The State of South Carolina

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The Honorable James J. Reid
Commissioner, South Carolina Industrial
Commission
1800 St. Julian Place
Columbia, South Carolina 29204

Dear Commissioner Reid:

On behalf of the Industrial Commission, you have asked whether the duties of the Commission could be delegated to the courts. As I understand your question, you wish to know whether the General Assembly could, by statute, create a new court to perform the duties of the Industrial Commission or whether a constitutional amendment would be required. We would advise that, under certain circumstances, such could probably be accomplished by statutory enactment. However, because of language contained in certain South Carolina cases, caution is urged.

Article V, § 1 of the South Carolina Constitution provides:

> The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.

Pursuant to this provision, our Supreme Court has held that, absent constitutional restraint, the General Assembly possesses plenary power to create courts of uniform jurisdiction. State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980); see also, Holloway v. Holloway, 203 S.C. 339, 27 S.E.2d 457 (1943). Of course, while the General Assembly possesses the authority under § 1 to create courts, such courts once created, are within the administrative control of the Chief Justice of the Supreme Court, pursuant to Article V, § 4.

REQUEST LETTER

If a court were created by the General Assembly to carry out the duties of the present Industrial Commission as part of the unified judicial system, the principal constitutional question then raised would be that of separation of powers. Article I, § 8 of the South Carolina Constitution provides:

> In the government of this State, the legislative, executive and judicial powers shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

In construing this constitutional provision in the context of the Legislature's delegation of authority to members of the judiciary, our Supreme Court has stated:

> It has been said that the policy and intent of the constitutional system is that the courts and judges not only shall not be required, but shall not be permitted, to exercise any power or to perform any trust or to assume any duty not pertaining to, or connected with, the administering of the judicial function, and that the exercise of any power or trust or the assumption of any public duty other than such as pertains to the exercise of the judicial function is not only without constitutional warrant, but is against the constitutional mandate in respect of the powers they are to exercise and the character of duties they are to discharge... .

State ex rel. McLeod v. Yonce, 274 S.C. 81, 261 S.E.2d, 303, 306 (1979). Applying this rule, our Court has declared unconstitutional legislative acts which have attempted to delegate executive functions to members of the judiciary. See, State ex rel. McLeod v. Yonce, supra; State v. Whittington, (S.C.), 301 S.E.2d 134 (1983).

Our Supreme Court has also previously recognized that it is a "perplexing problem" to distinguish between judicial and non-judicial functions. "Some administrative bodies perform functions which are judicial or quasi-judicial while other agencies perform essentially legislative or quasi-legislative or administrative functions." Board of Bank Control v. Thomason, 236 S.C.

158, 113 S.E.2d 544, 547 (1960), citing Floyd v. Dept. of Labor and Industries, 44 Wash.2d 560, 269 P.2d 563. While these distinctions are sometimes not easy to make, certain well recognized tests are utilized in the context of whether a court may fully review the actions of an administrative agency:

> One such test is whether the court could have been charged in the first instance with the responsibility of making the decision the administrative agency must make. Another test is whether the function the administrative agency performs is one that courts historically have been accustomed to perform and had performed prior to the creation of the administrative agency. The function exercised by a reviewing court may be judicial, because relating to a subject matter which courts are accustomed to decide, or because exercised in a procedure having the characteristics of a court procedure... .

2 Am.Jur.2d, Administrative Law, § 581. Another test was set forth by Justice Holmes in Prentis v. Atlantic Coast Line, 211 U.S. 210 (1908) wherein it was stated:

> A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power... .

211 U.S. at 226.

Courts in other states have applied these tests to statutes which delegate certain functions concerning an Industrial Commission to judicial officers. Uniformly, these courts have concluded that such delegation does not violate principles of separation of powers. For example, in Gawith v. Gage's Plumbing and Heating Co., 206 Kan. 169, 476 P.2d 966 (1970), the Supreme Court of Kansas reviewed the constitutionality of a statute which delegated to the district courts of that state the authority to try a workmen's compensation proceeding de novo. Quoting at length from the Court's opinion, it was stated:

