

When the Office of Administrative Hearings was established in 1989, it was the intent of the Governor and the General Assembly to create an independent agency that would conduct hearings in contested cases involving State employees and their supervisors. Just as all other agencies had final decision making authority on issues relative to their agencies, the Department of Personnel was to retain its responsibility to set and enforce State personnel policy. The final report of the Governor's Task Force on Administrative Hearing Officers emphasized that the purpose underlying the establishment of a Central Panel of Administrative Law Judges was to create "an independent fact finding tribunal and proposer of decisions without sacrificing the ultimate agency responsibility for final decision making." In addition, as indicated, the report emphasized that "agency heads will retain the ultimate decision making authority which the law mandates be theirs." The legislation which created OAH also specifically provided for the Governor to have until July 1, 1994, to exempt agencies from OAH's jurisdiction and requires an Advisory Council to recommend by January 1, 1992, which agencies should be exempted. In light of the current statute, the provisions of Senate Bill 439 appear, at a minimum, to be somewhat premature.

The ultimate impact of Senate Bill 439 is to make the Office of Administrative Hearings the final policy-making body for personnel policy in Maryland. I feel that that change is totally inappropriate. While Administrative Law Judges may be well versed in administrative processes, it is not the role of an Administrative Law Judge to set State policy in regard to personnel matters. Their function is to apply existing laws and policies to specific cases. In addition, the provisions of Senate Bill 439 are inconsistent with the practices currently in place in the 10 other states that have some form of Administrative Hearings Offices. Of those 10 states, none of the Administrative Law Judges have final decision making authority in regard to personnel matters, and three states specifically exclude the state's personnel agency from the jurisdiction of the Administrative Law Judges.

For these reasons, I am vetoing Senate Bill 439.

Sincerely,
William Donald Schaefer
Governor

Senate Bill No. 439

AN ACT concerning

Merit System - Hearings and Decisions

FOR the purpose of requiring the Secretary of Personnel to delegate authority to the Office of Administrative Hearings to hear and decide certain appeals; clarifying certain delegations of authority to the Office of Administrative Hearings to conduct certain hearings and to issue certain decisions in contested State employment cases; authorizing the Office of Administrative Hearings to issue certain final decisions; and generally relating to hearings and decisions in contested cases under the Merit System Law.