thereon, might, under certain conditions, constitute a failure to proceed "in the manner required by law" and therefore an abuse of discretion under this section. (See *Gov C § § 19578, 19582.*) *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

In an action to annul an order of the State Personnel Board dismissing the plaintiff from his civil service position, no abuse of discretion is indicated by an allegation that the board ignored the plaintiff's defense that his contract of employment limited his services to southern California and that he was justified in refusing to report for duty at Sacramento, where in view of former Gov C § 19360 (see now *Gov C § 19994.1*) giving the power to transfer to his superior, had findings been made, they would not support the conclusion that his employment was conditional and his refusal justified. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

In reviewing the ruling of the Retirement Board of San Francisco, where it is claimed that its findings are not supported by the evidence, an abuse of discretion on the Retirement Board's part can be found only if its decision is "not supported by substantial evidence in the light of the whole record" (subsection (c)). *Corcoran v San Francisco City & County Employees Retirement System (1952) 114 Cal App 2d 738, 251 P2d 59.*

In proceedings to review board's action in discharging employee, only if there is room for difference of opinion and charge appears clearly unsupported it may be held that board acted arbitrarily or capriciously. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

In proceeding to review action of civil service commission in discharging employee, it cannot be said that commission abused its discretion in determining that petitioner was guilty of actions making his employment detrimental where there is evidence to support charges that he violated orders, ridiculed and criticized his supervisors, and refused to do certain work. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

The action directed by the trial court's order for defendants, a city and its wage-fixing authorities, to proceed at once to provide salary and wage increases for city employees for a specified period, as would have been provided by an ordinance of a prior date had it been made effective, was required by a peremptory writ expressly stating defendants' duty to ascertain and to provide the salary or wages ascertained, where the fact-finding and determination had been made by the city council, as embodied in that ordinance, and had been found by the court to be fair; having once ascertained the prevailing wage, there was no discretion to provide for less. *Sanders v Los Angeles (1970) 3 Cal 3d 252, 90 Cal Rptr 169, 475 P2d 201.*

Judicial review of benefit decisions of the Unemployment Insurance Appeals Board is governed by *CCP § 1094.5*, subdivision (b) of which provides that abuse of discretion is found if an agency's decision is not supported by the findings. *Jacobs v California Unemployment Ins. Appeals Board (1972, 3rd Dist) 25 Cal App 3d 1035, 102 Cal Rptr 364.*

Under *CCP § 1094.5*, the scope of inquiry in reviewing a petition for administrative mandate is limited to "whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." A trial court properly denied a university laboratory employee's petition for a writ of mandate alleging that a letter written to the laboratory director by the university president was an abuse of discretion and amounted to the denial of a fair hearing, where any abuse of discretion manifested by the university president's letter was not prejudicial to the employee; since the only effect of the letter was an amelioration of the discipline imposed upon him. Furthermore, the employee was accorded a full administrative hearing pursuant to the university's staff personnel policy rules and made no challenge to the fairness of the hearing received nor attacked the administrative findings or the sufficiency of the evidence to support the decision. *Guilbert v Regents of University of Cal. (1979, 1st Dist) 93 Cal App 3d 233, 155 Cal Rptr 583.*

A public employee for a redevelopment agency was entitled to contest her termination, arising out of a grievance hearing and a finding of "conduct unbecoming an employee" of the agency, pursuant to a petition for administrative mandate (*CCP § 1094.5*), since the rules of the agency expressly provided that one in the employee's status may be terminated only for cause, and that such an employee is entitled to notice and, on request, to a hearing before the board of the agency. Moreover,§ 1094.5 applies whenever an agency exercises an adjudicatory function in considering facts presented in an administrative hearing. *Jabola v Pasadena Redevelopment Agency (1981, 2nd Dist) 125 Cal App 3d 931, 178 Cal Rptr 452* (disapproved on other grounds by *Cranston v City of Richmond, 40 Cal 3d 755, 221 Cal Rptr 779, 710 P2d 845).*

The trial court must exercise its independent judgment when reviewing the evidence presented at a county employee disability retirement hearing. In this review, the trial court may reweigh the evidence. After independently reviewing the administrative record, the trial court then may make its own factual findings. These powers of independent review are not limited by CCP§ 1094.5, subd. (f), which provides for an order of reconsideration; the trial court is not required by that statute to return the matter to the administrative agency for retrial and redecision. Although mandamus cannot control the lawful exercise of discretion by an agency, after that discretion has been exercised, the trial court may properly review the sufficiency of evidence to support the administrative finding, where that finding can only be a positive or a negative. *Levingston v Retirement Board (1995, 2nd Dist) 38 Cal App 4th 996, 45 Cal Rptr 2d 386.*

Where the trial court granted a petition for a writ of administrative mandamus, directing that a county set aside a decision denying disability retirement benefits to an employee, and finding instead that the employee was disabled and award him disability retirement benefits retroactive to his last day of service, the trial court properly found that the county did not proceed in the manner required by law in failing to appoint an administrative law judge to conduct the proceedings. However, although the trial court's interpretation of the law was correct, the trial court erred in failing to remand the matter to the county for a new hearing before an administrative law judge, rather than directing the county to reverse its decision. Under *Gov C § 21156*, the county was required to appoint an administrative law judge to conduct the proceedings. Because the hearing officer appointed by the county did not have the authority under the relevant statutes to hear the case and render findings, the county was without jurisdiction to make a decision based on those find-

ings. Thus the trial court was without power to determine whether the county's decision constituted an abuse of discretion under *CCP § 1094.5*. *Usher v County of Monterey (1998, 6th Dist) 65 Cal App 4th 210, 76 Cal Rptr 2d 274.*

A terminated police officer petitioned for a writ of administrative mandamus after his discharge was affirmed by the city Personnel Commission and after the City Council adopted the recommendation of the Commission. The officer had attempted to disqualify one member of the Commission on the ground of financial and/or personal interest in the outcome of the hearing, resulting in bias. The superior court denied the officer's request to set aside the decisions of the Commission and Council, and determined that there was no abuse of discretion within the meaning of *CCP § 1094.5*. On appeal, the court held that the officer had to prove actual bias to prevail on his due process claims. While the evidence clearly showed an "appearance of bias" on the Commissioner's part, there was insufficient evidence of "actual bias" to disqualify him. *Gai v City of Selma (1998, 5th Dist) 68 Cal App 4th 213, 79 Cal Rptr 2d 910, 219.*

In a review of a decision by a peer review hearing officer to terminate proceedings based on the doctor's disruptive behavior, the issue of whether the hearing officer had the authority for the sanction was reviewed de novo under *CCP § 1085*. The question of whether the sanction was properly imposed on the particular doctor was subject to abuse of discretion review as a quasi-judicial administrative decision under *CCP § 1094.5*. *Mileikowsky v Tenet Healthsystem (2005, 2nd Dist) 128 Cal App 4th 531.*

Civil service commission abused its discretion when it reinstated a deputy sheriff who had been terminated for lying to cover up a fellow deputy's physical abuse of an inmate. Therefore, the trial court should have granted the sheriff's petition for a writ of mandate overturning the commission's decision. *Kolender v San Diego County Civil Service Com. (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1421.*

c. QUESTIONS OF LAW AND FACT

(a) GENERALLY

27. In General

A reviewing court is not to judge the intrinsic value of evidence considered by an administrative agency, nor to weigh it, if the record discloses substantial evidence to support the decision; the inquiry is to be devoted only to the question whether the record shows an abuse of discretion; if reasonable minds may be divided as to the wisdom of such a board's action, the court will not substitute its judgment for that of the administrative board's action; this is so whether the decision be by a state-wide public board or public officer, or a local board or tribunal, the courts having no power to try the issues *de novo. Nishkian v Long Beach (1951) 103 Cal App 2d 749, 230 P2d 156.*

Though questions of law decided by administrative agency are subject to review, administrative interpretations of act will be followed unless they are clearly erroneous. *Barrett v California Unemployment Ins. Appeals Board (1961, 2nd Dist) 190 Cal App 2d 854, 12 Cal Rptr 356.*

Where there was no conflict in evidence as to matters concerning issue of plaintiff's exhaustion of administrative remedies, that issue became question of law for court and not one for jury. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

When administrative agency's determination involves construction of statute, its interpretation is question of law reviewable by court. *Rich v State Board of Optometry (1965, 1st Dist) 235 Cal App 2d 591, 45 Cal Rptr 512.*

Findings of administrative board are to be liberally construed to support rather than defeat order made by such board. *Meyers (Jack P.) Jack P. Meyers, Inc. v Alcoholic Beverage Control Appeals Board (1965, 2nd Dist) 238 Cal App 2d 869, 48 Cal Rptr 259.*

On review of an administrative decision under the"independent judgment" test, the court must weigh the evidence and exercise its independent judgment on the facts, whereas, under the substantial evidence test, the court must isolate and consider only the evidence supporting the administrative decision. *Cleveland Chiropractic College v State Board of Chiropractic Examiners (1970, 2nd Dist) 11 Cal App 3d 25, 89 Cal Rptr 572.*

CCP § 1094.5, provides for both an independent judgment and a substantial evidence review of administrative decisions. *Bixby v Pierno (1971) 4 Cal 3d 130, 93 Cal Rptr 234, 481 P2d 242.*

28. Conflicting Evidence

Chief issues in review of determination of fact by administrative board are whether person affected has been accorded hearing and whether there is substantial evidence to support determination of board, and evidence contrary to that supporting board's conclusions should be disregarded. *Chenoweth v Office of City Clerk (1955, 2nd Dist) 131 Cal App 2d 498, 280 P2d 858.*

In determining whether or not there is substantial evidence in support of administrative decision, conflicts in evidence must be resolved in favor of decision and all legitimate and reasonable inferences must be indulged in its support. *Marcucci v Board of Equalization (1956, 3rd Dist) 138 Cal App 2d 605, 292 P2d 264.*

Findings of administrative agency must be sustained if it has committed no error of law and if evidence, although conflicting, is sufficient to support such findings. *Griswold v Department of Alcoholic Beverage Control (1956, 1st Dist) 141 Cal App 2d 807, 297 P2d 762.*

In reviewing proceedings before local administrative board, court is bound to disregard all evidence contrary to that received in support of board's findings. *Sultan Turkish Bath, Inc. v Board of Police Comm'rs (1959, 2nd Dist) 169 Cal App 2d 188, 337 P2d 203.*

Mere conflict in evidence before administrative body does not entitle court, in review proceedings governed by this section, to interfere, since court is bound to disregard evidence that is contrary to that in support of body's findings. *Rapp v Napa County Planning Com. (1962, 1st Dist) 204 Cal App 2d 695, 22 Cal Rptr 643.*

Courts generally will defer to broad discretion vested in administrative agencies when evidence is conflicting, or even when reasonable men might differ on credibility of witnesses or proper inferences to be drawn from evidence, subject to requirement that findings be supported by substantial evidence. *Lorimore v State Personnel Board (1965, 3rd Dist) 232 Cal App 2d 183, 42 Cal Rptr 640.*

Under *CCP § 1094.5*, relating to inquiry into the validity of administrative orders or decisions, in an administrative mandamus proceeding in which the petitioner is not entitled to a limited trial de novo, the substantiality of the evidence is to be determined by the superior court by isolating and considering only the evidence supporting the administrative decision and not that conflicting with it, must consider the evidence in the light most favorable to the real parties in interest, must give them the benefit of every reasonable inference, and must resolve all conflicts in the evidence in support of the administrative decision. *Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

Despite the use of the words "substantial evidence in the light of the whole record" used in *CCP § 1094.5*, subd (c), the superior court, in an administrative mandamus proceeding, must apply the substantial evidence rule in the same manner that the rule is applied by appellate courts in reviewing decisions of trial courts; i.e., the substantiality of the evidence is determined by isolating and considering only the evidence supporting the administrative decision and not that conflicting with it. *American Federation of Teachers v San Lorenzo Unified School Dist. (1969, 1st Dist) 276 Cal App 2d 132, 80 Cal Rptr 758.*

29. Inferences or Conclusions From Evidence

Reviewing court, in its consideration of evidence in support of decision of administrative body, must resolve conflicts, and indulge legitimate and reasonable inferences, in favor of that decision. *Board of Trustees v Munro (1958, 3rd Dist) 163 Cal App 2d 440, 329 P2d 765.*

In determining whether there is substantial evidence in support of administrative decision, conflicts in evidence must be resolved in favor of that decision, and all legitimate and reasonable inferences must be indulged in its support. *Whoriskey v San Francisco (1963, 1st Dist) 213 Cal App 2d 400, 28 Cal Rptr 833.*

Court reviewing findings of administrative agency will resolve all doubts as to sufficiency of evidence in favor of administrative agency's finding. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

The requirement that an administrative agency express findings of fact sufficient to reveal relevant sub-conclusions supportive of the ultimate decision when rendering a decision reviewable under *CCP § 1094.5*, providing for judicial review of an administrative order or decision made pursuant to a hearing required by law, applies only to administrative actions that are adjudicatory and not to administrative actions that are legislative in nature. *Rancho Palos Verdes v City Council of Rolling Hills Estates (1976, 2nd Dist) 59 Cal App 3d 869, 129 Cal Rptr 173.*

30. Substantial Evidence

Factual determination of statewide administrative agency which derives adjudicating power from Constitution are not subject to re-examination in trial de novo but are to be upheld by reviewing court if they are supported by substantial evidence. *Shepherd v State Personnel Board (1957) 48 Cal 2d 41, 307 P2d 4.*

Findings of fact of State Personnel Board will not be disturbed on judicial review if supported by substantial evidence. *Hardy v Vial (1957) 48 Cal 2d 577, 311 P2d 494.*

On review of a local quasi-judicial administrative body's order, the trial court is confined to determining whether there was substantial evidence to support the order. *Kling v City Council of Newport Beach (1957, 4th Dist) 155 Cal App 2d 309, 317 P2d 708.*

The authority of the court in proceedings under this section is restricted to a determination as to whether or not there was substantial evidence before the commission to support its findings when the ruling of a local quasi-judicial body is brought into question. *Aluisi County of Fresno (1958, 4th Dist) 159 Cal App 2d 823, 324 P2d 920.*

In reviewing decision of administrative body, given quasi-judicial powers by Constitution, reviewing court is limited to determination of whether decision is supported by substantial evidence and court may not substitute its view for that of administrative body, nor reweigh conflicting evidence. *Board of Trustees v Munro (1958, 3rd Dist) 163 Cal App 2d 440, 329 P2d 765.*

On review of decision of local administrative body, reviewing court is concerned only with presence or absence in agency record of substantial evidence which will support agency's determination. *Flaherty v Board of Retirement of Los Angeles County Employees Retirement Asso. (1961, 2nd Dist) 198 Cal App 2d 397, 18 Cal Rptr 256.*

In reviewing decision of administrative board, court is bound by substantial evidence rule. *Tabory v State Personnel Board (1962, 1st Dist) 208 Cal App 2d 543, 25 Cal Rptr 333.*

Where local agencies or boards exercise judicial or constitutional quasi-judicial power, superior court in its review of decisions of such agencies or boards is confined to determining whether there was substantial evidence before agency or board to support its findings. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Factual determinations of an administrative body must be upheld when supported by substantial evidence. *Forstner v San Francisco (1966, 1st Dist) 243 Cal App 2d 625, 52 Cal Rptr 621.*

In an administrative mandamus proceeding to review the action of a county retirement board, the courts must apply the substantive evidence rule in the same manner that the rule is applied by appellate courts in reviewing a trial court's decision. *Petry v Board of Retirement of Los Angeles County Employees Retirement Ass'n (1969, 2nd Dist) 273 Cal App 2d 124, 77 Cal Rptr 891.*

CCP § 1094.5, relating to administrative mandamus, contemplates that, at a minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision. *Topanga Asso. for Scenic Community v County of Los Angeles (1974) 11 Cal 3d 506, 113 Cal Rptr 836, 522 P2d 12.*

The standard for review of a trial court's determination that a county agency's decision to discipline an employee was proper is whether substantial evidence supports the decision of the trial court. *Pipkin v Board of Supervisors (1978, 3rd Dist) 82 Cal App 3d 652, 147 Cal Rptr 502.*

The 1966 constitutional revision which repealed former Cal. Const., art. IV, § 25, providing for the Legislature to regulate horse racing, and enacted art. IV, § 19(b) in its place, and which did not change the basic wording of the grant of power to the Legislature, did not change the status of the California Horse Racing Board as a board of constitutional origin for purposes of administrative mandamus review. Accordingly, in mandamus proceedings under *CCP § 1094.5*, to review the suspension of a horse trainer's license, the trial court properly applied the substantial evidence test. *Jones v Superior Court of Orange County (1981, 4th Dist) 114 Cal App 3d 725, 170 Cal Rptr 837.*

In a mandamus proceeding pursuant to *CCP § 1094.5*, by a contract (probationary) community college teacher and a faculty association seeking to have set aside a decision of the community college district not to rehire the teacher for the forthcoming academic year, the trial court properly utilized the substantial evidence standard of review rather than exercising its independent judgment in determining whether the district had complied with the evaluation procedures set forth in a collective bargaining agreement entered into between the association and the district pursuant to the Education

Employment Relation Act (*Gov C § 3540* et seq.). Ed C § § 87600et seq., dealing with the employment of contract employees, the decisions regarding their continued employment, and the right to an administrative hearing, contain no standard regarding the judicial review of a decision of the governing board. The right of a probationary teacher to be rehired for the next school year is not a vested one; the term "probationary" itself is the opposite of vested, and the Education Code leaves the final determination as to rehiring probationary teachers with the governing board. *Mt. San Antonio College Faculty Ass'n v Board of Trustees (1981, 2nd Dist) 125 Cal App 3d 27, 177 Cal Rptr 810.*

When a trial court applies the substantial evidence test in reviewing an administrative agency's decision, it determines whether the agency's findings are supported by substantial evidence in light of the whole record (*CCP § 1094.5*, subd. (c)). Conclusions of law, however, are reviewed independently. Further, on appeal, the function of the reviewing court is the same as that of the trial court. *International Bhd. of Electrical Workers v Aubry (1996, 2nd Dist) 42 Cal App 4th 861, 50 Cal Rptr 2d 1.*

Following approval by the California Coastal Commission of a local coastal program (LCP) for a large coastal development plan, several interested parties and public interest groups filed a petition for a writ of mandate challenging the LCP, and named the commission, landowners, and others as real parties in interest. The trial court was obligated to determine whether substantial evidence supported the administrative agency's findings and whether the findings supported the agency's decision. The Court of Appeal's role is precisely the same as that of the trial court. In an administrative mandamus action where no limited trial de novo is authorized by law, the trial and appellate courts occupy in essence identical positions with regard to the administrative record, exercising the appellate function of determining whether the record is free from legal error. *Bolsa Chica Land Trust v Superior Court (1999, 4th Dist) 71 Cal App 4th 493, 83 Cal Rptr 2d 850, 502.*

31. -In Light of Whole Record

Courts have duty to ascertain if there was fair trial and if orders of administrative tribunal are supported by substantial evidence in light of whole record. *Armistead v Los Angeles (1957, 2nd Dist) 152 Cal App 2d 319, 313 P2d 127.*

Phrase "substantial evidence in the light of the whole record" has been consistently construed as signifying no more than adoption by legislature, for particular purposes, of substantial evidence rule as generally applied in judicial proceedings in this state rather than"scintilla" rule, which has been applied in judicial proceedings in some other jurisdictions. *Martin v Alcoholic Beverage Control Appeals Board (1959) 52 Cal 2d 238, 340 P2d 1.*

Constitutional and statutory provisions providing for review of decisions of Department of Alcoholic Beverage Control to determine whether "findings are supported by substantial evidence in light of the whole record" signify no more than adoption of substantial evidence rule as generally applied in judicial proceedings in this state. *Rosales v Department of Alcoholic Beverage Control (1959, 1st Dist) 171 Cal App 2d 624, 341 P2d 366.*

In reviewing orders or decisions of administrative tribunals, courts are charged with duty to ascertain whether there was fair trial and whether such orders or decisions are supported by substantial evidence, in light of whole record. *Stout v Department of Employment (1959, 2nd Dist) 172 Cal App 2d 666, 342 P2d 918.*

In judging sufficiency of evidence to sustain decision of administrative body, such as civil service commission, court is confined to determination as to whether, in light of whole record, there was substantial evidence before commission to support its finding. *Aluisi v County of Fresno (1960, 4th Dist) 178 Cal App 2d 443, 2 Cal Rptr 779.*

As used in review of proceeding by local, quasi-judicial administrative tribunal, term "substantial evidence in light of the whole record" is equivalent to the "substantial evidence rule." *Takata v Los Angeles (1960, 2nd Dist) 184 Cal App 2d 154, 7 Cal Rptr 516.*

Mandamus is appropriate remedy to test proper exercise of discretion vested in local administrative board; and where challenge to such exercise of discretion rests on claimed insufficiency of evidence, court's power of review is conditioned on determining that findings are not supported by substantial evidence in light of whole record before board. *Siller v Board of Supervisors (1962) 58 Cal 2d 479, 25 Cal Rptr 73, 375 P2d 41.*

When state-wide administrative agency does not adjudicate vested or constitutional right, scope of review in superior court is limited by substantial evidence rule, and agency's decision must be upheld if there is substantial evidence in whole record to support it. *County of Contra Costa v Social Welfare Board (1962, 1st Dist) 199 Cal App 2d 468, 18 Cal Rptr 573* (disapproved by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

Substantial evidence rule in administrative mandamus is equivalent to concept of substantial evidence in light of whole record. *Coomes v State Personnel Board (1963, 3rd Dist) 215 Cal App 2d 770, 30 Cal Rptr 639.*

Where findings of administrative agency are devoid of evidentiary support or are based on inferences arbitrarily drawn without reasonable foundation or are contrary to facts universally accepted as true and judicially known, administrative order will be reversed as not supported by substantial evidence in light of whole record. *Lorimore v State Personnel Board (1965, 3rd Dist) 232 Cal App 2d 183, 42 Cal Rptr 640.*

In an administrative mandamus proceeding, the correct standard for reviewing a decision of the Director of the State Department of Social Welfare denying an applicant benefits for the totally disabled was to examine the record to see if there was substantial evidence supporting the Director's decision. *Stratton-King v Martin (1972, 1st Dist) 28 Cal App 3d 686, 104 Cal Rptr 916* (disapproved by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

The standard for judicial review of a decision of the Director of the State Department of Social Welfare overruling a referee's decision in favor of an application for aid for the needy disabled is whether the director's decision is supported by substantial evidence in the light of the whole record (*CCP § 1094.5*, subd. (c)), and also in the light of the rule that the decision of the referee is entitled to great weight if supported by ample credible evidence or substantial evidence. *Millen v Swoap (1976, 1st Dist) 58 Cal App 3d 943, 130 Cal Rptr 387* (disapproved by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

The phrase "in light of the whole record" in *CCP § 1094.5*, subd. (c), means that a court reviewing an agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record. Rather, the court must consider all relevant evidence, including evidence detracting from the decision, a task that involves some weighing to estimate the worth of the evidence fairly. An appellate court's review is identical to that of the trial court. *Lucas Valley Homeowners Ass'n v County of Marin (1991, 1st Dist) 233 Cal App 3d 130, 284 Cal Rptr 427,* mod (Cal App 1st Dist) *91 CDOS 6840.*

The statutory directive that abuse of an administrative agency's discretion exists if its findings are not supported by substantial evidence "in light of the whole record" (*CCP § 1094.5*, subd. (c) (administrative mandamus)), means that the court reviewing an agency's decision cannot just isolate the evidence supporting the findings and disregard other relevant evidence in the record. Rather, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence. That limited weighing is not an independent review. It is for the agency to weigh the preponderance of conflicting evidence. Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency. Moreover, the standard of review on appeal is identical to the trial court's. *Sierra Club v California Coastal Com. (1993, 1st Dist) 12 Cal App 4th 602, 15 Cal Rptr 2d 779.*

32. Weight of Evidence

On an application for a writ of mandate to review an order of a local quasi-judicial body, the trial court does not have a right to judge of the intrinsic value of the evidence nor to weigh it; it is limited to determine whether there was substantial evidence before the body to sustain its findings. *Odden v County Foresters, Firewardens & County Fire Protection Dist. Firemen's Retirement Board (1951) 108 Cal App 2d 48, 238 P2d 23.*

Court in an administrative mandamus proceeding is limited, so far as sufficiency of evidence is concerned, to determination of whether substantial evidence was produced in support of a challenged finding, and may not weigh the evidence or make independent findings as to the effect thereof. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

Superior court in mandate proceedings to review decision of Board of Equalization and District Court of Appeal on appeal are without authority to reweigh evidence. *Marcucci v Board of Equalization (1956, 3rd Dist) 138 Cal App 2d 605, 292 P2d 264.*

Superior court on application for wirt of mandate to review order of local quasi-judicial body has no right to judge intrinsic value of evidence nor to weigh it, but is limited to determining whether there was substantial evidence before body to support its decision. *Schumm v Board of Supervisors (1956, 3rd Dist) 140 Cal App 2d 874, 295 P2d 934.*

Scope of review of findings of local administrative agency is in terms of substantial evidence rather than weight of evidence. *Wilbur v Office of City Clerk (1956, 2nd Dist) 143 Cal App 2d 636, 300 P2d 84.*

In reviewing findings and orders of local, quasi-judicial body, trial court is confined to evidence received by board, and in reviewing that evidence may not reweigh it, but may only consider whether there is any substantial competent and material evidence in administrative record to sustain findings and order attacked. *Takata v Los Angeles (1960, 2nd Dist) 184 Cal App 2d 154, 7 Cal Rptr 516.*

In mandamus proceeding to review action of local administrative board, court does not have right to judge intrinsic value of evidence or to weigh it. *Siller v Board of Supervisors (1962) 58 Cal 2d 479, 25 Cal Rptr 73, 375 P2d 41.*

Scope of review of agency's decision is limited to determining whether there is substantial support to be found in record, and both superior court in mandate proceedings brought before it and appellate court are without authority to reweigh evidence. *Whoriskey v San Francisco (1963, 1st Dist) 213 Cal App 2d 400, 28 Cal Rptr 833.*

Judicial determination of matters as to which administrative decision has been made does not inevitably mean that courts will reweigh evidence on which findings of inferior tribunal or body are based. *In re Redevelopment Plan for Bunker Hill Urban Renewal Project 1B (1964) 61 Cal 2d 21, 37 Cal Rptr 74, 389 P2d 538.*

In review of administrative board decision, where substantial evidence rule applies, trial judge does not independently weigh evidence and make his own findings, but determines question of law, i.e., whether evidence is sufficient and like questions enumerated in this section. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

In an administrative mandamus proceeding challenging a decision of the State Board of Medical Examiners revoking a license, the trial court is required to exercise its independent judgment in reweighing the evidence, while a reviewing court is limited to determining if the evidence supports the trial court's findings. In making that determination, all conflicts in the evidence must be resolved in favor of the respondent, and all legitimate and reasonable inferences drawn to uphold the trial court's findings, the reviewing court may not reweigh the evidence and consider the credibility of witnesses. *Packer v Board of Medical Examiners (1974, 2nd Dist) 37 Cal App 3d 63, 112 Cal Rptr 76.*

The right to continued welfare benefits, for purposes of judicial review of welfare decisions, is both "fundamental" and "vested", thereby invoking the independent judgment standard of review, under which, as provided in *CCP § 1094.5*, subd. (c),"abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." *Harlow v Carleson (1976) 16 Cal 3d 731, 129 Cal Rptr 298, 548 P2d 698.*

Where the decision or order of a county agency substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. However, where a fundamental vested right is not affected, the trial court's inquiry is limited to a determination of whether the findings are supported by substantial evidence in light of the whole record. *Pipkin v Board of Supervisors (1978, 3rd Dist) 82 Cal App 3d 652, 147 Cal Rptr 502.*

Under *CCP § 1094.5*, subd. (c), providing alternative standards for judicial review of the evidentiary basis of an administrative agency's adjudicatory decision, the courts are left with the ultimate task of deciding which cases warrant review under the weight of the evidence standard. *County of Alameda v Board of Retirement (1988) 46 Cal 3d 902, 251 Cal Rptr 267, 760 P2d 464.*

Under *CCP § 1094.5(c)*, substantial evidence supported a decision to overturn a driver's license suspension because the trial court, as trier of fact, was entitled to find that a preliminary alcohol screening test was unreliable and therefore of insufficient weight to support the suspension; the officer did not observe the licensee for 15 minutes, as required by regulation. *Roze v. Department of Motor Vehicles (2006, 4th Dist) 141 Cal App 4th 1176, 46 Cal Rptr 3d 829, 2006 Cal App LEXIS 1188.*

33. Substitution of Court's Judgment for That of Agency

Subject to the court's power to exercise an independent judgment on the evidence in certain review proceedings, the court has nothing to do with wisdom or expediency of the measures adopted by administrative agency to which the formulation and execution of state policy had been entrusted, and will not substitute its judgment or motions of expediency, reasonableness or wisdom for those which have guided the agency. *Faulkner v California Toll Bridge Authority (1952) 40 Cal 2d 317, 253 P2d 659.*

Up to point where court cannot, in good conscience, say that administrative evidence supporting findings and inferences of fact by administrative tribunal is substantial, in that there is no reasonable relation between facts and findings,

court should not substitute its judgment for agency's, though had court heard case de novo it would not have reached same findings of fact itself. *Pranger v Break (1960, 4th Dist) 186 Cal App 2d 551, 9 Cal Rptr 293.*

Where record before planning commission contained abundant evidence that proposed shale quarrying and transportation operation would be conducted in safe, dust-free and relatively quiet manner and would have no adverse effect on property values, and where applicable zoning ordinance authorized use permits for excavation if planning commission found that use would not be detrimental to health, safety, peace, morals, comfort and general welfare of residents and workers, and not detrimental or injurious to property and improvements or the general welfare of county, court, in review under this section, acted beyond its power in holding that commission's findings were not supported by substantial evidence, and in attempting to substitute its judgment for that of commission. *Rapp v Napa County Planning Com. (1962, 1st Dist) 204 Cal App 2d 695, 22 Cal Rptr 643.*

A determination by an Urbal Renewal Agency, whether it was a legislative or an administrative determination, that only one bidder qualified for a redevelopment project, was not subject on appeal to a de novo type of review, and an appellate court is not empowered to substitute its determination for that of a board in the absence of an abuse of discretion, fraud, collusion, or bad faith on the part of the board. *Old Town Development Corp. v Urban Renewal Agency (1967, 1st Dist) 249 Cal App 2d 313, 57 Cal Rptr 426.*

Neither the Alcoholic Beverage Control Appeal Board nor the courts may disregard or overturn a finding of fact of the Department of Alcoholic Beverage Control for the reason that it is considered that a contrary finding would have been equally or more reasonable. *Reimel v Alcoholic Beverage Control Appeals Board (1967, 2nd Dist) 250 Cal App 2d 673, 58 Cal Rptr 788.*

A court has no power to conduct a trial de novo and substitute its findings on matters exclusively within the jurisdiction of a county tax appeals board created under authority of former Cal Const, art XIII, § 9.5 (see now *Cal Const Art XIII § 16*). *County of Los Angeles v Tax Appeals Board (1968, 2nd Dist) 267 Cal App 2d 830, 73 Cal Rptr 469.*

Where the Legislature has conferred on an administrative agency the authority to apply such broad standards as the "fair, just and equitable" criteria set forth in former Corp Code, § 25510, the courts should not substitute their own judgment for that of the agency, but should uphold the administrative decision unless it is arbitrary, capricious, or fraudulent, having no reasonable basis in law, or no substantial basis in fact. *Bixby v Pierno (1971) 4 Cal 3d 130, 93 Cal Rptr 234, 481 P2d 242.*

Unless it can be demonstrated that actions of the State Water Resources Control Board are not grounded on any reasonable factual basis, the courts should not interfere with its discretion or substitute their discretion for that of the board. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

In California, the courts must decide on a case-by-case whether an administrative decision or class of decisions substantially affects fundamental vested rights and thus requires independent judgment review. In determining whether the right is fundamental, the courts do not weigh only the economic aspects, but also the effect in human terms and the importance to the individual in the life situation. *Pipkin v Board of Supervisors (1978, 3rd Dist) 82 Cal App 3d 652, 147 Cal Rptr 502.*

The courts must decide on a case-by-case basis whether an administrative decision substantially affects a fundamental vested right. If an administrative decision affects such a right, then a full and independent judicial review of that decision is indicated since the abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction. In determining whether the right is fundamental, the courts do not alone weigh the economic aspect of it, but also consider the effect of it in human terms and the importance of it to the individual in the life situation. *McGue v Sillas (1978, 1st Dist) 82 Cal App 3d 799, 147 Cal Rptr 354.*

A court reviewing a legislative act of an administrative agency will inquire whether the agency acted within the scope of its delegated authority, whether it employed fair procedures, and whether the agency action was reasonable. In inquiring as to reasonableness, the court will not substitute its independent policy judgment for that of the agency on the basis of an independent trial de novo. It will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support. *California Mfrs. California Mfrs. Asso. v Industrial Welfare Com. (1980, 4th Dist) 109 Cal App 3d 95, 167 Cal Rptr 203.*

34. Conclusiveness and Adequacy of Findings

In proceeding to review order of administrative board, any finding which is not specifically attacked must be accepted as true. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

Local administrative commission's finding that any of several specified findings would cause commission to make order that is sought to be reviewed obviates necessity of determination, by reviewing court, whether all findings are supported by substantial evidence. *Borders v Anderson (1962, 2nd Dist) 204 Cal App 2d 401, 22 Cal Rptr 243.*

An ambiguous administrative finding may be supplemented by reference to the administrative record, and a finding so supplemented is adequate where it permits the courts to determine whether the decision is based on lawful principles. *Doyle v Board of Barber Examiners (1966, 3rd Dist) 244 Cal App 2d 521, 53 Cal Rptr 420.*

Implicit in *CCP § 1094.5*, relating to administrative mandamus, is a requirement that the administrative agency which renders the challenged decision set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order. *Topanga Asso. for Scenic Community v County of Los Angeles (1974) 11 Cal 3d 506, 113 Cal Rptr 836, 522 P2d 12.*

Implicit in the administrative mandamus provisions of *Code Civ. Proc. § 1094.5*, is a requirement that the agency which renders the challenged decision set forth finding to bridge the analytic gap between the raw evidence and the ultimate decision or order. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

In an action by a county board of supervisors seeking a writ of mandate directing the Highway Commission to rescind certain decisions relating to highway construction projects, such decisions could not be held null and void for failure of the commission to make findings of fact thereon, where, although administrative findings of fact are required for purposes of administrative mandamus (*CCP § 1094.5*), the decisions in question were quasi-legislative and therefore subject to judicial review, if at all, under ordinary mandamus procedure (*CCP § 1085*), for which administrative findings of fact are not required. *Board of Supervisors v California Highway Com. (1976, 3rd Dist) 57 Cal App 3d 952, 129 Cal Rptr 504.*

Superior court erred in denying a licensee's petition for writ of mandate challenging the suspension of the licensee's driver's license for allegedly driving while intoxicated, where the superior court decided the case without reading the administrative record. *Ocheltree v Gourley (2002, 2nd Dist) 102 Cal App 4th 1013, 126 Cal Rptr 2d 77.*

Agency is not precluded from adopting findings spelling out its reasoning for a decision after a petition for a writ of mandate seeking judicial review of that decision had been filed, nor is there a rule specifying how promptly written findings must be made. *Sierra Club v California Coastal Commission (2003, 1st Dist) 107 Cal App 4th 1030, 133 Cal Rptr 2d 182.*

When the California Coastal Commission issued a decision granting a developer a permit, its findings supporting that decision were permissibly adopted subsequent to the decision, as they were not a post-hoc rationalization to support the decision. *Sierra Club v California Coastal Commission (2003, 1st Dist) 107 Cal App 4th 1030, 133 Cal Rptr 2d 182.*

(b) SPECIFIC INSTANCES

35. In General

In a proceeding in mandamus to compel the vacation of an administrative order, the superior court properly refrained from determining the sufficiency of the evidence when it found that the proceeding under review had not been heard by a properly qualified hearing officer. *National Auto.& Casualty Ins. Co. v Downey (1950) 98 Cal App 2d 586, 220 P2d 962.*

Decisions of administrative agencies revoking licenses or denying the exercise of "vested" rights are subject to limited trial de novo by the superior court; decisions of administrative agencies denying applications or permits which do not constitute "vested rights" are subject to restrictive "substantial evidence" review. *Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

In a proceeding by a city council vacating a public street, the city council is required to make findings of fact sufficiently detailed to satisfy the requirements of judicial review under *CCP § 1094.5*, governing judicial review of an administrative order or decision made pursuant to a hearing required by law, for the reason that such an action is governed by *Sts. & Hy. Code, § 8323*, requiring the city council to find from evidence submitted at a noticed public hearing that

the street was unnecessary for public purposes, and, where adjudicatory rather than legislative in nature, is also governed by *Pub. Resources Code, § 21168*, providing for judicial review of a public agency's decision on the ground of noncompliance with the *California Environmental Quality Act. Rancho Palos Verdes v City Council of Rolling Hills Estates (1976, 2nd Dist) 59 Cal App 3d 869, 129 Cal Rptr 173.*

In determining whether a fundamental right is involved in the review of an administrative action by administrative mandamus, and thus, whether the independent judgment standard should be applied, the courts do not alone weigh the economic aspect of the right, but consider also its effect in human terms and the importance of it to the individual in a life situation. The right of the survivor of a public employee to a service-connected death benefit almost three times the nonservice connected death allowance is a fundamental right. So is the right of a physician to staff privileges in a particular private hospital. *Estes v Grover City (1978, 2nd Dist) 82 Cal App 3d 509, 147 Cal Rptr 131.*

