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Constitutional Law - Separation of Powers

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Recent Decisions

CONSTITUTIONAL LAW—SEPARATION OF POWERS—The Pennsylvania Supreme Court has held that the judicial branch has inherent power to determine reasonably necessary funds for its efficient and effective operation.

Commonwealth ex rel. Carroll v. Tate, 422 Pa. 45, 274 A.2d 193 (1971).

The judges of the Common Pleas Court of Philadelphia prepared their budget for 1970-1971 requesting \$19,706,278. They submitted this budget to the mayor for his approval. After several meetings with the representatives of the court, the mayor reduced the budget to \$16,488,263, and sent it to the city council. Before the city council, the representatives of the court again argued for the inclusion of the money deleted by the mayor.¹ However, the city council approved the mayor's budget.

The judges brought a mandamus action in the common pleas court to force the city council to appropriate and pay the additional funds. They also petitioned the supreme court to assign a judge, other than a Philadelphia Common Pleas Court judge, to hear the case. Due to a conflict of interest, no judge of the common pleas court could hear the case. The supreme court specially designated a judge of the superior court to hear and decide the case. In a pre-trial order, the judge of the superior court ruled that the common pleas court judges had the burden of proving that the additional funds were reasonable and necessary. The superior court judge compelled the payment of the additional funds, but reduced the amount initially requested by the judges since they had only partially met the burden.

Both parties appealed to the commonwealth court. Thereafter, a petition was filed by the common pleas court judges, and the supreme court assumed plenary jurisdiction.² The superior court judge's decision was affirmed. The supreme court reasoned that the judicial branch of government, in order to maintain and protect its co-equal independence

1. The judges at this time also requested an additional \$3,000,000 which they later deleted.

2. The judges petitioned the supreme court to take plenary jurisdiction under PA. STAT. ANN. tit. 17, § 211.205 (Supp. 1971).

with the executive and legislative branches, must possess the power to determine the amount necessary for its efficient operation and to compel the payment of those funds.³ As a result of this decision the judicial branch now has broad power to prepare a budget and compel payment of it.⁴

The judicial branch's attempt to protect itself began when it was recognized that the judiciary, under a republican form of government, would be a weak and inferior branch unless it had the ability to enforce its demands.⁵ The judiciary first compelled payment of rents for rooms for jurors.⁶ It then recognized that the legislature could not decrease a judge's salary;⁷ that the legislature could not order a new trial;⁸ that a prothonotary must be paid for rooms rented by him in the pursuit of his duties;⁹ that judges have a right to receive increases in salary;¹⁰ and that judges may hire stenographers,¹¹ pay a handwriting expert,¹² and increase the salaries of court administrative personnel.¹³

The above decisions were based upon the judiciary's "inherent rights and powers to do all things that are reasonably necessary for the administration of justice."¹⁴ In *Carroll* the supreme court reasoned that the co-equal independent status of the judiciary could only be protected from impairment or destruction if the judiciary had the inherent power to force payment of funds which are reasonably necessary to fulfill its mandated responsibilities.¹⁵ The extraordinary writ of mandamus was used to prevent the legislature from strangling the judiciary by disallowing the funds which the judiciary must have to exist.¹⁶ The supreme

3. Of the seven judges on the supreme court, one judge took no part in the decision, three judges wrote or agreed with concurring opinions and one judge wrote a concurring and dissenting opinion.

4. The logical extension of this decision is that the Pennsylvania Supreme Court could compel payment of its own budget.

5. Murray, *Chief Justice Gibson of the Pennsylvania Supreme Court and Judicial Review*, 32 U. PITT. L. REV. 127 (1970).

6. *Commissioners v. Hall*, 7 Watts 290 (Pa. 1838).

7. *Hepburn v. Mann*, 5 W. & S. 403 (Pa. 1843).

8. *DeChastellux v. Fairchild*, 15 Pa. 18 (1850).