> In applying the foregoing tests we conclude from the history of workmen's compensation acts in this and other jurisdictions that a court could have been given the duty of determining whether a workmen was injured while acting within the scope of his employment and adjudicating his injuries... . [citations omitted].
>
> In England, where the first workmen's compensation act was enacted in 1897 and then revised by the workmen's compensation act of 1906, the act is now and always has been administered through the courts. Since the English acts preceded the first American workmen's compensation acts, the American compensation acts contain many of the essential features and phraseology of the British and Canadian acts... .
>
> Consequently, the courts in this state could have been charged originally with the duty of finding the facts which the director (and his examiners) under the workmen's compensation act found in this case.
>
> Historically, the function performed by the director (and his examiners) is one which the courts performed prior to the passage of the workmen's compensation act of Kansas in 1927... .
>
> It must therefore be said the functions now performed by the director under the Kansas workmens' compensation acts historically were performed by the courts, and thus can truly be classed as judicial.
>
> Applying the functions of the director of workmen's compensation to the definition of judicial power given by Justice Holmes in Prentis v. Atlantic Coastline, supra, we find that the director investigates, declares and enforces liabilities as they stand on past facts ... under existing laws (the workmen's compensation act).
>
> It seems clear to us the director of workmen's compensation in Kansas performs functions which are essentially judicial, and the office of the director should be classified as a quasi-judicial agency.

476 P.2d at 973-974. (Emphasis added.) Thus, the Court found no separation of powers violation.

In Gawith, the Kansas Supreme Court cited with approval the case of Floyd v. Dept. of Labor and Industry, supra. There, the Washington Supreme Court had, based upon the same reasoning, reached an identical conclusion to that in Gawith. The Court in Floyd noted that, as of 1954 when the decision was written, in

> ... six states and the territory of Alaska the courts directly administer the workmen's compensation laws, performing the functions which appellant here contends are not judicial and cannot be delegated to the courts in this State.

269 P.2d at 569. And as mentioned earlier, the Floyd decision was cited with approval by our own Supreme Court in Board of Bank Control v. Thomason, supra. See also, State v. Mechum, 63 N.M. 250, 316 P.2d 1069 (1957).

Thus, the general law in the area seems clear; because the functions of an Industrial Commission are typically judicial or quasi-judicial in nature, and because courts originally performed such functions (and in some cases still do), there is no separation of powers violation where the Legislature assigns such duties completely to the judicial branch. Likewise, our own Supreme Court has consistently concluded that the functions of the South Carolina Industrial Commission are quasi-judicial in nature. See, Gurley v.Mills Mill, 225 S.C. 46, 80 S.E.2d 745 (1954); Strange v. Heath, 212 S.C. 274, 47 S.E.2d 629 (1948); Schwartz v. Mount Vernon Woodberry Mills, 206 S.C. 227, 33 S.E.2d 517 (1945). While in the Schwartz case, the Court cautioned that the Commission was not a court, but an administrative agency which was a part of the executive branch of this State, the Court also recognized that the Commission possessed certain powers which are "quasi-judicial or judicial in their nature... ." 206 S.C. at 237.

Thus, it is reasonable to conclude that our Court would likewise permit the General Assembly to transfer the duties of the Industrial Commission to a court created as part of the unified judicial system pursuant to the plenary authority contained in Article V, § 1. As mentioned earlier other jurisdictions have similarly delegated the responsibility for adjudicating Workmens' Compensation claims to the courts. For example, in 1959, the Oklahoma legislature changed the State Industrial Commission to the State Industrial Court by statute; the Oklahoma Supreme Court has tacitly approved this statutory enactment. Nat. Zinc Co., Inc. v. Sparger, 560 P.2d 191 (Okl. 1977).

Moreover, any doubts which may be had are usually resolved in favor of the constitutionality of the legislation. As is generally recognized:

> ... the fact that a power is conferred by statute on a court of justice, to be exercised by it in the first instance in a proceeding instituted therein is, itself of controlling importance as fixing the judicial character of the power and is decisive in that respect, unless it is reasonably certain that the power belongs exclusively to the legislative or executive department. Every doubt will be resolved in favor of a statute conferring powers of an ambiguous character upon a judicial officer, in order that the powers so conferred may be held to be judicial.

