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Constitutional Law: The Inherent Power of the Couts to Appropriate Money for "Reasonably Necessary" Expenses

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Constitutional Law: The Inherent Power of the Courts to Appropriate Money for "Reasonably Necessary" Expenditures—"In the absence of prohibitive legislation, courts have the inherent power to provide themselves with appropriate procedures required for the performance of their tasks."[1] The case of *Commonwealth ex rel. Carroll v. Tate*[2] is an example of a court's use of its inherent power. The Court of Common Pleas of Philadelphia County had submitted requests for funds to the Philadelphia City Council. These requests were reduced from $19 million to $16 million by the executive branch of the local government and subsequently passed by the legislative branch. The court instituted a suit by a complaint in mandamus to compel the executive and legislative branches to appropriate the additional funds requested.

Two fundamental questions were involved in the suit: (1) does the judicial branch of government have the inherent power to determine what funds are reasonably necessary for its efficient and effective operation, and (2) if it has this power, does it have the power to compel the executive and legislative branches to provide the necessary funds? The Supreme Court of Pennsylvania answered both of these questions in the affirmative.

It should be recognized immediately that this inherent power is not an unlimited power. The very concept of inherent power in the courts carries with it the implication that its use is for occasions not provided for by established methods.[3] In essence, courts use their inherent power when the powers which they wish to exercise are not specifically granted to them in the appropriate constitutions but are related to the function which the courts must carry out.

> The inherent power of the courts is undoubtedly one of almost unlimited application since the courts themselves are the ones to say what that power is, but the use of inherent power has been and should be exercised with utmost caution. This is particularly true if the use of inherent power will conflict with the legislative power to appropriate.[4]

This applies aptly to the case at hand, for here is a situation where the court's inherent power does conflict with the legislative power

1. *Ex parte* United States, 101 F.2d 870 (7th Cir. 1939), *aff'd*, 308 U.S. 519 (1939).
2. 442 Pa. 45, 274 A.2d 193 (1971).
3. State *ex rel.* Hillis v. Sullivan, 48 Mont. 320, 137 P. 392 (1913).
4. 14 AM. JUR. *Courts* § 171 (1934).

to appropriate.

In *Tate,* the Pennsylvania Supreme Court recognized that the branches of government were co-equal; however, it stated that the line of demarcation "between the Executive, the Legislative, and the Judicial, and their respective jurisdiction and powers has never been definitely and specifically defined."[5] The court went on to add that the "co-equal independent Judiciary must possess rights and powers co-equal with its functions and duties, including the right and power to protect itself against any impairment thereof."[6]

In *Knox County Council v. State ex rel. McCormick,*[7] the Indiana Supreme Court also indicated that a court's inherent power should be used to guard against any impairment.

> Courts are an integral part of the government, and entirely independent; deriving their powers directly from the Constitution in so far as such powers are not inherent in the very nature of the judiciary. A court of general jurisdiction, whether named in the Constitution or established in pursuance of the provisions of the Constitution cannot be directed, controlled, or impeded in its functions by any of the other departments of the government. The security of human rights and the safety of free institutions require the absolute integrity and freedom of action of courts.[8]

Because of the system of checks and balances established by the democratic system and also the independent feature of each branch of government, no one branch should be able to control or influence another branch of government. This influence could take the form of cuts in requested funds for any one branch, especially since fiscal policies are controlled by the legislature.

> Our sense of justice tells us that a court is not free if it is under financial pressure, whether it be from a city council or other legislative body, in the consideration of the rights of some individual who is affected by some alleged autocratic or unauthorized official action of such a body. One who controls the purse strings can control how tightly those purse strings are drawn, and the very existence of a dependent. Justice, as well as the security of human rights and the safety of free institutions require free-

5. 442 Pa. at 51, 274 A.2d at 197.

6. *Id.* at 52, 274 A.2d at 197.

7. 217 Ind. 493, 29 N.E.2d 405 (1940).