In an action by the owners and operators of a hotel challenging the conditional use permit requirement placed on them by the City of San Francisco to comply with zoning laws to rent their property to tourists, rather than to longer term residents, the trial court properly denied the owners' petition for writ of administrative mandate under *CCP § 1094.5*; the requirement did not constitute a taking in violation of *Cal Const Art I § 19* because a mitigation fee measured by the resulting loss of housing units was reasonably related to the impacts of the proposed change in use; furthermore, the Ellis Act, *Gov C § 7060-7060.7*, did not apply because the owners never took the measures necessary to invoke their statutory rights under the Act. *San Remo Hotel v City and County of San Francisco (2002) 27 Cal 4th 643, 117 Cal Rptr 2d 269, 41 P3d 87.*

36. Disciplinary Proceedings

Contractor's State License Board does not exercise judicial power in disciplinary proceeding against contractor; any order it may make is subject to review in superior court and on that review contractor has right to place before court not only evidence received before registrar of board, but subject to limitations of subd (d), any additional relevant evidence, and court would be required to exercise its independent judgment on question whether contractor had breached his contract and was subject to discipline. *Contractors' State License Board v Superior Court of Los Angeles County (1960, 2nd Dist) 187 Cal App 2d 557, 10 Cal Rptr 95.*

Where findings of Real Estate Commissioner in disciplinary proceedings against brokers are supported by uncontradicted evidence, it is error for court to make finding that such administrative findings are not supported by weight of evidence. *Caro v Savage (1962, 1st Dist) 201 Cal App 2d 530, 20 Cal Rptr 286.*

The proper standard for reviewing a county agency's decision to discipline a public employee was not affected by the fact that a merit system, rather than a civil service system, was involved. *Pipkin v Board of Supervisors (1978, 3rd Dist) 82 Cal App 3d 652, 147 Cal Rptr 502.*

In a hospital's disciplinary proceedings concerning a physician who had been convicted of conspiracy to murder his wife, the hospital acted within its discretion in suspending the physician's staff membership pending the outcome of his criminal appeals, where the basis of the decision was that the crime was of such a nature that it was incompatible with the ethical and professional rules of a physician-those of upholding the dignity and sanctity of human life and of alleviating suffering. The crime of conspiracy to murder one's wife is substantially related to the qualifications, functions, and duties of a physician. Even though the suspension was effective before exhaustion of criminal appeals, the physician was not denied substantive or procedural due process, nor was there infringement of his right to appeal his criminal conviction. *Miller v National Medical Hospital, Inc. (1981, 4th Dist) 124 Cal App 3d 81, 177 Cal Rptr 119.*

In an action for damages against a city brought by a police lieutenant who was demoted to the rank of sergeant after the city determined that he had lied to his superiors during an internal investigation of his alleged misconduct, the trial court erred in entering an order holding that plaintiff's lawsuit for damages was barred for his failure to file a petition for a writ of administrative mandamus pursuant to *CCP § 1094.5*. Although plaintiff was required to file such a petition, he was entitled to amend his complaint in order to present the proper pleading, given the unsettled state of the law at the time he filed his complaint for damages. In addition, although plaintiff was not permitted to file an action for damages under Gov C§ 3309.5, of the Public Safety Officers Procedural Bill of Rights Act (Gov C§ 3300 et seq.), he was permitted to file a concurrent Gov C§ 3309.5, action for injunctive or other extraordinary relief, on the ground that his employer had violated his rights under the act, even though his employer had already issued its final administrative decision. Further, issues decided in one action will be binding in the other. *Gales v Superior Court (1996, 2nd Dist) 47 Cal App 4th 1596, 55 Cal Rptr 2d 460.*

Pursuant to *B & P C § § 5583, 5584* of the Architects Practice Act, *B & P C § 5500* et seq., the California Board of Architectural Examiners properly disciplined an architect for wrongful conduct that occurred prior to the time that his architect's license was issued, even if the license itself was not obtained by fraud or misrepresentation; the architect's action for a peremptory writ of mandate pursuant to *CCP § 1094.5* was remanded for a determination as to whether the Board imposed an excessive sanction in revoking the architect's license. *Hughes v Board of Architectural Examiners (1998) 17 Cal 4th 763, 72 Cal Rptr 2d 624, 952 P2d 641.*

In an administrative mandamus action brought by a physician contesting his removal from a hospital's emergency room "call panel" (a list of physicians on call to cover the emergency room for non-county patients), the trial court properly reviewed the decision of the hospital's governing body sitting as an Appeals Board, which decided to remove the physician from the call panel, and the not the decision of a hospital judicial review committee, which recommended the physician's reinstatement. Pursuant to *CCP § 1094.5(a)*, the role of the superior court in reviewing such a matter is to inquire into the validity of any final administrative order or decision. Under the bylaws of the medical staff of the hospital, the decision of the hospital judicial review committee was not the final administrative decision, but rather the governing body acting as the Appeals Board. The decision of the Appeals Board was the final decision rendered in a multilevel administrative review process; the report and recommendation of the hospital judicial review committee was not a final decision which could be appealed from separately. *Hongsathavij v Queen of Angels etc. Medical Center (1998, 2nd Dist) 62 Cal App 4th 1123, 73 Cal Rptr 2d 695.*

Where a dentist was convicted of three misdemeanor domestic violence offenses as well as charged with illegal possession and use of drugs, the trial court's denial of a petition for a writ of administrative mandate, pursuant to *CCP § 1094.5*, to set aside discipline imposed by the Board of Dental Examiners was proper because the dentist and board entered into a stipulation that resulted in the board's disciplinary order and that the order could not be avoided just because the dentist's conviction was later vacated. *Stermer v Board of Dental Examiners (2002, 2nd Dist) 95 Cal App 4th 128, 115 Cal Rptr 2d 294.*

Trial court erred in denying a police officer's petition for writ of administrative mandate under *CCP § 1094.5*, wherein the officer challenged the police department's downgrade of his pay grade position. The punitive action of downgrade was barred because the police department failed to notify the officer of the proposed disciplinary action within one year of discovery of the facts giving rise to the proposed discipline, as required by *Gov C § 3304(d)*. *Sanchez v. City of Los Angeles (2006, 2d Dist) 139 Cal App 4th 1297, 43 Cal Rptr 3d 695, 2006 Cal App LEXIS 788.*

In a case in which a former student sued a private college for declaratory relief under California's Leonard Law, *Ed C § § 94367* et seq., the former student, who had been disciplined by the college, was authorized to bring his claim in the trial court without having to seek administrative mandamus pursuant to *CCP § 1094.5*. *Antebi v. Occidental College (2006, 2d Dist) 141 Cal App 4th 1542, 2006 Cal App LEXIS 1253.*

37. Employees' Rights

In a mandamus proceeding to review an order of a fire pension board denying petitioners a pension for the death of a fireman, the evidence supported a finding that the fireman's death was not a result of the performance of his duty, and that his work as a fireman did not cause his fatal heart condition, where medical witnesses testified to that effect, no new evidence being offered in the superior court. *McGrath v Young (1950) 98 Cal App 2d 415, 220 P2d 609.*

In reviewing the ruling of the Retirement Board of San Francisco, where it is claimed that its findings are not supported by the evidence, the inquiry of the superior court is limited to the question of "whether there was any prejudicial abuse of discretion" (subsection (b)). *Corcoran v San Francisco City & County Employees Retirement System (1952) 114 Cal App 2d 738, 251 P2d 59.*

In proceeding in mandamus to compel city retirement board to pay widow of retired police officer pension identical in amount to that formerly paid to him, findings that officer did not die as result of injuries received in, or illness caused by, performance of his duty and that widow failed to sustain burden of proving that he died as result of service-connected illness are sustained by evidence that officer after his retirement, while trying to arrest cab driver for driving through "stop" signs was assaulted by cab driver, and that cause of death was exertion or excitement caused by altercation with cab driver. *Cooper v Retirement Board of San Francisco (1955, 1st Dist) 131 Cal App 2d 804, 281 P2d 349.*

What constitutes behavior under *Gov C § 19572* subd (s) is essentially question for determination of *Personnel Board. Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

On judicial review of action of county civil service commission, chief issues are whether person affected has been accorded fair hearing, and if so, whether there is any substantial evidence to support commission's determination; court must confine itself to showing made before administrative tribunal with respect to sufficiency of evidence. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

In mandamus proceeding to compel Department of Employment to grant unemployment benefits, judgment affirming decision of Unemployment Insurance Appeals Board, which affirmed decision of referee of Department of Employment that petitioner was ineligible for benefits because she had voluntarily terminated her most recent employment was sustained by substantial evidence indicating that petitioner voluntarily terminated her employment because she was being harassed by creditors and did not wish to work and turn over her salary to these creditors, and by employer's testimony that she could have continued working. *Vayne v Department of Employment (1962, 2nd Dist) 200 Cal App 2d 517, 19 Cal Rptr 329.*

Evidence that appellant, psychologist with Department of Corrections, twice contacted parolee in violation of department's rule prohibiting employees from contacting ex-prisoners, that appellant had requested blanket permission for contacting parolees and permission had been denied, and that appellant expected some action by department as result of his activity was sufficient to support charges of insubordination and wilful disobedience. *Tabory v State Personnel Board (1962, 1st Dist) 208 Cal App 2d 543, 25 Cal Rptr 333.*

Where pension board with quasi-judicial powers found that widow was entitled to pension equal to one third of salary paid to her husband and based the finding on its determination that husband did not die as direct result of performance of his duty, on appeal, it was not for court to determine whether husband lost his life as direct result of actual performance of his duty but whether, in light of whole record before board, there was substantial evidence to support board's finding. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

The use of a writ of mandate to review the quasi-judicial action of a board of retirement of a county employees' retirement association in deciding whether a county employee is entitled to retirement is properly termed "administrative mandamus" (*CCP § 1094.5*); such proceeding in the superior court is in no sense a trial de novo, and the court's only legitimate function is to determine whether or not the retirement board had substantial evidence to support the decision. *Grant v Board of Retirement of Kern County Employees' Retirement Asso. (1967, 5th Dist) 253 Cal App 2d 1020, 61 Cal Rptr 791.*

The trial court correctly determined that a city and its wage-fixing authorities had failed to comply with a writ providing that they might use "any appropriate administrative procedures" to make the ascertainment, required by charter, as to prevailing wages in private industry to which salaries and wages for city employees were to be adjusted, where it appeared that defendants did not use the procedures originally employed and found by the appellate court to be fair and equitable, but used in one instance new formulas resulting in a recommendation of no increases on the same facts and, in another instance, applied new formulas resulting in fewer and lesser increases than those allowed under the court-approved procedure. *Sanders v Los Angeles (1970) 3 Cal 3d 252, 90 Cal Rptr 169, 475 P2d 201.*

In a mandamus proceeding brought under *CCP § 1094.5*, to review determinations reached by the State Department of Employment or of the Unemployment Insurance Appeals Board (or both) that a claimant is ineligible for unemployment compensation benefits because of his leaving his employment voluntarily without good cause, the superior court is required to weigh the administrative evidence and to exercise independent judgment thereon. *King v California Unemployment Ins. Appeals Board (1972, 1st Dist) 25 Cal App 3d 199, 101 Cal Rptr 660.*

In reviewing a decision of a county board of retirement by administrative mandamus pursuant to *CCP § 1094.5*, the trial court and the appellate court are bound by the substantial evidence rule, the function of the courts being to determine if the record is free from legal error. Where there is no substantial conflict in the evidence, however, the proper interpretation of statutory language is a question of law for the court and the reviewing court is not constricted in that regard by the conclusions of the trial court. *Neeley v Board of Retirement (1974, 5th Dist) 36 Cal App 3d 815, 111 Cal Rptr 841.*

A police officer petitioned for administrative mandamus under *CCP § 1094.5* to set aside a disciplinary suspension imposed on him by the chief of police. The trial court rejected the petition and the Court of Appeal affirmed. The city charter provisions did not deal directly with the question of whether a police officer, having initiated the appeal of a particular disciplinary action, may later decide to accept the initial punishment and unilaterally abandon that process so as to preclude any further valid action by the board. However, these provisions, when read in their entirety, strongly suggest that the disciplined officer has no such right. The city provisions represented a comprehensive scheme designed

to govern the discipline of police officers. The appeal process provided for in the city charter also satisfied the requirements of the Public Safety Officers Procedural Bill of Rights (*Gov C § 3300* et seq.). *Jackson v City of Los Angeles (1999, 2nd Dist) 69 Cal App 4th 769, 81 Cal Rptr 2d 814.*

In denying a former employee's petition for writ of mandate, the trial court acted properly in sustaining a county civil service commission's rejection of the former employee's claim for back pay, where the former employee, who had been suspended following his indictment on felony charges, resigned before the commission hearing was held. *Zuniga v. Los Angeles County Civ. Serv. Comm'n (2006) 137 Cal App 4th 1255, 40 Cal Rptr 3d 863, 2006 Cal App LEXIS 410.*

38. -Discharge and Reinstatement

In mandamus proceedings to compel the reinstatement of a discharged civil service employee, both the trial court and the appellate court are bound by the conclusion of the civil service commission in regard to the employee's condition of mind, arrived at after opportunity to observe her appearance and demeanor and her manner of testifying during the hearing of the charges. *Pratt v Los Angeles County Civil Service Com. (1951) 108 Cal App 2d 114, 238 P2d 3.*

A dismissed civil service employee seeking to compel the city to permit her to resume her duties is not entitled to a trial de novo in the superior court, but only to a review of the proceedings before the local board acting as a quasi-judicial body empowered to make final adjudications of fact in connection with matters properly submitted to it. *Thompson v Long Beach (1953) 41 Cal 2d 235, 259 P2d 649.*

In proceeding to review an order of State Personnel Board dismissing civil service employee from his position, admitted fact of driving vehicle while intoxicated and running through signal light amounts to substantial evidence supporting finding to that effect; and although conviction of Vehicle Code violation as result of that accident would not be sufficient sustaining evidence of charge of driving while intoxicated, it is competent for purpose of supplementing and explaining evidence of fact of driving while intoxicated. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

It is for municipal civil service board, not for courts to determine whether city civil service employee was discharged because he failed to report for work on account of illness or because he refused to obey orders. *Wilbur v Office of City Clerk (1956, 2nd Dist) 143 Cal App 2d 636, 300 P2d 84.*

In mandamus proceeding to compel State Personnel Board to reinstate discharged civil service employee, trial court's function is to review transcript of hearings to determine whether board's findings were supported by substantial evidence. *Coomes v State Personnel Board (1963, 3rd Dist) 215 Cal App 2d 770, 30 Cal Rptr 639.*

In mandamus proceeding to compel defendant city to pay plaintiff pro rata pension after his discharge for insubordination, court erred in finding that plaintiff was not guilty of insubordination where record before city's pension board was clearly more than sufficient to support finding of insubordination, and, in addition, where city's civil service board, vested with full power to hear and adjudicate propriety of dismissals, had upheld plaintiff's dismissal and plaintiff had taken no steps to obtain judicial review of board's decision which, once made, was res judicata and immune from collateral attack on other than jurisdictional grounds, and where record before trial court was devoid of any evidence that board had exceeded its jurisdiction. *DeCelle v Alameda (1963, 1st Dist) 221 Cal App 2d 528, 34 Cal Rptr 597.*

In hearing for discharge of civil service employee, credibility of witnesses and proper weight to be given their testimony were matters within exclusive province of State Personnel Board, and finding on conflicting testimony that employee's conduct with mental patient constituted physical abuse and flagrant violation of her instructions was conclusive. *Lorimore v State Personnel Board (1965, 3rd Dist) 232 Cal App 2d 183, 42 Cal Rptr 640.*

State Personnel Board is statewide administrative agency endowed by Constitution with quasi-judicial powers; its order discharging civil service employee can be set aside as arbitrary only when unsupported by substantial evidence in light of whole record. *Lorimore v State Personnel Board (1965, 3rd Dist) 232 Cal App 2d 183, 42 Cal Rptr 640.*

Factual determinations by State Personnel Board concerning grounds for discharge of civil service employee must be upheld where they are supported by substantial evidence, and in proceeding in mandamus to compel board to set aside its decision to discharge employee, superior court should act as reviewing court, not as trial court. *Hignsbergen v State Personnel Board (1966, 1st Dist) 240 Cal App 2d 914, 50 Cal Rptr 59.*

On judicial review of a decision of the State Personnel Board denying plaintiff's appeal from a decision of the Director of General Services notifying plaintiff that he was being laid off due to lack of work, the superior court had no

authority to nullify the board's decision where it failed to find a lack of substantial evidence to support the board's finding that the layoff by the department was made in good faith. *Stewart v State Personnel Board (1967, 3rd Dist) 250 Cal App 2d 445, 58 Cal Rptr 280.*

In a proceeding to determine the propriety of the dismissal by a school district board of a probationary school teacher for failure to rehire for the following school year (former Ed C § 13444), no right of judicial review was accorded to the teacher to test the decision of the board as to the sufficiency of the reasons for dismissal, but, as in all cases of review of administrative proceedings by mandamus, a court could determine whether the board's jurisdiction was exceeded, whether the hearing was fair, and whether the board's findings were supported by substantial evidence (*CCP § 1094.5*). *Lunderville v Emery Unified School Dist. (1968, 1st Dist) 262 Cal App 2d 459, 68 Cal Rptr 768.*

In a mandamus proceeding to compel a school district to re-employ a probationary teacher, the trial court was precluded from considering whether the charges made against the teacher justified dismissal, where there was substantial evidence to support the findings of the hearing officer adopted by the Board of Education, and where the causes for dismissal related to the welfare of the schools and the pupils. *American Federation of Teachers v San Lorenzo Unified School Dist. (1969, 1st Dist) 276 Cal App 2d 132, 80 Cal Rptr 758.*

The question whether a municipal civil service board's conclusion was sufficiently supported by the substantial evidence rule, to the effect that a certain police officer had been unlawfully discharged due to a coerced resignation induced by improper conduct on the part of superior officers in the police department, depended upon whether such conclusion was supported by any evidence, contradictory or otherwise, adduced before the board, viewed in the light most favorable to the officer and indulging in all reasonable inferences to support the board's findings. *Keithley v Civil Service Bd. (1970, 1st Dist) 11 Cal App 3d 443, 89 Cal Rptr 809.*

In a mandamus proceeding, brought pursuant to CCP§ 1085, to compel the governing board of a county unified school district to reinstate a tenured teacher who inadvertently failed to make a timely return, contrary to the provisions of former Ed. Code, § 13260 [44842], of his contract with the district for the subsequent school year, the trial court did not err in applying the substantial evidence test, rather than the independent judgment test, to determine whether the board had abused its discretion in refusing to reemploy the teacher. Though the teacher's proper remedy may have been administrative mandamus pursuant to *CCP § 1094.5*, which would have involved the independent judgment test, such a procedural defect could not be raised for the first time on appeal by the board, and, in any event, application of the independent judgment test would not have produced a different result in the trial court. *California Teachers Asso. v Governing Board of Mariposa County Unified School Dist. (1977, 5th Dist) 70 Cal App 3d 833, 139 Cal Rptr 155.*

The trial court erred in overruling defendant college's demurrer to an assistant professor's complaint for damages arising from defendant's declining to offer plaintiff lifetime academic tenure. Administrative mandamus review (*CCP § 1094.5*) was plaintiff's exclusive remedy, and thus defendant was entitled to have its demurrer sustained. Section 1094.5 applies to nongovernmental administrative agencies and to public university employment decisions. Important public policy interests are served by providing a uniform practice of judicial, rather than jury, review of quasi-judicial administrative decisions to deny lifetime academic tenure, since tenure decisions in an academic setting involve a combination of factors that tend to set them apart from employment decisions generally. These factors affect the quality of education at the institution, and therefore the decisions are best made within the university by the candidate's peers. Thus, because de novo review by lay juries of the merits of tenure candidacies will severely impact these freedoms, absent discrimination, judicial review of tenure decisions is limited to evaluating the fairness of the administrative hearing in an administrative mandamus action. Further, it was irrelevant that plaintiff alleged breach of contract and defendant's failure to follow its policies, since those allegations still required the trier of fact to decide whether defendant should have granted plaintiff lifetime tenure. *Pomona College v Superior Court (1996, 2nd Dist) 45 Cal App 4th 1716, 53 Cal Rptr 2d 662.*

Labor contracts (MOU's) for several bargaining units, provided an alternative dispute resolution mechanism for litigating a disciplinary action in a forum other than the California State Personnel Board (SPB), but the SPB and an association of state attorneys and administrative law judges, filed actions to prohibit implementation of the disciplinary provisions of the MOUs; on appeal, it was determined that the MOUs violated *Cal. Const. art. VII, § 3(a)* because they restricted the SPB's adjudicatory authority to review disciplinary actions taken against state civil service employees and that the implementing legislation, *Cal. Gov't Code § § 18670(c)* and (d); 19175(f) and (g); 19576.6; Cal. *Code Civ. Proc. § 1094.5(k)*; 2000 Cal. Stat. 402,§ § 5, 6, and 7, violated *Cal. Const. art. VII, § 3(a)* to the extent it sanctioned the offending provisions of the *MOUs. State Personnel Bd. v Department of Personnel Administration (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1326.*

County civil service commission had the authority to modify a sheriff's discipline of a sergeant from a termination to a suspension. The court deferred to the fact finder's conclusion that the sergeant's report was careless rather than intentionally untruthful. *Kolender v San Diego County Civil Service Com. (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1492.*

39. Licenses

In a mandamus proceeding to compel an administrative board to restore a revoked medical license, both the trial and appellate courts are limited to a determination of whether the board's findings are supported by substantial evidence in the light of the record, and where such substantial evidence exists the appellate court has no power to set aside the judgment even though it is not supported by the weight of the evidence. *Housman v Board of Medical Examiners (1948) 84 Cal App 2d 308, 190 P2d 653.*

In mandamus proceedings to compel the State Board of Health to restore the petitioner's license as a clinical laboratory technologist, on the ground that the penalty of the revocation was so disproportionate to the violations involved as to amount to an abuse of discretion, the inquiry in the trial court is as to whether it is established that the order or decision of the board is supported by the findings or the findings by the weight of the evidence. *Cooper v State Board of Public Health (1951) 102 Cal App 2d 926, 229 P2d 27.*

In proceedings to review an order of the real estate commissioner suspending a broker's license, the trial court is authorized to exercise its independent judgment on the evidence before the hearing officer, without being finally bound by the findings made after the administrative hearing. *Manning v Watson (1952) 108 Cal App 2d 705, 239 P2d 688.*

When it is shown that licentiate in optometry solicited medical corps officer on nearby army post to refer army personnel and dependents to optometrist on agreed fee basis and agreement was executed by army officer making referrals and optometrist making payments to officer or his wife there is sufficient evidence to support finding in mandamus proceeding that licentiate had violated *B & P C § 650. Mast v State Board of Optometry (1956, 2nd Dist) 139 Cal App 2d 78, 293 P2d 148.*

In proceedings to review action of administrative agency with respect to denial of application for license, or restoration of revoked license, scope of review is to determine whether agency abused its discretion and court's power is limited to determining sufficiency of evidence to support administrative findings. *Foster v McConnell (1958, 1st Dist) 162 Cal App 2d 701, 329 P2d 32.*

Adjudicatory powers exercised by the Athletic Commission in revoking for cause boxing matchmaker's license are conferred on commission with constitutional sanction, and court inquiring into validity of such revocation is not authorized or required to exercise its independent judgment on the evidence, but must apply substantial evidence rule. *Rudolph v Athletic Com. of California (1960, 2nd Dist) 177 Cal App 2d 1, 1 Cal Rptr 898.*

Where Alcoholic Beverage Control Appeals Board has reversed decision of Department of Alcoholic Beverage Control denying application for on-sale liquor license, judicial review by mandamus is necessarily directed at decision of appeals board, but any judicial determination of whether appeals board has exceeded its "limited" powers would incidentally require review of decision of department and of record of which department's decision had been based. *Martin v Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337.*

Neither Alcoholic Beverage Control Appeals Board nor trial court in mandamus proceeding erred in concluding that there was no substantial evidence to sustain determination of Department of Alcoholic Beverage Control that good cause existed for denying application for transfer of on-sale beer and wine license to premises operated as restaurant across street from church and within block from school where evidence tended to establish that applicants were law-abiding persons who operated superior restaurant and were endeavoring to make its services still better and attractive to a larger number of patrons, and that proximity of church, when considered in light of facts that church did not protest issuance of license to applicants and that within 600-foot radius of premises there already existed eight licensed premises, of which only one held on-sale beer and wine license, did not appear of such significance as to support department's decision. *Martin v Alcoholic Beverage Control Appeals Board (1961) 55 Cal 2d 867, 13 Cal Rptr 513, 362 P2d 337.*

On petition for writ of mandate to compel Department of Alcoholic Beverage Control to vacate and set aside its suspension of liquor license, superior court should review evidence and findings in same fashion that appellate court reviews trial court's findings. *De Martini v Department of Alcoholic Beverage Control (1963, 1st Dist) 215 Cal App 2d*

787, 30 Cal Rptr 668 (disapproved on other grounds by *Harris v Alcoholic Beverage Control Appeals Board, 62 Cal 2d 589, 43 Cal Rptr 633, 400 P2d 745).*

Since the power to determine the facts in licensing matters is vested in the Department of Alcoholic Beverage Control, and not in the Alcoholic Beverage Control Appeals Board or the courts, a review of the department's action is governed by the rule that where there is room for reasonable difference of opinion with respect to the correctness of a finding of fact it will not be disturbed by the reviewing tribunal. *Reimel v Alcoholic Beverage Control Appeals Board (1967, 2nd Dist) 250 Cal App 2d 673, 58 Cal Rptr 788.*

There was substantial evidence to support the finding and judgment of the superior court in denying a petition by a motorcycle dealer for a writ of mandate to compel the Department of Motor Vehicles to set aside its decision suspending the dealer's license, certificates and special plates, where the evidence demonstrated that the dealer was in violation of the outermost limits for timely submission of dealers' reports of sales, as required by *Veh Code, § 4456*, and where, though a certain exhibit failed to show when papers and notice of transfer were officially received by the Department of Motor Vehicles and failed to indicate whether the vehicles in question were new or used, another exhibit in evidence before the court did indicate whether the vehicle was new or used and did set forth the date when the papers and notice of transfer were originally received. *Evilsizor v Department of Motor Vehicles (1967, 1st Dist) 251 Cal App 2d 216, 59 Cal Rptr 375.*

In an administrative mandamus proceeding seeking judicial review pursuant to former Fin C § 5258, of the Savings and Loan Commissioner's decision granting a savings and loan association's application to operate a branch office, the subject matter of the administrative mandamus petition was limited to a review of the administrative record to permit the court to decide whether on that record the granting of the license was supported by substantial evidence, and evidence outside that record could not be judicially reviewed; and as the sufficiency of the evidence to support the Commissioner's decision for the purpose of judicial review sought by an objector stands or falls on the administrative record, the trial court did not abuse its discretion in refusing to permit discovery as to whether the Commissioner based his decision on secret ex parte communications, whether the applicant deliberately misrepresented to and concealed from the Commissioner evidence regarding its financial condition and other material facts, and whether the Commissioner has abandoned his usual rules, regulations and instructions without notice. *Beverly Hills Federal Sav. Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

In an administrative mandamus proceeding seeking judicial review pursuant to *Fin C § 5258*, of the Savings and Loan Commissioner's decision granting a savings and loan association's application to operate a branch office, brought by competing associations seeking to protect their interest from additional competition by the licensee, petitioners' interest in being free from competition was not a vested right, and the maximum relief to which they were entitled was for the superior court to determine whether or not the Commissioner's actions were supported by substantial evidence in the light of the whole record. *Beverly Hills Federal Sav. Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

Where the right or interest affected by an order of the Department of Motor Vehicles denying an application for a motor vehicle dealer's license is not a vested right, the function of the trial court, in a proceeding under *CCP § 1094.5*, is to determine whether the department, in denying the application, committed errors of law. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

Inasmuch as the Registrar of Contractors, in his adjudicatory function, is required to conduct a hearing in which evidence is taken, the standards for administrative mandamus expressed in *CCP § 1094.5*, applied to an application for a writ of mandamus seeking to set aside the registrar's decision revoking petitioner's contractor's license, notiwthstanding that the petition did not specifically refer to that statute. *Grimes v Hoschler (1974) 12 Cal 3d 305, 115 Cal Rptr 625, 525 P2d 65.*

A physician was entitled to a writ of mandate directing the State Board of Medical Examiners to dismiss a disciplinary proceeding against him and to vacate, annul, and expunge its decision imposing discipline for unprofessional conduct as defined in former B & P C § § 2384, 2390 (see now *B & P C § § 2237, 2239*), on the basis of the doctor's personal use of, and conviction for possession of, a narcotic, where the substance involved was marijuana and the board found that the episode had no effect on his medical ability or his patients' well-being, and where, prior to the board's decision becoming final, legislation was enacted eliminating marijuana as a narcotic. *Weissbuch v Board of Medical Examiners (1974, 2nd Dist) 41 Cal App 3d 924, 116 Cal Rptr 479.*

In reviewing revocation of a license by a state agency the court renders its independent judgment on the basis of the administrative record plus such additional evidence as may be admitted under *CCP § 1094.5*, subd. (d). *Board of Dental Examiners v Superior Court of Sacramento County (1976, 3rd Dist) 55 Cal App 3d 811, 127 Cal Rptr 865.*

In mandamus proceedings to review a decision of the board of examiners in veterinary medicine suspending a doctor's license, the trial court did not abuse its discretion in remanding the case to the board for further proceedings on the basis of its finding there was relevant evidence not producible in the exercise of reasonable diligence at the administrative hearing (*CCP § 1094.5*, subd. (d)), where the petition alleged that the doctor could not reasonably have anticipated the introduction of altered evidence, or that the testimony of his former associate and codefendant would be directed, not to her defense, but to attack him. Such allegations were a sufficient showing that the doctor could not in the exercise of reasonable diligence have anticipated the testimony of the former associate and therefore was unable to present the impeaching testimony at the hearing. *Hand v Board of Examiners in Veterinary Medicine (1977, 1st Dist) 66 Cal App 3d 605, 136 Cal Rptr 187.*

The right to a driver's license is not a fundamental right. Thus, the trial court properly applied the substantial evidence test, rather than the independent judgment test, in reviewing via administrative mandamus the decision of the Department of Motor Vehicles to suspend the license of an automobile driver for refusal to submit to a chemical sobriety test. *McGue v Sillas (1978, 1st Dist) 82 Cal App 3d 799, 147 Cal Rptr 354.*

In administrative mandate proceedings following the suspension of a motorist's license on the basis of his refusal to submit to a blood alcohol test, the trial court properly found that the officer who arrested the motorist failed to effectively communicate to him that refusal to submit to the test would automatically result in the suspension of his driving privileges, where interference from the officer's car radio rendered significant portions of the admonishment inaudible and left the motorist with the impression that he would be subject to suspension only upon conviction of drunk driving. *Thompson v Department of Motor Vehicles (1980, 5th Dist) 107 Cal App 3d 354, 165 Cal Rptr 626.*

In a mandamus proceeding (*CCP § 1094.5*) to compel the Department of Motor Vehicles to vacate its suspension of a motorist's driver's license (*Veh. Code, § 13353*), arising out of a vehicle stop of the motorist for drunk driving in which he refused to take any chemical test, substantial evidence in the record supported the findings of the Department of Motor Vehicles and the trial court that the motorist was arrested at the stop site and knew that he was arrested, although he was advised by the police officer that he was being "detained," rather than being specifically informed of the arrest, when he was transported to the police station for chemical testing, where the motorist's repeated response to the officer's admonition at the police station, regarding license revocation upon refusal or failure to take a test, was that he refused to submit to testing before seeing his attorney. *Ormonde v Department of Motor Vehicles (1981, 3rd Dist) 117 Cal App 3d 889, 173 Cal Rptr 79.*

In a mandamus proceeding (*CCP § 1094.5*) to compel the Department of Motor Vehicles to vacate its suspension of a motorist's driver's license (*Veh. Code, § 13353*), arising out of a vehicle stop of the motorist for drunk driving in which he refused to take any chemical test, the trial court properly found that the motorist was given an appropriate warning as to the consequences of his refusal to take a test, that his refusal was not excused, and thus the suspension was lawful, although the arresting officer initially advised the motorist that he "could" lose his license if he refused to submit to a test, where the officer later read the motorist the standard admonition, word for word, that refusal or failure to take a test "will" result in license suspension, and the motorist continued to refuse to submit to testing before seeing his attorney. *Ormonde v Department of Motor Vehicles (1981, 3rd Dist) 117 Cal App 3d 889, 173 Cal Rptr 79.*

On appeal from a judgment in a mandamus action brought against the Department of Motor Vehicles by a driver whose license had been suspended by the department, and in which action the trial court had entered judgment for the driver on the ground of the absence of the arresting officer and admission of the officer's hearsay statement at the department's hearing on license suspension, the Court of Appeal remanded the cause to the trial court. Although the trial court erred in concluding that the officer's presence was required at the department hearing, the driver had been led to believe that the officer would be present at such hearing, and thus could not be faulted for failure to subpoena the officer. Additionally, it was not reasonable for the driver to have anticipated the holding of the Court of Appeal that he had the burden to produce the officer's testimony. *Burkhart v Department of Motor Vehicles (1981, 5th Dist) 124 Cal App 3d 99, 177 Cal Rptr 175.*

CCP § 1094.5(c) provides the basic framework by which an aggrieved party to an administrative proceeding may seek judicial review of any final order or decision rendered by a state agency. There are two tests for judicial review of the evidentiary basis for the agency's decision. The independent judgment rule applies when the decision of an administrative agency will substantially affect a fundamental vested right. The trial court must not only examine the administra-

tive record for errors of law, but must also exercise its independent judgment upon the evidence disclosed in a limited trial de novo. The substantial evidence rule applies when the administrative decision neither involves nor substantially affects a vested right. The trial court must then review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law, but need not look beyond the record of the administrative proceedings. Which standard is to be utilized thus depends on whether the administrative action affects a fundamental vested right. Here, revocation of plaintiff's vehicle salesperson's license involved a fundamental vested right, meaning that the trial court had to exercise its independent judgment on the evidence in the case. *Mann v Department of Motor Vehicles (1999, 6th Dist) 76 Cal App 4th 312, 320, 90 Cal Rptr 2d 277.*

Where the California Board of Registered Nursing declined to accept an out-of-state college's nursing program as equivalent to California's minimum requirements pursuant to *B & P C § 2736(a)(2)*, the college was not entitled to a writ of mandate under either *CCP § § 1085* or *1094.5* because the board properly exercised its statutory discretion. *Excelsior College v. California Bd. of Registered Nursing (2006) 136 Cal App 4th 1218, 39 Cal Rptr 3d 618, 2006 Cal App LEXIS 224.*

40. Membership in Unincorporated Association

In any proper case involving expulsion of member from voluntary unincorporated association, only function which courts may perform is to determine whether association acted within its powers, in good faith, and in accordance with its laws and law of the land. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

In mandamus proceeding to compel medical association to restore physician to membership, there is sufficient evidence to sustain finding that physician intentionally violated association rule declaring that physician should not diminish another physician's patient's trust in his own physician, where statement, objected to as hearsay, was admitted pursuant to stipulation. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

41. Permits

Where there is a sufficient factual basis for the conclusion of the commissioner in denying a permit to engage in business subject to regulation, and he therefore did not act arbitrarily or otherwise abuse his discretionary power in denying the permit, the inquiry of the appellate court into the state of the record is at an end, and this rule is not changed by this section. *Southern California Jockey Club, Inc. v California Horse Racing Board (1950) 36 Cal 2d 167, 223 P2d 1.*

In mandate proceeding, decision of San Francisco Board of Permit Appeals must be sustained if supported by substantial evidence. *Iscoff v Police Com. of Francisco (1963, 1st Dist) 222 Cal App 2d 395, 35 Cal Rptr 189.*

In a mandate proceeding to review the granting of a variance by the San Francisco Board of Permit Appeals, the variance order may be sustained only if the board's findings suffice to establish compliance with all of the statutory criteria and are supported by substantial evidence in the record. *Broadway, Laguna, Vallejo Asso. v Board of Permit Appeals (1967) 66 Cal 2d 767, 59 Cal Rptr 146, 427 P2d 810.*

In a mandamus proceeding to compel a city to grant a driveway access through the frontage of a lot occupied by petitioners to a city street, there was no basis for holding that the city had been arbitrary, capricious or discriminatory in denying the driveway, where petitioners presently had egress and ingress to their lot via another lot, and where there was no evidence to support an asserted uniform city policy of granting every lot in the city a driveway through its frontage on a street. *Delta Rent-A-Car Systems, Inc. v Beverly Hills (1969, 2nd Dist) 1 Cal App 3d 781, 82 Cal Rptr 318.*

There was substantial evidence to support a city's finding that the granting of a permit for a driveway access to a lot fronting on a street would create a serious traffic hazard to the detriment of the public safety and the general welfare, where the city councilmen were familiar with the land area, the existing traffic problems and the particular intersections involved, and where, in addition to the councilmen's personal knowledge, they had before them the petitioners' application, exhibits, and their own testimony as to the amount of use the proposed driveway would receive. *Delta Rent-A-Car Systems, Inc. v Beverly Hills (1969, 2nd Dist) 1 Cal App 3d 781, 82 Cal Rptr 318.*