16 Am.Jur.2d, Constitutional Law § 309. Therefore, based upon the foregoing authorities, it is reasonable to believe that our Court would conclude that the Legislature could, by statute, assign completely the duties of the Industrial Commission to presently existing courts or to a newly created court.

We would further advise caution in this area, however. Based upon the existing South Carolina cases, it is clear that our Court would look with disfavor upon assigning any duties of the Industrial Commission to our courts while the Commission remains a part of the executive branch. Indeed, in the Yonce case, the Court cautioned:

> While we have before us only the question of whether the General Assembly may direct the use of judicial manpower to preside over the Public Service Commission, it would necessarily follow that if such is permitted, circuit judges would be directed to preside over meetings at the Board of Education, the Industrial Commission, [etc.].... [Emphasis added.]

Thus, notwithstanding the decisions of other courts, it would appear that the most cautious approach would be the statutory abolition of the Industrial Commission and then the transfer of its duties to the judicial branch.

A further area for concern is the fact that our Court has previously emphasized the fact that many of the present duties of the Industrial Commission are purely administrative, rather than quasi-judicial in nature. In the Schwartz case, for example the Court described the Industrial Commission in terms which are worth quoting in full:

> What has been said from time to time in the past likening the Industrial Commission to a law court (particularly in Poole v. Saxon Mills, 192 S.C. 339, 6 S.E.2d 761, where disfigurement award of $1,250.00 for facial scars was attacked but affirmed) was valuable for the purpose of analogy and served to illustrate the various points involved on those occasions. But we have not heretofore held the Commission to be a court, and it is not. The following is from 71 C.J. 917, par. 655, Worker's Compensation Acts: "Although under some statutes it has been held that the compensation board exercises judicial functions and is a judicial body, as a general rule it has been held that such a board is an administrative body belonging to the executive department of the state government through which the state functions with regard to employees who are entitled to compensation for their injuries received in the course of their employment, or, as has been said that it is a ministerial and administrative body, and, that although some of its powers are quasi-judicial or judicial in their nature, and although it may perform some incidental judicial functions, it has no judicial power within the general acceptation of that term or in the sense in which the term is used in constitutions, and the members are not considered as judicial officers, nor as a judicial body, nor as a court of general nor even of limited common-law jurisdiction. [Emphasis added.]

206 S.C. at 237-238. Some courts have moreover, concluded that legislative nomenclature is not determinative in separation of powers analysis; in other words, the important criteria is the nature of the function the body is performing, rather than what the body is called. Wulff v. Tax Ct. of Appeals, 288 N.W.2d 221 (Minn. 1979). Thus, a court could conceivably look behind the

Legislature's denomination of any newly created "court" concluding that many of the functions presently being performed by the Industrial Commission remain administrative rather than judicial. For that reason also, caution is advised.

CONCLUSION

1. It is the opinion of this Office that a court would probably conclude that a statutory enactment would be sufficient to transfer the duties of the present Industrial Commission to a court of unified jurisdiction, created pursuant to the authority vested in the General Assembly by virtue of Article V, § 1 of the State Constitution.

2. There are however, several areas of possible concern, if such is done by simple statutory enactment. One area of concern is the fact that the Industrial Commission must not remain within the executive branch. In other words, to avoid the problems suggested by the Yonce case, the Industrial Commission, as it presently exists, within the executive branch would have to be abolished and its duties simply transferred to a newly created court.

3. One other area of possible concern remains. Even should the General Assembly create a "court" to perform the present functions of the Industrial Commission, it is still conceivable that our Supreme Court could conclude that many of the new court's duties are purely administrative and ministerial and are, in reality, executive duties. Thus, out of an abundance of caution, you may still wish to consider the possibility of a constitutional amendment to effectuate such transfer. 1/

4. In advising you herein, this Office, of course, is not commenting upon the wisdom of any proposal to transfer the

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1/ Such a constitutional amendment would not inevitably mean the creation of a constitutional court which only a subsequent constitutional amendment could abolish. The amendment could simply authorize the General Assembly to create by statute a court for the purpose of performing the duties relating to the Industrial Commission. All doubts expressed herein could thus be eliminated.

duties of the Industrial Commission to the judicial branch of government.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

RDC:djg