

Attorneys-Bar Integration

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RECENT DECISIONS

Attorneys—Bar Integration.—In *Integration of the Bar Case*, 11 N.W. (2d) 694 (Wis. 1943), the Integrated Bar Law¹ was declared validly enacted and constitutional. The case was instituted by order of the court for reasons stated in *Goodland v. Zimmerman*,² because of the desirability of an immediate and final determination of the validity of the law, and the special interest to the court, since the bill is in the form of a direction to the court to put into effect the organization of the Bar.³

The case deals primarily with the relationship between the two branches of government, the legislative and the judicial. In determining whether the bill was validly enacted, the court delineated the limits of judicial regulation of legislative procedure.⁴ The court reaffirmed the "journal rule": namely, that the journal of the legislative body may be used to show that the enrolled bill is erroneous.⁵ The journal, however, cannot be impeached by oral testimony, or by any notes or memoranda.⁶ In discussing the practical reasons for this doctrine, the court declared that if oral testimony were admissible to determine the validity of an enactment, it would lead to uncertainty in the law; and that reformation of the journal by the court on the basis of oral testimony would amount to an interference with the legislative department. The court also upheld the legislative practice by which "paired" members are regarded as absent, even though there would not be a requisite two-thirds were they counted as present.

In considering the constitutionality of the law, the court discussed the relative power of the legislature and the judiciary over the Bar.⁷

¹ Chapter 315, Session Laws of 1943.

² 243 Wis. 459, 10 N.W. (2d) 180 (1943).

Goodland v. Zimmerman was an action by the governor to enjoin the secretary of state from publishing the Integration of the Bar Bill. *Held* a court has no jurisdiction to enjoin legislative process; and the governor had no "interest" sufficient to entitle him to maintain suit.

³ Similar order in *In Re Appointment of Revisor of Statutes*, 204 Wis. 501, 236 N.W. 717, (1931).

⁴ See *Judicial Regulation of Legislative Procedure in Wisconsin*, Wis. Law Rev., 1941, No. 4, July, '41.

⁵ *Loomis v. Callahan*, 196 Wis. 518, 220 N.W. 816, (1928).

⁶ *Auditor General v. Menominee County*, 89 Mich. 552, 51 N.W. 483 (1891). See 40 L.R.A., p. 32.

⁷ States have taken various positions on the matter. Some few subscribe to the theory that the legislature may prescribe the rules for admission to the bar and for the regulation of attorneys, while the court enforces the decisions of the legislature. *Re Applicants for License to Practise Law*, 143 N.C. 1, 55 S.E. 635, (1906). Other courts refer to the inherent power of the judicial branch over the bar. *In re Day*, 181 Ill. 73, 54 N.E. 646, (1899). The third position includes the Wisconsin holding, that the legislature and the courts have a dual jurisdiction. *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646, (1911). *Re Leach*, 134 Ind. 665, 34 N.E. 641, (1893). *In re Bruen*, 102 Wash. 472, 172 Pac. 1152, (1918).

See 4 Texas Law Rev. 1.

The position taken in *In re Cannon*⁸ was affirmed, namely, that the ultimate control of the Bar rests with the judiciary,⁹ although the legislature may enact regulatory measures under the police power.¹⁰ The source of the power of the judiciary is purportedly inherent, in that attorneys are the officers of the court.¹¹ Therefore, although the legislature may set out rules for barristers in the interests of the general welfare, such measures are always subject to review as to whether they are adequate¹² or embarrassing to the court.¹³

Under this dual jurisdiction, integration of the Bar may be initiated by either the judiciary or the legislature; the former, under the inherent power¹⁴; the latter, as an act conducive to the public interest.¹⁵ The court interprets Chapter 315 as a declaration by the legislature that the integration of the Bar will promote the general welfare. It is obvious that there is no delegation of legislative power to the Supreme Court, since that body itself could have initiated Bar Integration. The more delicate question, however, concerns the form of the bill, since it is worded: "The Supreme Court shall"—provide for organization and government of the State Bar Association. It is clear that this could not be construed as an order since one branch of government cannot issue a mandate to another as to matters within the power of the other branch. Nevertheless, the suggestion that the bill be treated as a "memorial" invoking the power of the court was not adopted. The court regarded the act as more than a mere suggestion, basing its decision on the customary deference of the judiciary to legislative enactments which do not embarrass the court or impair its constitutional function.¹⁶

Thus, while the Supreme Court of Wisconsin has in no way relinquished its power to control the Bar to the legislature, it has allowed the legislature to take the initiative in the matter of Bar Integration.

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⁸ 206 Wis. 374, 240 N.W. 441 (1932).

⁹ Rocky Mt. L. Rev. 12:209, Ap '40.

¹⁰ Wis. L. Rev. 8:74-6 D '32.

Marq. L. Rev. 16:213-215 Ap '32.

¹¹ *In re Cannon*, *supra*.

¹² In 1849, Ch. 152 of the Laws of 1849 was enacted, stating that any resident of the state showing good moral character should be admitted to practise as an attorney. This law was disregarded by the courts. Chief Justice Ryan discusses this statute in *In re Goodell*, 39 Wis. 232, 20 Am. Rep. 42 (1875).

¹³ *In re Janitor of the Supreme Court*, 35 Wis. 410 (1874).

¹⁴ 114 A.L.R. 151 at 161.

¹⁵ *State Bar of Oklahoma v. McGee*, 148 Okla. 219, 298 Pac. 586 (1931).

¹⁶ *In re Goodell*, *supra*.

In re Goodell, 48 Wis. Appendix, 693, 81 N.W. 551 (1879).