8. *Id.* at 512, 29 N.E.2d at 413, quoting Board v. Albright, 168 Ind. 564, 578, 81 N.E. 578, 582-83 (1907).

> dom of action of courts in hearing cases of those aggrieved by official actions, to their injury.[9]

In order for a court to compel appropriation of the needed funds, the lower court has the burden of proving that its requests are reasonably necessary. To be reasonably necessary not only must the need be practical rather than relative, but it must be shown that the funds are needed for the efficient and effective administration of justice. In *Tate,* the judges documented their requests by showing a specific breakdown of each and every request to be considered. These requests were then weighed against the factors that the court felt were important in considering what are reasonably necessary expenditures. The court took into consideration such things as sufficient funds for adequate staffing of the courts, reasonable salaries for judicial personnel, necessary court administration services and funds for the maintenance or construction of essential court facilities. Viewed in this light, the inherent power of the court to require appropriation of funds clearly is not an unlimited power.

The court must prove that these funds are reasonably necessary for the efficient and effective operation of the court. Considering that funds for most projects are limited, this test of "reasonable and necessary for the efficient and effective operation of the court" seems realistic; however, what does the court view as reasonably necessary expenditures? The addition of more judges or courts in jurisdictions facing severe backlogs might be considered reasonably necessary, but some expenditures in the past have bordered on the ridiculous. As noted in *In re Surcharge of County Commissioners,*[10] the court's inherent power has been used and expense incurred; (a) to feed and lodge jurors; (b) for attendance of physicians upon persons who have become ill while impaneled; (c) for the transfer of jurors; (d) for appointment of custodians of ballot boxes; and (e) for the appointment of bodyguards. Most of the recent cases deal with the hiring and compensating of court personnel.[11]

It is also relevant that the judiciary is not the only arm of

9. Carlson v. State *ex rel.* Stodola, 247 Ind. 631, 633-34, 220 N.E.2d 532, 534 (1966).

10. 12 Pa. D. & C. 471 (1929).

11. *See* Carlson v. State *ex rel.* Stodola, 247 Ind. 651, 220 N.E.2d 532 (1966); Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436 (1969); State *ex rel.* Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. 1970).

government that needs more funds. Available funds must be apportioned on the basis of need—the main reason why the court must prove that its requests are reasonably necessary for the court's efficient and effective operation. When speaking of funds, one should examine the comparisons between the amount of funds allocated to the judiciary as opposed to the other branches and agencies of government, both federal and state. In 1947, costs for the judiciary were 1/19 of 1% of the total federal budget. Current figures (1965-66) show that the judiciary's budget is just 1/17 of 1% of the total federal budget. Twenty years shows little change. Costs of the federal judiciary in 1963 were $66 million. Contrast this with the $50.9 billion spent by the Department of Defense in the same year. Percentages for states and counties, on the whole, average better than those of the federal government. In 1964, states allocated 6/10 of 1% while counties allocated approximately 6.3% of their total budgets for judicial functions.[12]

Assuming the court does have the inherent power to determine that funds are reasonably necessary for the efficient and effective operation of the court, should it then be able to compel payment of these funds? This question brings into focus numerous other questions which should be considered. What is "reasonably necessary" in view of the scarcity of public funds and ever increasing expenses? In conjunction with this question, it must be remembered that a higher court decides if the lower court's requests are reasonably necessary. If the requests are adjudged to be reasonably necessary but there are no available funds, there is an additional problem. Can the court force the legislature or executive branches of government to raise more money, or should the court be able to raise money by levying taxes or fees?

A problem related to the question which arose in the present case would occur if the executive branch of government submitted a request for funds which the legislature denied. Again, it would be up to the judiciary to decide if these requests were reasonably necessary. In such a case would the judiciary be inclined to find favorably for the executive branch? Justice Hale of the Washington Supreme Court stated that "the Judiciary should recognize that other branches of government . . . are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."[13] He went on to add:

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12. 50 J. AM. JUD. SOC'Y 296 (1967).