The appropriate remedy for the California Coastal Zone Conservation Commission's conduct purportedly in excess of its jurisdiction in hearing an appeal from the regional commission's order granting a permit for development of certain coastal lands was administrative mandamus under *CCP § 1094.5*, rather than "traditional" mandamus under *CCP §*

1085, to compel affirmance of the regional commission's approval of the permit. *State v Superior Court of Orange County (1974) 12 Cal 3d 237, 115 Cal Rptr 497, 524 P2d 1281.*

Gov C§ § 818.4, 821.2, providing that neither a public entity nor a public employee is liable for injury caused by refusal to issue a permit if the entity or employee is authorized to determine whether the permit should be issued, were applicable in a proceeding in administrative mandamus, under *CCP § 1094.5*, to a cause of action seeking damages from the California Coastal Zone Conservation Commission, where the only final administrative order, such as is contemplated by that statute, was the commission's denial of a permit to develop certain coastal lands, and the cause of action for damages was founded on the denial. *State v Superior Court of Orange County (1974) 12 Cal 3d 237, 115 Cal Rptr 497, 524 P2d 1281.*

42. Miscellaneous

Inclusion of lands within an irrigation district constitutes a determination by the board of supervisors that such lands will be benefited by the proposed irrigation, and since the question of benefits is one of fact a finding with reference thereto, if supported by any competent evidence, is conclusive though erroneous; and it is not constitutionally necessary that a right to rehearing or appeal be given; where the board has found the facts and then misapplied the law, this error may be corrected by the court, but where the board on conflicting testimony, has found the facts, such finding is final and courts of appeal are bound thereby. *Hobe v Madera Irrigation Dist. (1954) 128 Cal App 2d 9, 274 P2d 874.*

Scope of review of decision of State Board of Equalization is limited to determining whether or not there is substantial support therefor to be found in record. *Marcucci v Board of Equalization (1956, 3rd Dist) 138 Cal App 2d 605, 292 P2d 264.*

Determination by State Engineer as to availability of surplus water, or other facts, though concluding no rights to water permit, is ultimate judicial question and reviewable under this section. *Rank v United States (1956, DC Cal) 142 F Supp 1.*

In proceeding to review order of state board of education revoking teacher's credentials, trial court exercised its independent judgment on evidence rather than acting in its appellate capacity in concluding that proof was insufficient to establish prima facie case against teacher, though it stated in findings that there was "no substantial evidence" to support board's order. *Tringham v State Board of Education (1958) 50 Cal 2d 507, 326 P2d 850.*

In reviewing decision of state Horse Racing Board in mandamus proceeding, it was not within province of superior court to reweigh evidence; its sole function was to determine from review of record whether or not there was any substantial evidence tending to support board's findings, and if there was such evidence, board's findings and decision must be upheld. *Epstein v California Horse Racing Board (1963, 2nd Dist) 222 Cal App 2d 831, 35 Cal Rptr 642.*

In mandamus to inquire into the validity of a county tax appeals board decision reducing the assessed value of partially constructed building improvements, the trial court properly determined that the board's implied finding of the full cash value of the improvements on the assessment date was not supported by substantial or any evidence, and correctly remanded the proceedings to the board, commanding it to set aside its decision and reconsider its action, and to conduct a rehearing thereon, where the record showed that the assessor had information of the improvement builder of costs on the assessment date in excess of that on which the original assessment, presumed to be regular and correct, was based, and where implicit in the testimony of the sole witness for the owner was an acknowledgment that the property was worth considerably more than the value assigned by the board in reducing the assessed value. *County of Los Angeles v Tax Appeals Board (1968, 2nd Dist) 267 Cal App 2d 830, 73 Cal Rptr 469.*

In reviewing a decision of the Commissioner of Corporations approving a recapitalization plan, the trial court properly applied the substantial evidence rule, and refused to exercise its independent judgment, where the Commissioner's decision did not involve any vested fundamental right, such as would call for an independent judgment review. *Bixby v Pierno (1971) 4 Cal 3d 130, 93 Cal Rptr 234, 481 P2d 242.*

In a mandate proceeding brought to review the granting of a zoning variance, the grant will be sustained if the zoning agency's findings suffice to establish compliance with all of the statutory criteria and are supported by substantial evidence in the record. *Zakessian v Sausalito (1972, 1st Dist) 28 Cal App 3d 794, 105 Cal Rptr 105.*

Dismissal of writs of mandate brought by beneficiaries of California's Medi-Cal program, pursuant to Cal. *Code Civ. Proc. § § 1094.5* and *1085*, seeking reimbursement for covered services, was reversed and remanded where the

State had failed to establish a reasonable procedure by which recipients could obtain prompt reimbursement for covered services. *Conlan v Bonta' (2002, 1st Dist) 102 Cal App 4th 745, 125 Cal Rptr 2d 788.*

Trial court erred in granting the contractor's petition for writ of administrative mandamus where the contractor's corrupt practices involved the administration of city contracts so as to warrant permanent debarment; as such, the city properly imposed a permanent debarment on the contractor rather than a three-year debarment. *Southern Cal. Underground Contractors, Inc. v City of San Diego (2003, 4th Dist) 108 Cal App 4th 533, 133 Cal Rptr 2d 527.*

Authorship of a letter critical of a company's project was sufficient to preclude a planning commission member from serving as a reasonably impartial, non-involved reviewer and the member should have recused himself from hearing the matter; the member's participation in the appeal to the commission required the commission's decision to be vacated and the court directed that the company's request for mandamus relief under *CCP § 1094.5(b)* be granted. *Nasha v City of Los Angeles (2004, 2nd Dist) 125 Cal App 4th 470.*

(3) REVIEW OF RECORD;TRIAL DE NOVO

43. In General

Review of administrative proceedings is confined to issues appearing in record of administrative body as made out by parties to the proceeding. *Bohn v Watson (1954, 2nd Dist) 130 Cal App 2d 24, 278 P2d 454.*

Review of action of administrative agency exercising judicial powers is limited to consideration of record made before agency. *Safeway Stores, Inc. v Burlingame (1959, 1st Dist) 170 Cal App 2d 637, 339 P2d 933.*

Though trial court at hearing under this section, in proper case may receive additional evidence, its review of proceedings of administrative body is confined to issues appearing in record of that body as made out by parties to proceedings. *Yen Eng v Board of Bldg. & Safety Comm'rs (1960, 2nd Dist) 184 Cal App 2d 514, 7 Cal Rptr 564.*

Reviewing court may not consider evidence that was not presented to local administrative body; there is no trial de novo with respect to matters which agency was authorized to and did in fact decide. *Flaherty v Board of Retirement of Los Angeles County Employees Retirement Asso. (1961, 2nd Dist) 198 Cal App 2d 397, 18 Cal Rptr 256.*

Factual determinations of a state-wide administrative agency that derives adjudicating power from the Constitution are not subject to reexamination in a trial de novo but are to be upheld by a reviewing court if they are supported by substantial evidence; in such a case the function of the superior court is that of a reviewing court and not a trial court and in making its determination the court is obligated to confine itself to the record of the administrative proceeding and to refrain from exercising its independent judgment on the weight of the evidence. *Stewart v State Personnel Board (1967, 3rd Dist) 250 Cal App 2d 445, 58 Cal Rptr 280.*

With the exception of administrative agencies exercising quasi-judicial power pursuant to authority derived from the constitution and administrative decisions of state-wide agencies which are not judicial in character or which, if judicial in character, do not affect a vested right or interest, decisions of all state-wide agencies exercising quasi-judicial power are subject to "limited trial de novo" by the superior court. *Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

In a proceeding in mandamus under *CCP § 1094.5*, to inquire into the validity of a decision rendered by a state-wide administrative agency not clothed with constitutional quasi-judicial powers, affecting only an unvested right or interest, the scope of review extends only to matters of law appearing on the record of the administrative proceeding, and, accordingly, the court's review of the evidence produced below is limited to a determination of whether it is legally sufficient to sustain the decision. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

Although a person whose application for a permit has been denied is entitled to an independent judicial determination of the issue whether he received a fair administrative hearing, such review is not a "trial de novo," in the sense of a full civil trial before the superior court unlimited by either the administrative record or the administrative mandamus provisions of *CCP § 1094.5*. Rather, the court renders its independent judgment on the basis of the administrative record plus such additional evidence admitted under *CCP § 1094.5*, subd. (d). *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

While an appeal reviews the correctness of the judgment or order as of the time of its rendition, leaving later developments to be handled in some subsequent litigation, mandamus review of agency decisions is grounded on the fact that the agency does not have full judicial power in a constitutional sense, as such power is vested only in the courts of record. Accordingly, the independent judgment review under *CCP § 1094.5*, is a limited trial de novo where, to save the time and expense required to remand the case to the agency for reconsideration in the light of new evidence, the superior court is authorized to consider the new evidence in reviewing the administrative decision if it chooses to do so. *Windigo Mills v Unemployment Ins. Appeals Board (1979, 5th Dist) 92 Cal App 3d 586, 155 Cal Rptr 63.*

In mandamus proceedings by a physician whose clinical privileges to practice psychiatric medicine at a private hospital had been suspended after an administrative hearing, the trial court's application of its independent judgment in characterizing the evidence before the hospital's judicial review committee as a mere difference of opinion between the suspended physician and the medical director was an improper usurpation of the factfinding and conflict-resolving function of the hospital's review committee. Moreover, *CCP § 1094.5*, subd. (d), requires the trial court to determine whether the administrative findings are supported in the light of the whole record, not merely that part of the evidence or its interpretation which the trial court decides to accept as more credible or probable, or which results from the trial court's substitution of its preferred resolution of conflicts between medical opinions in place of those made by the administrative committee. *Cipriotti v Board of Directors (1983, 2nd Dist) 147 Cal App 3d 144, 196 Cal Rptr 367.*

A hearing on a writ of administrative mandamus is conducted solely on the record of the proceeding before the administrative agency. *CCP § 1094.5*, subd. (e), providing that a court may remand a case to be considered in light of relevant evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded, is a limited exception to this rule and operates as a limitation on the court's authority to admit new evidence. The trial court is authorized under § 1094.5, subd. (e), to receive relevant evidence of events which transpired after the date of the agency's decision. *Toyota of Visalia, Inc. v New Motor Vehicle Bd. (1987, 5th Dist) 188 Cal App 3d 872, 233 Cal Rptr 708.*

When an administrative decision substantially affects vested, fundamental rights, particularly the right to practice one's trade or profession, the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo. If the administrative decision does not involve, or substantially affect, any fundamental vested right, the trial court must still review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law, but the trial court need not look beyond that whole record of the administrative proceedings. A license that has already been obtained is vested, but whether the underlying right is considered fundamental must be considered from the standpoint of its economic aspect or its effect in human terms and the importance to the individual in the life situation. The crucial question in determining whether a right is fundamental is not the actual amount of harm or damage in the particular case but the essential character of the right in human terms. Thus, the critical area of focus is the nature of the right. *San Benito Foods v Veneman (1996, 6th Dist) 50 Cal App 4th 1889, 58 Cal Rptr 2d 571.*

44. When Trial de Novo Warranted

In a mandamus proceeding to compel a superior court to try an action against an administrative board as a trial de novo, the court's statement that it was unwilling to hear the matter as a trial de novo was not a refusal to do so and was consistent with the willingness to give petitioner the relief he asked if the hearing be governed by supreme court decision that, in mandamus proceedings to review orders of state-wide administrative agencies, a petitioner is entitled to present independent evidence and to have, in effect, a trial *de novo. Friedland v Superior Court of Sacramento County (1945) 67 Cal App 2d 619, 155 P2d 90.*

Where there is pleading and proof that a local board has acted arbitrarily, capriciously, or fraudulently, the superior court will, on either mandamus or certiorari, afford petitioner a trial *de novo. Saks& Co. v Beverly Hills (1951) 107 Cal App 2d 260, 237 P2d 32* (disapproved by *Fascination, Inc. v Hoover, 39 Cal 2d 260, 246 P2d 656)* and (disapproved on other grounds by *Fairfield v Superior Court of Solano County, 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375).*

An employer has a sufficient right of property in his unemployment insurance reserve account as entitles him to a limited trial de novo in a review by mandamus under this section of the propriety of charges made against the account. *Chrysler Corp. v California Employment Stabilization Com. (1953) 116 Cal App 2d 8, 253 P2d 68.*

On petition for writ of mandate to review administrative order of Social Welfare Board with respect to application for old age assistance, petitioners are not entitled to trial de novo in superior court where they do not possess vested

right, but right to make application for old age benefits requires that they are able to comply with statutory requisites therefor. *Bertch v Social Welfare Dep't (1955) 45 Cal 2d 524, 289 P2d 485.*

Party seeking judicial review of administrative board's decision is not entitled to trial de novo in superior court, but only to review of full proceedings before board acting as quasi-judicial body empowered to make final adjudications of fact in connection with matters properly submitted to it. *Marcucci v Board of Equalization (1956, 3rd Dist) 138 Cal App 2d 605, 292 P2d 264.*

The rule that there can be no trial de novo in a mandamus proceeding attacking administrative action as to which a right to a hearing exists as a matter of due process or general law does not apply where no hearing or taking of evidence is required. *Munns v Stenman (1957, 2nd Dist) 152 Cal App 2d 543, 314 P2d 67.*

On review of administrative body's decision, there can be nothing in nature of trial de novo in reviewing court. *Board of Trustees v Munro (1958, 3rd Dist) 163 Cal App 2d 440, 329 P2d 765.*

In a proceeding in mandamus under *CCP § 1094.5*, to inquire into the validity of a decision rendered by a state-wide administrative agency not clothed with constitutional quasi-judicial powers, affecting a vested right or interest, the decision is reviewed by means of a limited trial de novo in which the trial court not only examines the record for errors of law, but also exercises its independent judgment upon the weight of the evidence produced before the administrative agency, together with any further evidence properly admitted by the court. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

In reviewing the denial of a petition for writ of mandamus, whether under *CCP § 1085* or *CCP § 1094.5*, the appellate court reviews questions of law *de novo. Fry v Saenz (2002, 3rd Dist) 98 Cal App 4th 256, 120 Cal Rptr 2d 30.*

45. Whether Independent Judgment Is Permitted

In a mandamus proceeding to review an order of a state-wide administrative board, the court is authorized to exercise its independent judgment on the evidence. *Moran v Board of Medical Examiners (1948) 32 Cal 2d 301, 196 P2d 20.*

Court is authorized, in mandamus proceeding wherein decision of administrative agency having state-wide jurisdiction is reviewed, to exercise its independent judgment on evidence. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

In mandamus proceeding to review order of state wide agency exercising statutory powers only, trial court is authorized to exercise its independent judgment on evidence. *Nelson Valley Bldg. Co. v Morrisey (1955, 3rd Dist) 135 Cal App 2d 738, 288 P2d 135.*

Trial court is authorized to exercise independent judgment on evidence. *Beach v Contractors State License Board (1957, 2nd Dist) 151 Cal App 2d 117, 311 P2d 51.*

On review of local administrative board's determination, court does not have right to judge intrinsic value of evidence nor to weigh it, its power being confined to determine whether there was substantial evidence before board to support its findings. *Sultan Turkish Bath, Inc. v Board of Police Comm'rs (1959, 2nd Dist) 169 Cal App 2d 188, 337 P2d 203.*

Proceeding in mandamus to review administrative order of state officer pursuant to provisions of this section confers on trial court authority to exercise its independent judgment on weight of evidence. *Post v Jacobsen (1960, 4th Dist) 180 Cal App 2d 297, 4 Cal Rptr 817.*

Where vested rights are concerned, superior court, in its review of state-wide administrative agency's record, may weigh evidence and exercise its independent judgment. *County of Contra Costa v Social Welfare Board (1962, 1st Dist) 199 Cal App 2d 468, 18 Cal Rptr 573* (disapproved on other grounds by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

Where subject matter determined by statewide statutory administrative agencies involves matters of privilege rather than vested rights, constitutional considerations do not require court to exercise independent judgment, but merely to determine that agency had reasonable ground for its decision and that its action did not constitute abuse of discretion. *Crestlawn Memorial Park Asso. v Sobieski (1962, 2nd Dist) 210 Cal App 2d 43, 26 Cal Rptr 421.*

In a mandamus proceeding to review an order of a state administrative agency, the trial court is authorized to exercise its independent judgment as to whether the agency's findings are supported by substantial evidence, and the trial court therefore has the ultimate power of decision. *Ring v Smith (1970, 2nd Dist) 5 Cal App 3d 197, 85 Cal Rptr 227.*

When reviewing the administrative decisions of non-constitutional state-level agencies which affect "vested" rights, the court must exercise the independent judgment test. *Cleveland Chiropractic College v State Board of Chiropractic Examiners (1970, 2nd Dist) 11 Cal App 3d 25, 89 Cal Rptr 572.*

Under a writ of mandate to review the findings of a statewide administrative agency that lacks judicial power under the state Constitution, the superior court reviews the evidence upon which the agency based its examination. (*CCP § 1094.5*.) *Stearns v Fair Employment Practice Com. (1971) 6 Cal 3d 205, 98 Cal Rptr 467, 490 P2d 1155.*

Because of the provision of *Cal. Const., art. VI,§ 1*, that the judicial power of the state is vested in the supreme court, courts of appeal, superior courts, municipal courts, and justice courts, the legislature is not authorized to grant judicial powers to local administrative agencies, and power granted to those agencies under the former reference of the provision to "inferior courts" no longer exists. Thus, if an order or decision of an agency substantially affects a fundamental vested right, the trial court, in determining under *CCP § 1094.5*, whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence, but, if the order or decision does not substantially effect a fundamental vested right, the court's inquiry will be limited to a determination of whether or not the findings are supported by substantial evidence in light of the whole record. *Strumsky v San Diego County Employees Retirement Ass'n (1974) 11 Cal 3d 28, 112 Cal Rptr 805, 520 P2d 29.*

The scope of judicial review of an administrative decision under *CCP § 1094.5*, depends both on the nature of the right presented and also on the nature of the grant of authority to the agency whose action is subject to review. The question presented, if the sufficiency of the evidence is challenged, will be whether the particular function being reviewed is based on a constitutional grant of authority. If so, the substantial evidence test applies, but, if the source of authority is a statute, and a vested right is affected, the independent judgment test applies. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

The independent judgment rule must be applied by the trial court in reviewing administrative findings by the Board of Medical Examiners in proceedings to revoke a physician's license, since the Board of Medical Examiners does not exercise judicial functions and the revocation of a professional license involves deprivation of a vested right. *Petrucci v Board of Medical Examiners (1975, 1st Dist) 45 Cal App 3d 83, 117 Cal Rptr 735.*

A judgment in an administrative mandate proceeding upholding the discharge of a police officer for lying to departmental investigators, required reversal where the trial court applied the substantial evidence standard of review approved by current decisional law, but where, while an appeal of the judgment was pending, the Supreme Court rendered a decision holding that an order or decision of an agency substantially affecting a fundamental vested right is to be reviewed by the trial court exercising its independent judgment on the evidence, which rule was specifically made applicable to all pending appeals. Furthermore, the appellate court could not conduct the de novo review in place of the trial court, in the interest of expediency, since it did not have the same power as the trial court in reviewing the administrative proceeding, but was limited to determining whether substantial evidence supported the trial court's findings. *Brush v Los Angeles (1975, 2nd Dist) 45 Cal App 3d 120, 119 Cal Rptr 366.*

Reversible error was established on appeal from a judgment granting a peremptory writ of mandate commanding the trial board of a city fire department Civil Service Commission to set aside a decision ordering a fireman discharged from service, where it was stipulated at oral argument that the trial court had followed the "substantial evidence" rule in reviewing the evidence rather than the "independent judgment on the evidence" rule announced by the state Supreme Court pending appeal of the trial court's decision and made applicable to all pending and future proceedings in trial courts and all pending and future appeals. Public employment which provides for discharge only for cause shown is a fundamental vested right subject to the independent judgment on the evidence standard of review. *Lake v Civil Service Com. of Fire Dep't (1975, 5th Dist) 47 Cal App 3d 224, 120 Cal Rptr 452.*

Where an order or decision of an administrative agency affects a fundamental vested right, the reviewing court must exercise independent judgment to reweigh the evidence, but if the administrative order or decision does not substantially affect a fundamental vested right, judicial review is limited to a determination of whether the findings are supported by substantial evidence. *Sierra Club v California Coastal Zone Conservation Com. (1976, 1st Dist) 58 Cal App 3d 149, 129 Cal Rptr 743.*

If an order or decision of an administrative agency substantially affects a fundamental or vested right, a court, in determining under *CCP § 1094.5*, whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence. If, on the other hand, the order or decision does not substantially affect a fundamental vested right, the trial court's inquiry will be limited to a determination of whether or not the findings are supported by substantial evidence in the light of the whole record. In determining whether the right involved is fundamental, the courts do not alone weigh the economic aspect of it, but the effect of it in human terms and the importance of it to the individual in the life situation. *Anton v San Antonio Community Hospital (1977) 19 Cal 3d 802, 140 Cal Rptr 442, 567 P2d 1162.*

The standard of proof upon superior court review, under the independent judgment doctrine, of administrative decisions is simply the weight or preponderance of the evidence. Thus, in a proceeding by a former chief deputy sheriff for a writ of mandate to compel a county civil service commission and the county sheriff to vacate and set aside a disciplinary order, the findings of the superior court made in exercise of its independent judgment and by the weight of the evidence but not by clear and convincing evidence that two of the charges against the chief deputy sheriff were true, were sufficient to support the superior court's decision upholding the civil service commission's determination of disciplinary action. *Chamberlain v Ventura County Civil Service Com. (1977, 2nd Dist) 69 Cal App 3d 362, 138 Cal Rptr 155.*

Judicial review in administrative mandamus (*CCP § 1094.5*) extends to only whether the administrative agency has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner provided by law, the decision is not supported by the findings, or the findings are not supported by the evidence. It is not contemplated by the statute that there should be a trial de novo before the court reviewing the administrative agency's action even under the independent review test. Public policy requires a litigant to produce all existing evidence on his behalf at the administrative hearing, and only where the record is augmented within the strict limits set forth within the statute is evidence of the main issues received in the superior court. *Windigo Mills v Unemployment Ins. Appeals Board (1979, 5th Dist) 92 Cal App 3d 586, 155 Cal Rptr 63.*

The owner of a commercial building located within the protected coastal zone who wished to remodel the building to include a second floor restaurant and who, in reliance on a representation of the regional commission's agent that a coastal development permit (*Pub Res C § 30600*) was not necessary, obtained building permits, expended substantial sums of money in remodeling the building, and entered into other leases with rentals hinging upon the restaurant opening, acquired a fundamental vested right rooted in the constitutional protection against deprivation of property rights without due process of law. Thus, in a mandamus proceeding (*CCP § 1094.5*) that arose when the regional commission decided that a coastal development permit was in fact necessary and thereafter denied plaintiff's application therefor, the trial court erred in applying the substantial evidence test in reviewing the permit denial. The trial court should have exercised its independent judgment on the evidence presented. *Stanson v San Diego Coast Regional Com. (1980, 4th Dist) 101 Cal App 3d 38, 161 Cal Rptr 392.*

A dispute about an employer's liability for unemployment benefits affects both the claimant's and the employer's fundamental vested rights so that if either challenges a board decision by administrative mandamus (*CCP § 1094.5*) the trial court must judge independently the evidence in the administrative record. On appeal the court's findings, even when contrary to those of the board, cannot be overturned for evidentiary insufficiency if they are substantially supported. *Pacific Legal Foundation v Unemployment Ins. Appeals Board (1981) 29 Cal 3d 101, 172 Cal Rptr 194, 624 P2d 244.*

In a proceeding in which a property owner sought a peremptory writ of mandate to require a city to issue a zoning variance and occupancy permit, the trial court had adequate evidence to rule on the petition, where the parties attached portions of the administrative record to their pleadings as permitted by *CCP § 1094.5*, subd. (a), and where the city's answer admitted most of the significant facts. Moreover, the court properly exercised its independent judgment in reviewing the evidence. The property owner, who had completed her house in good faith reliance upon a city issued building permit and who was subsequently informed the house violated a specific plan ordinance, had acquired a vested right in having her home remain where built. *Anderson v La Mesa (1981, 4th Dist) 118 Cal App 3d 657, 173 Cal Rptr 572.*

The trial court did not err in applying the independent judgment test to a city's denial of a renewal application for a tavern's conditional use permit, which had allowed the tavern to use an adjoining space for a game room, where the city sought to close the tavern by denying the permit. The owner's right to continued operation of the tavern, which had existed as a legal nonconforming use for over 35 years, and in which the owner had made a substantial investment, was a

fundamental vested right and not a purely economic privilege. The right to continue an established business was sufficiently personal, vested, and important to preclude its extinction by a nonjudicial body. Accordingly, the trial court's review of the city's action under the independent judgment test, rather than the substantial evidence test, was proper. *Goat Hill Tavern v Costa Mesa (1992, 4th Dist) 6 Cal App 4th 1519, 8 Cal Rptr 2d 385.*

A driver's license is a fundamental right for the purpose of selecting the standard of judicial review in an administrative mandamus proceeding (*CCP § 1094.5*) to review an administrative decision to suspend or revoke such a license. The trial court is required to exercise its independent judgment in reviewing an administrative decision of the Department of Motor Vehicles and, even if suspension is entirely appropriate, it should be ordered only after the administrative record receives that independent judgment review. It is the appellate court's duty to examine the trial court's findings to determine whether they are supported by substantial evidence. *Elizabeth D. v Zolin (1993, 2nd Dist) 21 Cal App 4th 347, 25 Cal Rptr 2d 852.*

When a trial court applies the independent judgment test in reviewing an administrative agency decision, it determines whether the agency's findings are supported by the weight of the evidence (CCP§ 1094.5, subd. (c)). This is a kind of limited trial de novo, using the existing administrative record. In general, the independent judgment standard is used when the administrative decision affects a right that is vested or has been legitimately acquired, and that is of a fundamental nature in light of its economic effect or other importance. *International Bhd. of Electrical Workers v Aubry (1996, 2nd Dist) 42 Cal App 4th 861, 50 Cal Rptr 2d 1, 96 CDOS 1099.*

In administrative mandamus actions brought under *CCP § 1094.5*, appellate review is limited to issues in the record at the administrative level, although additional evidence, in a proper case, may be received. It was never contemplated that a party to an administrative hearing should withhold any defense then available or make only a perfunctory or "skeleton" showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court. *Green v Board of Dental Examiners (1996, 2nd Dist) 47 Cal App 4th 786, 55 Cal Rptr 2d 140.*

Where a trial court is required to exercise "independent judgment" review of an agency determination, the trial court must, in exercising such review, afford a "strong presumption" that the administrative findings are correct, and the petitioner bears the burden of proving that these findings are incorrect. Long-established case law demonstrates that neither presuming the correctness of administrative findings, nor placing the burden on the petitioner, is inconsistent with independent judgment review as that term has been understood in this state. Further, in view of the longstanding duration of the judicial precedent establishing and reaffirming independent judgment review, and the legislative history of CCP§ 1094.5, which implicitly recognizes the rule, it would be inappropriate to judicially abrogate the independent judgment rule; the policy arguments advanced in support of such a change properly should be directed to the *Legislature. Fukuda v City of Angels (1999) 20 Cal 4th 805, 808, 85 Cal Rptr 2d 696, 977 P2d 693.*

The trial court summarily denied a petition for writ of administrative mandamus brought by a juvenile convicted of first-degree murder which challenged an order of the Youthful Offender Parole Board returning her from the California Youth Authority to the superior court for commitment to state prison. Petitioner asserted that her right to remain at CYA implicated a vested, fundamental right, compelling the trial court's independent review of the Board's action. The effect of the Board's decision to return petitioner to adult court was that she would be sentenced to state prison for 26 years to life and would not be eligible for parole for many years. Had the Board confirmed her prior placement, petitioner would have continued to receive the benefit of the trial court's sentence and would have expected to be released from custody within a few years. Given the dramatic difference in the potential length and nature of incarceration, and considering the Board's decision from the standpoint of its effect in human terms and the importance to petitioner, the board's decision must be deemed to directly affect her fundamental vested rights. Review of a decision to remove the inmate to the world of adult punishment requires the exercise of independent judgment. *Mardesich v California Youthful Offender Parole Bd. (1999, 2nd Dist) 69 Cal App 4th 1361, 82 Cal Rptr 2d 294, 1367.*

46. In Specific Instances

In mandamus proceeding to annul order of State Board of Osteopathic Examiners, trial court was authorized to exercise its judgment on evidence before the board. *Newhouse v Board of Osteopathic Examiners (1958, 2nd Dist) 159 Cal App 2d 728, 324 P2d 687.*

Real estate commissioner's determination in disciplinary proceeding against licensed broker or salesman is subject to trial de novo before superior court, in which court is entitled to exercise its independent judgment on the evidence. *McPherson v Real Estate Comm'r (1958, 1st Dist) 162 Cal App 2d 751, 329 P2d 12.*

In reviewing acts of administrative agency such as Real Estate Commissioner, superior court is authorized by law and required to exercise its independent judgment on evidence. *Wahl v Division of Real Estate (1961, 3rd Dist) 197 Cal App 2d 97, 17 Cal Rptr 25.*

Superior court is not authorized to exercise its independent judgment on evidence on appeal from determination by municipal water district to include appellant's property in proposed special assessment improvement district; superior court's power of review is limited in cases of appeal from determination of local district to determination whether there was substantial evidence before district to support its decision. *San Diego Gas & Electric Co. v Sinclair (1963, 4th Dist) 214 Cal App 2d 778, 29 Cal Rptr 769.*

In mandamus proceeding to have Bay Area Air Pollution Control District regulation declared invalid, statement by court that if there was any evidence before board, obviously they were going to prevail did not show that court failed to weigh evidence and form its own independent judgment on all evidence before it where other portions of record indicated that court was aware of its duty to weigh evidence before it and to decide issues on weight of evidence rather than by substantial evidence rule. *Lees v Bay Area Air Pollution Control Dist. (1965, 1st Dist) 238 Cal App 2d 850, 48 Cal Rptr 295.*

In mandamus proceeding to review decision of Director of Agriculture, who has statewide jurisdiction, trial court is authorized to exercise its independent judgment on evidence. It is function of appellate court to determine whether there is any substantial evidence to support trial court's findings. *Almaden-Santa Clara Vineyards v Paul (1966, 1st Dist) 239 Cal App 2d 860, 49 Cal Rptr 256.*

The Bureau of Private Investigators and Adjusters, a division of the Department of Professional and Vocational Standards, is a state-wide administrative agency created by statute (*Bus & Prof Code,§ 7500,* et seq.), and has no constitutionally conferred adjudicatory powers. Its decision is subject to an independent weighing of the supporting evidence by the trial court pursuant to *CCP § 1094.5. Lundborg v Director of Dep't of Professional & Vocational Standards (1967, 1st Dist) 257 Cal App 2d 141, 64 Cal Rptr 650.*

Since the California Coastal Zone Conservation Commission is not an agency of constitutional origin which has been granted limited judicial power by the Constitution, the trial court is authorized to make an independent judgment on the evidence only if the commission's decision "affects a right which has been legitimately acquired or is otherwise 'vested,' and... is of a fundamental nature from the standpoint of its economic aspect or its 'effect'... in human terms and importance... to the individual life situation." Thus, in an action by a coastal developer challenging the actions of the commission in which the central question presented was the extent of the developer's vested right to continue construction of a project, the asserted right was fundamental, deriving from the constitutional guaranty that property may not be taken without due process of law, so that the trial court must make its own independent judgment on the evidence. *Transcentury Properties, Inc. v State (1974, 1st Dist) 41 Cal App 3d 835, 116 Cal Rptr 487.*

In reviewing a decision of the State Water Resources Control Board approving an application to appropriate water subject to conditions, the trial court properly applied the substantial evidence test rather than the independent judgment test. An applicant for appropriation of water does not have a fundamental vested right in the success of his application, and, though the board's powers are largely statutory, they are partially constitutional. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

47. -Employees' Rights

The trial court in reviewing a decision of the State Personnel Board is bound by the substantial evidence rule and is not entitled to exercise its independent judgment as to the weight of the evidence. *Nelson v Department of Corrections (1952) 110 Cal App 2d 331, 242 P2d 906.*

Since the civil service commission of San Francisco is a local board, as distinguished from a board of statewide jurisdiction, the superior court, in reviewing the commission's ruling, is not authorized to exercise its independent judgment on the evidence, the limit of its power being to determine whether the commission's decision is supported by substantial evidence. *Denton v San Francisco (1953) 119 Cal App 2d 369, 260 P2d 83.*

The Department of Employment and the Unemployment Insurance Appeals Board are state-wide administrative agencies created by statute, having no constitutionally conferred adjudicatory powers and their decisions are subject to independent weighing of supporting evidence by trial judge when challenged under this section. *Sears, Roebuck & Co. v Walls (1960, 2nd Dist) 178 Cal App 2d 284, 2 Cal Rptr 847.*

In reviewing decisions granting or denying unemployment insurance benefits pursuant to *CCP § 1094.5* the superior court exercises its independent judgment on the evidence and inquires whether the administrative agency's findings are supported by the weight of the evidence; except where relevant evidence has been excluded at the administrative hearing or could not be produced by the exercise of reasonable diligence, the court's independent review focuses on the evidentiary record made at the administrative level. *Lacy v California Unemployment Ins. Appeals Board (1971, 3rd Dist) 17 Cal App 3d 1128, 95 Cal Rptr 566.*

A judgment denying a writ of mandate to a former city policeman who challenged the city council's denial of his application for reinstatement and back pay had to be reversed, where the council had made no findings, formal or informal, where its action could have been on any one of several bases, and where some of the bases suggested by the evidence would not support that action; thus, remand to the city was required for another hearing followed by appropriate findings. *Hadley v Ontario (1974, 4th Dist) 43 Cal App 3d 121, 117 Cal Rptr 513.*

A judgment in an administrative mandate proceeding upholding the discharge of a police officer for lying to departmental investigators, required reversal where the trial court applied the substantial evidence standard of review approved by current decisional law, but where, while an appeal of the judgment was pending, the Supreme Court rendered a decision holding that an order or decision of an agency substantially affecting a fundamental vested right is to be reviewed by the trial court exercising its independent judgment on the evidence, which rule was specifically made applicable to all pending appeals. Furthermore, the appellate court could not conduct the de novo review in place of the trial court, in the interest of expediency, since it did not have the same power as the trial court in reviewing the administrative proceeding, but was limited to determining whether substantial evidence supported the trial court's findings. *Brush v Los Angeles (1975, 2nd Dist) 45 Cal App 3d 120, 119 Cal Rptr 366.*

The independent judgment rule applicable in mandate proceedings by a police officer, whose dismissal had been upheld by the city council, applied only to the issue of guilt or innocence of the charges, while discretion in fixing the penalty remained in the city council, and could not be disturbed unless there had been a manifest abuse of its discretion. Accordingly, when the trial court determined that one of the substantive findings of misconduct was unsupported by the evidence, the proper procedure was to remand to the city council to permit it to exercise its discretion, where it could not be said that the city council would abuse its discretion by affirming the officer's dismissal on the charges which the trial court found to be established. *Zink v Sausalito (1977, 1st Dist) 70 Cal App 3d 662, 139 Cal Rptr 59.*

In an administrative mandamus proceeding by a county department of parks and recreation challenging the finding by the county's civil service commission that an employee had been denied a promotion based on his Mexican-American ancestry, the trial court was not authorized to exercise its independent judgment on the evidence. Although CCP § l094.5, subd. (c) (inquiry into validity of administrative order), leaves to the courts the ultimate task of deciding in which cases a trial court is "authorized by law" to exercise its independent judgment on the weight of the evidence, an employer's right to discipline or manage its employees is subject to civil service and antidiscrimination regulation, and is not a fundamental vested right entitling the employer to have a trial court exercise its independent judgment. Rather, the question for both the trial court and the appellate court was whether substantial evidence in the administrative record supported the commission's findings. *Los Angeles County Dep't of Parks & Recreation v Civil Service Com. (1992, 2nd Dist) 8 Cal App 4th 273, 10 Cal Rptr 2d 150.*

48. -Licenses

An insurance agent whose license was revoked by the insurance commissioner is in no position to contend that he was not afforded due process because the commissioner adopted the findings and proposed the decision of the hearing officer without hearing or reading the evidence introduced before that officer where the superior court, in reviewing and upholding the commissioner's action in a mandamus proceeding, decided the case on the full record, including the transcript of proceedings had before the hearing officer, and in so doing exercised an independent judgment on the facts. *Hohreiter v Garrison (1947) 81 Cal App 2d 384, 184 P2d 323.*

In a review under this section, of the real estate commissioner's suspension of a broker's license, the court is authorized to exercise its independent judgment on the evidence. *Richards Realty Co. v Real Estate Comm'r (1956, 4th Dist) 144 Cal App 2d 357, 300 P2d 893.*

Rule requiring court to reweigh evidence and exercise of its independent judgment in proceedings to review action of administrative officer applies only to proceedings brought to suspend or revoke licenses and does not apply where application for license is denied nor where licensee is seeking restoration of revoked license. *Foster v McConnell (1958, 1st Dist) 162 Cal App 2d 701, 329 P2d 32.*

Mandamus proceeding to review Contractors' State License Board's revocation of two plumbing contractors' licenses is trial de novo and trial court is authorized to exercise its independent judgment on evidence. *Backman v State, Dep't of Professional & Vocational Standards (1959, 2nd Dist) 167 Cal App 2d 82, 333 P2d 830.*

