

1975 S.C. Op. Atty. Gen. 163 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4086, 1975 WL 22382

Office of the Attorney General

State of South Carolina

Opinion No. 4086

August 20, 1975

*1 Claude M. Scarborough, Jr., Esquire
President
South Carolina Bar
Post Office Box 11297
Columbia, South Carolina 29211

Dear Mr. Scarborough:

You have raised the following question:

Can the General Assembly require the South Carolina Bar to deposit its funds in the General Fund and receive an annual appropriation which shall, as nearly as possible, coincide with the amount of funds deposited?

Article I, Section 8 of the Constitution of this State declares that:

In the government of this State, the legislative, executive, and judicial powers of the government 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.

The Supreme Court of this State, in the case of [State v. Ansel](#), 76 S.C. 395, 57 S.E. 185 (1907), stated that each branch of the government of this State is supreme as to matters within its own sphere of action.

A distinct line of demarcation among these respective spheres of action does not exist, and for that reason the line must be drawn and redrawn as the peculiarities of each situation demand. The three branches of government must, of course, work together to effectively meet the various needs of the people of this State, and occasionally in doing so, one branch will exceed the limits of its sphere of action and encroach upon the duties and responsibilities of another branch.

Inherent in each branch of government, however, is the authority to do that which is reasonably necessary for its proper functioning and administration, and to maintain itself against encroachment by another branch. Such inherent power in the judiciary has been recognized by the United States Supreme Court. See, e.g., [Ex Parte Peterson](#), 253 U.S. 300 (1920); [New York Times Co. v. U.S.](#), 405 U.S. 713, 752 n. 3 (1971); [Wood v. Georgia](#), 370 U.S. 375, 383 (1962) (dictum). In a 1971 case the Supreme Court of Pennsylvania stated that these inherent powers of the judiciary to maintain itself against encroachment by another branch include the authority to determine what funds are reasonably necessary for its efficient and effective operation and to compel the executive and legislative branches to provide these funds. [Commonwealth ex rel. Carroll v. Tate](#), 442 Pa. 45, 274 A.2d 193 (1971). This broad scope of the inherent authority of the judiciary as defined in [Carroll](#) has been reaffirmed in the courts of ten states, and specifically in the Supreme Court of Appeals of West Virginia in [State ex rel. Brotherton v. Blankenship](#), 207 S.E.2d 421 (1973).

One of the duties of the judiciary is to determine when one branch of government has exceeded its authority and encroached on the sphere of action of another branch. See generally, [State ex rel. Edwards v. Query](#), 37 S.E.2d 241, 207 S.C. 500 (1946); [Doran v. Robertson](#), 27 S.E.2d 714, 203 S.C. 434 (1943); [State ex rel. Edwards v. Osborne](#), 11 S.E.2d 260, 195 S.C. 295 (1940).

*2 Article V, Section 4 of the Constitution of this State states in part:
The Supreme Court shall have jurisdiction over the admission to the practice of law . . .

To carry out this responsibility, our Supreme Court has promulgated certain rules and regulations governing the practice of law and has created the South Carolina Bar as an administrative agent to insure the advancement of the administration of justice throughout the State. Rule III(b) of the Supreme Court Rules Governing the South Carolina Bar deals with the budgetary requirements of the Bar by establishing a licensing fee for Bar membership and providing for the distribution of all such membership fees.

The proposal of the State Budget and Control Board to have the Bar deposit its funds in the General Fund and receive an annual appropriation which will, as nearly as possible, coincide with the amount of funds deposited, in my opinion, contains the potential for conflict with Rule III(b). The Supreme Court has the authority to determine that such an action exceeds the authority of the Legislature and encroaches on one of its spheres of action by impairing or destroying the efficient administration of its responsibility to regulate the admission to the practice of law. Should the Supreme Court make such a finding, it could exercise its inherent power and resist such an encroachment.

Should the Supreme Court find that a requirement by the Legislature that the South Carolina Bar deposit its funds in the General Fund and receive an annual appropriation coincident with the amount of funds deposited impairs or destroys the efficient administration of its responsibility to regulate the admission to the practice of law, it would, in my opinion, be authorized to exercise its inherent power and disregard that requirement.

With kind regards,

Daniel R. McLeod
Attorney General

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