13. Hendrix v. City of Seattle, 76 Wash. 2d 142, ____, 456 P.2d 696, 704 (1969).

> Courts must thus operate under a degree of restraint which, while assuring to each person every natural right and every right vouchsafed him by the constitutions, does not enlarge upon those rights in such a way as to disparage the constitutional powers of the legislative and executive branches or abridge their constitutional capabilities.[14]

So although some states may agree that the court does have the inherent power to appropriate funds, not all of these states are in complete agreement as to the use of such power.[15]

A solution for the problem of lack of funds seems to be supplied in Pennsylvania by the Judiciary Article of 1968. In essence, it provides that the financial responsibility for the operation of the courts should be taken over by the state rather than by counties and municipalities.[16] This would take some of the financial burden off the counties and cities.

Another possible solution is that suggested in *Judges for the Third Judicial Circuit v. County of Wayne.*[17] There the court stated that the "inherent power of courts is not exhausted when needs of administration of justice have been declared and urged on legislative councils," since, in a limited area, "courts have the inherent power to bind the State or the county contractually" with respect to payment of judicial expenses.[18] This, in effect, could mean that even if funds were not allocated to the judiciary it could still receive necessary services and supplies merely by entering into contracts with others. Then, when the funds ran out, the state would be forced to pay based on a contractual obligation. There probably would be the test of reasonableness and necessity placed on the formulation of the contracts however.

Although Wisconsin's court system is financed by litigants, municipalities, counties, and the state,[19] similar problems concerning reasonably necessary expenditures can be found.

Early in the history of this state, it was established that courts

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14. *Id.*

15. *See* cases cited note 10 *supra. See also* Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

16. Weis, *A New Name and a New Financial Policy for the Courts,* 41 PENN. B.A.Q. 189, 191 (1970). Supposedly this move would result in an increase in efficiency and in the further independence of the judiciary.

17. 383 Mich. 10, 172 N.W.2d 436 (1969).

18. *Id.* at ____, 172 N.W.2d at 440.

19. Hallows & DeWitt, *The Need for Court Organization,* 1954 WIS. L. REV. 376.

of record had an inherent power to appoint such assistants as they deemed necessary to expedite and properly conduct judicial business.[20] A court's power to determine its requirements for functioning efficiently and performing its duties was again considered in *In re Court Room*,[21] in which a circuit court had held that Milwaukee County had to provide it with suitable quarters. The supreme court agreed, holding that in order to preserve the full and free exercise of the judicial functions of the court, the circuit court could demand reasonable quarters. Finally, in the case of *State ex rel. Reynolds v. County Court*,[22] wherein a Kenosha county judge had an air conditioner installed because the heat in the courtroom made it difficult to conduct hearings, the supreme court held that this was a matter of necessity. Although the question wasn't raised in the case, the supreme court held that the court had the power to determine the necessity for air conditioning.

In view of these cases, it would appear that Wisconsin subscribes to the position that if an expenditure is reasonably necessary for the court's efficient and effective operation, funds may be allocated for it by judicial order.

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Municipal Corporations: Recovery From Municipality for Value of Services Furnished Without Compliance with Statutory Bidding Requirements—The Wisconsin Supreme Court decided in *Blum v. City of Hillsboro*[1] that the plaintiff contractor had a cause of action for unjust enrichment against the defendant municipality as a result of services performed under an amended municipal contract which, as amended, was rendered invalid for failure to comply with the procedure required by the competitive bidding statute.[2] The

20. *In re* Janitor of Supreme Court, 35 Wis. 410 (1874).
21. 148 Wis. 109, 134 N.W. 490 (1912).
22. 11 Wis. 2d 560, 105 N.W.2d 876 (1960).

1. 49 Wis. 2d 667, 183 N.W.2d 47 (1971).
2. WIS. STAT. § 62.15(1) (1969) provides:
All public construction, the estimated cost of which shall exceed $1,000 shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.