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Substantial Evidence Standard of Review: What is a Mere Scintilla Anyway?

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SUBSTANTIAL EVIDENCE STANDARD OF REVIEW: WHAT IS A MERE SCINTILLA ANYWAY?

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"Substantial evidence" is one of those numerous legal terms of doubtful content which may mean almost anything, but which for the sake of reasonable certainty in administration of justice should be given as definite and certain a content as possible.[2]
~E. Blythe Statson, Dean of the University of Michigan Law School, 1941

I. INTRODUCTION

Long before the substantial evidence rule was codified as part of the Texas Administrative Procedure Act,[3] it was a component of federal and Texas jurisprudence. Throughout its development, the standard has been the subject of great debate about what it means, why it exists, and whether or not it unfairly weighs toward administrative agencies.

The goal of this paper is to provide a brief discussion of the origins of the substantial evidence standard of review, and to discuss the law an administrative practitioner should be aware of in this area.

II. HISTORY OF THE SUBSTANTIAL EVIDENCE STANDARD

A. WHY IS THERE A SUBSTANTIAL EVIDENCE STANDARD?

Many commentators and practitioners have contemplated the purpose of the substantial evidence rule. But as the standard developed, many scholars theorized it served as a check to issues of separation of powers between courts (the judicial branch) and administrative agencies (the executive branch).

Speaking in broad terms, substantial evidence "marks a substantial portion of the boundary line between two

[1] The views and opinions included in this paper are solely those of the author and do not express the official position of the Office of the Attorney General or any state agency represented by the Attorney General.

[2] E. Blythe Statson, *"Substantial Evidence" in Administrative Law*, 89 PENNSYLVANIA L. REV. 1026, 1035 (1941).

[3] Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.903.

supposedly coordinate branches of government. It determines the extent to which the judiciary is under an obligation to serve as a check upon erroneous action by the administrative branch of government."[4]

"The main explanation probably is stated in the *Gulf-Atlantic*[5] decision. Administrative agencies are established by the Legislature as expert bodies exercising wise discretion in complex fields. Most of the value of the administrative process would be lost if agency determinations were subject to substitution by court judgments on the same evidence. Uniformity of treatment of the subject of regulation is vital, and independent court trials would tend to destroy it."[6]

B. FEDERAL ADMINISTRATIVE PROCEDURE ACT

Standards of review in federal courts began to evolve under federal administrative law through challenges brought under the Interstate Commerce Act under the original act of 1887.[7] "The Act stipulated that the 'reports' of the Commission should be deemed 'prima facie evidence of the matters therein stated.'"[8] But because the Interstate Commerce Act failed to provide a "meaningful" standard of review though, courts were left to develop their own.[9]

The actual term "substantial evidence" first appeared in federal statutes.[10] The term was included, in a modified form, in the Federal Trade Commission Act of 1914.[11] The 1914 act used the term "testimony" rather than "evidence," but for all intents and purposes, the terms were treated synonymously.[12] It was the courts

[4] E. Blythe Statson, *"Substantial Evidence" in Administrative Law*, 89 PENNSYLVANIA L. REV. 1026, 1029 (1941).

[5] *Gulf Land Co. v. Atlantic Refining Co.*, 131 S.W.2d 73 (Tex. 1939).

[6] Lennart V. Larson, *The Substantial Evidence Rule: Texas Version*, 5 SMU L. REV. 152, 166 (1951).

[7] E. Blythe Statson, *"Substantial Evidence" in Administrative Law*, 89 PENNSYLVANIA L. REV. 1026, 1039 (1941).

[8] *Id.* (quoting 24 Stat. 384-85 (1887), 47 U.S.C.A. §§ 13-16a (1928)).

[9] *Id.* at 1029.

[10] *Id.* at 1026.

[11] *Id.* (citing 38 Stat. 719 (1914), 15 U.S.C.A. § 45 (c) (1927), as amended 52 Stat. 1028 (1938), 15 U.S.C.A. § 45 (c) (Supp. 1940)).

[12] *Id.*

> "any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a

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