Fact that court stated in its memorandum opinion that it disagreed with administrative board's disposition of license revocation case but that abuse of discretion was not evident did not indicate that court failed to exercise its independent judgment on evidence to determine whether board's findings were supported by weight of evidence, as required by this section, where, read in context, remarks were directed toward particular penalty assessed, not question of guilt or innocence of licensee. *Kramer v State Board of Accountancy (1962, 2nd Dist) 200 Cal App 2d 163, 19 Cal Rptr 226.*

On appeal to superior court from administrative ruling of Real Estate Commissioner revoking licenses of brokers, court is authorized to exercise its independent judgment on evidence of administrative hearing without being bound by findings made at hearing. *Caro v Savage (1962, 1st Dist) 201 Cal App 2d 530, 20 Cal Rptr 286.*

Since seriousness of depriving doctor of his license to practice is patent, court that reviews proceeding for revocation of license pursuant to this section has duty to reweigh evidence and to exercise its independent judgment on evidence. *Bernstein v Board of Medical Examiners (1962, 5th Dist) 204 Cal App 2d 378, 22 Cal Rptr 419.*

In proceeding in mandamus to compel Insurance Commissioner to set aside order revoking insurance agent's licenses, Commissioner's determination was subject to trial de novo in which trial court was entitled to exercise its independent judgment on evidence (*CCP § 1094.5*); thus expungement of agent's conviction, which was not before Commissioner at time of his action, was properly considered by trial court. *Ready v Grady (1966, 1st Dist) 243 Cal App 2d 113, 52 Cal Rptr 303.*

Where an order of the Department of Motor Vehicles suspending a driver's license under the implied consent law (*Veh Code,§ 13353*), is properly challenged under *CCP § 1094.5*, the independent judgment of the trial court should be used to ascertain if the evidence was sufficient to support the findings of the department; such review of an administrative adjudication is authorized by law if the adjudication affects a vested right, and if the agency is a state-level agency of legislative (rather than constitutional) origin. *James v Department of Motor Vehicles (1968, 4th Dist) 267 Cal App 2d 750, 73 Cal Rptr 452.*

A decision by the Director of the Department of Professional and Vocational Standards ordering the suspension of the license of a collection agent under the Collection Agency Act (former B & P C § 6850 et seq., see now *Cal Code Regs Title 16, § § 610* et seq) affects a vested interest held by the license and was made in the discharge of a function of a statewide or "state-level" agency of legislative, as distinguished from constitutional, origin; thus, if the licensee in a mandamus proceeding to review the decision alleges that the director's findings were not supported by the evidence adduced at the administrative hearing, the reviewing court would ordinarily be authorized to exercise its independent judgment on the administrative evidence and conclude that an abuse of discretion by the director is established if the court determines that the director's findings are not supported by the weight of the evidence. (*CCP § 1094.5*, subd (c).) *David Kikkert & Associates, Inc. v Shine (1970, 1st Dist) 6 Cal App 3d 112, 86 Cal Rptr 161.*

In a proceeding for administrative mandamus to review the action of a state-level agency of legislative origin involving a vested right in a license, the trial court was governed by the "independent judgment" test, and accordingly in its review it had the right to judge the intrinsic value of the evidence and to weigh it. (*CCP § 1094.5*, subd (c).) *Borror v Department of Invest., Div. of Real Estate (1971, 1st Dist) 15 Cal App 3d 531, 92 Cal Rptr 525.*

In a proceeding for administrative mandamus to review the action of a state level agency of legislative origin involving a vested right in a license, the scope of the trial before the superior court is not an unlimited trial de novo, but the trial proceeds upon a consideration of the record of the administrative proceedings that is received in evidence and marked as an exhibit. The trial court is not necessarily confined to the record before the agency, but it may receive additional evidence that could not have been produced at the administrative hearing in the exercise of reasonable diligence, or that was improperly excluded at the administrative hearing. (*CCP § 1094.5*, subd (d).) *Borror v Department of Invest., Div. of Real Estate (1971, 1st Dist) 15 Cal App 3d 531, 92 Cal Rptr 525.*

Because the Department of Motor Vehicles is a state-level agency of legislative origin and license suspension proceedings affect a vested right, a reviewing court in administrative mandate proceedings following suspension of a driver's license must make its own factual findings and arrive at an independent judgment. *Thompson v Department of Motor Vehicles (1980, 5th Dist) 107 Cal App 3d 354, 165 Cal Rptr 626.*

In an administrative mandamus proceeding (*CCP § 1094.5*) brought by a food processing company to review a decision involving a threatened suspension or revocation of a food processing license, the trial court erred in applying the substantial evidence standard of review rather than the independent judgment standard. Plaintiff's food processor's license constituted a fundamental vested right. While the administrative agency's decision had a purely economic effect on plaintiff and the amount of the penalty that plaintiff was actually required to pay was not extraordinary, the nature of the right itself was crucial to plaintiff's economic viability as a food processor. *San Benito Foods v Veneman (1996, 6th Dist) 50 Cal App 4th 1889, 58 Cal Rptr 2d 571.*

D. PRACTICE AND PROCEDURE

(1) GENERALLY

49. In General; Jurisdiction

Where superior court, having jurisdiction, has assumed jurisdiction of proceeding under this section to review action of State Board of Equalization in increasing assessment of all taxable property within county affected by board's order, there is no valid reason why Supreme Court should take original jurisdiction in the matter. *People v County of Tulare (1955) 45 Cal 2d 317, 289 P2d 11.*

On appeal from a petition by a unified school district for a writ of administrative mandamus to review a Department of Education hearing officer's decision that the individualized education program provided by the district for an emotionally handicapped child was insufficient, it was unnecessary under the circumstances to decide whether review should have been sought pursuant to federal law *(20 USCS § 1415*(e)(2)) rather than by way of the state administrative mandamus remedy (*CCP § 1094.5*). However, federal procedure should be employed, where state review procedures provide less protection and a more limited scope of review to the aggrieved party. *San Francisco Unified School Dist. v State of California (1982, 1st Dist) 131 Cal App 3d 54, 182 Cal Rptr 525.*

Even where late filing of appeals from administrative personnel decisions is not expressly permitted by regulation or statute, discretionary extensions of time for appeal for good cause are required where the employee has a fundamental and vested right of employment. Thus, in granting a civil servant's petition for an administrative writ of mandate to compel the county civil service commission to hear her late-filed appeal of termination, the superior court correctly reconciled plaintiff's right to have her appeal heard on the merits with the commission's concern for orderly process, where plaintiff had such an interest in her continued permanent employment. The delay in filing was short, caused by inadvertence, and the commission asserted no prejudice. Also, the fact that the commission had exercised discretion to allow late-filed appeals by job applicants but not vested employees undermined its claim for strict adherence to the time requirements. *Civil Service Com. v Velez (1993, 4th Dist) 14 Cal App 4th 115, 17 Cal Rptr 2d 490.*

Where a mobile home park owner challenged a mobile home park rent control ordinance and the court dismissed the taking and equal protection claims, the court declined to exercise supplemental jurisdiction over the park owner's petition for a writ of administrative mandamus. *Hacienda Valley Mobile Estates v City of Morgan Hill (2002, ND Cal) 2002 US Dist LEXIS 26978,* affd (CA9 Cal) *2003 US App LEXIS 25419.*

Gov C § 11523 of the Administrative Procedure Act (APA), *Gov C § 11500* et seq., applies to the Fair Employment and Housing Commission (California) because (1) under *Gov C § 11501*, the APA applies to any agency as determined by the statutes relating to the agency, (2) under *Gov C § 12972(a)* of the Fair Employment and Housing Act, *Gov C § 12900* et seq., the Commission is to conduct all actions and procedures in accordance with the APA, (3) the Commission incorporated the rules for judicial review found in the APA, *Gov C § § 11523, 12987.1*, and (4) § 12987.1(a) directs that any party aggrieved by the Commission's order was to obtain review under *CCP § 1094.5*. *Fair Employment & Housing Commission v Superior Court (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 150.*

50. Venue

Venue in a mandamus action brought under *CCP § 1094.5*, to inquire into the validity of an administrative order or decision, is governed by *CCP § 393*, and is in the county in which the cause, or some part thereof, arose. *Lynch v Superior Court of Santa Cruz County (1970, 1st Dist) 7 Cal App 3d 929, 86 Cal Rptr 925.*

Venue of a mandamus action seeking review of a decision of the State Personnel Board affirming the dismissal of a Senior Narcotic Agent was in the county out of which the agent worked at the time of his dismissal and in which the dismissal took place, where, though certain acts constituting charges against the agent allegedly occurred in other coun-

ties, his cause of action arose out of the dismissal itself. *Lynch v Superior Court of Santa Cruz County (1970, 1st Dist) 7 Cal App 3d 929, 86 Cal Rptr 925.*

51. Time Requirements

Laches bars discharged municipal civil service employee's application for mandamus to restore him to former position, where his own explanation for 18-month year delay is lack of funds. *Newman v Board of Civil Service Comm'rs (1956, 2nd Dist) 140 Cal App 2d 907, 296 P2d 41* (disapproved on other grounds by *Conti v Board of Civil Service Comm'rs, 1 Cal 3d 351, 82 Cal Rptr 337, 461 P2d 617).*

Action by which former county civil service employee sought to be reinstated was barred by laches where delay was long, unnecessary, and unexcused and county was prejudiced thereby. *Callender v County of San Diego (1958, 4th Dist) 161 Cal App 2d 481, 327 P2d 74.*

Taxpayer was not guilty of laches in filing petition for writ of mandate to compel county board of supervisors to act on claim for refund of taxes allegedly erroneously and illegally collected by board where it discovered in 1955 that it had been paying taxes on property outside jurisdiction of certain school districts for twenty-six years, where it then made claim on board for refund for preceding four years, where, despite all that taxpayer could with propriety do to enforce action by board, supervisors failed to act and taxpayer, in 1958, demanded that some action be taken, where board rejected such demand to act and continued to fail to act and retained claims without action thereon, and mandamus action was filed fifty-one days thereafter. *Signal Oil & Gas Co. v Bradbury (1960, 2nd Dist) 183 Cal App 2d 40, 6 Cal Rptr 736.*

Where writ of mandate was sought to compel Board of Medical Examiners to issue, without examination, reciprocity certificate to practice as physician and surgeon, and where, after court denied writ, petitioner moved for new trial, principally on ground of newly discovered evidence, contending that this required that court open case for referral back to board under subd (d) of this section, court did not abuse its discretion in denying such motion for it appeared case had been pending for several years during which petitioner had not been diligently attempting to secure evidence of kind subsequently offered on such motion, and that it was only when decision went against him that he attempted to obtain some relevant evidence which would form basis of court's granting new trial. *Akopiantz v Board of Medical Examiners (1961, 1st Dist) 190 Cal App 2d 81, 11 Cal Rptr 810.*

Parties seeking judicial relief by mandamus from order of State Board of Optometry refusing to issue branch office license could proceed under *CCP § 1085*, relating to issuance of "traditional writ," rather than under *CCP § 1094.5*, and were not bound by time limit prescribed by Government Code, where it was clear that board was not called on to make factual determination within its quasi-judicial function, but rather to decide question of law. *Rich v State Board of Optometry (1965, 1st Dist) 235 Cal App 2d 591, 45 Cal Rptr 512.*

A petitioner was guilty of laches in not commencing his action within due time and the trial court properly sustained a demurrer without leave to amend a petition for a writ to compel the City of Los Angeles to reinstate petitioner as a member of the police department where it appeared that petitioner did not file a claim for compensation pursuant to an applicable ordinance, that he waited about eight months before instituting the action after it was administratively determined that his resignation was not to be overturned, that there was no allegation in his petition in reference to the delay nor as to exhaustion of administrative remedies, that his choice in bringing his action was deliberate and uninfluenced by any promise or suggestion of reinstatement, and that he chose to remain silent and inactive when vigilance and alertness were required in the interest of the taxpaying public. *McLeod v Los Angeles (1967, 2nd Dist) 256 Cal App 2d 693, 64 Cal Rptr 394* (disapproved on other grounds by *Conti v Board of Civil Service Comm'rs, 1 Cal 3d 351, 82 Cal Rptr 337, 461 P2d 617).*

A petition, under *CCP § 1094.5*, for administrative mandate to review a suspension of an automobile operator's license filed 71 days after the suspension was ordered, was timely filed. *Cameron v Cozens (1973, 2nd Dist) 30 Cal App 3d 887, 106 Cal Rptr 537.*

Execution of a writ of possession of real property condemned by a city did not deprive the condemnee of any benefits to which she may have been entitled under state or federal relocation assistance laws or deny her due process, where the record showed that there had been a judicial determination that the city was entitled to acquire the property and that it had made the required payment into court, thereby making it mandatory on the trial court to issue a writ of execution for immediate occupancy pursuant to former CCP § 1254 (see now *CCP § § 1268.110* et seq.). As a "displaced person," the condemnee was required to institute in a timely manner the administrative remedies provided by Gov C§ 7260

et seq., CCP § 1094.5, and the city's relocation assistance rules and regulations, and having failed either to take the appropriate action to claim benefits or to cooperate with the public agency to enable it to fulfill its obligation to determine the benefits for which she might qualify, she was not entitled to obstruct the activities of the city by belatedly interposing her claims to oppose execution of the writ of possession. *Los Angeles v Decker (1976, 2nd Dist) 61 Cal App 3d 444, 132 Cal Rptr 188.*

A private citizen's proceeding for a writ of mandate to compel the preparation of an environmental impact report concerning the construction in a city park of a building approved by the city council and city planning commission appeared to be barred by the statute of limitations set forth in *Pub Res C § 21167*, providing that any action or proceeding seeking to compel the preparation of an environmental impact report shall be commenced within 180 days after commencement of the construction of the project, where the issue of the need for an environmental impact report had been raised for the first time three years after construction of the building had been completed. *Simons v Los Angeles (1977, 2nd Dist) 72 Cal App 3d 924, 140 Cal Rptr 484.*

Regarding the 60-day time period specified in Pub Res C§ 30801, for judicial review of an administrative agency's decision pursuant to *CCP § 1094.5*, the law is settled and clear that the statutory periods within which mandamus petitions may be filed are not jurisdictional in nature, as are the periods within which appeals may be taken from lower courts, but are mere statutes of limitation, and rules of law relating to limitations of actions are applicable to mandamus proceedings. Thus, a petition for a writ of mandate to review a decision of the California Coastal Commission under *CCP § 1094.5*, with respect to parking requirements imposed on a project lot as a condition for a permit for the construction of a restaurant thereon was timely filed, even though it was not filed within 60 days after the commission's decision became final as required under Pub Res C§ 30801, where the reason for the delay in its filing was the delay in preparing the administrative record for review that the landowner had timely requested, and where it was filed within 30 days from the landowner's receipt of the record. *Liberty v California Coastal Com. (1980, 4th Dist) 113 Cal App 3d 491, 170 Cal Rptr 247.*

A decision of the State Personnel Board was subject to judicial review to determine whether it complied with a previous writ of mandate ordering it to afford an association of government engineers a "trial-type" hearing regarding prevailing rates for comparable service in other public employment and in private business, even though the one-year statute of limitations applicable to administrative mandamus proceedings under *CCP § 1094.5*, had run, since the statute of limitations was tolled during the pendency of the initial mandamus proceeding which sought to have the same matter adjudicated on another basis. The trial court that issued the initial writ of mandate had continuing jurisdiction to issue orders and/or penalties to enforce its initial writ at any time thereafter until the writ had been fully satisfied. Professional Engineers in *California Government v State Personnel Board (1980, 2nd Dist) 114 Cal App 3d 101, 170 Cal Rptr 547.*

A taxpayer's action filed for the purpose of obtaining a review of proceedings leading to an approval of a proposed sale of Redevelopment Agency (Agency) real property by the appropriate legislative body for the community in which the property is located and for the purpose of enjoining the sale is not subject to a statute of limitations defense under *CCP § 1094.6*, or *CCP § 526*. The 90-day limitations period specified in *CCP § 1094.6*, for certain proceedings filed under CCP§ 1094.5, does not apply to an action attacking the proposed sale of Agency property. The provision of *CCP § 526*, for the bringing of certain actions by specified parties within one year before commencement of the action is not a statute of limitations, but a description of a class of persons entitled to bring such actions. *Nolan v Redevelopment Agency of Burbank (1981, 2nd Dist) 117 Cal App 3d 494, 172 Cal Rptr 797.*

Under Gov C§ 11523, providing that when judicial relief from an administrative decision made under the Administrative Procedure Act is sought by writ of mandate, the petition must be filed within 30 days after the last day on which reconsideration could be ordered, the 30-day limit is a statute of limitations. Like any other cause of action, a proceeding for writ of mandate is barred if not commenced within the applicable limitation period. *Kupka v Board of Admin. of Public Employees' Retirement System (1981, 4th Dist) 122 Cal App 3d 791, 176 Cal Rptr 214.*

The trial court properly dismissed an administrative mandamus proceeding brought by a state employee who was challenging his termination by the State Personnel Board, where plaintiff failed to serve the petition on defendant and did not notice it for hearing until more than five years after its filing. Although a petition for a writ of administrative mandamus (*CCP § 1094.5*) involves a special proceeding, it is not beyond the reach of dismissal for delay in prosecution under the general dismissal statutes (*CCP § 581* et seq.). *CCP § 583.120*, subd. (b), provides that the court may apply the statutes governing dismissal for delay in prosecution to a special proceeding except when the application would be inconsistent with the character of the special proceeding or the statute governing the special proceeding. Since there is no specific statute that permits dismissal of an administrative mandamus proceeding for failure to prosecute, it is

not inconsistent to apply the general five-year dismissal statute (*CCP § 583.310*) to such a proceeding. *Binyon v State of California (1993, 2nd Dist) 17 Cal App 4th 952, 21 Cal Rptr 2d 673.*

In an action by the state against a county assessor and a private landowner for money owed, following calculation of a fee to cancel a contract under the Williamson Act (*Gov C § 51200* et seq.; preservation of agricultural land with low tax valuation), the trial court erred in determining the action was barred under *Gov C § 51286* (180-day limitation on action to challenge cancellation of Williamson Act contract). That statute applies only to actions seeking "to attack, review, set aside, void, or annul a decision of a board of supervisors or a city council to cancel a contract." This language, by its own terms, refers only to actions of the board and not to actions of the assessor. Moreover, nothing in the legislative history or scheme supports a conclusion that the Legislature intended the statute to apply to actions challenging only the assessor's cancellation valuation and not the decision of the board to cancel a contract under the act. In this case, the state did not challenge the county board's approval of the cancellation, but rather the assessor's cancellation valuation. Further, the action was not a backdoor attempt to kill the cancellation of the contract; the gravamen of the complaint was to compel the assessor to assess the land as required by the Williamson Act, even if the end result might have forced the landowner to pay a higher fee or abandon the cancellation. Thus, the applicable statute was *CCP § 338*, subd. (a) (three-year statute of limitations for action on liability created by statute, other than penalty or forfeiture), and under that provision, the action was timely. *People ex rel. Dept. of Conservation v Triplett (1996, 5th Dist) 48 Cal App 4th 233, 55 Cal Rptr 2d 610.*

Generally, the question of whether a statute of limitations applies is a pure question of law based on the language of the statute in question or any legislative intent which can be discerned from its legislative history. *People ex rel. Dept. of Conservation v Triplett (1996, 5th Dist) 48 Cal App 4th 233, 55 Cal Rptr 2d 610.*

A hospital filed a petition for writ of mandate (*CCP § 1085*), writ a administrative mandate (*CCP § 1094.5*) and declaratory relief (*CCP § 1060*) against the Department of Health Services regarding a cost reimbursement dispute. The trial court denied the petition and the Court of Appeal affirmed, holding that the hospital did not file its petition within the statute of limitations period provided in *W & I C § 14171(j)*, six months from the issuance of the director's final decision. As a general rule, "issuance" of an administrative order means entry or filing, and not service or mailing, of an order. The mailing requirement set forth in § 14171(e)(3)(B) is reasonably interpreted to refer not only to "adopted" final decisions, but also to "issued" final decisions. Similarly, the six-month date for filing a petition for writ of administrative mandate refers to the act of the director finalizing the decision whether by adoption or issuance. It is also apparent from the statute that adoption or issuance of a final decision is independent of the mailing of a copy of the decision. It is the Director who adopts or issues the final decision, while it is the department which is required to mail the provider a copy of the final decision. Therefore, the final decision in this case was reviewable under *CCP § 1094.5* within six months of the issuance of the Director's final decision. *Westside Hospital v Belshe (1999, 2nd Dist) 69 Cal App 4th 672, 81 Cal Rptr 2d 768, 677.*

A hospital provider of Medi-Cal services petitioned for administrative mandamus relief to prevent the Department of Health Services from assessing Medi-Cal liabilities against the hospital for refunds of money previously paid, which were mistaken payments. Plaintiff alleged that the department's delay in assessing the liabilities was unreasonable and prejudicial, and that therefore the doctrine of laches precluded the assessment. The trial court erred in ruling against the hospital, which relied on limitations periods borrowed from analogous statutes of limitation. Several statutes of limitation in CCP were applicable, including *CCP § 337*, which provides for a four-year limitation on book accounts, *CCP § 338(a)*, which provides for a three-year limitation for an action upon a liability created by statute, other than a penalty or forfeiture, and § 338(d), which provides for a three-year limitation for actions for relief on the ground of fraud or mistake. *Fountain Valley Regional Hospital & Medical Center v Bonta (1999, 2nd Dist) 75 Cal App 4th 316, 324, 89 Cal Rptr 2d 139.*

Because a landowner's predecessor did not seek judicial intervention under *Pub Res C § 30801* to avoid an offer to dedicate land permit condition, the landowner, as successor owner of the property, was bound by the predecessor's waiver of its right to seek timely writ review under *CCP § 1094.5*. *Serra Canyon Co. v California Coastal Com. (2004, 2nd Dist) 120 Cal App 4th 663.*

Because real parties in interest did not file their petition for a writ of administrative mandate under *CCP § 1094.5* within the time limitations of *Gov C § 11523* of the Administrative Procedure Act, *Gov C § 11500* et seq., which applied to the Fair Employment and Housing Commission (California), the trial court erred in denying the Commission's demurrer and the court issued a writ of mandate directing the trial court to vacate its ruling and enter a new order grant-

ing the Commission's demurrer. *Fair Employment & Housing Commission v Superior Court (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 150.*

In a neighbor's judicial challenge of a building permit issued in conjunction with a zoning variance, review was time barred because service was not accomplished within 90 days of a decision by the board of appeals. The board was not estopped from asserting the statute of limitations based on its reference to *CCP § 1094.6*, which applied to decisions subject to review under *CCP § 1094.5*, without reference to the service requirement of *Gov C § 65009*; *CCP § 1094.6* put the neighbor on notice that a conflicting, shorter limitations provision relating to the subject matter might exist. *Honig v San Francisco Planning Dept. (2005, Cal App 1st Dist) 2005 Cal App LEXIS 348.*

52. Pleading

A petition for mandamus to review an order of an administrative agency does not ipso facto nullify the order and throw the matter open for an entirely new hearing. *Madruga v Borden Co. (1944) 63 Cal App 2d 116, 146 P2d 273.*

In an action to annul a state personnel board order dismissing plaintiff from his civil service position, plaintiff who contended that the board was a party to his contract of employment and therefore unable to render an unprejudiced decision concerning it, failed to allege facts that establish a denial of a fair trial, where he made no claim that any board member was prejudiced against him, and in view of the fact that the board was a proper tribunal. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

Abuse of discretion within the meaning of this section need not be alleged in so many words. *Graham v Bryant (1954) 123 Cal App 2d 66, 266 P2d 44.*

Failure of petition to show beneficial interest of petitioners in administrative proceedings sought to be reviewed may be cured by amendment. *Temescal Water Co. v Department of Public Works (1955) 44 Cal 2d 90, 280 P2d 1.*

Petition in mandamus proceeding to review action of administrative board should set forth any objection to proceedings before board which are to be questioned on trial. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

It is abuse of discretion to sustain, without leave to amend, demurrer to petition in mandamus capable of being amended to state facts entitling petitioner to review Board of Education's revocation of his teaching credentials and to authorize court to consider any claimed competent evidence subsequently discovered. *Tringham v State Board of Education (1955, 4th Dist) 137 Cal App 2d 733, 290 P2d 890.*

Answer in mandamus proceedings is accepted as true unless controverted by plaintiff. *Steiger v Board of Supervisors (1956, 2nd Dist) 143 Cal App 2d 352, 300 P2d 210.*

Section does not touch matter of appearance by demurrer and it may be assumed it is proper, as in other mandamus proceedings, but in case where code section requires independent review of evidence and it is incorporated in petition, procedural devise cannot control court's action or dispense with its weighing of evidence; a demurrer to petition does not present law points exclusively as it does in ordinary civil action. *Sears, Roebuck & Co. v Walls (1960, 2nd Dist) 178 Cal App 2d 284, 2 Cal Rptr 847.*

Against a general demurrer, the only requirement is that on a consideration of all the facts stated, it must appear that the plaintiff is entitled to some relief, notwithstanding that the facts may be inartfully stated or intermingled with a statement of other facts irrelevant to the cause of action, or that the plaintiff demands relief to which he is not entitled under the facts alleged. *Selby Realty Co. v San Buenaventura (1973) 10 Cal 3d 110, 109 Cal Rptr 799, 514 P2d 111.*

A cause of action for administrative mandamus against a city, under *CCP § 1094.5*, good against general demurrer, was stated by a complaint alleging facts indicating that the city, in denying plaintiff's application for a building permit, abused its discretion, in that the primary basis for the denial was plaintiff's failure to dedicate and improve the extension of a certain street through its property as contemplated by a general plan adopted by the city despite the facts that such dedication was required by the governing ordinance only for the widening of existing streets and that plaintiff had met all valid requirements for issuance of the permit. *Selby Realty Co. v San Buenaventura (1973) 10 Cal 3d 110, 109 Cal Rptr 799, 514 P2d 111.*

The rule that a return to a petition for a writ of mandate may be made by way of a demurrer applies to a petition under *CCP § 1094.5*, where a review of an administrative order or decision is sought. *Carleson v Unemployment Ins. Appeals Board (1976, 2nd Dist) 64 Cal App 3d 145, 134 Cal Rptr 278.*

Mandate may issue despite the form of the petition or its prayer for prohibition. The rationale behind the rule, that a plaintiff's cause of action will not be defeated by an error in specifying the appropriate form of mandamus, applies equally to a mistaken request for *CCP § 1094.5*, mandamus, when *CCP § 1085* is appropriate. *Lowry v Obledo (1980, 3rd Dist) 111 Cal App 3d 14, 169 Cal Rptr 732.*

Challenge to a county retirement system's decision to increase employer contributions was not subject to an anti-SLAPP motion because the system's decision, from which the challenge arose, was not an act in furtherance of the right to free speech. To decide otherwise would have significantly burdened the petition rights of those seeking mandamus review for most types of governmental action because many of the public entity decisions reviewable by mandamus or administrative mandamus were arrived at after discussion and a vote at a public meeting. *San Ramon Valley Fire Protection Dist. v Contra Costa County Employees' Retirement Assn. (2004, 1st Dist) 125 Cal App 4th 343.*

53. -Petition for Another Writ Regarded As One For Mandate

While an action for declaratory relief is not appropriate for review of an administrative order, the complaint may be regarded as a petition for a writ of mandate. *Hostetter v Alderson (1952) 38 Cal 2d 499, 241 P2d 230.*

Though complaint in civil action for declaratory relief is not appropriate for review of administrative determination, complaint may be regarded as petition for writ of mandate if it states cause of action for mandamus. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Though action for declaratory relief is not applicable for review of administrative order, complaint thereof may be regarded as petition for writ of mandate. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

Action for declaratory relief is not appropriate for purpose of reviewing final orders and decisions of administrative agency exericising quasi-judicial powers, but action may be treated as petition for writ of mandate. *Grant v Board of Medical Examiners (1965, 1st Dist) 232 Cal App 2d 820, 43 Cal Rptr 270.*

Under appropriate circumstances, the court may treat a complaint, purportedly but improperly seeking declaratory relief in the form of a judicial review of an administrative decision, as a petition for a writ of mandate to determine whether the administrative body had abused its discretion. *Hill v Manhattan Beach (1971) 6 Cal 3d 279, 98 Cal Rptr 785, 491 P2d 369.*

An action for declaratory relief to review an administrative order should be regarded as a petition for a writ of mandate for purposes of ruling on a general demurrer. *Scott v Indian Wells (1972) 6 Cal 3d 541, 99 Cal Rptr 745, 492 P2d 1137.*

Because the only question before the court was one of timeliness, and as a writ of administrative mandate under *CCP § 1094.5*, like a challenge under *Gov C § 65009(c)(1)(E)*, had to be brought within 90 days of the final administrative decision under *CCP § 1094.6(b)*, the court did not need to address the effect, if any, of property owners having failed to label their petition as one for administrative mandate as well as one for ordinary mandate under *CCP § 1085*. *Travis v County of Santa Cruz (2004, Cal) 2004 Cal LEXIS 6834.*

54. -Stating Cause of Action

A petition for a writ of mandate to require a city zoning commissioner to issue a variance so as to enable the petitioner to drill more than one oil well within a city block stated a cause of action sufficient to entitle the petitioner to give proof that the ordinance was unconstitutional, and the demurrer was improperly sustained thereto where the petition alleged the granting of variance to others permitting the drilling of more wells in a block prior to the passage of a certain ordinance, the refusal of a variance to the petitioner pursuant to such ordinance, and loss to him from the surrounding wells. *Bernstein v Smutz (1947) 83 Cal App 2d 108, 188 P2d 48.*

Where plaintiff in an action to annul a state personnel board order dismissing him from the civil service fails to bring his allegations within the provisions of this section, he fails to state a cause of action for relief by writ of mandamus. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

A petitioner is not entitled as a matter of right to the issuance of a writ of mandate; if his petition fails to state a prima facie case entitling him to the issuance of the writ, it is within court's power to deny it "out of hand." *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

No cause of action is stated by petition for mandamus and injunctive relief that fails to allege exhaustion of available administrative remedy. *Judson Pacific-Murphy Corp. v Durkee (1956, 1st Dist) 144 Cal App 2d 377, 301 P2d 97.*

To plead a case of action against Social Welfare Board to compel it to set aside its decision ordering county to reinstate Aid to Needy Children grant to named person for benefit of her daughter, county must either attach to its complaint complete transcript of all evidence on which board acted or allege substance of all evidence board received and further aver with particularity elements, aspects and principles wherein such evidence, considered in light of county's contentions, supports conclusion that board abused its discretion. *County of Contra Costa v Social Welfare Board (1962, 1st Dist) 199 Cal App 2d 468, 18 Cal Rptr 573* (disapproved on other grounds by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

In proceeding by county for writ of mandate compelling Social Welfare Board to set aside its decision ordering county to reinstate Aid to Needy Children grant to named person for benefit of her daughter, petition failed to state cause of action and board's demurrer should have been sustained where no transcript of hearing before board which resulted in order complained of was attached to county's petition or incorporated by reference, and proposed decision of referee, which was considered by court as evidence, was only before court as exhibit in county's separate motion for preliminary injunction. *County of Contra Costa v Social Welfare Board (1962, 1st Dist) 199 Cal App 2d 468, 18 Cal Rptr 573* (disapproved on other grounds by *Frink v Prod, 31 Cal 3d 166, 181 Cal Rptr 893, 643 P2d 476).*

A petition for a writ of mandate to annul certain conditions to a use permit did not state a cause of action, and defendants' general demurrer should have been sustained, where there was no allegation that it was the ministerial duty of any city officer or agency to issue a use permit free of the objected-to conditions, nor any factual allegations tending to show excess of jurisdiction, or lack of a fair trial, or an abuse of discretion. *Gong v Fremont (1967, 1st Dist) 250 Cal App 2d 568, 58 Cal Rptr 664.*

In a mandamus proceeding against a city council seeking a peremptory writ commanding the city to reinstate the petitioner as chief of police, the petition for the writ stated a cause of action and evidence relating to the reasons or motive for the termination of the petitioner's employment was admissible, where the petition alleged in substance that the council's action was arbitrary and discriminatory in that the only reason petitioner was dismissed was because he exercised his statutory rights under *Gov Code, § § 3500-3509*, to join and participate in activities of an employee organization, where the petitioner was not accorded notice of hearing, and where the reason given by the council in its resolution terminating the employment was merely that the council had determined "it was not within the public interest" that petitioner continue as chief of police. *Ball v City Council of Coachella (1967, 4th Dist) 252 Cal App 2d 136, 60 Cal Rptr 139.*

The trial court erred in refusing issuance of an alternative writ of mandamus to review a decision of the Director of the Department of Professional and Vocational Standards invalidating an electronics service dealer's registration, where the petition alleged, inter alia, that the director abused his discretion in imposing the maximum penalty of revocation for what the dealer believed to be, at most, a technical violation; thus, it set forth facts sufficient to entitle the dealer to a judicial determination of the propriety of the action of the director, and denial of the alternative writ, in effect, deprived the dealer of his right to due process of law. *Turner v Hatch (1971, 2nd Dist) 14 Cal App 3d 759, 92 Cal Rptr 643.*

Under *CCP § 1109*, the ordinary rules of pleading are applied in determining whether or not a petition which seeks the remedy of administrative mandamus states a cause of action. *Turner v Hatch (1971, 2nd Dist) 14 Cal App 3d 759, 92 Cal Rptr 643.*

A petition by the Franchise Tax Board for a writ of mandate seeking to prevent the municipal court from releasing funds seized pursuant to an invalid search warrant and claimed by the board under a jeopardy income tax assessment alleged ultimate facts establishing that the municipal court was acting in excess of its jurisdiction in ordering the funds released to the attorney for the party from whom they were seized, where it was shown that notice of the jeopardy assessment, an order to withhold, and a certificate of tax deficiency had been filed with the municipal court, where, even assuming that court had the power to determine conflicting claims to the cash upon which the assessment was levied, a purported notice of assignment was the only evidence that someone other than the person from whom the money was seized claimed the fund, and where such notice was framed in conclusory terms and by design did not state that the person from whom the money was seized was the assignor or that any other person as assignor had any right to the money. *Franchise Tax Board v Municipal Court for Los Angeles Judicial Dist. (1975, 2nd Dist) 45 Cal App 3d 377, 119 Cal Rptr 552.*

In a proceeding for administrative mandamus, sought by an ambulance company to compel a city to issue it a permit to conduct an ambulance service within the city, in which the petition had alleged that the city council denied the permit on the ground that the present ambulance service was adequate and that the public convenience and necessity did not require additional ambulance service, the trial court did not err in sustaining the city's demurrer without leave to amend, where there was no allegation in the petition of the existence of evidence before the council which would contradict the finding that ambulance service in the city was currently adequate, and where there was no factual allegation of any procedural irregularity. *Bell v Mountain View (1977, 1st Dist) 66 Cal App 3d 332, 136 Cal Rptr 8.*

55. Record of Administrative Proceeding

This section does not authorize the court to take judicial notice of the record of the proceedings before an agency unless the same has been filed as a part of the complaint or petition. *Kleiner v Garrison (1947) 82 Cal App 2d 442, 187 P2d 57.*

This section does not inject the record into a petition for the writ as a part thereof. *Kleiner v Garrison (1947) 82 Cal App 2d 442, 187 P2d 57.*

In mandamus proceedings to review the actions of an administrative board, it is incumbent on the petitioner to prepare and file in the trial court a transcript of the evidence taken before the board if he contends that it is insufficient, and his failure to do so precludes an attack on the evidence. *Fickeisen v Civil Service Com. (1950) 98 Cal App 2d 419, 220 P2d 605.*

This section relating to taxing as cost expense of preparing the record of proceedings leading to an administrative order attacked by writ of mandate refers to the record filed in the mandamus proceeding, and not to the expense of procuring a copy of the record for the use of a party's counsel. *Cooper v State Board of Public Health (1951) 102 Cal App 2d 926, 229 P2d 27.*

Administrative record must be presented to court in proceeding to review by mandamus revocation of license by administrative agency, although mandamus proceeding is type of trial *de novo. Wisler v California State Board of Accountancy (1955, 1st Dist) 136 Cal App 2d 79, 288 P2d 322.*

Person interested in having action of inferior tribunal reviewed by writ of mandate must furnish record to be reviewed. *Wisler v California State Board of Accountancy (1955, 1st Dist) 136 Cal App 2d 79, 288 P2d 322.*

Where stenographic record of the proceedings before board is not attached to or filed with petition for administrative review, charges made by petitioner that there is no "substantial evidence" to support the challenged findings constitute a mere conclusion and cannot be treated as the equivalent of the indispensable facts. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

Where there is no record of proceedings before State Personnel Board sought to be reviewed, provisions of this section are not applicable. *Keeler v Superior Court of Sacramento County (1956) 46 Cal 2d 596, 297 P2d 967.*

In proceeding in mandamus to compel administrative board to reverse its action, hearing is type of de novo trial, but administrative record must be presented to court. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

In mandamus proceeding to compel plaintiff's reinstatement as fireman, it was incumbent on plaintiff to prepare and file in superior court transcript of testimony at administrative hearing to contest sufficiency of evidence, and his failure to do so precluded an attack on evidence on appeal. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

A judgment denying a writ of mandate to a former city policeman who challenged the city council's denial of his application for reinstatement and back pay had to be reversed, where the council had made no findings, formal or informal, where its action could have been on any one of several bases, and where some of the bases suggested by the evidence would not support that action; thus, remand to the city was required for another hearing followed by appropriate findings. *Hadley v Ontario (1974, 4th Dist) 43 Cal App 3d 121, 117 Cal Rptr 513.*

