

Exclusive (and/or?) Primary Jurisdiction

An Overview of Significant Cases from 2009 – 2018

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Agency Powers

- Administrative agencies have no inherent powers – only those granted to them by the Legislature.
- The Legislature often grants broad and commanding authority to administrative agencies.
- Two types of agency authority – exclusive jurisdiction and primary jurisdiction.

Exclusive Jurisdiction

- Granted by Legislature either expressly by statute using the term “exclusive jurisdiction” or inherently when a “pervasive regulatory scheme” demonstrates Legislative intent to grant exclusive jurisdiction.
- Exclusive jurisdiction is jurisdictional.

Primary Jurisdiction

- A judicial construct whereby courts are expected to yield to an agency’s expertise before ruling on disputes.
- Primary jurisdiction is not jurisdictional.
- Primary jurisdiction is “prudential.”
- Courts are not required to defer to an agency with primary jurisdiction – though they are generally expected to do so.

Exclusive / Primary Jurisdiction

- These are separate doctrines with separate implications for courts and practitioners.
- Many opinions emphasize the fundamental differences between the two doctrines.
- But ... the distinction is not always applied with absolute clarity.

Employees Retirement System of Texas v. Duenez 288 S.W.3d 905 (Tex. 2009)

- Case presents a “curious question.”
- Can a state agency demand dismissal of its own claim because it failed to exhaust administrative remedies in front of itself?



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