9. *McCalmont v. County of Allegheny*, 29 Pa. 417 (1857).

10. *Commonwealth v. Mathues*, 210 Pa. 372, 59 A. 961 (1904).

11. *In re Surcharge of County Commissioners*, 12 Pa. D. & C. 471 (C.P. Lackawana Co. 1929).

12. *Edwards v. Prutzman*, 108 Pa. Super. 184, 165 A. 255 (1933).

13. *Leahy v. Farrell*, 362 Pa. 52, 66 A.2d 577 (1949).

14. *Commonwealth v. Brownmiller*, 141 Pa. Super. 107, 14 A.2d 907 (1940).

15. The Pennsylvania Constitution enumerates the mandated responsibilities:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

PA. CONST. art. 1, § 11.

16. See *Hepburn v. Mann*, 5 W. & S. 403, 419 (Pa. 1843) where the supreme court

court refused to consider the financial plight of Philadelphia in determining whether the funds were reasonably necessary. The need for an independent judiciary, which is mandated by the constitution, outweighed any consideration of the city's financial problems.

This problem has arisen in only a few states.¹⁷ The most notable case is *Carlson v. Stodola*.¹⁸ The facts and issues presented in *Carlson* are strikingly similar to those of *Carroll*, and *Carlson's* ruling is identical to *Carroll's*. Pennsylvania and Indiana, however, are the only states which have taken such a broad view of the judiciary's power to protect itself.

The supreme court in *Carroll* misapplied the precedents relied on in reaching its conclusion. The Pennsylvania cases relied on involved specific items necessary for the functioning of the court, whereas *Carroll* involved a general appropriation. The prior cases also were limited to the incurring of a debt in order to compel payment.¹⁹ The very nature of a debt implies that a contractual obligation has been incurred which is completely absent here. This limit on the power of a court to compel payment of funds was not even considered in this decision. For additional support, *Carroll* relies on the position that the inherent power of the judiciary enables a court to incur and order payment of the expenses necessary for the proper functioning of the court.²⁰ Again, however, this position says nothing about the ability of a court to determine what future funds are necessary.

The supreme court in *Carroll* relied heavily on *Leahey v. Farrell*.²¹ In *Leahey* the supreme court said that if officials act unreasonably in denying requested funds a court can mandate payment of those funds. In applying this concept, *Carroll* places the burden on the court to prove the reasonable necessity of its needs. The burden on the court in *Leahey*, however, was to prove that the officials had acted arbitrarily or capriciously in disapproving the court's request. This distinction is of some importance if it is realized that it is easier to prove oneself has acted in a reasonable manner, than to prove another has acted arbitrar-

recognized the potential danger of the legislative power, and that the judiciary must take necessary steps in order to safeguard the form of government established by the constitution.

17. See generally *Nobel County Council v. Fifer*, 234 Ind. 172, 125 N.E.2d 709 (1955); *Schneider v. Cunningham*, 39 Mont. 165, 101 P. 962 (1909); *Kitzmeyer v. Davis*, 26 Nev. 373, 68 P. 689 (1902).

18. 247 Ind. 631, 220 N.E.2d 532 (1966).

19. See *Commonwealth ex rel. Carroll v. Tate*, 442 Pa. 45, 51-53, 274 A.2d 193, 197 (1971).

20. *Gentry v. Becker*, 352 Mo. 769, 174 S.W.2d 181 (1943).

21. 362 Pa. 52, 66 A.2d 577 (1949).

ily. Also, when judging whether another's decision was reasonable it is necessary to consider the factors deemed important by the other in reaching his decision. Thus, the *Leahey* burden would have allowed for evaluation of factors considered by the city council in disallowing the funds, *i.e.*, the lack of funds and the financial plight of the city. Under the *Carroll* burden the supreme court refused to consider these factors. Possibly this will force the legislature to cut its and the executive's necessary funds in order to comply with the court's order.