In a quasi-judicial proceeding before an administrative board, the board should state findings. If it does so, the parties are not entitled to inquire outside the administrative record to determine what evidence was considered by, or what reasoning was employed by, the administrators. If the board does not state findings, the remedy, depending on the case, is to annul the administrative action or to remand the matter to the board for findings. Deposition of the administrators is

not a substitute for findings. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

The provision of *CCP § 1094.5*, stating that all or part of the record of an administrative proceeding may be ordered to be filed by the court, did not authorize the superior court to order that a copy of the transcript of an administrative proceeding involving the discharge of an indigent civil service employee be supplied free of charge to the employee, where it did not order that the administrative record be filed with the court, but, rather, that the transcript be supplied by the agency to the employee. *Civil Service Com. v Superior Court of Los Angeles County (1976, 2nd Dist) 63 Cal App 3d 627, 133 Cal Rptr 825.*

A civil service employee claiming to be indigent was not entitled to a transcript, free of charge, of a proceeding before a civil service hearing officer concerning the employee's possible discharge. A superior court is without power to order that an indigent person seeking judicial review of an administrative proceeding involving an economic interest be supplied with the transcript of the proceeding at the expense of the agency, and due process and equal protection do not dictate otherwise. *Civil Service Com. v Superior Court of Los Angeles County (1976, 2nd Dist) 63 Cal App 3d 627, 133 Cal Rptr 825.*

In an administrative mandaus proceeding (*CCP § 1094.5*), brought by a groundsman whose employment with a school district was terminated, the trial court erroneously refused to exercise its discretion and order that the personnel commission furnish it with a transcript of the administrative proceedings, or tape recordings thereof, where the employee was indigent, where the agency asserted that a transcript was necessary in order for the court to conduct the required independent judicial review, and where, in light of respondent's refusal to accept as true petitioner's statement of the case or to supplement the statement so as to bring it into conformity with the record, requiring respondent to provide a transcript was the only way for the court to establish the evidence of the litigation before it. *Woodard v Personnel Com. of Compton Unified School Dist. (1979, 2nd Dist) 89 Cal App 3d 552, 152 Cal Rptr 658.*

In a *CCP § 1094.5* proceeding for a writ of mandate, § 1094.5, subd. (c), requires that in order to find that an administrative agency abused its discretion, the superior court must review the entire administrative record to determine whether the agency's findings are supported by substantial evidence. Thus, the superior court erred in issuing a writ of mandate against a city which had obtained an administrative decision against a property owner who failed to meet his burden of producing the entire administrative record. Production of an "adequate" record was insufficient. *Hothem v City and County of San Francisco (1986, 1st Dist) 186 Cal App 3d 702, 231 Cal Rptr 70.*

In an administrative mandamus proceeding (*CCP § 1094.5*) to set aside the suspension of plaintiff's driving privileges by the Department of Motor Vehicles (DMV) due to the fact that plaintiff had suffered a seizure, plaintiff's failure to provide the trial court with the transcript of the administrative hearing or the medical evidence in the administrative record was not harmless error. In a proceeding under § 1094.5, it is the petitioner's responsibility to produce a sufficient record of the administrative proceedings. Otherwise, the presumption of regularity will prevail, since the burden falls on the petitioner attacking the administrative decision to demonstrate where the administrative proceedings were unfair, were in excess of jurisdiction, or showed prejudicial abuse of discretion. Thus, the DMV did not have a responsibility to prepare the record and it was not required to show it was right; rather it was up to plaintiff to supply a sufficient record to show the *DMV was wrong. Elizabeth D. v Zolin (1993, 2nd Dist) 21 Cal App 4th 347, 25 Cal Rptr 2d 852.*

In an administrative mandamus proceeding to set aside the suspension of plaintiff's driving privileges on medical grounds, her filing of one selected medical document and declarations regarding events subsequent to the administrative hearing was not a sufficient partial filing of the administrative record under *Code Civ. Proc., § 1094.5*, subd. (a), to establish an administrative abuse of discretion. A petitioner has the burden to provide a partial record that will allow sufficient and effective review by the court. Such a record is sufficient if it provides the reviewing court with a basis for the affirmance or reversal of the order or decision, and establishes where in the proceedings the administrative body acted in excess of its jurisdiction, or denied a fair hearing or abused its discretion. This partial record must accurately represent the administrative proceedings, provide the reviewing court with an understanding of what occurred below, and enable that court to undertake an independent judicial review of the administrative decision. *Elizabeth D. v Zolin (1993, 2nd Dist) 21 Cal App 4th 347, 25 Cal Rptr 2d 852.*

Motion for discovery and augmentation of administrative record through deposition should have been denied because no proper preliminary foundation required by *CCP § 1094.5(e)* was laid which showed that any or all members of reviewing panel were biased against real party in interest. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

Augmentation of the administrative record is permitted only within the strict limits set forth in *CCP § 1094.5(e). Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

In the absence of a proper preliminary foundation showing that one of the exceptions noted in *CCP § 1094.5(e)* applies, it is error for the court to permit the record to be augmented. Determination of the question of whether one of the exceptions applies is within the discretion of the trial court, and the exercise of that discretion will not be disturbed unless it is manifestly abused. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

Where a physician did not include within the record on appeal that evidence presented to the hearing committee, it was presumed that substantial evidence supported the hospital board's disciplinary decision; the inquiry on judicial review was limited to whether the board applied correct standards in making its decision. *Weinberg v Cedars-Sinai Medical Center (2004, 2nd Dist) 119 Cal App 4th 1098.*

Administrative mandamus under *CCP § 1094.5* is conducted solely on the record of the proceeding before the administrative agency, and thus it is an insufficient remedy when a plaintiff alleges that he was denied an opportunity to present his case at the administrative level; therefore, where a developer sued a city regarding a certain project condition, and where the city argued that the suit was precluded because the city counsel had approved the disputed condition and the developer failed to challenge the city counsel's decision by an administrative writ under § 1094.5, the court rejected the city's argument, in part, because the city counsel hearing did not afford the developer an opportunity to present evidence, and the § 1094.5 writ did not afford him an opportunity to develop this record. *Pacifica v City of Pacifica (2005, ND Cal) 366 F Supp 2d 927.*

Trial court did not abuse its discretion in denying a property owner's request to augment the administrative record where her written objections were submitted six weeks after the deadline for such objections and after the city had completed its decision-making process and had adopted a redevelopment plan. *Evans v City of San Jose (2005, Cal App 6th Dist) 2005 Cal App LEXIS 680.*

Where the record before an appellate court indicated that although a historical society had requested that a city prepare the administrative record, it then failed to take any further necessary steps to obtain the record, such as paying the costs of preparation as ordered by the trial court or seeking modification of the trial court's order to permit a waiver of costs or delayed payment, the trial court could reasonably conclude that the society had no good faith intention to obtain the record, file an opening brief, or pursue the litigation. Under those circumstances, the trial court did not abuse its discretion in granting a motion for dismissal of the society's petition for a writ of mandate that challenged the approval of a low income housing development on a site with historical significance, based on the society's failure to prosecute the matter. *Black Historical Society v City of San Diego (2005, Cal App 4th Dist) 134 Cal App 4th 670, 36 Cal Rptr 3d 378, 2005 Cal App LEXIS 1856.*

56. Stay of Administrative Order

A writ of supersedeas is not a writ of right, but one resting in the sound discretion of the appellate court to be issued only where some unusual situation is presented which cannot well be handled otherwise; the mere fact that petitioner might suffer injury through loss of practice as a physician, pending appeal from an administrative order finding her guilty of procuring an abortion and revoking her license would not entitle her to the writ. *Bogart v Board of Medical Examiners (1950) 99 Cal App 2d 170, 221 P2d 168.*

Where District Court of Appeal is of opinion that under subdivision f, superior court has full power, if the public interest requires, to dissolve, modify, or change a stay order once granted as long as proceeding for mandate is still pending in that court, a petition for an alternative writ of prohibition will be denied. *Morton v Superior Court of San Mateo County (1953) 119 Cal App 2d 665, 260 P2d 215.*

Under subd f of this section a district court of appeal possesses discretionary power to terminate the stay of execution of an administrative order or decision at any time it is convinced that continuance of the stay is against public interest, and such motion may be granted where respondent board has made a prima facie showing that such continuance would be against public interest and appellant has not filed opposition to the motion or, though given the opportunity, appeared before the court for the purpose of opposing the motion. *Ciro's of San Francisco v State Board of Equalization (1956, 1st Dist) 143 Cal App 2d 99, 299 P2d 985.*

Nothing in former Pub Res C § 27424, or in its new reenactment in Pub Res C§ 30801, expressly prohibits the trial court from requiring the posting of a stay bond in an action brought to review an action or decision of the coastal

commission or a regional commission under the California Coastal Zone Conservation Act (former Pub Res C§ 27000 et seq., see now the California Coastal Act, *Pub Res C § § 30000* et seq.). Accordingly, the trial court properly required the posting of a bond in connection with the granting of an order staying construction in mandate proceedings by petitioners under *CCP § 1094.5* and Pub Res C§ 27424 (now § 30801), to review the granting of various permits to build single family dwellings, where it appeared the real parties had made investments and proceeded in good faith and relied on permits issued after complying with the statutory requirements and satisfying the commissions that the construction being pursued was proper, that real parties were subjected to damages occasioned by delay in completion combined with fast-rising costs of construction, and that there would be irreparable harm to real parties if no bond were furnished and the stay proved to be improvidently granted. *Venice Canals Resident Home Owners Asso. v Superior Court of Los Angeles County (1977, 2nd Dist) 72 Cal App 3d 675, 140 Cal Rptr 361.*

57. Hearing; Jury

A petitioner asking for judicial review of the action of the medical board in refusing to restore a revoked medical license is entitled to a formal hearing on the record of the administrative board where the record is filed in court. *Housman v Board of Medical Examiners (1948) 84 Cal App 2d 308, 190 P2d 653.*

In a proceeding in mandamus to compel the issuance of building permits, any jurisdictional defect in departing from the rule permitting a trial de novo in a proceeding in which a right to a hearing exists as a matter of due process or general law was waived by the city attorney in stipulating to the judge's view of the premises and taking of evidence there. *Munns v Stenman (1957, 2nd Dist) 152 Cal App 2d 543, 314 P2d 67.*

No jury was required in action by administrative officer for damages for his alleged unlawful discharge, where, although defendant's demurrer to complaint as not stating cause of action for breach of contract had been overruled, it was clear that court considered matter as special proceeding to review administrative board's action pursuant to this section, and not as action for breach of contract. *Humbert v Castro Valley County Fire Protection Dist. (1963, 1st Dist) 214 Cal App 2d 1, 29 Cal Rptr 158.*

In a proceeding in mandamus seeking to annul an order of the Department of Motor Vehicles suspending a motorist's driver's license on the ground that he refused to submit to a chemical sobriety test (*Veh Code, § 13353*), it was clear from the record that the trial court denied the motorist's petition "out of hand" rather than merely denying the request of his counsel for an alternative writ ex parte, where the court's order emphatically stated that the petition was denied, where, inasmuch as the judge was furnished a complete transcript of the departmental hearing before the referee, he was presumably conversant with the evidence presented at that hearing, where he was also fully apprised of the substantive theory upon which the motorist's petition was founded, and where the judge stated that in his opinion the order of suspension was correct. *Kingston v Department of Motor Vehicles (1969, 5th Dist) 271 Cal App 2d 549, 76 Cal Rptr 614.*

On petition pursuant to *CCP § 1094.5*, which sought review of his suspension from hospital staff privileges following his conviction of conspiracy to murder his wife, the trial court properly held that the physician had been afforded fair procedure under the law, where the physician had received adequate notice of request for his suspension, had appeared in an informal hearing before the hospital administrator and a committee of professional staff, had appeared and had been given an opportunity to have counsel present at a second hearing before a separate committee of professional staff on review of the recommendations from the first hearing, had failed to substantiate the allegations of bias on the part of some members of the committees which had heard his case, and there was no overlapping of membership in the committees. *Miller v National Medical Hospital, Inc. (1981, 4th Dist) 124 Cal App 3d 81, 177 Cal Rptr 119.*

58. -Witnesses

If credibility of witnesses before board of education is brought into question in mandamus proceeding to review board's revocation of teacher's credentials, opportunity to contradict or impeach their testimony is to be afforded at trial. *Tringham v State Board of Education (1955, 4th Dist) 137 Cal App 2d 733, 290 P2d 890.*

Mere attack on credibility of witness before administrative tribunal does not entitle party, in mandamus proceeding to call that witness for further examination and impeachment unless it is shown to satisfaction of court that party was unreasonably foreclosed from proceeding with his impeachment at administrative hearing or that he has new impeaching evidence that could not with reasonable diligence have been produced at original hearing. *Mast v State Board of Optometry (1956, 2nd Dist) 139 Cal App 2d 78, 293 P2d 148.*

In an administrative mandamus proceeding seeking judicial review pursuant to former Fin C § 5258, of the Savings and Loan Commissioner's decision granting a savings and loan association's application to operate a branch office in which the petition charged the applicant with intrinsic fraud in withholding information in proceedings before the Commissioner, a reviewing court would refuse to reappraise the credibility of witnesses or to re-examine documentary evidence claimed to be false; and the trial court did not abuse its discretion in refusing discovery relating to petitioners' claim of suppression of evidence and presentation of perjured testimony or false documents in the hearing in which petitioners participated. The resolution of these matters rested entirely within the province of the Commissioner and his decision thereon was not subject to judicial review. *Beverly Hills Federal Sav. & Loan Asso. v Superior Court of Los Angeles County (1968, 2nd Dist) 259 Cal App 2d 306, 66 Cal Rptr 183.*

The trial court properly issued a writ of mandate requiring the human services agency to hold another hearing as to whether petitioner violated a rule of the methadone maintenance program requiring his dismissal, where, despite petitioner's objection, the witnesses at the hearing had not testified under oath. Testimony taken from witnesses in administrative hearings must have the same threshhold guarantee of truthfulness as testimony taken in a court of law, and the agency therefore violated the procedural requirements mandated by state law in allowing the witnesses to testify without taking the oath. *Marlow v Orange County Human Services Agency (1980, 4th Dist) 110 Cal App 3d 290, 167 Cal Rptr 776.*

59. Evidence

In a proceeding in mandamus to compel the State Board of Medical Examiners to set aside an order suspending a physician's license on a charge of aiding and abetting an unlicensed person, whom he had employed, to practice medicine, evidence of the circumstances surrounding the reemployment and continuance of the employment of such unlicensed person should have been admitted without limitation, rather than in mitigation only. *Garfield v Board of Medical Examiners (1950) 99 Cal App 2d 219, 221 P2d 705.*

Court is not confined to record of proceedings before the board, but record before board is competent evidence which should be considered and weighed along with other evidence in cause. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

It is not contemplated that there be a reiteration of evidence presented to the board and contained in its record. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

In examining record of administrative board, nothing may be treated as evidence that has not been introduced as such. *Stout v Department of Employment (1959, 2nd Dist) 172 Cal App 2d 666, 342 P2d 918.*

A doctor found guilty at an administrative hearing of charges relating to abortion failed to exercise "reasonable diligence," within the meaning of *CCP § 1094.5*, in producing alleged representations of the investigators that the board would be lenient if he were cooperative and told the truth, where he was told at the hearing that he would lose his license, and this was confirmed in writing a month later with revocation effective a month after that, but where he made no attempt during any of this time to tell the board. His excuse that the promise had a "stultifying effect" on him at the hearing was inadequate, and the trial court properly refused to hear the proffered evidence. *Schoenen v Board of Medical Examiners (1966, 2nd Dist) 245 Cal App 2d 909, 54 Cal Rptr 364.*

The trial court in administrative mandamus did not abuse its discretion in refusing to hear the proffered mitigation testimony of a doctor whose license had been revoked by the Board of Medical Examiners, where some of the matters had already been received at the board hearing and were before the court in the transcript, others he wanted to change somewhat, and still others he wanted to amplify, where he had had full opportunity to present such testimony before the board and had taken full advantage of it, and where, in any event, the question of penalty was one, not for the court, but for the board, as was the question of mitigation under *Gov Code, § 11520(b). Schoenen v Board of Medical Examiners (1966, 2nd Dist) 245 Cal App 2d 909, 54 Cal Rptr 364.*

Without identification of the evidence forming the basis of an administrative agency's action, a reviewing court can neither affirm nor deny the existence of evidentiary support; the court cannot invalidate the agency's action by measuring evidence produced by its assailant. *California Asso. of Nursing Homes, etc. v Williams (1970, 3rd Dist) 4 Cal App 3d 800, 84 Cal Rptr 590.*

In administrative mandamus proceedings to review a city council's denial of an application for a permit for a planned unit shopping center development, the applicants were not entitled to question councilmen to determine what

evidence they relied on or what reasoning they employed in voting against the application. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

In the absence of a showing by persons whose application for a permit for a planned unit shopping center development had been denied by a city council that their questions asked in deposing certain councilmen were reasonably calculated to lead to the discovery of evidence admissible under the administrative mandamus provisions of *CCP § 1094.5*, subd. (d), the superior court erred in granting the applicants' motion to compel answers. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

In administrative mandamus proceedings under CCP§ 1094.5, to review a city council's denial of an application for a permit for a planned unit shopping center development the court erred in ordering councilmen, being deposed by the applicants, to answer questions aimed at eliciting proof that the councilmen had stated their opposition to the permit in advance of administrative hearings on the application. Such proof would not serve to disqualify the councilmen from voting on the application, and would be inadmissible as not relevant under *CCP § 1094.5*, subd. (d). *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

The standard of proof upon superior court review, under the independent judgment doctrine, of administrative decisions is simply the weight or preponderance of the evidence. Thus, in a proceeding by a former chief deputy sheriff for a writ of mandate to compel a county civil service commission and the county sheriff to vacate and set aside a disciplinary order, the findings of the superior court made in exercise of its independent judgment and by the weight of the evidence but not by clear and convincing evidence that two of the charges against the chief deputy sheriff were true, were sufficient to support the superior court's decision upholding the civil service commission's determination of disciplinary action. *Chamberlain v Ventura County Civil Service Com. (1977, 2nd Dist) 69 Cal App 3d 362, 138 Cal Rptr 155.*

In a proceeding brought against a city by the owners of certain land located therein alleging an abuse of discretion by the city council in denying a requested zoning variance, and seeking a writ of mandate, pursuant to *CCP § 1094.5*, commanding the city council to grant the variance, the trial court in granting a judgment issuing a writ of mandate erred in making an independent review of the evidence and in making findings; since no fundamental vested right was involved, the court should have applied the substantial evidence test. Further, the court erred in considering evidence that was not before the city council, since neither of the alternative prerequisites specified by *CCP § 1094.5*, for augmentation of the record was present; i.e., the evidence could, in the exercise of reasonable diligence, have been produced at the city planning commission's evidentiary hearing held prior to the council's decision, and no relevant evidence was improperly excluded by the commission. *PMI Mortgage Ins. Co. v City of Pacific Grove (1981, 1st Dist) 128 Cal App 3d 724, 179 Cal Rptr 185.*

In a proceeding by a physician for a writ of administrative mandate (*CCP § 1094.5*) to order a nonprofit hospital to review an order denying the physician a clinical privilege, the application of the substantial evidence test (*CCP § 1094.5*, subd. (d)) did not deprive the physician of equal protection by treating him differently from others asserting a fundamental right. Not only was the physician's license unaffected, but he retained full rights and privileges of his license to practice medicine as well as other clinical privileges at the hospital. Furthermore, at the time of his application for the privileges he was not exercising any right to practice at the hospital. In addition, the Legislature has authority to provide for a substantial evidence review of administrative determinations. *Smith v Vallejo General Hospital (1985, 1st Dist) 170 Cal App 3d 450, 216 Cal Rptr 189.*

A proceeding by a developer to compel a school district to vacate a resolution imposing a "school facilities fee" on new commercial and industrial construction within the district and to refund the fees it had imposed on the developer's developments was not subject to the procedural standards of administrative mandamus under *CCP § 1094.5*, and their substantial evidence standard of review, but rather to the general principles governing mandamus actions and their more limited standards of review. Administrative mandamus is available only to review adjudicatory decisions of government agencies. Since the school district's decision to impose the development fees applied generally to all future commercial and industrial development within its jurisdiction, the decision had a legislative rather than adjudicatory character. *Balch Enterprises, Inc. v New Haven Unified School Dist. (1990, 1st Dist) 219 Cal App 3d 783.*

Because it was only in the course of the trial court action that a company had the opportunity to take a planning commission member's deposition to fully develop the issue of bias, under *CCP § 1094.5(e)*, such evidence properly was before the trial court in the mandamus proceeding and was entitled to due consideration. *Nasha v City of Los Angeles (2004, 2nd Dist) 125 Cal App 4th 470.*

60. -Incompetent Evidence Considered Below

In mandamus proceeding to compel a contractors state license board to restore to petitioning corporation its contractor's license, the petitioner was not entitled to an unqualified or unlimited trial de novo, and its rights were not denied where the trial court carefully considered the entire record of the complaint and evidence and proceedings before the board, and, considering only legally admissible evidence, made independent findings and conclusions; the complaining party may object to incompetent evidence received by the board, and may offer evidence which the board improperly excluded, or which, in the exercise of reasonable diligence, could not have been introduced before the board. *West Coast Home Improv. Co. v Contractors' State License Board (1945) 72 Cal App 2d 287, 164 P2d 811.*

An order of a local administrative board cannot stand if it is based solely on incompetent hearsay evidence. *Kinney v Sacramento City Employees' Retirement System (1947) 77 Cal App 2d 779, 176 P2d 775.*

The fact that incompetent evidence was admitted in a hearing, before the state personnel board, of charges filed against a civil service employee does not require an entirely new hearing before the board, where the trial court finds simple charges to be sustained by competent substantial evidence. *Nelson v Department of Corrections (1952) 110 Cal App 2d 331, 242 P2d 906.*

Complaining party in mandamus proceeding may object to incompetent evidence received by board and offer evidence improperly excluded. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

Admission of irrelevant or incompetent evidence by administrative board is not ground to annul its action if there is sufficient competent evidence to support its determination. *Nichandros v Real Estate Div. of Dep't of Inv. (1960, 1st Dist) 181 Cal App 2d 179, 5 Cal Rptr 274.*

In proceeding to review by writ of mandate order of Board of Chiropractic Examiners imposing one-year suspension on chiropractor found to have engaged in misleading advertising, court's exclusion, as immaterial, of proffered evidence regarding other complaints against licensee which board's secretary had allegedly discussed with its investigator was not erroneous and did not unduly limit scope of licensee's inquiry, despite licensee's contention that such evidence tended to show bias and prejudice on part of board and that board, in adopting hearing officer's proposed decision, took into account matters which were not received in evidence at administrative hearing. *Sassone v Board of Chiropractic Examiners (1962, 2nd Dist) 201 Cal App 2d 165, 20 Cal Rptr 231.*

In a proceeding for administrative mandamus to review an administrative action, a party to the administrative action may interpose an objection to the competency of evidence in the administrative record, if it appears from the record that incompetent evidence has been received by the agency over the party's objection. *Borror v Department of Invest., Div. of Real Estate (1971, 1st Dist) 15 Cal App 3d 531, 92 Cal Rptr 525.*

A letter from a city employee's supervisor setting forth charges against her did not provide substantial evidence of the truth of the charges or provide adequate support for a resulting administrative decision upholding the employee's suspension, where the information on which the charges were based was not within the supervisor's personal knowledge, but had been relayed to him by others, so that the letter was hearsay twice removed. Hearsay evidence, unless specially permitted by statute, is not competent evidence by itself to support an administrative agency's decision. *Layton v Merit System Com. (1976, 2nd Dist) 60 Cal App 3d 58, 131 Cal Rptr 318.*

61. -Additional Evidence

Produce dealers and growers filing a mandate proceeding to review a marketing order of the Director of Agriculture on the ground that his findings are not supported by the evidence and that he showed prejudice in favor of the order may have such matters determined in the Superior Court, but if, instead of doing so, they seek and the court permits the introduction of new evidence which could not have been produced before the director because it was not then in existence, they cannot, after a subsequent unsuccessful appeal to the District Court of Appeal, have the case returned to the Superior Court for a determination from the record as to whether the director abused his discretion in making the marketing order. *Brock v Superior Court of San Francisco (1952) 109 Cal App 2d 594, 241 P2d 283.*

Although one may not offer a mere skeleton defense before an administrative board and later secure a trial de novo in an unlimited sense, additional evidence may be admitted on trial if the showing required by subd (d) is made. *Sautter v Contractors' State License Bd. (1954) 124 Cal App 2d 149, 268 P2d 139.*

Additional evidence may be received in mandamus proceeding to review action of administrative board on showing that, in exercise of reasonable diligence, it could not have been introduced before board. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

Court is not required to solicit or order introduction of additional evidence in mandamus proceeding to review action of administrative board. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

In a mandamus proceeding to compel the State Board of Optometry to set aside its decision imposing discipline on an optometrist for his operation of a "vision service" for labor union members, the trial court did not err in refusing to receive evidence that the professional members of the board were biased and prejudiced against the accused because of their membership in a competitive vision service, where the petition did not charge bias and prejudice, where no showing was made as to why such evidence could not have been made part of the record at the administrative level (CCP§ 1094.5, subd (d)), and where, inasmuch as it was not contended that the board prevented the introduction of any relevant evidence, alleged bias or prejudice of board members could not have affected the judgment of the court, which was based on an independent review of the record in the proceeding before the board. *Barkin v Board of Optometry (1969, 2nd Dist) 269 Cal App 2d 714, 75 Cal Rptr 337.*

While a hearing pursuant to *CCP § 1094.5*, to review an administrative determination of a state-wide agency revoking a license, is a limited trial de novo, the trial court may properly exclude additional testimony at the hearing unless it finds that the evidence offered could not have been produced at the administrative proceeding by the exercise of reasonable diligence or that it was improperly excluded by the administrative agency. *Alford v Department of Education (1970, 2nd Dist) 13 Cal App 3d 884, 91 Cal Rptr 843.*

In an action by coastal developers for declaratory relief and a writ of mandate, challenging the decision by the California Coastal Zone Conservation Commission in partially denying a claimed exemption from permit requirements for a planned development, the developers' contention that the California Coastal Zone Act of 1972 was unconstitutional as depriving them of their property without due process of law, was only another way of phrasing their challenge to the decision of the state commission, and there was thus no merit to the contention that those issues were independent of the state commission's decision so as to permit the admission of any relevant evidence; while the contention that regulations promulgated by the state commission were not authorized by the Act, raised only a legal question so as to preclude the need for other evidence; therefore, the presentation of evidence in the trial court was regulated by the terms of *CCP § 1094.5*, limiting a court on administrative review to considering the entire agency record unless "the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the [administrative] hearing...." *Transcentury Properties, Inc. v State (1974, 1st Dist) 41 Cal App 3d 835, 116 Cal Rptr 487.*

In administrative mandamus proceedings, an order compelling discovery must rest on a showing that such discovery is reasonably calculated to lead to evidence admissible under *CCP § 1094.5*, subd. (d), limiting the admission of evidence, additional to the administrative record, to relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the administrative hearing. *Fairfield v Superior Court of Solano County (1975) 14 Cal 3d 768, 122 Cal Rptr 543, 537 P2d 375.*

Under *CCP § 1094.5*, precluding the introduction of evidence in a mandamus proceeding to review an administrative agency decision, unless there is new evidence or evidence which was improperly excluded at the administrative hearing, it is for the trial court to determine if either of those situations exists for the admission of evidence at the mandamus proceeding. An appellate court will not disturb the determination of the trial court on that issue unless the trial court abuses its discretion in admitting new evidence. Furthermore, if the credibility of witnesses before the agency is brought into question at the mandamus proceeding, opportunity to contradict or impeach such testimony is to be afforded at the trial. *Hand v Board of Examiners in Veterinary Medicine (1977, 1st Dist) 66 Cal App 3d 605, 136 Cal Rptr 187.*

In administrative mandamus proceedings, the trial court is authorized under *CCP § 1094.5*, subd. (e), to receive relevant evidence of events which transpired after the date of the agency's decision. *Windigo Mills v Unemployment Ins. Appeals Board (1979, 5th Dist) 92 Cal App 3d 586, 155 Cal Rptr 63.*

In an action for administrative mandamus an order compelling discovery must rest upon a showing that such discovery is reasonably calculated to lead to evidence admissible under *CCP § 1094.5*, subd. (d), which limits the admission of evidence additional to the administrative record to "relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing." *Guilbert v Regents of University of Cal. (1979, 1st Dist) 93 Cal App 3d 233, 155 Cal Rptr 583.*

CCP § 1094.5, subd. (e), authorizes the admission into evidence in administrative mandamus proceedings of matters which come into existence after the administrative hearing. *Kate' School v Department of Health (1979, 5th Dist) 94 Cal App 3d 606, 156 Cal Rptr 529.*

In administrative mandamus proceedings under CCP§ 1094.5, against the Department of Motor Vehicles by a driver whose license had been suspended for six months for refusing an alcohol test in violation of *Veh. Code, § 13353*, evidence of a prior erroneous suspension of the driver's license was relevant to the equitable issues before the trial court. However, where that court had seemingly overlooked the fact that during the period of the erroneous five-month suspension for violation of *Veh. Code, § 13352*, the driver was concurrently serving a six-month suspension for another violation of *Veh. Code, § 13353*, reversal of the judgment and a remand of the cause to the court for its further consideration of the record and the equitable issue presented would comport with justice and equity. *Curtin v Department of Motor Vehicles (1981, 1st Dist) 123 Cal App 3d 481, 176 Cal Rptr 690.*

Under *CCP § 1094.5*, subd. (e), the court in an administrative mandamus proceeding may admit new evidence if it is relevant evidence of events that transpired after the administrative agency's decision. However, in a proceeding to set aside the suspension of plaintiff's driving privileges on medical grounds, in which plaintiff failed to provide the trial court with a sufficient administrative record, new evidence in the form of declarations by plaintiff, her physician, and her father was not sufficient to permit the trial court to set aside the suspension. The evidence in parts of plaintiff's and her physician's declarations, as well as that in her father's declaration, could have been presented at the administrative hearing, and, therefore, was not new evidence and was not admissible in the administrative mandamus proceeding. Considering these evidentiary limitations, the declarations, either by themselves or in conjunction with an earlier statement by the physician that was before the trial court, would not have supported plaintiff's claims of error. *Elizabeth D. v Zolin (1993, 2nd Dist) 21 Cal App 4th 347, 25 Cal Rptr 2d 852.*

The system for public recording of land title records was established by statute (Gov C§ 27201 et seq.), and the proper operation of that system is hence one of legislative intent. A county recorder is obligated to accept for recordation only those documents that are "authorized or required by law to be recorded" (Gov C§ 27201), and there is no authority for the proposition that the recorder must or may accept unauthorized documents for recordation. Nor is there any authority for the proposition that parties may by private contract create a right to record, for their own private purposes, documents that are not "authorized or required by law to be recorded." There is no principled basis for the proposition that the Legislature intended all documents of every kind to be recordable unless specifically prohibited. *Ward v Superior Court (1997, 2nd Dist) 55 Cal App 4th 60, 63 Cal Rptr 2d 731.*

Homeowners were entitled to expungement of a document recorded in a county's land title records by a homeowners association, asserting that the homeowners were in violation of the association's covenants, conditions, and restrictions by painting their house an unauthorized color. The notice of noncompliance was not a legally recordable document and the improper recordation of the document created a cloud on title, preventing refinancing of the homeowners' property until they posted a $10,000 bond. The bond remained outstanding and was a sufficiently serious injury to require expungement of the improperly recorded notice. *Ward v Superior Court (1997, 2nd Dist) 55 Cal App 4th 60, 63 Cal Rptr 2d 73.*

Although there is no express provision allowing discovery in an administrative mandamus proceeding, *CCP § 1094.5(e)* has been interpreted to allow limited posthearing discovery provided the moving party shows that such discovery is reasonably calculated to lead to evidence admissible under *CCP § 1094.5*. The reason for the distinction is that in an ordinary civil action, discovery is not limited to questions which may lead to admissible evidence, but includes inquiries relevant to the subject matter of the action which may be helpful in preparation for trial. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

Discovery under *CCP § 1094.5*, unlike general civil discovery, cannot be used to go on a fishing expedition looking for unknown facts to support speculative theories. The stringent requirements set forth in Cal. *CCP § 1094.5(e)* require the moving party to identify what evidence is sought to be discovered for purposes of adding it to the record; to establish the relevancy of the evidence; and to show that either any such relevant, additional evidence was improperly excluded at the administrative hearing, or it could not have been produced at the hearing with the exercise of reasonable diligence. *Pomona Valley Hospital Medical Center v Superior Court (1997, 2nd Dist) 55 Cal App 4th 93, 63 Cal Rptr 2d 743.*

In an employee termination administrative mandamus case involving a school district plumber who was accused of using paid sick days when he was not actually sick, the district did not satisfy either of the circumstances specified in

CCP § 1094.5(e) for the taking of additional evidence; absent such a showing by the district, remand of the case was unwarranted. *Ashford v Culver City Unified Sch. Dist. (2005, 2nd Dist) 130 Cal App 4th 344.*

CCP § 1094.5(e) opens a narrow, discretionary window for additional evidence. Therefore, a trial court did not exceed its discretion by limiting the evidence to the administrative record; a party's declarations that summarized and characterized the proceedings that the record reflected were redundant and did not require addition to the record. *Helene Curtis, Inc. v Los Angeles County Assessment Appeals Bds. (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 1252.*

62. -Evidence not Submitted to Administrative Agency

In a proceeding to review the action of an administrative board, the trial court is not required to receive new evidence unless it appears that, in the exercise of reasonable diligence, it could not have been introduced before the board. *Kinney v Sacramento City Employees' Retirement System (1947) 77 Cal App 2d 779, 176 P2d 775.*

On hearing an order to show cause the court must examine the record, and give full and fair opportunity to the petitioner to point out in the record the matters he claims show the arbitrary action of the board; he may not offer evidence, or submit to the court anything which was not before the board. *Housman v Board of Medical Examiners (1948) 84 Cal App 2d 308, 190 P2d 653.*

Circular allegedly published by insurer describing coverage of workmen's compensation insurance policy does not, by being annexed to petition for review of Industrial Accident Commission decision, become part of record, where neither circular nor circumstances of its issuance was put in evidence before commission. *Fyne v Industrial Acci. Com. (1956, 1st Dist) 138 Cal App 2d 467, 292 P2d 78.*

New evidence can be received in a superior court in a proceeding for administrative mandamus only after a showing that it could not have been presented to the board through the exercise of reasonable diligence, and such a showing was not made where the petitioner's affidavits in support of a motion to amend the petition were met by a contradictory affidavit, thus presenting a question of fact and a matter for exercise of discretion by the trial judge. *Thayer v Board of Osteopathic Examiners (1958, 2nd Dist) 157 Cal App 2d 4, 320 P2d 28.*

In a mandate proceeding under *CCP § 1094.5*, the recognized rule precludes the introduction of evidence that the proponent neglected to offer before the administrative agency. *Wilke & Holzheiser, Inc. v Department of Alcoholic Beverage Control (1966) 65 Cal 2d 349, 55 Cal Rptr 23, 420 P2d 735.*

At an administrative mandamus proceeding, if additional evidence is sought to be introduced by a party, the court has a right to receive it if it was not incompetent or not properly excluded at the administrative hearing, and if it is shown that in the exercise of reasonable diligence it could not have been introduced before the board. *Schoenen v Board of Medical Examiners (1966, 2nd Dist) 245 Cal App 2d 909, 54 Cal Rptr 364.*

In the provision in *CCP § 1094.5*, subd (d) requiring that, to be admissible in an administrative mandamus proceeding, new evidence must be evidence which "in the exercise of reasonable diligence could not have been produced... at the hearing" the phrase "at the hearing" means at any time prior to the administrative decision becoming final. *Schoenen v Board of Medical Examiners (1966, 2nd Dist) 245 Cal App 2d 909, 54 Cal Rptr 364.*

In an administrative mandamus proceeding to review a decision of the State Board of Education revoking a teacher's credential and denying her application for a different credential, the trial court did not err in refusing to permit the teacher to produce psychiatric testimony at trial in addition to that which was already in the record of the administrative proceedings, where there was no showing that such evidence could not have been offered at the administrative hearing if due diligence had been exercised or that the evidence was there excluded; the teacher's excuse for failure to offer the evidence at the administrative hearing, that she was unable at that time to afford an expert as skilled in "forensic medicine" as the one she proposed to call, was not the equivalent of the exercise of due diligence which permits the introduction of new evidence pursuant to CCP§ 1094.5. Failure to produce stronger evidence at an administrative hearing is not excused by financial inability to obtain the best expert testimony that money can buy. *Alford v Department of Education (1970, 2nd Dist) 13 Cal App 3d 884, 91 Cal Rptr 843.*

In reviewing the decision of a statewide administrative agency with statutory, not constitutional, authority to deprive persons of some vested interest, the court exercises its independent judgment and may substitute its judgment for that of the agency if it determines that the findings are not supported by the weight of the evidence, but there is a limited trial de novo in that *CCP § 1094.5*, precludes the introduction of evidence which the proponent neglected to offer be-

fore the administrative agency; to allow such evidence there must be a showing of why it could have not have been made a part of the record at the administrative level. *State v Superior Court of Sacramento County (1971, 3rd Dist) 16 Cal App 3d 87, 93 Cal Rptr 663.*