The city council and mayor argued that the "reasonable necessity" test should mean that there be an actual impairment of the judiciary's functions and that their only obligation was to treat the court fairly.²² The supreme court rejected this limitation. Thus, there are no guidelines for courts to follow except what was allowed as an expense in *Carroll*.

The supreme court in *Carroll* felt there was an undefined boundary separating the powers of the legislature and the judiciary, and that both branches may exercise similar powers which are within this boundary. The separation of powers doctrine, however, recognizes certain functions of each branch that cannot be exercised by the other branches.²³ It has been recognized by many courts that the power to appropriate money is exclusively a legislative function.²⁴ Since courts have strictly held that the legislature has no power to order a new trial, which is exclusively a judicial power,²⁵ it is hard to reconcile a judicial determination that the courts may use the appropriation power which resides rightly in the legislature. In the Pennsylvania Constitution it is stated that, "No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officers."²⁶ It is inconsistent for the constitution to give the legislature the exclusive right to appropriate money, and for the supreme court to say it can compel the legislature to exercise that power.

The supreme court believed that the only adequate protection for a court from the legislative ability to destroy it, by cutting off necessary funds, was for the court to compel payment of funds. There are two

22. Interview with Matthew W. Bullock, Jr., First Deputy City Solicitor of Philadelphia, in Philadelphia, Nov. 19, 1971.

23. See generally *United States v. Brown*, 381 U.S. 437 (1965); *Smith v. Miller*, 153 Colo. 35, 384 P.2d 738 (1963).

24. See generally *Colbert v. State*, 86 Miss. 769, 39 So. 65 (1905); *Gregory v. Rollins*, 230 S.C. 269, 95 S.E.2d 487 (1956).

25. *DeChastellux v. Fairchild*, 15 Pa. 18 (1850).

26. PA. CONST. art. 3, § 24. It should be noted that there is no statute applicable to the *Carroll* situation.

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ways for a court to achieve the same protection without doing violence to the separation of powers doctrine. In *Judges for the Third Judicial Circuit v. County of Wayne*,²⁷ the Michigan Supreme Court expressed the two ways: (1) a court can prepare and submit a budget and argue before the executive and legislative branches that the funds are essential for its proper functioning; and (2) if the court has failed after using the first method it may contractually bind the legislature by incurring a debt for a practical necessity.²⁸

The approach in *Carroll*, while stressing the separation of powers doctrine by giving the judiciary the absolute power to establish and order the payment of a budget, has destroyed the doctrine of checks and balances. Now, seven judges have control over their finances which is an exclusive legislative function. The judiciary from this decision has the absolute freedom which potentially enables them to destroy the republican form of government. There is no one to determine whether the supreme court has acted arbitrarily in its appropriation. Thus, *Carroll* establishes a dangerous precedent, for even though the money forced to be appropriated may work to the advantage of the people at this time, it leaves the door open for the judiciary to achieve a superior position in our government.²⁹

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CRIMINAL LAW—SUBJECT-MATTER JURISDICTION—RETROACTIVITY—The Federal District Court for the Eastern District of New York has held that *O'Callahan v. Parker*, a decision concerning subject-matter jurisdiction, must be applied retroactively.

Flemings v. Chafee, 330 F. Supp. 193 (E.D. N.Y. 1971).

In 1944 Flemings was a Navy serviceman stationed in New Jersey. He was lawfully absent from the installation, when he stole a car in Trenton, and drove it to central Pennsylvania where he was apprehended by Pennsylvania State Police. Flemings was turned over to military author-

27. 172 N.W.2d 436 (Mich. 1969).

28. *Id.* at 440.

29. President Washington warned of this development in talking of the doctrine of checks and balances when he said, "[L]et there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed." 12 G. WASHINGTON, WRITINGS SELECTED FROM THE ORIGINAL MANUSCRIPTS WITH A LIFE OF THE AUTHOR BY JERUND SPARKS, 382-398 (1848).