In an action by a property owner for a writ of mandate to require a utility district to set water rates at levels which would eliminate the need for property tax revenues and to delete from the property tax rolls any tax levies attributable to the district, evidence of waters in other districts could not be considered, where, although the property owner had been present at the hearings and objected to the rates, he had presented no evidence to support his objection. *Kahn v East Bay Municipal Utility Dist. (1974, 1st Dist) 41 Cal App 3d 397, 116 Cal Rptr 333.*

In an administrative mandamus action by oil companies challenging the validity of pollution control district rules requiring the installation of vapor recovery systems in gasoline storage and loading operations, evidence of acts, data, reports and other evidence within the limits of CCP§ 1094.5, subd. (d), was admissible if there was a finding the evidence could not have been produced at the administrative hearing in the exercise of reasonable diligence, regardless of whether the evidence dealt with events which occurred before or after the date of the hearing. Accordingly, the trial court erred in limiting the oil companies' right of discovery to acts occurring before the date of the administrative hearing rather than as provided in the statute, and such error unduly restricted the scope of allowable discovery. *Mobil Oil Corp. v Superior Court of San Diego County (1976, 4th Dist) 59 Cal App 3d 293, 130 Cal Rptr 814.*

In mandate proceedings, the Board of Examiners in Veterinary Medicine waived its right to object on appeal to the trial court's decision setting aside the board's decision suspending a doctor, being based on an offer of proof that there was relevant evidence which, in the exercise of reasonable diligence, the doctor could not have produced at the hearing, where the board had agreed that the trial court could decide as a preliminary matter whether the additional evidence was relevant and whether it could have been produced at the administrative hearing on the basis of the offer of proof. *Hand v Board of Examiners in Veterinary Medicine (1977, 1st Dist) 66 Cal App 3d 605, 136 Cal Rptr 187.*

CCP § 1904.5, subd. (e), authorizing the trial court in an administrative mandamus proceedings to admit such evidence as is relevant and which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the administrative hearing, constitutes statutory authority for the use of affidavits as direct evidence at administrative mandamus hearings in the superior court, subject to the rules governing the right of cross-examination and the prohibition against double hearsay. *Windigo Mills v Unemployment Ins. Appeals Board (1979, 5th Dist) 92 Cal App 3d 586, 155 Cal Rptr 63.*

In proceedings initiated by a developer, the trial court erred by issuing a peremptory writ of mandate (*CCP § 1094.5*, subd. (e)), commanding the California Coastal Commission to set aside its denial of a developer's permit applications, and to reconsider them based on the court's conclusion as to the location of the legal boundary of the beachfront property. The court remanded the matter based on the "new evidence" of the legally determined seaward boundary. However, this was not newly discovered evidence which, in the exercise of reasonable discretion, could not have been produced or that was improperly excluded at the hearing before the commission, as required under *CCP § 1094.5*, subd. (e). There was no reason the developer could not have established the boundary before it proceeded with its permit applications. Thus, there was no legal basis for remanding the matter; instead, the proper remedy was to resubmit the applications based on the legally established boundary. Moreover, although the court found that there had been a temporary taking, there can be no taking until there is a final governmental determination that deprives the owner of all or substantially all economic use of the property. There had been no such final determination in the present case. The developer had not yet established a right to develop the property, given that it had not established the location of the legal boundary and of an express easement. *Lechuza Villas West v California Coastal Com. (1997, 2nd Dist) 60 Cal App 4th 218, 70 Cal Rptr 2d 399.*

In an *Ins C § 1032* proceeding to review rejection of claims against an insolvent insurance company, a trial court can consider evidence that was not before the California Insurance Commissioner as to extrinsic issues, such as procedural fairness, but cannot consider such evidence in evaluating the Commissioner's ruling on the merits; the rule is analogous to that applied by trial courts in reviewing adjudicatory administrative decisions under *CCP § 1094.5*. *Garamendi v Golden Eagle Ins. Co. (2005, 1st Dist) 128 Cal App 4th 452.*

63. -Burden of Proof; Presumptions

In an action to annul a state personnel board order dismissing plaintiff from the civil service the conclusion that no abuse of discretion is indicated by his allegation that the board ignored his claimed contractual defense and made no findings thereon is justified in particular where the complaint states that the board did make findings, without setting

them forth even in substance, since it must be assumed, in the absence of a contrary allegation, that its decision is supported by the findings and that the findings are supported by the evidence. *Boren v State Personnel Board (1951) 37 Cal 2d 634, 234 P2d 981.*

In administrative mandamus proceeding, ruling of administrative tribunal comes before court attended by strong presumption that official duty has been regularly performed, which presumption must be overcome by factual allegations; mere conclusions will not suffice. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

In mandate proceeding to review order of administrative agency, presumption of former CCP § 1963 subd 15 (see now *Ev C § 664*) that official duty has been regularly performed, sustains conclusion that agency, in hearing on reconsideration of its decision, duly considered evidence which had been presented before hearing officer. *Moyer v State Board of Equalization (1956, 1st Dist) 140 Cal App 2d 651, 295 P2d 583.*

In absence of showing that any member of administrative board did not read, or was familiar with, evidence adduced at hearing, law presumes that board's decision was made after consideration of evidence. *Steiger v Board of Supervisors (1956, 2nd Dist) 143 Cal App 2d 352, 300 P2d 210.*

Burden is on petitioner seeking review of Board of Bar Governors' recommendation for disciplinary action to show that findings are not supported by evidence or that recommendation is erroneous or unlawful. *In re Hallinan (1957) 48 Cal 2d 52, 307 P2d 1.*

Administrative proceedings are to be liberally construed and fact that certain action was taken or recommendation made raises presumption that existence of necessary facts have been ascertained and found. *Buckley v Savage (1960, 2nd Dist) 184 Cal App 2d 18, 7 Cal Rptr 328.*

Generally, in a review of administrative proceedings, every presumption in favor of administrative findings which may ordinarily be accorded to such determination of trier of fact should be indulged to support administrative findings on such factual matters. *Pranger v Break (1960, 4th Dist) 186 Cal App 2d 551, 9 Cal Rptr 293.*

In mandamus proceeding to have Bay Area Air Pollution Control District regulation declared invalid, fact that some findings made by court were not supported by substantial evidence did not indicate that court did not properly evaluate evidence before it and reach right result where plaintiffs failed to sustain their burden of demonstrating that district's determination was erroneous and invalid as applied to them and no procedural misstep impeded their efforts. *Lees v Bay Area Air Pollution Control Dist. (1965, 1st Dist) 238 Cal App 2d 850, 48 Cal Rptr 295.*

In mandamus proceeding to compel his reinstatement, discharged fireman failed to meet burden of showing lack of substantial evidence to support findings that he twice disobeyed superior officers where no transcript of administrative hearing was furnished and it was established that in violation of order he wore shoes with buckles and that he disobeyed fire chief's order to proceed through proper channels to question his suspension rather than to go directly to city administrator. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

Findings and determination of administrative agency come before reviewing court with strong presumption of correctness and regularity, and absent evidence establishing the contrary, it is presumed that necessary facts to support determination were ascertained and found, that agency duly considered evidence adduced at administrative hearing, that official duty was regularly performed, and that agency applied the proper standard or test in reaching its decision. *Mattison v Signal Hill (1966, 2nd Dist) 241 Cal App 2d 576, 50 Cal Rptr 682.*

In an administrative mandamus proceeding (*CCP § 1094.5*), it is error to receive new evidence in a trial de novo, the court's power of review being confined to determining whether there was substantial evidence before the administrative board to support its decision, and where allegations of irregular procedure or insufficient evidence have been denied, presumptions arise that the administrative proceedings were in fact regular and supported by the evidence, the burden of proof falling upon the party attacking the decision to demonstrate otherwise. *Gong v Fremont (1967, 1st Dist) 250 Cal App 2d 568, 58 Cal Rptr 664.*

The decision of an administrative agency comes before a court with a presumption of regularly performed official duty, and where no stenographic record of the proceeding is attached or filed with the petition, a challenge to the sufficiency of the evidence in such prior hearing is a conclusion that cannot be treated as equivalent to the indispensable facts. *Feist v Rowe (1970, 4th Dist) 3 Cal App 3d 404, 83 Cal Rptr 465.*

Although administrative actions enjoy a presumption of regularity, such presumption does not immunize agency action from effective judicial review. *California Mfrs. Asso. v Industrial Welfare Com. (1980, 4th Dist) 109 Cal App 3d 95, 167 Cal Rptr 203.*

The substantial evidence standard for judicial review of adjudicatory decisions of private nonprofit hospital corporations, prescribed by the Legislature (*CCP § 1094.5*, subd. (d)), does not violate due process of law where such private hospitals are required to make such decisions on the basis of substantial rationality and fair procedure. *Gaenslen v Board of Directors (1985, 1st Dist) 185 Cal App 3d 563, 232 Cal Rptr 239.*

64. Dismissal

It is not abuse of discretion to dismiss, for lack of prosecution, petition for writ of mandamus to review revocation of petitioner's license to practice accountancy, in view of his failure to comply with provisions of Government Code and in view of his failure to make any effort to get cause heard for more than three years after answer was filed. *Wisler v California State Board of Accountancy (1955, 1st Dist) 136 Cal App 2d 79, 288 P2d 322.*

In mandamus proceeding to review board order revoking petitioner's license, fact that on hearing of motion to dismiss for lack of prosecution, one of petitioner's counsel, who had handled matter, was ill, does not require that court refuse to dismiss petition, where another attorney of record for petitioner throughout entire proceeding showed himself fully competent to represent petitioner. *Wisler v California State Board of Accountancy (1955, 1st Dist) 136 Cal App 2d 79, 288 P2d 322.*

In mandamus proceeding to compel reinstatement of plaintiff's teaching credentials, court did not err in denying motion to dismiss for lack of jurisdiction on theory that former CCP § 583 (see now *CCP § § 583.110* et seq.) requires case to be brought to trial within three years after remittitur issued on appeal is filed in court and that this requirement was not met because of failure to comply with provisions of § 594 for five-day notice of trial on "issue of fact," where defendants' answer admitted that plaintiff's conviction occurred prior to 1952 legislation dealing with such convictions, and issue of retroactivity presented only question of law. *Di Genova v State Bd. of Education (1962) 57 Cal 2d 167, 18 Cal Rptr 369, 367 P2d 865.*

A mandamus action to compel a school district to re-employ a probationary teacher was properly dismissed as to plaintiff labor union and its president, where it was not alleged that any right of the union or of its president as such had been invaded, and neither requested any relief, and where no allegation was made that the right of the organization to represent its members in relations with public school employers was being violated. *American Federation of Teachers v San Lorenzo Unified School Dist. (1969, 1st Dist) 276 Cal App 2d 132, 80 Cal Rptr 758.*

Mortgage guaranty insurer was properly ordered by the California Insurance Commissioner to stop selling a "lien protection" policy, which was title insurance. Therefore, the trial court properly denied the insurer's petition for a writ of administrative mandamus under *CCP § 1094.5*. *Radian Guaranty, Inc. v Garamendi (2005, Cal App 1st Dist) 2005 Cal App LEXIS 490, 2005* Daily Journal DAR 3678.

65. Findings

Although no new evidence is received in mandamus proceeding to review action of administrative board court can make findings and conclusions and render judgment either granting or denying relief. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

Findings and order of administrative board do not have finality of court judgment in mandamus proceeding to review action of board. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

In formal order of court in mandamus proceeding to review action of administrative board, indicating to counsel what judgment would be, is not decision of court; findings of fact and conclusion of law constitute such decision. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

In reviewing findings of administrative board, trial court is required not to make findings of fact, but to determine whether findings of board are supported by substantial evidence in light of whole record. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

The decision of the State Board of Education approving a plan to create a unified school district pursuant to former Ed C § 4200 (specifying conditions to be met before the creation of a new district is authorized), was a quasi-legislative

act, rather than an adjudicatory decision; thus, no findings were required pursuant to *CCP § 1094.5* (administrative mandamus), as to specific compliance with former Ed C § 4200. Moreover, even if findings were required, the board in effect adopted the findings of the county committee which prepared the proposed plan, and those findings were fully adequate to allow meaningful judicial review. An administrative agency may adopt the findings prepared by another body. *Fullerton Joint Union High School Dist. v State Bd. of Education (1982) 32 Cal 3d 779, 187 Cal Rptr 398, 654 P2d 168.*

The need for findings by an administrative agency when it makes an adjudicatory decision is not based upon rule or regulation. In part, the need for findings is implicit in *CCP § 1094.5*, subd. (b), which defines "abuse of discretion" to include instances in which an administrative order or decision "is not supported by the findings, or the findings are not supported by the evidence." In part, the need for findings is the product of judge-made law; findings by an adjudicative agency are necessary as a practical matter in order to permit judicial review of agency action. *Respers v University of Cal. Retirement System (1985, 3rd Dist) 171 Cal App 3d 864, 217 Cal Rptr 594.*

66. -Specific Instances

In a mandamus proceeding to compel reinstatement of civil service employees, the findings of the trial court that the petitioners were regularly laid off pursuant to the municipal charter was supported by the evidence. *Carter v Los Angeles (1948) 31 Cal 2d 341, 188 P2d 465.*

In a proceeding in certiorari-mandamus to review an order denying a pension to the surviving widow of a fireman who died following a coronary occlusion, a finding that the deceased did not sustain injury to his heart in the course of his duties and that death did not result from any injury arising out of his employment was supported by sufficient although conflicting evidence. *Sorel v Smith (1950) 99 Cal App 2d 266, 221 P2d 115.*

In mandamus proceeding to review administrative decision of state board revoking contractor's license of corporation, finding of trial court that if registrar had known of falsity of managing employee's statement that no member of corporation's personnel had ever been convicted of felony license would not have been issued, is immaterial and can be disregarded as surplusage. *Nelson Valley Bldg. Co. v Morrisey (1955, 3rd Dist) 135 Cal App 2d 738, 288 P2d 135.*

In mandamus proceeding to review administrative decision of state board revoking contractor's license of corporation, finding that when managing employee of corporation applied for license he falsely stated that no person listed "in the personnel of applicant," had ever been convicted of felony and that falsity of such statement was known to him is sustained by evidence that two members of corporation's personnel had been convicted of felonies, and that managing employee, during hearing before administrative agency, admitted his conviction of crime of issuing checks without sufficient funds. *Nelson Valley Bldg. Co. v Morrisey (1955, 3rd Dist) 135 Cal App 2d 738, 288 P2d 135.*

It is not necessary for administrative agency or court reviewing its administrative decision in revoking contractor's license for misrepresentation of material fact in application under *B & P C § 7112*, to find that concealment was of a fact which, if known at the time of issuance of license, would have resulted in denial of application,§ 7112 being concerned with fact rather than effect of wilful concealment. *Nelson Valley Bldg. Co. v Morrisey (1955, 3rd Dist) 135 Cal App 2d 738, 288 P2d 135.*

In proceeding in mandamus to review Board of Equalization's decision on accusation against liquor licensee, court makes sufficient finding by referring to every paragraph of petition and answer and finding it to be true or untrue. *Mercurio v Department of Alcoholic Beverage Control (1956, 1st Dist) 144 Cal App 2d 626, 301 P2d 474.*

Where no issue as to each instance in which officer testified to buying liquor licensee's waitresses a drink is raised by pleadings, and no request for specific findings on each instance is made, court need not make such detailed findings in proceeding in mandamus for review of Board of Equalization's decision. *Mercurio v Department of Alcoholic Beverage Control (1956, 1st Dist) 144 Cal App 2d 626, 301 P2d 474.*

In mandamus proceeding to compel real estate commissioner to set aside orders suspending licenses of broker and his salesmen, findings of trial court that in real estate transactions in question broker and salesman were guilty of no conduct justifying disciplinary action taken against them were sustained by evidence that, among other things, after agent and salesman sold property for client, they acted in good faith in procuring second purchaser in behalf of first purchaser. *McPherson v Real Estate Comm'r (1958, 1st Dist) 162 Cal App 2d 751, 329 P2d 12.*

No findings are necessary in proceedings to obtain writ of mandamus commanding Alcoholic Beverage Control Appeals Board to vacate order reversing order of State Board of Equalization, and correctness of those made need not

be determined by appellate court where only question submitted to trial court was one of law. *Koehn v State Board of Equalization (1958, 1st Dist) 166 Cal App 2d 109, 333 P2d 125.*

Finding that general building contractor breached his fiduciary duty with intent of making secret profit and that his license should be revoked is supported by evidence that he agreed with owners to build house for price not to exceed specified amount, he submitted false statements to owners for materials and services, he permitted subcontractors to deviate from plans and specifications, and final cost exceeded instrument by more than $2,000. *Hemphill v Contractors' State License Board (1959, 2nd Dist) 167 Cal App 2d 340, 334 P2d 287.*

In a mandamus proceeding to review the discharge of a University of California librarian, the trial court did not err in its finding that the university's hearing officer's recommendation of discharge for poor supervisorial qualities was based on substantial evidence where there was evidence of a high employee turnover in her library department, that she had been given notice that her supervisorial practices were a cause of concern and should be corrected, that proffered help in correcting her deficiencies was disregarded by her, and three witnesses who had been employed under appellant testified to great stress and tension in her department, although there was substantial conflicting evidence concerning her supervisorial abilities. *Ishimatsu v Regents of University of Cal. (1968, 1st Dist) 266 Cal App 2d 854, 72 Cal Rptr 756.*

The findings of a local administrative agency may be of an informal nature and an express statement of findings will be excused altogether where such findings are necessarily implied from the decision, but there is no presumption that findings, if made, would support the decision, where it might be based on one or more of several theories, each relating to different factual considerations; in such event a reviewing court is unable to determine whether there is sufficient evidence to support the presumed findings, or if the decision is based upon a proper principle. *Mahoney v San Francisco City & County Employees' Retirement Board (1973, Cal App 1st Dist) 30 Cal App 3d 1, 106 Cal Rptr 94.*

The findings of the State Water Resources Control Board on an application to appropriate water need not be stated with the formality required in a judicial proceeding; their basic purpose is to enable a reviewing court to determine whether they are supported by sufficient evidence or a proper principle and to apprise the parties as to the reason for the administrative action in order that they may decide whether, and upon what grounds, additional proceedings should be initiated. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

Where a private project to divide an 8.1-acre parcel of grazing land into 3 homesites was invalidly approved by the landowner's county board of supervisors on the erroneous basis that the project was categorically exempt from the provisions of the Environmental Quality Act (Pub Res C§ § 21000 et seq.), despite objections by the landowner's neighbors that it was not exempt and that for various asserted reasons it would have a significant environmental effect, a subsequent court challenge by the neighbors, in administrative mandamus (*CCP § 1094.5*), required that the county board's resolution of approval be annulled, that the application for the project be processed according to the Act, and that the board's findings, instead of being couched solely in the language of the applicable statutes, be in the form either of a negative declaration (Cal. Admin. Code, tit. 14, § 15083) or of an environmental impact report (Pub Res C§ 21151) so as to permit a reviewing court to judge the analytic gap between the evidence and the ultimate decision. *Myers v Board of Supervisors (1976, 1st Dist) 58 Cal App 3d 413, 129 Cal Rptr 902.*

A county board of supervisors' resolution approving a private development plan and amending the county's general plan to conform to such approval was improper, where although the raw evidence supported the decision of the board, the board made no formal findings bridging the analytical gap between the raw evidence and the ultimate decision as is required by *CCP § 1094.5*, providing for review of administrative orders by writ of mandate, and where the minutes and the resolution of approval indicated no informal findings pointing up the basis of the board's action. *Mountain Defense League v Board of Supervisors (1977, 4th Dist) 65 Cal App 3d 723, 135 Cal Rptr 588.*

67. Judgment or Order

In a proceeding in mandamus to compel a city council to reinstate a chief of police and award him judgment for accrued salary, that portion of the judgment awarding back pay to the petitioner was erroneous where there was no pleading of the amount of salary he was earning, no evidence was introduced thereon, and the record was devoid of any evidence relating to the amount of accrued salary to which he would have been entitled. *Ball v City Council of Coachella (1967, 4th Dist) 252 Cal App 2d 136, 60 Cal Rptr 139.*

In a mandamus action to compel the State Board of Pharmacy to vacate its decision suspending a permit and licenses for unauthorized refilling of prescriptions for dangerous drugs (former B & P C § 4229, see now *B & P C § 4063*) the granting of petitioners' motion for new trial on specified grounds of insufficiency of the evidence and judgment as against the law (*CCP § 657(6)*), was not binding on the judge who presided at the new trial and did not preclude a subsequent retrial and re-examination of all issues of fact, even though no additional evidence was offered, where the motion was granted for the sole purpose of according petitioners a new trial consisting of a re-examination of all issues of fact in the same court (*CCP § 656*), which contemplated an independent determination of the cause, and where the record showed that the motion was granted by the first judge primarily because of his doubt that he had properly decided the legal issue of whether a hearing officer could take official notice of the dangerous character of drugs referred to by their trade names. *Arenstein v California State Bd. of Pharmacy (1968, 2nd Dist) 265 Cal App 2d 179, 71 Cal Rptr 357.*

Though a judgment in a mandate proceeding refusing a writ to compel review of an alleged wrongful discharge of a county employee before his death may be determinative of some issues between the plaintiff widow of the employee and the county on the application of the doctrine of collateral estoppel, that determination requires factual proof of what issues were actually litigated in the mandate proceeding and is not an appropriate determination for the Court of Appeal on a review of a judgment of dismissal following an order sustaining a general demurrer without leave to amend in the widow's action against the county for damages resulting from the alleged wrongful discharge. *Myers v County of Orange (1970, 4th Dist) 6 Cal App 3d 626, 86 Cal Rptr 198.*

In a mandamus proceeding to compel a county appeal board to set aside its decision not to grant a hearing as to the reinstatement to the date of death of an employee allegedly wrongfully dismissed and to hold a hearing, a judgment denying the peremptory writ of mandate was not res judicata in an action by the employee's widow for damages resulting from the alleged wrongful discharge. *Myers v County of Orange (1970, 4th Dist) 6 Cal App 3d 626, 86 Cal Rptr 198.*

An application for a writ of mandate or administrative mandamus is a special proceeding within *CCP § 1063* et seq., governing such proceedings. Once an alternative writ has been issued and an evidentiary hearing been had, it is contemplated that the proceeding shall be terminated by a judgment, not a minute order signed by the clerk. The judgment should dispose of the alternative writ theretofore issued, as well as the matter of costs. In cases in which the trial court has determined a question of fact, *Cal. Rules of Court, rule 232*, and *CCP § 632*, both relating to the preparation of findings, also apply. *Hadley v Superior Court of San Bernardino County (1972, 4th Dist) 29 Cal App 3d 389, 105 Cal Rptr 500.*

In a mandamus action brought under *CCP § 1094.5* challenging a county's denial of an application to subdivide a residential property, the trial court did not err in denying the owner's motion for summary adjudication under *CCP § 437c* subd. (f); the owner, instead of seeking summary adjudication, should have moved for judgment on the writ pursuant to *CCP § 1094* because the proceeding was based on the administrative record. *Dunn v. County of Santa Barbara, 135 Cal App 4th 1281, 38 Cal Rptr 3d 316, 2006 Cal. App. LEXIS 74* (Jan. 25, 2006).

68. -Entering Judgment or Remanding

In a proceeding in mandamus to compel a municipal civil service board to set aside an order dismissing a patrolman from the police department and to reinstate him, although the trial court properly concluded that the patrolman was denied a fair hearing since information had been taken outside the hearing which the patrolman had no opportunity to refute, the judgment should not have ordered his reinstatement but should have remanded the cause to the board for proper proceeding, since the board had not exhausted its power to act until it had given the patrolman a fair hearing. *English v Long Beach (1950) 35 Cal 2d 155, 217 P2d 22.*

When an administrative agency has not conducted a hearing properly or has committed error of law, or if the evidence is insufficient to support the findings, and it is still possible under the circumstances for the agency to exercise its discretion, the reviewing court should remand the matter to the agency for further consideration. *National Auto. & Casualty Ins. Co. v Downey (1950) 98 Cal App 2d 586, 220 P2d 962.*

In a mandamus proceeding to compel local administrative officers to issue a license to a petitioner to operate an amusement game, the trial court is limited to an examination of the matters considered and examined by the officers in arriving at their decision; to an ascertainment of whether such matters were sufficient to justify denying the license; where determinative powers are vested in the local administrative agency and the court finds the decision to lack evidentiary basis, a hearing was denied or it was otherwise erroneous, it is proper to remand the case to the agency for fur-

ther proceedings rather than for the court to decide the matter on the merits. *Fascination, Inc. v Hoover (1952) 39 Cal 2d 260, 246 P2d 656.*

The court in a mandamus proceeding should not annul an order granting a license nor making findings on the issue, but should refer the matter back to the board for redetermination where there is substantial conflict in the evidence. *Western Los Angeles Citizens' Committee on Liquor Licenses v State Board of Equalization (1952) 111 Cal App 2d 843, 245 P2d 571.*

Court has inherent power to remand cause in mandamus to administrative body for further proceedings which are deemed necessary for proper determination. *Keeler v Superior Court of Sacramento County (1956) 46 Cal 2d 596, 297 P2d 967.*

Where determinative powers are vested in local administrative agency and court finds its decision lacks evidentiary basis, hearing was denied or it was otherwise erroneous, it is proper procedure to remand case to local agency for further and proper proceedings rather than for court to decide matters on merits. *Walters v Pine Cove County Water Dist. (1960, 4th Dist) 177 Cal App 2d 498, 2 Cal Rptr 253.*

It was not error to remand to city licensing board matter of renewal of petitioner's business licenses where there had been neither majority vote of board for renewal of licenses or for denial of renewal, and city charter required board's action to be based on majority vote. *Fisher v Board of Police Comm'rs (1965, 2nd Dist) 236 Cal App 2d 298, 45 Cal Rptr 859.*

In proceeding in mandamus to compel Insurance Commissioner to set aside order revoking, on ground of his conviction of felony, insurance agent's licenses, where Commissioner was not aware of expungement of agent's conviction at time of administrative hearing, it was proper for matter to be returned to Commissioner for reconsideration in light of that development. *Ready v Grady (1966, 1st Dist) 243 Cal App 2d 113, 52 Cal Rptr 303.*

A fire department member was entitled to a new hearing before the city retirement board on his application for industrial disability retirement benefits and to appropriate findings thereon, where his application had been denied without findings, formal or informal, where the issues before the board were whether the applicant's alleged disabling injury occurred in the performance of his duties, whether he was incapacitated from the performance of his duties, and whether his refusal to submit to surgery for the purpose of removing his disability was reasonable, and where, though the record would support an adverse finding on the issue of reasonableness of failure to submit to surgery, there was no evidence to support a finding that the disability was not duty-incurred. Thus, it was impossible to determine whether the factual determinations made by the board did, or did not, support its denial of the application, and the lack of findings deprived the applicant to his prejudice of any fair or meaningful review of the decision. *Mahoney v San Francisco City & County Employees' Retirement Board (1973, Cal App 1st Dist) 30 Cal App 3d 1, 106 Cal Rptr 94.*

Where, on judicial review, it was determined that the Director of the former Department of Social Welfare had, as a matter of law, wrongly denied an application for aid to the needy disabled (former W& I C § § 13500 et seq.), to which an applicant was entitled to benefits as of a particular date (*W & I C § 11056*), there was no issue remaining on which the trial court could invade the director's discretion, and a judgment directing an award to the applicant of retroactive benefits was therefore within the scope of the court's powers in mandamus under the *CCP § 1094.5*, subd. (e). The applicant was thus entitled to such benefits retroactive to the first day of the month following her application, and was also entitled, under *Civ. Code § 3287*, subd. (a), to prejudment interest thereon, each benefit payment to be viewed, for such purpose, as vesting on the date it became due. *Tripp v Swoap (1976) 17 Cal 3d 671, 131 Cal Rptr 789, 552 P2d 749.*

Remand to a medical board was necessary where the board erroneously disqualified all of a physician's experts. Under *CCP § 1094.5(e)*, a trial court cannot sanction an administrative agency's deprivation of due process by retroactively admitting evidence to support findings made following an unfair proceeding. *Sinaiko v Superior Court (2004, 3rd Dist) 122 Cal App 4th 1133.*

69. -Penalties

Where the trial court concludes that only some of the charges against a civil service employee found to be true by the State Personnel Board are sustained by substantial evidence, the court properly remands the matter to the board for reconsideration of the penalty without again trying the employee either on the original charges or on those sustained by the court. *Nelson v Department of Corrections (1952) 110 Cal App 2d 331, 242 P2d 906.*

Determination of penalty to be imposed by administrative agency lies with agency and not with court. *Black v State Personnel Board (1955, 2nd Dist) 136 Cal App 2d 904, 289 P2d 863.*

Court having found that findings of civil service commission upholding discharge of employee were supported by substantial evidence, determination of penalty to be imposed by commission is vested in commission and not in court. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

When administrative tribunal after considering several charges against licentiate makes separate finding and imposes specific section for each offense, accused, in mandate proceeding, is not entitled to have cause sent back to administrative agency for reconsideration of penalty because court vacates administrative order as to some accusations, as would be if penalty imposed had been based on collective rather than on separate findings. *Mast v State Board of Optometry (1956, 2nd Dist) 139 Cal App 2d 78, 293 P2d 148.*

Where effect of judicial review is to reduce number of violations forming basis for penalty meted out by public administrative agency, and it cannot be known whether agency would, for reduced number of violations, have meted out same penalty, agency will be directed to set aside order and redetermine penalty, and this principle is applicable to judicial review of expulsion of physician from medical association. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

Matter of fixing penalty for violation of bail bond regulation is not for reviewing court in mandamus proceeding, but for Insurance Commissioner in exercise of his discretion. *Nardoni v McConnell (1957) 48 Cal 2d 500, 310 P2d 644.*

Where an administrative agency exercising state-wide jurisdiction has imposed a single penalty based on multiple charges of misconduct and the reviewing court holds some of them to be unsupported, the practice normally employed is to return the case to the administrative agency with a direction to reconsider the penalty; that can be done only when some of the charges are unsupported by evidence and the court cannot ascertain from the record whether the same penalty would have been imposed had the agency recognized the absence of evidence sufficient to support only a part of the charges on which the petitioner was found guilty. *Thayer v Board of Osteopathic Examiners (1958, 2nd Dist) 157 Cal App 2d 4, 320 P2d 28.*

Same limitation expressly declared in subd e that court's "judgment shall not limit or control in any way the discretion legally vested" in an administrative agency is applicable to power of Alcoholic Beverage Control Appeals Board in reviewing propriety of decision of Department of Alcoholic Beverage Control on the penalty, which 1954 amendment of Const Art XX § 22 has placed in discretion of the department. *Martin v Alcoholic Beverage Control Appeals Board (1959) 52 Cal 2d 287, 341 P2d 296.*

Where superior court upholds only some of adverse findings made by administrative board in hearings on charge against licensee, usual procedure is to send matter back to board for reconsideration of penalty that had been imposed by board; however, there will be no remand where those findings that were sustained by court are such that there can be no real doubt that on return for reconsideration, board would impose same penalty. *Sica v Board of Police Comm'rs (1962, 2nd Dist) 200 Cal App 2d 137, 19 Cal Rptr 277.*

In an administrative mandamus action, the trial court erred in setting aside penalties imposed by the State Board of Pharmacy on a retail drug corporation for false, misleading and illegal advertising, such penalties consisting of a 10-day suspension on the false and misleading advertising charge and a 30-day suspension on the illegal advertising charge, where the corporation's guilt of the violations was established on a prior appeal, where evidence in mitigation applied only to the 10-day suspension, which could not be said to constitute an abuse of discretion as a matter of law, and where evidence offered by the corporation fell far short of establishing unreasonable hardship, particularly where testimony as to probable loss was completely unsupported by any computation in terms of loss of prescription sales or pharmacists' salaries. *West Romaine Corp. v California State Board of Pharmacy (1968, 2nd Dist) 266 Cal App 2d 901, 72 Cal Rptr 569.*

In a mandamus proceeding to compel the Civil Service Commission to restore a county employee to his job, the court's order, by clear implication, if not expressly, required that the employee be restored to his job and a penalty less severe than dismissal be imposed where the court directed that a peremptory writ of mandate issue commanding the commissioners to set aside their order affirming the petitioner's summary dismissal by his supervisor and commanding them to vacate the supervisor's dismissal order and to redetermine the penalty imposed, but authorizing them to reexamine all evidence and the entire record and to impose a fair, just, and reasonable penalty for his taking of $1. *Carroll v Civil Service Com. (1970, 5th Dist) 11 Cal App 3d 727, 90 Cal Rptr 128.*

70. -Costs

Petitioners were not entitled to their costs of preparing transcript of administrative hearing under this section where they were not pervailing party, despite fact that case was remanded for purpose of redetermining penalty. *Jacobs v Department of Motor Vehicles (1958, 2nd Dist) 161 Cal App 2d 727, 327 P2d 123.*

Section does not require that petitioner pay for copy of record and that such copy be left with clerk of superior court for use by both parties. *Escrow Guarantee Co. v Savage (1963, 2nd Dist) 213 Cal App 2d 595, 28 Cal Rptr 889.*

Subdivision (a) refers to record filed in mandamus proceeding, and not to expense of procuring copy of record for private use of parties. *Escrow Guarantee Co. v Savage (1963, 2nd Dist) 213 Cal App 2d 595, 28 Cal Rptr 889.*

The costs of transcripts of hearings before administrative agencies whose orders or decisions are subject to review under *CCP § 1094.5*, relating to inquiry into the validity of administrative orders or decisions, must be allowed to the prevailing party. *Williams v Santa Maria Joint Union High School Dist. (1967, 2nd Dist) 252 Cal App 2d 1010, 60 Cal Rptr 911.*

CCP § 1094.5, subd. (a), authorizes recoupment, by the successful petitioner, of expenses incurred in preparing of a copy of the record for the mandamus proceedings, even though such expenses were incurred as a necessary step taken by petitioner to exhaust administrative remedies before application for the writ was made. *Ralph's Chrysler-Plymouth v New Car Dealers Policy & Appeals Board (1973) 8 Cal 3d 792, 106 Cal Rptr 169, 505 P2d 1009.*

Under *W & I C § 10962*, giving an applicant for public aid the right, after receiving notice of the decision of the director of the State Department of Social Welfare, to file a petition in the superior court under *CCP § 1094.5*, for judicial review of that decision, and, if the applicant obtains a favorable decision, to receive reasonable attorney fees and costs, an applicant for public assistance who was granted a peremptory writ of mandate directing the Director of the State Department of Social Welfare to issue his decision after an administrative "fair hearing" on the applicant's claim, was entitled to an award of attorney fees, where the director had not complied with federal and state regulations requiring him to issue his decision within 90 days after a request for a "fair hearing." Attorney fees are provided for by *W & I C § 10962*, in order to enable a needy person to establish through judicial proceedings his or her right to a statutory benefit, and since the remedy pursued by the applicant was occasioned by the director's inaction and was essential to make the right granted by *W & I C § 10962*, meaningful, attorney fees were properly awarded under the authority of that section. *Silberman v Swoap (1975, 4th Dist) 50 Cal App 3d 568, 123 Cal Rptr 456.*

In a class action in which a regulation of the director of the state Department of Social Welfare denying AFDC benefits to plaintiffs and members of their class was held invalid, the trial court properly ordered that the director pay specified attorney fees to each of three entities who had acted as counsel for the named plaintiffs, where plaintiffs had, after exhausting their administrative remedies, sought relief in administrative mandamus under *CCP § 1094.5*, as permitted by *W & I C § 10962*, which provides for the allowance of reasonable attorney fees, and the fees were awarded to their counsel. Thus the awards were proper irrespective of the fact that the result plaintiffs achieved was in favor of some others who were similarly entitled to benefits but who had not followed the same administrative course. *Hypolite v Carleson (1975, 1st Dist) 52 Cal App 3d 566, 125 Cal Rptr 221.*

In mandamus proceedings challenging the decision of the human resources agency dismissing petitioner from the methadone maintenance program, the trial court did not abuse its discretion in awarding petitioner the costs of the preparation of a reporter's transcript of the termination hearing, where petitioner hired a court reporter to be present and take down the testimony in stenotype, where that was later transcribed and used by petitioner, the agency, and the trial court, where the tape recording of the hearing provided by the agency was never transcribed, and where it was the trial court's view that the action of petitioner in providing for his own transcript was reasonable and necessary. Whether a particular cost is necessary or incurred in good faith is a issue for the second discretion of the trial court. *Marlow v Orange County Human Services Agency (1980, 4th Dist) 110 Cal App 3d 290, 167 Cal Rptr 776.*

The term "prevailing party," as used in *CCP § 1094.5* (if the expense of preparing the administrative record in a proceeding for writ of administrative mandate was borne by the prevailing party, it is taxable as costs), includes parties against whom litigation was commenced and later dismissed; this is true even where the plaintiff has voluntarily dismissed his action. Hence, in a proceeding for writ for administrative mandate to compel a city to reinstate a former city employee, the trial court properly awarded the city costs to recover its preparation of the administrative transcript after the employee voluntarily dismissed the proceeding, where the trial court impliedly made a finding as to which party was prevailing when it entered its judgment including costs against the employee, the employee failed to file an objection to the cost bill by filing a timely motion to tax costs as required under *CCP § 1033*, and thus the final judgment awarding

costs was entered without objection. *Santos v City of Fresno Civil Service Bd. (1987, 5th Dist) 193 Cal App 3d 1442, 239 Cal Rptr 14.*

The 1982 amendment to *CCP § 1094.5* (administrative mandamus procedure), adding a cost waiver provision for paupers as to administrative hearing records, reflects no legislative intent to deny such waivers to indigent petitioners seeking judicial review of final decisions of the 68 state agencies subject to the Administrative Procedure Act (Gov C§ 11501 et seq.). Even though Gov C§ 11523, permitting mandamus review of those agencies' administrative decisions, does not authorize such a cost waiver, the two statutes concern the same subject matter and were enacted in the same legislative session; thus, any ostensible conflict between their provisions as to waiver of costs for transcripts is reconciled by reading the two laws as one law under the rule of construction in pari materia. *Board of Medical Quality Assurance v Superior Court (1988, 2nd Dist) 203 Cal App 3d 691, 250 Cal Rptr 182.*

(2) APPEAL AND ERROR

a. GENERALLY

71. In General

Where Alcoholic Beverage Control Appeals Board reversed order of Department of Alcoholic Beverage Control denying application for an on-sale beer license, appeals board could appeal from judgment of trial court in mandamus proceeding directing it to affirm department's order. *Martin v Alcoholic Beverage Control Appeals Board (1959) 52 Cal 2d 238, 340 P2d 1.*

Where District Court of Appeal denied petition for mandate to direct superior court to set aside judgment dissolving preliminary injunction and dismissing petitioners' complaint for declaratory relief, and petition for hearing in Supreme Court, praying that such petition be deemed, in the alternative, "... one for a writ of supersedeas or an order equivalent thereto," was denied by Supreme Court without opinion, such ruling was in substance denial of supersedeas and it would be improper for District Court of Appeal to grant petition for supersedeas made after appeal from judgment had been transferred to such court. *Eden Memorial Park Asso. v Department of Public Works (1962, 2nd Dist) 207 Cal App 2d 766, 24 Cal Rptr 707.*

On remand following an appeal in an administrative mandamus action in which the appellate court directed the trial court to affirm certain findings of fact and determinations of issues of the State Board of Pharmacy with reference to charges of false, misleading and illegal advertising by a retail drug corporation, the trial court was free to act on the penalty phase of the case, where that phase was not covered by the order of the appellate court; the doctrine of the law of the case does not apply to points of law which might have been but were not presented and determined on the prior appeal. *West Romaine Corp. v California State Board of Pharmacy (1968, 2nd Dist) 266 Cal App 2d 901, 72 Cal Rptr 569.*

In an administrative mandamus action wherein no limited trial do novo is authorized by law, the trial court itself exercises an essentially appellate function in that only errors of law appearing on the administrative record are subject to its cognizance. Therefore, the trial and appellate courts occupy identical positions with regard to the administrative record and the function of the appellate court, like that of the trial court, is to determine whether that record is free from legal error. *Sierra Club v Hayward (1981) 28 Cal 3d 840, 171 Cal Rptr 619, 623 P2d 180.*

Under *CCP § 1094.5*, a decision of an administrative agency may be challenged by petition for writ of administrative mandamus. There are two standards of judicial review: substantial evidence and independent judgment. It was the intent of the Legislature to invest the judiciary with the task of making the ultimate decision as to which cases should be subject to which test. If an administrative decision substantially affects a fundamental vested right, the trial court must exercise the independent judgment test. Otherwise, the substantial evidence test should be applied. The decision as to which test to use must be made on a case-by-case basis. In determining whether a right is "fundamental" and "vested," the question is whether the affected right is deemed to be of such significance that it should not be extinguished by a body lacking in judicial power. *Malibu Mountains Recreation, Inc. v County of Los Angeles (1998, 2nd Dist) 67 Cal App 4th 359, 79 Cal Rptr 2d 25, 366.*

In an action by a city employee alleging employment discrimination in which plaintiff sought a writ of administrative mandamus (*CCP § 1094.5*), the trial court's order granting the city's motion for summary judgment, based on a finding that the doctrine of laches barred the § 1094.5 petition, was subject to de novo review. Reviewing the matter

under the deferential abuse of discretion standard was error. *Johnson v City of Loma Linda (2000) 24 Cal 4th 61, 99 Cal Rptr 2d 316, 5 P3d 874.*

Trial court erred in granting summary adjudication to an agency, and denying a city housing authority employee's petition for administrative mandamus under Cal. *Code Civ. Proc. § 1094.5(b)*, in connection with the employee's action seeking relief from the agency decision that terminated employment; although there was substantial evidence to support the trial court's finding, made pursuant to *Cal. Evid. Code§ 780(f)*, (h), that the employee knew a co-worker had been terminated from employment when the employee gave the co-worker confidential information, that determination was flawed because, in making its own evaluation of the complaint against the employee based on the record, the agency engaged in a "collective acquisition and exchange of the facts" within the meaning of *Cal. Gov't Code § 54950* of the Brown Act, and thus the agency violated *Cal. Gov't Code § 54957(b)(1)* by conducting a closed hearing on the charges against the employee without giving the employee notice of the right to be heard in person in an open session, and the fact that the agency gave the employee notice of a subsequent meeting did not cure this error. *Morrison v Housing Authority of the City of Los Angeles Bd. of Comrs. (2003, 2nd Dist) 107 Cal App 4th 860, 132 Cal Rptr 2d 453.*

72. Appealable Orders

An order denying an alternative writ of mandate brought by a substantial minority shareholder of a savings and loan association to obtain judicial review of an order of the Savings and Loan Commissioner approving the merger of three savings and loan associations was not an appealable order where the trial court made clear that it was not dismissing petitioner's petition and that its summary denial of the alternative writ sought by petitioner was without prejudice to his either thereafter amending his petition and reapplying for relief by way of ordinary mandamus or to any remedies he might have by statute, as the denial of the alternative writ neither terminated the proceeding nor finally determined the rights of the parties in the proceeding. *Gibson v Savings & Loan Comm'r (1970, 2nd Dist) 6 Cal App 3d 269, 85 Cal Rptr 799.*

In a proceeding to enforce a prior final order for restoration of a civil service employee to his job with a penalty less severe than dismissal, an order for restoration of his job without penalty of any kind constituted a major modification of the prior order and was, therefore, appealable under former CCP § 963, subd 2 (now § 904.1), providing for appeal from any special order made after final judgment. *Carroll v Civil Service Com. (1970, 5th Dist) 11 Cal App 3d 727, 90 Cal Rptr 128.*

In a mandamus proceeding to compel reinstatement of a civil service employee, an order for his reinstatement was appealable and, absent an appeal, became final; its finality was not affected by subsequent proceedings necessary to enforce it and it could not be reversed on appeal following the enforcement proceedings. *Carroll v Civil Service Com. (1970, 5th Dist) 11 Cal App 3d 727, 90 Cal Rptr 128.*

Gov C § 27280, subd. (a), providing that "[a]ny instrument or judgment affecting the title to or possession of real property may be recorded ..." did not authorize a homeowners association to record, in a county's land title records, a document asserting that homeowners were in violation of the association's covenants, conditions, and restrictions by painting their house an unauthorized color. A recordable "instrument" is one that either transfers title, "gives" a lien, or "gives" a right or duty (*Gov C § 27279*, subd.(a)), and the notice of noncompliance did none of those. Even assuming that the notice of noncompliance were an "instrument" as defined by *Gov C § 27279*, it would be recordable only if, pursuant to *Gov C § 27280*, it affected "title to" or "possession of" the real property, but the notice of noncompliance did not affect title to the property or possession. The notice simply created uncertainty about whether the association would be able to force the homeowners (or their successors) to repaint their home. *Ward v Superior Court (1997, 2nd Dist) 55 Cal App 4th 60, 63 Cal Rptr 2d 731.*

73. Duty to Show Error

On appeal from judgment in mandamus proceeding refusing to interfere with determination of city retirement board that retired police officer did not die as result of injury received in, or illness caused by, performance of his duty, it is appellant's duty to show that evidence and reasonable inferences therefrom do not support board's findings. *Cooper v Retirement Board of San Francisco (1955, 1st Dist) 131 Cal App 2d 804, 281 P2d 349.*

b. SCOPE OF REVIEW

(a) GENERALLY

74. In General

On appeal from judgment of trial court in mandamus proceeding to review action of administrative agency, reviewing court determines only whether decision is supported by record. *Yellow Cab Co. v California Unemployment Ins. Appeals Board (1961, 2nd Dist) 194 Cal App 2d 343, 15 Cal Rptr 425.*

That trial court erroneously exercises independent judgment in reviewing evidence before administrative board does not inhibit scope of review of appellate court, as appellate review is limited to evidence before such board. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

On appeal from a judgment in a mandamus proceeding under *CCP § 1094.5*, in a case in which no limited trial de novo is authorized, the function of the appellate court is to determine whether the administrative record is free from legal error. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

In an administrative mandamus review of an administrative agency's determination, the trial court is confined to the record before the agency unless petitioner shows he possesses evidence not presented to the agency which he could not have produced in the exercise of reasonable diligence, or unless relevant evidence was improperly excluded in the administrative hearing. This rule applies whether the independent judgment test or the substantial evidence test is employed to review the agency's determination. *State v Superior Court of Orange County (1974) 12 Cal 3d 237, 115 Cal Rptr 497, 524 P2d 1281.*

A decision of the state Division of Industrial Safety determining that the "short-handled hoe" is not an "unsafe hand tool" within the meaning of Cal. Admin. Code, Tit. 8, § 3316, prohibiting the use of such unsafe tools, was not a quasi-legislative act declining to promulgate a new regulation so as to be subject only to a limited judicial review to determine whether the action was arbitrary or capricious, but involved the interpretation and application of an existing regulation. In reviewing such an agency decision, a court must determine whether the agency applied the proper legal standard in evaluating the evidence before it. *Carmona v Division of Industrial Safety (1975) 13 Cal 3d 303, 118 Cal Rptr 473, 530 P2d 161.*

Where a vested fundamental right is substantially affected by a determination of a legislative agency, the trial court, on an application for a writ of mandate, must review the case under the independent judgment test, i.e., the trial court must determine whether the weight of the evidence supports the agency's findings. On review of the trial court's judgment, the Court of Appeal must determine only whether substantial evidence supports the trial court's ruling. *Reynolds v City of San Carlos (1981, 1st Dist) 126 Cal App 3d 208, 178 Cal Rptr 636.*

In reviewing a decision of the Unemployment Insurance Appeals Board pursuant to *CCP § 1094*, the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings, and inquires whether the findings of the administrative agency are supported by the weight of the evidence. On review of the superior court's judgment, the appellate court is confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial, credible, and competent evidence. However, the appellate court is not so confined if the probative facts are uncontradicted, not susceptible of opposing inferences, and, as a matter of law, compel a different conclusion from that reached by the trial court. *Lozano v Unemployment Ins. Appeals Bd. (1982, 2nd Dist) 130 Cal App 3d 749, 182 Cal Rptr 6.*

On appeal by a unified school district from a writ of administrative mandamus which set aside a Department of Education hearing officer's decision that the individualized educational program provided by the district to an emotionally handicapped child was insufficient, the school district lacked standing to challenge the use of the state administrative mandamus remedy rather than federal law *(20 USCS § 1415*(e)(2)), where the district selected that procedure, prevailed in the trial court and accepted the benefits of the judgment. Nor could the child challenge the use of § 1094.5 on appeal, where he failed to object at trial and suffered no prejudice by its use. *San Francisco Unified School Dist. v State of California (1982, 1st Dist) 131 Cal App 3d 54, 182 Cal Rptr 525.*

The trial court erred in granting a writ of mandamus to landowners who had been denied a land use permit by a city to build a residence on a lot, on the ground that one of three findings of detriment made by the city in support of the permit denial was inherently ambiguous and not supported by substantial evidence. Under the applicable zoning ordinance, a finding of nondetriment is a prerequisite to the grant of a use permit, and if the city could not make the required findings, the permit must be denied. It was thus not necessary to determine that each finding was supported by substantial evidence. The city made three specific findings which did not merely track the general language of the ordinance, and there was no need to infer findings to support denial of the use permit. At least two of the findings were adequate

and supported by substantial evidence, and therefore any defect in the other finding did not prejudice the landowners. *CCP § 1094.5*, requires that any abuse of discretion by an administrative body be "prejudicial," and Gov C§ 65010, subd. (b), requires prejudice for procedural errors in zoning and planning matters to warrant overturning the decision. *Saad v City of Berkeley (1994, 1st Dist) 24 Cal App 4th 1206, 30 Cal Rptr 2d 95.*

In accordance with *Pub Res C § 30801* and *CCP § 1094.5*, the court could not consider evidence outside the record in an appeal from the California Coastal Commission's denial of an environmental challenge to a coastal development permit. *Sierra Club v California Coastal Com. (2005, Cal) 2005 Cal LEXIS 5381*.

75. Consideration of New Matter; Matter Raised for First Time on Appeal

A petitioner may not assert for the first time on appeal, from a superior court's decision reviewing a ruling of the Retirement Board of San Francisco refusing him a pension, that he was prejudiced by not being represented by counsel before the board. *Corcoran v San Francisco City& County Employees Retirement System (1952) 114 Cal App 2d 738, 251 P2d 59.*

A petitioner may not assert for the first time on appeal, from a superior court's decision reviewing a ruling of the Retirement Board of San Francisco refusing him a pension, that the board considered evidence received after submission of the case. *Corcoran v San Francisco City & County Employees Retirement System (1952) 114 Cal App 2d 738, 251 P2d 59.*

In mandamus proceeding to compel medical association to restore physician to membership, he is not entitled to object on appeal to hearsay character of written statement prepared by witness for association concerning physician's alleged violation of association rule, in view of conference between adversaries held before statement was admitted, aimed at eliminating hearsay and opinion therefrom. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

Where petitioner, in proceeding in mandamus to review administrative order revoking license, made no constitutional objections when transcript, exhibits and photographs of things seen in his office were offered and received in evidence subsequent to decision in *People v Cahan, 44 C2d 434, 282 P2d 905,* holding evidence obtained by illegal search and seizure inadmissible, and where it was stipulated that such document might be received and considered by trial court, petitioner should not be heard to complain on appeal. *Cooley v State Board of Funeral Directors & Embalmers (1956, 4th Dist) 141 Cal App 2d 293, 296 P2d 588.*

Where, on appeal by licensees from judgment in mandamus proceeding to review determination by Department of Alcoholic Beverage Control, respondent did not appeal from judgment annulling revocation of license on one count of charges against licensees, that court was not before appellate court and claim that it was erroneously annulled by trial court could not be considered. *Garcia v Munro (1958, 1st Dist) 161 Cal App 2d 425, 326 P2d 894.*

In mandamus to compel board of city directors to annul order affirming action of zoning committee in granting a variance and exception from certain zoning ordinance provisions, it is incumbent on plaintiff to prepare and file in superior court a transcript of evidence adduced on hearing before committee and board if they wish to contend evidence was insufficient to support board's order, and failure to do so precludes attack on sufficiency of evidence on appeal from judgment denying writ. *Ames v Pasadena (1959, 2nd Dist) 167 Cal App 2d 510, 334 P2d 653.*

Even assuming, in action seeking declaration that county set-back ordinances were unconstitutional as applied to plaintiffs' lot, that action seeking administrative mandamus under this section, would have been appropriate remedy, such fact was not available to defendants on appeal as basis for reversal of declaratory judgment where they did not raise matter at any time during course of pretrial proceedings or trial itself. *Hoshour v County of Contra Costa (1962, 1st Dist) 203 Cal App 2d 602, 21 Cal Rptr 714.*

Where assertion of deprivation of due process before administrative board was not presented to or considered by trial court and was not set out as issue in pretrial conference order, it is not issue in case and cannot be raised for first time on appeal. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

A claim made for the first time on appeal, that administrative findings failed to state violations of law calling for a penalty, raises questions of law; and where the Attorney General chooses to meet rather than avoid the claim, the appellate court may appropriately consider it. *Doyle v Board of Barber Examiners (1966, 3rd Dist) 244 Cal App 2d 521, 53 Cal Rptr 420.*

In an action to compel a county board of supervisors to amend an applicable salary ordinance necessary to implement a reclassification of certain civil service employees wherein the trial court granted the peremptory writ of mandate so ordering, a contention by the employees that the writ should have been made operative on July 13, 1966, the date the classification was made, rather than on January 1, 1967, the date of the next semiannual amendments to the salary ordinance, could not be raised for the first time on appeal where pleadings uniformly sought an operative and effective date as of January 1, 1967, where it was stipulated by opposing counsel that the county had funds with which to pay a required salary increase as of January 1, 1967, while there was no evidence introduced that the county had such funds as of any other date, and where the employees counsel admitted at trial that the board had a reasonable time to pass a salary ordinance or to implement the reclassification. *Schecter v County of Los Angeles (1968, 2nd Dist) 258 Cal App 2d 391, 65 Cal Rptr 739.*

On appeal from a judgment denying a writ of mandamus to compel the State Board of Pharmacy to vacate a decision suspending a permit and licenses for unauthorized refilling of prescriptions for dangerous drugs, the question of whether former B & P C § 4211, subd (k) (see now *B & P C § 4022*) defining as dangerous "any drug which bears the legend: Caution: Federal law prohibits dispensing without prescription" when read with former B & P C § 4229, (see now *B & P C § 4063*) was unconstitutional as permitting a private person to define a crime, could not be considered, where such question was not raised in the trial court. *Arenstein v California State Bd. of Pharmacy (1968, 2nd Dist) 265 Cal App 2d 179, 71 Cal Rptr 357.*

On appeal from a judgment denying a petition for a writ of administrative mandamus (*CCP § 1094.5*), sought by teachers to set aside a decision by their school district board terminating their employment, appellants were not entitled to challenge, on grounds of insufficiency of the evidence, certain conclusions reached at the prior administrative hearings (namely, that the mandatory minimum requirements for physical education under former Ed C § 8572.5, (see now *Ed C § 51210* et seq.) would be met after the proposed reduction of that program; that the services of one of the appellants, as administrative assistant, were subject to reduction or elimination pursuant to former Ed C § 13447; and that the "ranking" of another of the appellants was lower than a certain teacher rehired by the board), where no such issues or claims had been raised by any party in the earlier proceedings before the hearing officer, or subsequently before the trial court applying the independent judgment test. *Degener v Governing Board of Wiseburn School Dist. (1977, 2nd Dist) 67 Cal App 3d 689, 136 Cal Rptr 801.*

In an administrative mandamus proceeding in which the trial court has properly exercised its independent judgment on the evidence, the trial court's factual determinations are conclusive on appeal if they are supported by substantial evidence. But if the proper scope of review in the trial court was whether the administrative decision was supported by substantial evidence, the function of the appellate court is the same as that of the trial court, that is, the appellate court reviews the administrative decision to determine whether it is supported by substantial evidence. *Lewin v St. Joseph Hospital (1978, 4th Dist) 82 Cal App 3d 368, 146 Cal Rptr 892.*

In administrative mandamus actions brought under *CCP § 1094.5*, appellate review is limited to issues in the record at the administrative level, although additional evidence, in a proper case, may be received. Accordingly, in administrative proceedings pertaining to a county's approval of a land use permit authorizing construction of an apartment complex, an opposing city's failure to raise the argument that the county abused its discretion by approving a permit which was inconsistent with the county's general plan precluded it from raising the issue in a petition for administrative mandamus. The fact the city may not have intended to avoid an administrative determination of the issue did not negate the policy reasons for refusing to allow it to raise the issue for the first time in the trial court. *Walnut Creek v County of Contra Costa (1980, 1st Dist) 101 Cal App 3d 1012, 162 Cal Rptr 224.*

On appeal by a physician and surgeon in a mandate proceeding in which the trial court upheld the doctor's suspension from practice by the Board of Medical Quality Assurance on the basis of findings of gross negligence in connection with a patient who had undergone abdominal surgery and had later died, the doctor could not successfully raise an issue of bias of a hearing panel member, where that issue was not raised before the agency or trial court. To allow the issue to be raised on appeal, when not presented before the trial court, would undermine orderly procedure on administrative mandamus. *Franz v Board of Medical Quality Assurance (1982) 31 Cal 3d 124, 181 Cal Rptr 732, 642 P2d 792.*

In a writ proceeding brought by a Native American tribe and three nonprofit corporations to invalidate the decision of the state Department of Health Services approving an environmental impact report (EIR) and license for the construction and operation of a low-level radioactive waste disposal facility in the desert, the trial court erred in finding that *CCP § 1094.5*, subd. (e), which provides for remand for reconsideration in light of newly discovered or improperly excluded evidence, justified remand for reconsideration in light of a scientific report that alleged deficiencies in the EIR,

but was submitted after completion of it. The scientific report did not constitute evidence of events which took place after the administrative decision, but was a restatement and elaboration of its authors' opinions about possible features of the site which the department had already taken into account. In context, requiring renewed reconsideration of the department's decisions in light of the authors' renewed exposition of their opinions would create a revolving rehearing, and undermine the prospect of a final decision of this matter. *Fort Mojave Indian Tribe v Department of Health Services (1995, 2nd Dist) 38 Cal App 4th 1574, 45 Cal Rptr 2d 822.*

CCP § 1094.5, subd. (e), which authorizes the court in an administrative mandamus proceeding to remand the case for reconsideration if the court finds that there is newly developed evidence, has been interpreted to apply only to the receipt of evidence of events which took place after the administrative hearing. Although remand in light of evidence that did not come into existence until after an administrative hearing is not prohibited in administrative mandamus proceedings as it is in quasi-legislative mandamus proceedings under *CCP § 1094.5*, subd. (e)), the concerns that prompted that prohibition apply equally in administrative mandamus cases. Section 1094.5, subd. (e), opens a narrow, discretionary window for additional, newly discovered evidence; routine allowance thereunder of conflicting scientific opinions created after the administrative decision would render the finality of administrative decisions uncertain and attenuated. *Fort Mojave Indian Tribe v Department of Health Services (1995, 2nd Dist) 38 Cal App 4th 1574, 45 Cal Rptr 2d 822.*

76. Findings

In a proceeding in mandamus to compel payment of a pension to the widow of a policeman, a finding that the policeman did not die as the result of an injury or disability incurred in the performance of his duty was binding on appeal, though there was no conflict in the evidence that the deceased was suffering from a pre-existing heart ailment and that such ailment was the immediate cause of death, where there was a conflict as to the fact whether previous exertions of the deceased in the performance of his official duties aggravated the heart ailment and whether such aggravation precipitated it. *Marshall v Oakland (1949) 92 Cal App 2d 593, 207 P2d 882.*

Due process of law requires a trial de novo in the superior court when the findings of a state-wide administrative agency are there attacked by mandamus; it is of the essence of a trial de novo that the court may exercise its independent judgment on the evidence, and where the trial court in such a proceeding has exercised its independent judgment on conflicting evidence, the findings of such court are necessarily conclusive on appeal. *Tamble v Downey (1951) 104 Cal App 2d 810, 232 P2d 543.*

Where Real Estate Commissioner revokes license of real estate corporation, but makes no findings that such corporation violated any section of Business and Professions Code, and appellate court is unable to ascertain upon what specific basis trial court set aside revocation of corporation's license, appellate court will conclude that commissioner's decision was not supported by any findings whatsoever. *Caro v Savage (1962, 1st Dist) 201 Cal App 2d 530, 20 Cal Rptr 286.*

Mandamus proceeding to compel defendant state Horse Racing Board to set aside its decision and order denying plaintiff permission to engage in parimutuel wagering and access to racing enclosure within its jurisdiction is not trial de novo, and lower court's findings are not binding on appellate court. *Epstein v California Horse Racing Board (1963, 2nd Dist) 222 Cal App 2d 831, 35 Cal Rptr 642.*

On appeal from a decision of the trial court on rulings of the California Unemployment Insurance Appeals Board, the conclusions of the trial court may be disregarded by the appellate court only where the probative facts are not in dispute, and those facts clearly require a conclusion different from that reached by the trial court. *General Motors Corp. v California Unemployment Ins. Appeals Board (1967, 1st Dist) 253 Cal App 2d 540, 61 Cal Rptr 483.*

On a trial court's review of the revocation of a doctor's certificate for furnishing dangerous drugs without a prescription, following a hearing in which the Board of Medical Examiners found, inter alia, that the doctor was guilty of moral turpitude, greater specificity would have been preferable than that contained in the court's contrary findings on this issue, which stated merely that the finding of moral turpitude was not supported by the evidence, but on appeal from the judgment the appellate court must assume that the trial court's finding of ultimate fact included a finding of all probative facts necessary to sustain it (*CCP § 634*), where the board waived any objection on specificity by neither requesting special findings nor objecting to the generality of those rendered, and where the reasons for its conclusion on this pivotal issue, as stated in the trial court's opinion, showed that the court had exercised its independent judgment on the evidence. *Yakov v Board of Medical Examiners (1968) 68 Cal 2d 67, 64 Cal Rptr 785, 435 P2d 553.*

A finding of the trial court in a mandamus action that plaintiff and his counsel were not guilty of laches could not be sustained on appeal, where plaintiff's allegations of excuses for the delays were denied by defendants, where neither party introduced any evidence at trial to either support or rebut plaintiff's allegation, and where the trial judge's statement that the delay involved was excusable and inadvertent could not be read as finding that the delay represented a reasonable period for the preparation and filing of the petition and service of the alternative writ. *Conti v Board of Civil Service Comm'rs (1969) 1 Cal 3d 351, 82 Cal Rptr 337, 461 P2d 617.*

In a mandamus action by dismissed school teachers, a portion of a memorandum of decision not carried into the findings of fact, conclusions of law, or judgment, was superseded by the judgment and was not itself appealable. *Burgess v Board of Education (1974, 2nd Dist) 41 Cal App 3d 571, 116 Cal Rptr 183.*

A court reviewing the decision of an administrative agency to determine whether the evidence supports the agency's findings and whether the findings support the decision may look to the record as a whole to determine what the findings were, and it is not the case that only written findings of fact, labeled as such, are sufficient. *Carmel-By-The-Sea v Board of Supervisors (1977, 1st Dist) 71 Cal App 3d 84, 139 Cal Rptr 214.*

Written findings of fact by an administrative agency that merely recite statutory language are insufficient as a matter of law. *Carmel-By-The-Sea v Board of Supervisors (1977, 1st Dist) 71 Cal App 3d 84, 139 Cal Rptr 214.*

77. Adherence to Theory Presented Below

Generally, party may not change theory of his cause of action on appeal; however, on appeal from denial by superior court of writ of mandate to annul administrative decision, court will not hold petitioner to theory disclosed in his pleading for writ where record indicates point urged on appeal was debated in court, both before judgment and on motion for new trial, shift in theory is legal one, and respondent-attorney general elects not to urge procedural objection but to meet point raised by petitioner on appeal. *Byrd v Savage (1963, 3rd Dist) 219 Cal App 2d 396, 32 Cal Rptr 881.*

Injection of a new theory on appeal from an administrative decision, though not favored, may be permitted where it embraces only a question of law and the opposite party has adequate opportunity to debate it. *Doyle v Board of Barber Examiners (1966, 3rd Dist) 244 Cal App 2d 521, 53 Cal Rptr 420.*

In a proceeding by landowners, who had demolished buildings on their property and constructed the foundation of a building project pursuant to a valid foundation permit, seeking to set aside the California Tahoe Regional Planning Agency's assertion of jurisdiction over their building project and to compel the California Department of Transportation to issue an encroachment permit allowing highway access to their property, the trial court erred in using the independent judgment standard of review. It should have used the substantial evidence standard, limiting its inquiry to a determination of whether the findings of the administrative agency were supported by substantial evidence in the light of the whole record (*CCP § 1094.5*), where the landowners' asserted right of access to a state highway did not involve a fundamental vested right. A vested right for review purposes means a preexisting right. Since the landowners had not been issued a permit for such access, they had no preexisting right. Furthermore, since the landowners had access to their property from a city street, lack of state highway access, although a commercial disadvantage, could not be construed of such an economically essential character as to be of a fundamental nature. *McCarthy v California Tahoe Regional Planning Agency (1982, 3rd Dist) 129 Cal App 3d 222, 180 Cal Rptr 866.*

To the extent that a Medi-Cal provider continued to claim depreciation reimbursement, it had to stand ready to document the historical cost underlying that current claim, even if the data at issue had been deemed true and correct for purposes of a prior report by the failure to timely audit the prior report. The court affirmed the superior court's denial of the provider's petition for administrative mandate and the finding that the provider was not entitled to reimbursement to the extent that it did not provide documentation. *Redding Medical Center v Bonta (2004, Cal App 3rd Dist) 2004 Cal App LEXIS 182.*

78. Questions Reviewable

Where trial court in mandamus proceeding to review determination of administrative board, concluded on substantial evidence that board acted within its jurisdiction and did not abuse its discretion, matter of punishment was not reviewable by appellate court. *Yanke v State Dep't of Public Health (1958, 1st Dist) 162 Cal App 2d 600, 328 P2d 556.*

On appeal from judgment denying peremptory writ of mandate to compel municipal board to set aside its order directing vacating and demolition of fifty-year-old wooden apartment-hotel building, it was not province of reviewing court to consider cautiously disclosed hope of petitioners that, with property in area being taken for extensive commu-

nity redevelopment project, if they could keep their building from falling down or burning until condemnation proceedings were instituted, they might receive award of money in payment for structure which under present judgment they must at their own expense demolish and remove. *Yen Eng v Board of Bldg. & Safety Comm'rs (1960, 2nd Dist) 184 Cal App 2d 514, 7 Cal Rptr 564.*

An appeal from a judgment granting a writ of mandamus compelling the county to issue a building permit was not rendered moot by the fact that the proposed construction had been completed, where plaintiff was aware when it constructed the building in question that the judgment of the trial court was not final and therefore proceeded at its own risk. *Selby Realty Co. v O'Bannon (1969, 2nd Dist) 2 Cal App 3d 917, 82 Cal Rptr 807.*

In the judicial review of a subdivision approval, the reviewing court is to review the approval by the administrative mandamus standard of *CCP § 1094.5*. *Kennedy v Hayward (1980, 1st Dist) 105 Cal App 3d 953, 165 Cal Rptr 132.*

(b) QUESTIONS OF LAW AND FACT

79. In General

On appeal from a judgment in a mandamus proceeding under *CCP § 1094.5*, in a case in which the trial court is authorized to conduct a limited trial de novo, the province of the appellate court is analogous to that in an ordinary civil appeal, that is, only errors of law are subject to its cognizance, and a factual finding may be overturned only if the evidence received by the trial court, including the record of the administrative proceeding, is insufficient as a matter of law to sustain the finding. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

The Los Angeles Municipal Code requires that a city council resolution reversing or modifying a determination of the Board of Zoning Adjustments must contain a finding of fact showing wherein the proposed conditional use meets or fails to meet code requirements; therefore, on appeal from a judgment denying a writ of mandate ordering a rescission of a zoning resolution, the Court of Appeal must examine the city council resolution to determine if the reasons given for issuing a conditional use permit are relevant and adequate. *Stoddard v Edelman (1970, 2nd Dist) 4 Cal App 3d 544, 84 Cal Rptr 443.*

80. Sufficiency of Evidence; Power of Appellate Court

Where it is claimed in an appellate court that evidence fails to sustain a decision rendered by a superior court in its review under this section of local board's determination, the appellate court's power begins and ends with an inquiry whether there is any substantial evidence, contradicted or uncontradicted, which in and of itself will support the superior court's conclusion. *Corcoran v San Francisco City & County Employees Retirement System (1952) 114 Cal App 2d 738, 251 P2d 59.*

In review of decision of superior court upholding determination of local administrative agency, power of appellate court begins and ends with inquiry whether there is substantial evidence, contradicted or uncontradicted, which in and of itself will support superior court's conclusion. *Riggins v Board of Education (1956, 4th Dist) 144 Cal App 2d 232, 300 P2d 848.*

Determination of whether administrative board's findings are supported by evidence must be made by trial court in first instance under substantial evidence rule, and absent such determination appellate court cannot be called on to invoke its scope of review. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Rule that when superior court has rendered its judgment on mandamus and judgment is appealed appellate court's power is governed by substantial evidence rule obtains when findings involve decision of local administrative agency, in which case appellate court is confined to evidence in agency record. *Le Strange v Berkeley (1962, 1st Dist) 210 Cal App 2d 313, 26 Cal Rptr 550.*

Where superior court has reviewed determination of local improvement district, appellate court's power begins and ends with inquiry as to whether there was any substantial evidence to support superior court's conclusion. *San Diego Gas & Electric Co. v Sinclair (1963, 4th Dist) 214 Cal App 2d 778, 29 Cal Rptr 769.*

On mandamus to review an action of the State Personnel Board, the province of the superior court, as well as of the appellate court, begins and ends with the determination of whether there is substantial evidence to support the board's decision; neither the superior court nor the appellate court can weigh the evidence; all legitimate and reasonable inferences must be drawn in favor of the findings of fact made by the board, not those made by the superior court; and the

intervening judgment of the superior court does not change the nature of the review to be made by the appellate court. *Gubser v Department of Employment (1969, 5th Dist) 271 Cal App 2d 240, 76 Cal Rptr 577.*

In reviewing an adjudicatory decision of an agency of legislative origin, the trial court, in determining whether there has been an abuse of discretion (*CCP § 1094.5*), must exercise its independent judgment and weigh the evidence, where the order or decision of the agency substantially affects a fundamental vested right. *Los Alamitos General Hospital, Inc. v Lackner (1978, 2nd Dist) 86 Cal App 3d 417, 149 Cal Rptr 98.*

Under *CCP § 1094.5*, providing for review of administrative determinations by a writ of mandamus, the reviewing court exercises its independent judgment as to the weight of the evidence where a vested right is at stake, but review by substantial evidence is sufficient where the right is not vested. *Tex-Cal Land Management, Inc. v Agricultural Labor Relations Board (1979) 24 Cal 3d 335, 156 Cal Rptr 1, 595 P2d 579.*

In proceedings by an unemployment disability compensation claimant to establish his right to benefits for a second disability claim, except where the evidence is uncontradicted, the question whether the claimant's initial disability benefit period has ended before the second disability occurs is one of fact, first for the administrative law judge and the appeals board, and thereafter for the trial court. (*CCP § 1094.5*, subd. (c).) On appeal from a mandamus judgment, however, the appellate court determines only whether the findings and judgment are supported by substantial, credible and competent evidence and whether a different result is compelled as a matter of law. *Bilyeu v Unemployment Ins. Appeals Bd. (1982, 5th Dist) 130 Cal App 3d 657, 181 Cal Rptr 837.*

Following approval by the California Coastal Commission of a local coastal program (LCP) for a large coastal development plan, several interested parties and public interest groups filed a petition for a writ of mandate challenging the LCP, and named the commission, landowners, and others as real parties in interest. The trial court was obligated to determine whether substantial evidence supported the administrative agency's findings and whether the findings supported the agency's decision. The Court of Appeal's role is precisely the same as that of the trial court. In an administrative mandamus action where no limited trial de novo is authorized by law, the trial and appellate courts occupy in essence identical positions with regard to the administrative record, exercising the appellate function of determining whether the record is free from legal error. *Bolsa Chica Land Trust v Superior Court (1999, 4th Dist) 71 Cal App 4th 493, 83 Cal Rptr 2d 850, 502.*

81. -To Support Findings and Judgment

It is court's duty to exercise its independent judgment on evidence, and its decision must be sustained on appeal if there is any credible, competent evidence to support its findings. *Tringham v State Board of Education (1958) 50 Cal 2d 507, 326 P2d 850.*

When sufficiency of evidence to sustain finding is challenged on appeal from judgment in mandamus proceeding to review order of state-wide administrative board, appellate court is obliged to accept as true that evidence, including inferences reasonably drawn from testimony, which will support finding and to reject evidence that will support contrary finding. *McMurtry v State Board of Medical Examiners (1960, 4th Dist) 180 Cal App 2d 760, 4 Cal Rptr 910.*

On appeal from a decision by a trial court in a mandamus proceeding to review an order of a state administrative agency, the question is whether the evidence, viewed in the light most favorable to the prevailing party below, sustains the challenged findings. *Ring v Smith (1970, 2nd Dist) 5 Cal App 3d 197, 85 Cal Rptr 227.*

Implicit in *CCP § 1094.5* (review of agency's decision by writ of mandate), is a requirement that the agency that renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order. Thus, an agency's findings in connection with its denial of a hospital's application for exemption from the permit requirements of former H & S C § 437.10 (see now *H & S C § 127170*) (permit for expansion or conversion project required unless project was commenced prior to statute's effective date), were insufficient to permit meaningful appellate review, where the requested exemption involved a piece of equipment that the hospital contended was a component part of a project commenced prior to the statute's effective date, and where the agency's finding that the equipment was the project under review was susceptible to the interpretation that the agency felt, unjustifiably, that it was entitled to consider component parts of a single project as separate projects for exemption purposes. *Los Alamitos General Hospital, Inc. v Lackner (1978, 2nd Dist) 86 Cal App 3d 417, 149 Cal Rptr 98.*

82. -Substantial Evidence

Ultimate power of decision in review of determination of fact by administrative board rests with trial judge, and appellate courts will not interfere with conclusion of trial court if there is any substantial evidentiary support for it. *Chenoweth v Office of City Clerk (1955, 2nd Dist) 131 Cal App 2d 498, 280 P2d 858.*

The chief issues in a review of the determination of fact by an administrative board are whether the person affected has been accorded a hearing, and whether there is substantial evidence to support the determination of the board, and evidence contrary to that supporting the board's conclusions should be disregarded; the ultimate power of decision in a review of the determination of fact by such a board rests with the trial judge, with whose conclusion appellate courts will not interfere if there is any substantial evidentiary support for it. *Chenoweth v Office of City Clerk (1955, 2nd Dist) 131 Cal App 2d 498, 280 P2d 858.*

On appeal from judgment of court in mandamus proceeding to review action of administrative agency having statewide jurisdiction, province of appellate court, with respect to sufficiency of evidence, is whether there is any substantial evidence that will support judgment. *Ashdown v State Dep't of Employment (1955, 2nd Dist) 135 Cal App 2d 291, 287 P2d 176.*

Where superior court reweighs evidence adduced at hearing conducted by statutory statewide administrative agency and makes independent findings, the only function of appellate court is to determine whether those findings are supported by substantial evidence. *Hutchinson v Contractors' State License Board (1956, 2nd Dist) 143 Cal App 2d 628, 300 P2d 216.*

Province of appellate court as to sufficiency of evidence is whether there is any substantial evidence which will support judgment, and any conflicts in evidence may be disregarded. *Beach v Contractors State License Board (1957, 2nd Dist) 151 Cal App 2d 117, 311 P2d 51*.

On appeal from decision of trial court in mandamus proceeding to review administrative order of state officer, all conflicts in evidence must be resolved in favor of prevailing party, and if there was any substantial evidence before court, contradicted or uncontradicted, which supports that decision, appellate court must accept it as true. *Post v Jacobsen (1960, 4th Dist) 180 Cal App 2d 297, 4 Cal Rptr 817.*

Appellate court, in reviewing trial court's judgment affirming findings of local, quasi-judicial administrative tribunal, will not reweigh evidence received by trial court, but is limited to determining whether there is any substantial evidence in record on appeal to support judgment. *Takata v Los Angeles (1960, 2nd Dist) 184 Cal App 2d 154, 7 Cal Rptr 516.*

On appeal from superior court's judgment in mandamus proceeding to review administrative action, where issue in trial court was sufficiency of evidence to support agency's findings, and that court has exercised its independent judgment on evidence, appellate court will view evidence in light most favorable to respondent, and will determine whether or not there is any substantial evidence, contradicted or uncontradicted, that will support trial court's findings. *Wahl v Division of Real Estate (1961, 3rd Dist) 197 Cal App 2d 97, 17 Cal Rptr 25*.

On review of order of local, quasi-judicial commission, function of appellate court, with respect to sufficiency of evidence, is to ascertain whether findings of commission and trial court are supported by substantial evidence; where trial court determines that commission's findings are not supported by substantial evidence, appellate court examines record to ascertain where there is substantial evidence to support commission's order and decision. *Borders v Anderson (1962, 2nd Dist) 204 Cal App 2d 401, 22 Cal Rptr 243.*

As to matters determined in first instance by administrative agency, appellate court's role is to ascertain whether administrative record embodies substantial evidence to support findings of administrative agency and of trial court. *Coomes v State Personnel Board (1963, 3rd Dist) 215 Cal App 2d 770, 30 Cal Rptr 639.*

On appeal from trial court's decision in mandamus proceeding to review order of administrative board, court's findings must be upheld if they are supported by substantial evidence, contradicted or not. *Garvai v Board of Chiropractic Examiners (1963, 2nd Dist) 216 Cal App 2d 374, 31 Cal Rptr 187.*

When reviewing trial court's judgment affirming findings of administrative bodies, appellate court limits itself to determining whether substantial evidence in record supports judgment. *Hope v Contractors' State License Board (1964, 3rd Dist) 228 Cal App 2d 414, 39 Cal Rptr 514.*

In appeal from decision of trial court on findings of administrative board, appellate court is bound by substantial evidence rule whether or not trial court has exercised independent judgment. In former situation appellate court is con-

fined to evidence before trial court; in latter to evidence before board. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

In reviewing a factual determination of a statewide administrative agency that derives adjudicating power from the Constitution, the function of the appellate court is the same as that of the superior court, namely, to determine whether the board's findings are supported by substantial evidence irrespective of the trial court's decision; in making such determination, the appellate court must also regard the evidence in the light most favorable to the findings of fact made *by the board* and all legitimate and reasonable inferences must be drawn in their support. *Stewart v State Personnel Board (1967, 3rd Dist) 250 Cal App 2d 445, 58 Cal Rptr 280.*

In administrative mandamus proceedings to review a decision of the Board of Medical Examiners revoking a physician's license for having violated two sections of the Health and Safety Code and for writing false prescriptions for dangerous drugs and having such drugs in his possession, the court properly found that there was substantial evidence supporting the Board's decision where the record showed that the physician had pleaded guilty to the Health and Safety Code offenses and was sentenced as charged, and where testimony was received to the effect that none of the five persons referred to in the charges ever saw the prescriptions purportedly written for them, never received the drugs called for therein, that the physician thereby obtained and possessed the drugs, and admitted writing all of the prescriptions. *Petrucci v Board of Medical Examiners (1975, 1st Dist) 45 Cal App 3d 83, 117 Cal Rptr 735.*

Where the trial court exercised its independent judgment in denying a deputy sheriff's petition for a writ of mandate by which he sought review of a decision of a county retirement board that he was able to perform the duties of a deputy sheriff, the power of the appellate court was governed by the substantial evidence rule, i.e., the determination of whether the evidence, viewed in the light most favorable to the respondent, sustained the findings of the trial court, resolving any reasonable doubt in favor of those findings. *Harmon v Board of Retirement (1976, 1st Dist) 62 Cal App 3d 689, 133 Cal Rptr 154.*

The substantial evidence test, which under *CCP § 1094.5* is the proper standard of review for a trial court examining a local administrative agency decision involving no fundamental vested right, must also be applied by an appellate court when it reviews the decision of the administrative agency and the trial court. *Carmel-By-The-Sea v Board of Supervisors (1977, 1st Dist) 71 Cal App 3d 84, 139 Cal Rptr 214.*

When a trial court is limited to the substantial evidence test in reviewing the decision of an administrative agency, the trial and appellate courts occupy identical positions with respect to the administrative record, and the appellate court must itself review the whole administrative record to determine whether the agency's decision was supported by substantial evidence. *McGue v Sillas (1978, 1st Dist) 82 Cal App 3d 799, 147 Cal Rptr 354.*

Review of actions taken by an administrative agency which is required by law to hold a hearing and perform quasi-judicial functions is under *CCP, § 1094.5*, administrative mandamus. If the action reviewed is determined to be quasi-judicial the review is limited to whether the findings of an agency are supported by substantial evidence in light of the whole record. *Karlson v Camarillo (1980, 2nd Dist) 100 Cal App 3d 789, 161 Cal Rptr 260.*

CCP § 1094.5 subd (c), provides two tests for review of the evidence in administrative abuse of discretion cases: the independent judgment rule and the substantial evidence rule. Unless a fundamental vested right is involved, the substantial evidence test is to be applied both by the trial court and the appellate court. *Walnut Creek v County of Contra Costa (1980, 1st Dist) 101 Cal App 3d 1012, 162 Cal Rptr 224.*

Under *Pub Res C § 21160*, the decision of the Energy Resources Conservation and Development Commission to prepare a negative declaration in lieu of an environmental impact report concerning proposed regulations was reviewable by administrative mandamus, (*CCP § 1094.5*). Judicial review of such a decision is limited to determining whether there was an abuse of discretion, and such abuse is established where the agency has not proceeded in a manner required by law or has reached a decision not supported by substantial evidence. The reviewing court must make an independent examination of the record to determine whether there has been such abuse. *Building Code Action v Energy Resources Conservation & Development Com. (1980, 1st Dist) 102 Cal App 3d 577, 162 Cal Rptr 734.*

In an administrative mandamus proceeding to review a license revocation, the trial court must exercise its independent judgment on the evidence. On appeal, however, the question is not whether the administrative determination was supported by the weight of the evidence, but whether there is substantial evidence in support of the trial court's findings. Where findings are neither timely requested nor made, the appellate court may properly assume that the trial court found every material fact necessary to support its judgment. Moreover, if the evidence with respect to the essential facts is not in conflict, the issues presented are purely questions of law, and under such circumstances, the appellate

court may reach its independent conclusions based on such undisputed evidence. *Aantex Pest Control Co. v Structural Pest Control Board (1980, 1st Dist) 108 Cal App 3d 696, 166 Cal Rptr 763.*

A dispute about an employer's liability for unemployment benefits affects both the claimant's and the employer's fundamental vested rights so that if either challenges a board decision by administrative mandamus (*CCP § 1094.5*) the trial court must judge independently the evidence in the administrative record. On appeal the court's findings, even when contrary to those of the board, cannot be overturned for evidentiary insufficiency if they are substantially supported. *Pacific Legal Foundation v Unemployment Ins. Appeals Board (1981) 29 Cal 3d 101, 172 Cal Rptr 194, 624 P2d 244.*

The substantial evidence test is the applicable standard of review with respect to disciplinary actions taken against state university employees. *Washington v State Personnel Bd. (1981, 3rd Dist) 127 Cal App 3d 636, 179 Cal Rptr 637.*

CCP § 1094.5, subd. (d), providing for the substantial evidence standard in reviewing cases arising from private hospital boards, is not violative of the constitutional guaranty of equal protection of laws. Even though from the standpoint of the procedure to be followed there is little distinction between what is required of public and private hospitals in respect to medical staff adjudications, the sources of the required procedures for the two types of hospitals have been consistently distinguished. Moreover, the fact, standing alone, that public hospitals may rationally be subjected to greater judicial scrutiny because they are given subpoena power and are therefore in a much better position to obtain and present the facts than private hospitals which do not enjoy subpoena power justifies treating them differently as to the scope of judicial review. *Anton v San Antonio Community Hospital (1982, 4th Dist) 132 Cal App 3d 638, 183 Cal Rptr 423.*

Application of the substantial evidence rule to administrative mandamus review (*CCP § 1094.5*, subd. (d)) of administrative decisions of private hospitals organized under the Local Hospital District Law (*Health& Saf. Code, § 32000* et seq.) does not violate equal protection, even though the actions of some public hospitals in large urban areas, not organized pursuant to that law, are subject to independent judgment review. *Gill v Mercy Hospital (1988, 5th Dist) 199 Cal App 3d 889, 245 Cal Rptr 304.*

A driver's license is a fundamental right for the purpose of selecting the standard of judicial review in an administrative mandamus proceeding (*CCP § 1094.5*) to review an administrative decision to suspend or revoke such a license. The trial court is required to exercise its independent judgment in reviewing an administrative decision of the Department of Motor Vehicles and, even if suspension is entirely appropriate, it should be ordered only after the administrative record receives that independent judgment review. It is the appellate court's duty to examine the trial court's findings to determine whether they are supported by substantial evidence. *Elizabeth D. v Zolin (1993, 2nd Dist) 21 Cal App 4th 347, 25 Cal Rptr 2d 852.*

Business owner's contract with a landowner to locate groundwater and expert testimony that the contract was for geophysical services constituted substantial evidence under *CCP § 1094.5* to support a citation under *B & P C § 7832* for practicing geophysics, as defined in *B & P C § 7802.1*, for others in California without a license in violation of *B & P C § 7872(a). Jaramillo v. State Bd. for Geologists & Geophysicists (2006) 136 Cal App 4th 880, 39 Cal Rptr 3d 170, 2006 Cal. App. LEXIS 174.*

83. -In Specific Instances

In mandamus proceeding to compel medical association to restore physician to membership, appellate court will not disturb trial court's determination that evidence sustained finding that physician violated association rule declaring that physician should not diminish another physician's patient's trust in his own physician, where rule is not unreasonable or against public policy as applied to evidence that, while within few feet of patient, not his own, who was about to undergo operation, he made statements audible to patient and husband implying that operation was unnecessary. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

Appellate court's functions with respect to sufficiency of evidence to support Alcoholic Beverage Appeal Board's determination is limited to ascertaining whether findings of board and lower court are supported by substantial evidence. *Fromberg v Department of Alcoholic Beverage Control (1959, 2nd Dist) 169 Cal App 2d 230, 337 P2d 123.*

If a trial court reviews a decision by a statewide administrative agency that is without authority to exercise judicial powers, such as the Board of Medical Examiners, the trial court must independently review the evidence, and on that court the ultimate power of decision rests; appellate review therefrom is solely to decide whether credible, competent

evidence supports the judgment. *Yakov v Board of Medical Examiners (1968) 68 Cal 2d 67, 64 Cal Rptr 785, 435 P2d 553.*

In a mandate proceeding to review a decision of the State Water Resources Control Board approving an application to appropriate water, the trial court incorrectly held that substantial evidence supported the board's imposition of a condition that the applicant permit public access to its recreational reservoirs, where the reason for the condition was that the approved diversion of water from a river would reduce its flow, which would have an uncertain effect on the "fishery," and that it would result in "diminished recreational value" of the river, where the record showed that the fishery demands of the river were adequately met by conditions to the diversion agreed to between the applicant and the State Department of Fish and Game, and adopted in substance by the board, where, though there were clear inferences that the water level of the river would be lower at certain times, there was no evidence as to the effect of such decreases in terms of present or prospective recreational use, and where it was not established that loss to the public from projected annual evaporation of water from the project equalled the loss to be suffered by the applicant through imposition of the condition. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

In a mandate proceeding to review a decision of the State Water Resources Control Board approving an application to appropriate water, the record of the administrative proceeding did not support the trial court's ruling that "estoppel and waiver" barred the applicant's challenge to a condition imposed by the board that the applicant permit public access to its recreational reservoirs, where, though one of the applicant's witnesses had first stated that there would be public access, he finally concluded that the question of such access had "not yet been determined," and where the board's order amending decision noted that the record was conflicting as to the applicant's intent with regard to public access. *Bank of America v State Water Resources Control Board (1974, 3rd Dist) 42 Cal App 3d 198, 116 Cal Rptr 770.*

Superior court erred in overturning a decision of the California Fair Employment and Housing Commission that an employer discriminated against an employee based on religion and retaliated against him for threatening to file a discrimination complaint. Substantial evidence supported the Commission's findings that the employee's attendance at a Jehovah's Witness convention was a religious observance and that the employer failed to initiate an effort to accommodate the employee's religious belief. *California Fair Employment & Housing Com. v Gemini Aluminum Corp. (2004, 2nd Dist) 122 Cal App 4th 1004.*

Substantial evidence supported a finding of a county planning department and a county board of supervisors that protection of the wetlands was not feasible in approving a winery project. *Sierra Club v County of Napa (2004, Cal App 1st Dist) 2004 Cal App LEXIS 1467.*

Trial court properly denied a courier services company's petition for writ of administrative mandamus to overturn an administrative stop work order issued by the Department of Industrial Relations, which found that the company had failed to provide workers' compensation insurance for their drivers, where substantial evidence supported the Department's conclusion that 15 of 16 drivers were employees of the company rather than independent contractors. *JKH Enterprises, Inc. v. Department of Industrial Relations (2006, 6th Dist) 2006 Cal App LEXIS 1362.*

84. -Employees' Rights

In a mandamus proceeding to compel payment of a pension to the widow of a policeman who committed suicide, the determination of the trial court, based on conflicting expert evidence, as to absence of causal connection between the officer's injury in the course of his duty and his suicide years later could not be disturbed on appeal. *Platt v Los Angeles (1946) 72 Cal App 2d 753, 165 P2d 714.*

On appeal from judgment of superior court ordering issuance of writ of mandate requiring State Personnel Board to set aside its decision dismissing civil service employee, court's function is same as that of superior court, namely, to determine whether board's findings are supported by substantial evidence. In making that determination, evidence must be regarded in light most favorable to board's findings, not those made by superior court, and all legitimate and reasonable inferences must be drawn in their support. *Hignsbergen v State Personnel Board (1966, 1st Dist) 240 Cal App 2d 914, 50 Cal Rptr 59.*

To decide whether there was reasonable cause to discharge a civil service employee, the appellate court looks to the finding of the Civil Service Commission, not to the findings of the superior court, which acts as a reviewing tribunal. Neither court weighs the evidence in such a case. *Forstner v San Francisco (1966, 1st Dist) 243 Cal App 2d 625, 52 Cal Rptr 621.*

On appeal from a decision of the trial court on rulings of the California Unemployment Insurance Appeals Board, the inferences drawn by the trial judge must be sustained if they are reasonable and supported by substantial evidence where the record is not without conflict and contains evidence subject to different inferences. *General Motors Corp. v California Unemployment Ins. Appeals Board (1967, 1st Dist) 253 Cal App 2d 540, 61 Cal Rptr 483.*

The California Unemployment Insurance Appeals Board is a statutory agency without power to make final determinations of fact. Its rulings are subject to limited trial de novo in the superior court on which the judge must examine the administrative record and exercise his independent judgment as to the value, effect and weight of the evidence, drawing his own inferences from the evidence in the record, and where the evidence is subject to conflicting inferences, those drawn by the trial court must prevail if supported by substantial evidence. *General Motors Corp. v California Unemployment Ins. Appeals Board (1967, 1st Dist) 253 Cal App 2d 540, 61 Cal Rptr 483.*

If the trial court's ruling on orders of the California Unemployment Insurance Appeals Board is challenged by appeal, and substantial evidence supports the trial court's findings of fact, the appellate court may disregard the conflicting evidence, resolve conflicting inferences in favor of the prevailing party, and affirm the judgment. *General Motors Corp. v California Unemployment Ins. Appeals Board (1967, 1st Dist) 253 Cal App 2d 540, 61 Cal Rptr 483.*

A judgment denying a writ of mandate to a former city policeman who challenged the city council's denial of his application for reinstatement and back pay had to be reversed, where the council had made no findings, formal or informal, where its action could have been on any one of several bases, and where some of the bases suggested by the evidence would not support that action; thus, remand to the city was required for another hearing followed by appropriate findings. *Hadley v Ontario (1974, 4th Dist) 43 Cal App 3d 121, 117 Cal Rptr 513.*

In a proceeding under *CCP § 1094.5*, to review a determination of the State Personnel Board the role of the appellate court is to ascertain whether the administrative record embodies substantial evidence to support the findings of the administrative agency and of the trial court. The board is required to make findings under the provisions of *Gov C § 18682*, and a failure to make the findings justifies an appropriate remand. *Robinson v State Personnel Board (1979, 3rd Dist) 97 Cal App 3d 994, 159 Cal Rptr 222.*

Where an order or decision of an administrative agency substantially affects a fundamental vested right, a reviewing court, in determining under *CCP § 1094.5* (administrative mandamus), whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its independent judgment and find an abuse of discretion if the findings are not supported by the weight of the evidence. *Los Angeles County Employees Asso. v Sanitation Dist. No. 2 (1979, 2nd Dist) 89 Cal App 3d 294, 152 Cal Rptr 415.*

One-year statute of limitations in *Gov C § 3304* barred a punitive action of downgrading an officer's pay grade position because the only disciplinary action proposed by the police department within one year of discovering the operative facts was a 20-day suspension, and the paperwork at that time eschewed a downgrade. The trial court should have granted the officer's petition for writ of administrative mandate. *Sanchez v. City of Los Angeles (2006, 2d Dist) 140 Cal App 4th 1069, 45 Cal Rptr 3d 188, 2006 Cal App LEXIS 945.*

85. -Licenses

Findings by a referee of the Division of Motor Vehicles (former Veh C § 14109) (see now *Veh C § 14105*), and by the superior court on review (*CCP § 1094.5*), that an officer had reasonable cause to believe that the driver had been driving a motor vehicle on a highway while under the influence of intoxicating liquor were supported by substantial evidence, where, prior to arresting the driver, the officer saw him drive an automobile which stopped at an intersection where the traffic signal was red, proceed about 5 feet into the intersection while the signal was red, stop again, remained stopped about 10 seconds after the light changed to green and then take off suddenly and weave back and forth from lane to lane, and where the officer, prior to arresting the driver, noticed that there was a strong odor of alcohol on his breath and that he failed a simple balance test. *Finley v Orr (1968, 2nd Dist) 262 Cal App 2d 656, 69 Cal Rptr 137.*

Findings by a referee of the Division of Motor Vehicles (former Veh C § 14109, see now *Veh C § 14105*), and by the superior court on review (*CCP § 1094.5*), that a driver was told that his driving privilege would be suspended if he refused to submit to a chemical test were supported by substantial evidence where there was evidence that the officer read to the driver a statement to the effect that he was requested to submit to a chemical test to determine the alcoholic content of his blood, that he had a choice whether the test would be of his blood, breath, or urine, and that his refusal to take a test would result in suspension of his driving privilege for six months; and there was also evidence that the officer

told the driver that the Department of Motor Vehicles required that he submit to one of the three tests. *Finley v Orr (1968, 2nd Dist) 262 Cal App 2d 656, 69 Cal Rptr 137.*

Findings by a referee of the Division of Motor Vehicles (*Veh Code, § 14109*), and by the superior court on review (*CCP § 1094.5*), that an automobile driver refused to submit to any chemical test after having been requested to do so, the evidence supported a finding that the driver refused to take the test where there was evidence that after he had been told that his driving privilege would be suspended if he did not take the test he said that he would take it, where, after the breathalizer test was explained to him, he placed the mouthpiece in his mouth, but refused to blow into it and was given four or five opportunities to do so and refused each time to blow, and where he then, on request, declined to sign a statement that he refused to take any test. *Finley v Orr (1968, 2nd Dist) 262 Cal App 2d 656, 69 Cal Rptr 137.*

On appeal from a judgment granting a writ of mandate, in proceedings under *CCP § 1094.5*, ordering the Department of Motor Vehicles to set aside a denial of an application for a motor vehicle dealer's license, the review of the factual findings of the department is governed by the rule of substantial evidence, but the ultimate legal conclusion to be drawn from the facts falls within the peculiar competence of the appellate court. *Merrill v Department of Motor Vehicles (1969) 71 Cal 2d 907, 80 Cal Rptr 89, 458 P2d 33.*

The Department of Motor Vehicles is a state agency of legislative origin; in proper cases it is given the power to revoke or suspend licenses issued by it; and when its action in suspending a license has affected the licensee's vested right to act in the capacity of a motor vehicle dealer in the conduct of its business, the superior court is entitled to exercise its independent judgment as to the weight and sufficiency of the evidence contained in the record of the hearings before the agency where the conduct of the administrative agency has been challenged by mandamus; and upon appellate review of the superior court's judgment, the reviewing court looks to the record only to see if there was substantial evidenct to support the findings and judgment of the superior court. *Val Strough Chevrolet Co. v Bright (1969, 1st Dist) 269 Cal App 2d 855, 75 Cal Rptr 363.*

On appeal from a judgment in a mandamus proceeding directing the Director of the State Department of Motor Vehicles to set aside an order suspending plaintiff's motor vehicle dealer's license for 30 days, the appellate court could not review the evidence and decide whether, as a matter of law, it established that plaintiff employed an unlicensed salesman or conducted its business from unlicensed premises where, although the evidence in the case was not in conflict, the testimony was subject to different inferences and thus did not present a question of law. *Val Strough Chevrolet Co. v Bright (1969, 1st Dist) 269 Cal App 2d 855, 75 Cal Rptr 363.*

On appeal from a judgment in a mandamus proceeding (to review the suspension of a collection agent's license by the Director of the Department of Professional and Vocational Standards under the Collection Agency Act) the "substantial evidence" test would ordinarily apply where the licensee alleges that the director's findings were not supported by the evidence adduced at the administrative hearing; and in such a case, the question for the appellate court to resolve would be whether, with all contrary evidence disregarded, there was substantial evidence in the administrative record to support the lower court's findings. *David Kikkert & Associates, Inc. v Shine (1970, 1st Dist) 6 Cal App 3d 112, 86 Cal Rptr 161.*

In a mandamus proceeding to review the suspension of a collection agent's license by the Director of the Department of Professional and Vocational Standards under the Collection Agency Act (former B & P C § § 6850 et seq., see now Cal Code Regs Title 16§ § 610 et seq.), where the licensee alleges that the director's findings were not supported by the evidence adduced at the administrative hearing, the court cannot, as to decisive facts which are undisputed, assess the "weight" of evidence thereof which is uncontradicted, nor exercise its "independent judgment" with respect to such evidence; thus the court cannot set aside an administrative decision as unsupported by the evidence where the administrative findings are supported by uncontradicted evidence, and if it does so, and there is an appeal, the appellate court, not being bound by the substantial evidence test in such circumstances, will reverse the judgment. *David Kikkert & Associates, Inc. v Shine (1970, 1st Dist) 6 Cal App 3d 112, 86 Cal Rptr 161.*

When the trial court has employed the independent judgment test in an administrative mandate proceeding, evidentiary review at the appellate level is confined to determining whether the trial court's findings are supported by substantial evidence. The appellate court focuses on the findings of the trial court, rather than those of the administrative agency, and will uphold the trial court's judgment if there is any substantial evidence in support of it. *Thompson v Department of Motor Vehicles (1980, 5th Dist) 107 Cal App 3d 354, 165 Cal Rptr 626.*

Department of Motor Vehicles hearing officer properly considered a detailed narrative in an arresting officer's unsworn reports, along with his sworn statement on the two and one-half line official report. Therefore, the superior

court should not have granted a writ of mandate and set aside the license suspension. *MacDonald v Gutierrez (2004, Cal) 81 P3d 975.*

c. DETERMINATION AND DISPOSITION OF CAUSE

86. In General

On physician's appeal from judgment denying his application for mandamus to compel local medical association to reinstate him to membership association which contended that dispute was not justiciable controversy and which did not appeal from decision of state association's council, nor petition trial court, nor appeal from that court's decision, is not entitled to have certain findings of local association's council, some of which had been upset by state council and some by trial court, revived, restored and given legal effect. *Bernstein v Alameda-Contra Costa Medical Asso. (1956, 1st Dist) 139 Cal App 2d 241, 293 P2d 862.*

A judgment denying mandamus to set aside the state real estate commissioner's revocation of real estate and business opportunity broker's license should be affirmed where the trial court found that the commissioner's decision was justified and sustained by the evidence, to the effect that the broker appropriated to his own use a down payment to which the seller was entitled. *Blue v Watson (1957, 1st Dist) 147 Cal App 2d 582, 305 P2d 911.*

Though trial court, in mandamus proceeding brought under this section, to determine validity of order by Athletic Commission revoking for cause boxing matchmaker's license, may have exceeded its prerogative by weighing evidence, this was no cause for complaint on part of petitioner who asserted this should have been done and who could have suffered no prejudice thereby. *Rudolph v Athletic Com. of California (1960, 2nd Dist) 177 Cal App 2d 1, 1 Cal Rptr 898.*

On appeal from judgment denying peremptory writ of mandate to compel Board of Police Commissioners of Los Angeles to vacate its denial of petitioner's application for dance hall and cafe entertainment permit, appellate court affirmed judgment, where two of board's findings constituted distinct grounds, under municipal code, for denial of permit, and where it appeared that board, on reconsideration, could have reached no decision other than one it had already made. *Sica v Board of Police Comm'rs (1962, 2nd Dist) 200 Cal App 2d 137, 19 Cal Rptr 277.*

Appeal from judgment denying petition for writ of mandamus requiring members of city civil service commission to disallow certain points granted applicant other than petitioner on eligible list for captain of police department should be dismissed as moot where, because of lapse of time limit prescribed in city charter, appellate court could not order that petitioner's name be placed on eligible list that had expired. *Feder v Lahanier (1962, 1st Dist) 200 Cal App 2d 483, 19 Cal Rptr 638.*

Where license of psychiatrist to practice was revoked for conviction of crime involving moral turpitude, failure of individual board members to consider transcript of criminal proceedings could not be grounds for reversal where matter was reviewed by superior court. *Bernstein v Board of Medical Examiners (1962, 5th Dist) 204 Cal App 2d 378, 22 Cal Rptr 419.*

On appeal from judgment ensuing after superior court exercised its independent judgment on evidence and sustained decision revoking teachers' credentials on ground that, in obtaining them they had sworn falsely to loyalty oath required by *Gov C § § 3100-3109*, where hearing officer, education board, and superior court erroneously took judicial notice of fact that Communist Party, during period of teachers' membership, advocated violent overthrow of government and considered testimony of expert witness conceded on appeal to have been unreliable, teachers are entitled to reconsideration of matter by superior court. *Mack v State Board of Education (1964, 1st Dist) 224 Cal App 2d 370, 36 Cal Rptr 677.*

Where the substitute method of comparing the salaries of city employees with those of private industry was inadequate, unfair and deceptive, in making comparisons with the lowest scale, use of the method by the administrative officer and the committees and city council and other defendants was unreasonable, arbitrary, and a breach of duty, requiring reversal of an order determining defendants' compliance with a writ of mandate requiring determination and the fixing of salaries for city employees. *Sanders v Los Angeles (1967, 2nd Dist) 252 Cal App 2d 488, 60 Cal Rptr 539.*

In a proceeding to enforce a prior final order requiring that a civil service employee be restored to his job, subject to the imposition of a just penalty for taking $1 from the employees' coffee fund, a further order for restoration of his job with full back pay was contrary to the law in failing to provide for offsets, such as amounts paid by the County to or for the employee's benefit after his dismissal or the employee's earnings from other employment after dismissal; therefore, such order must be reversed. *Carroll v Civil Service Com. (1970, 5th Dist) 11 Cal App 3d 727, 90 Cal Rptr 128.*

A judgment in an administrative mandate proceeding upholding the discharge of a police officer for lying to departmental investigators, required reversal where the trial court applied the substantial evidence standard of review approved by current decisional law, but where, while an appeal of the judgment was pending, the Supreme Court rendered a decision holding that an order or decision of an agency substantially affecting a fundamental vested right is to be reviewed by the trial court exercising its independent judgment on the evidence, which rule was specifically made applicable to all pending appeals. Furthermore, the appellate court could not conduct the de novo review in place of the trial court, in the interest of expediency, since it did not have the same power as the trial court in reviewing the administrative proceeding, but was limited to determining whether substantial evidence supported the trial court's findings. *Brush v Los Angeles (1975, 2nd Dist) 45 Cal App 3d 120, 119 Cal Rptr 366.*

Trial court improperly granted a driver's petition for an administrative writ of mandate, challenging a decision of the California Department of Motor Vehicles to suspend her license based on the results of a blood-alcohol test because the driver's claim that the officer who administered the test had not continuously observed her for 15 minutes before the test, as purportedly required by *Cal. Code Regs. tit. 17,§ 1219.3*, did not rebut the presumption that the test was properly administered where the time of observation by the arresting officer combined with the successive time of observation by the administering officer exceeded the 15 minutes required under § 1219.3. *Taxara v Gutierrez (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1953.*

87. Harmless and Reversible Error

In a proceeding in mandamus, the superior court is not permitted to accept evidence in addition to the record of a local administrative board possessing judicial or quasi-judicial power; it may not pass on the truth or falsity of the facts; and if there be any substantial evidence, the order of such local tribunal must be sustained; the trying of an issue de novo is prejudicial error where the local tribunal has correctly decided the issue as far as the question was one of law and where there is substantial evidence to support its findings insofar as the question is one of fact. *Greif v Dullea (1944) 66 Cal App 2d 986, 153 P2d 581.*

Where the record of the proceedings before an administrative agency is not made a part of a petition for a writ of mandate nor incorporated in the petition by reference, it is prejudicial error for the court in ruling on a general demurrer to consider the proceedings before such agency. *Kleiner v Garrison (1947) 82 Cal App 2d 442, 187 P2d 57.*

In a mandamus proceeding to compel a zoning board of appeals to annul an order granting a variance, it was prejudicial error to fail to make findings where issues of fact were raised by the pleadings and findings of fact were not waived by the parties. *Beloin v Blankenhorn (1950) 97 Cal App 2d 662, 218 P2d 552.*

A civil service employee is not prejudiced by any error in refusing him permission to summarize, in his petition for review of the state personnel board's decision, the evidence in the board's transcript, where the court conducted a full hearing and had before it the transcript of the entire proceedings before the board. *Nelson v Department of Corrections (1952) 110 Cal App 2d 331, 242 P2d 906.*

In proceeding to review action of civil service commission in discharging employee, any inconsistency between finding that all allegations of one paragraph of petition are "true," including allegation that dissenting commissioner had stated that "facts do not justify discharge," and finding that "there was substantial evidence to support each and every finding made by Commission and findings support Commission's conclusion that petitioner's discharge was justified," is not material and does not result in miscarriage of justice. *Schneider v Civil Service Com. (1955, 2nd Dist) 137 Cal App 2d 277, 290 P2d 306.*

Where petitioner waived his right to attorney at hearing before administrative board, but had aid of counsel in his hearing before trial court where same issues were again presented, no prejudicial error results. *Cooley v State Board of Funeral Directors & Embalmers (1956, 4th Dist) 141 Cal App 2d 293, 296 P2d 588.*

In appeal from administrative decision, where trial court erroneously weighed evidence adduced before board, appellant suffered no prejudice if result reached was necessarily affirmance of sufficiency of evidence to support board's findings. *Savelli v Board of Medical Examiners (1964, 1st Dist) 229 Cal App 2d 124, 40 Cal Rptr 171.*

In mandamus proceeding to have Bay Area Air Pollution Control Board regulation declared invalid, refusal of court to allow plaintiffs to present limited record of proceedings before district's hearing board, though such procedure was permitted by former H & S C § 24368.4 (see now *H & S C § 40864*) and *CCP § 1094.5*, subd (a), did not constitute reversible error where plaintiffs chose not to be prepared with transcript of testimony before board and did not request continuance to obtain such transcript, they did not attempt to demonstrate relevance or significance of absent testimony,

and it did not appear that disputed testimony, if presented, would have affected results of mandamus proceedings. *Lees v Bay Area Air Pollution Control Dist. (1965, 1st Dist) 238 Cal App 2d 850, 48 Cal Rptr 295.*

It was reversible error for a trial court to deny a teacher's petition for a writ of mandate to compel the State Board of Education to restore his life diplomas, revoked by the board under former Ed C § 13202 (see now *Ed C § § 44000* et seq), on the basis of immoral and unprofessional conduct and acts involving moral turpitude, where, although the teacher had admitted to a week's physical but non-criminal homosexual relationship with another teacher three years earlier and the trial court either found or concluded that he had demonstrated his unfitness to teach, the record before the board and before the court contained no credible, competent evidence that he had ever considered an improper relationship with any student or anyone else before or since that single incident or to support any adverse inferences from the admitted conduct as to his teaching ability or as to the possibility that the surrounding publicity might in and of itself substantially impair his function as a teacher. *Sarac v State Board of Education (1967, 2nd Dist) 249 Cal App 2d 58, 57 Cal Rptr 69.*

In a mandamus proceeding by a county challenging the evidentiary sufficiency of a referee's decision adopted by the Director of the Department of Social Welfare as to the eligibility of a recipient of aid to needy children, it was not reversible error for the trial court not to permit the county to introduce additional evidence at the hearing pursuant to *CCP § 1094.5*, where there was no constitutional question or vested right at issue justifying a trial de novo, where the record made by a recording device as required by *Welf & Inst Code, § 10956*, left much to be desired but was admitted by stipulation, and where, when viewed in its entirety with anonymous statements viewed in context, the record was not unintelligible but could be made clear by reference to the transcript. *County of Madera v Holcomb (1968, 5th Dist) 259 Cal App 2d 226, 66 Cal Rptr 428.*

It was reversible error for a reviewing court to issue a peremptory writ of mandate to set aside a disciplinary order by the Director of the Department of Professional and Vocational Standards suspending a collection agent's license under the Collection Agency Act (former B & P C § § 6850 et seq.) (see now Cal Code Regs Title 16§ § 610 et seq.), where, though the writ was purportedly based on the insufficiency of the evidence to support the director's findings, conclusions of law that the licensee had violated former B & P C § 6947, subd (k) (see now *Cal Code Regs Title 16 § § 610* et seq.),, and rule 628 of the director's regulations necessarily followed from evidence that the licensee had refused for 17 months to refund to an alleged debtor $200 and attached wages to which, as judicially determined, the licensee was not entitled and had refused for a further 14 months to make either payment despite a final judgment establishing the alleged debtor's absolute entitlement to both, and where such evidence was established by facts that were undisputed. *David Kikkert & Associates, Inc. v Shine (1970, 1st Dist) 6 Cal App 3d 112, 86 Cal Rptr 161.*

If a petition in mandamus sets forth a prima facie basis for relief, refusal to issue the alternative writ constitutes reversible error. *Turner v Hatch (1971, 2nd Dist) 14 Cal App 3d 759, 92 Cal Rptr 643.*

In mandamus proceedings involving the review of a municipality's board of pension commissioners' denial of a policeman's application for a disability retirement pension, it was reversible error for the trial court to apply the substantial evidence test, rather than making an independent evaluation of the evidence. *Craver v Los Angeles (1974, 2nd Dist) 42 Cal App 3d 76, 117 Cal Rptr 534.*

In administrative mandamus proceedings under CCP§ 1094.5, against the Department of Motor Vehicles by a driver whose license had been suspended for six months for refusing an alcohol test in violation of *Veh. Code, § 13353*, evidence of a prior erroneous suspension of the driver's license was relevant to the equitable issues before the trial court. However, where that court had seemingly overlooked the fact that during the period of the erroneous five-month suspension for violation of *Veh. Code, § 13352*, the driver was concurrently serving a six-month suspension for another violation of *Veh. Code, § 13353*, reversal of the judgment and a remand of the cause to the court for its further consideration of the record and the equitable issue presented would comport with justice and equity. *Curtin v Department of Motor Vehicles (1981, 1st Dist) 123 Cal App 3d 481, 176 Cal Rptr 690.*

SUGGESTED FORMS

Notice of Motion for Order To Produce Record of Proceedings

Cal Code Civ Proc § 1094.5

Order To Produce Record of Proceedings

Judgment Reviewing Administrative Order or Decision