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Separation of Powers in Pennsylvania: The Judiciary’s Prevention of Legislative Encroachment

“Of the three powers above mentioned the JUDICIARY is next to nothing.”

INTRODUCTION

Each state constitution contains a separation of powers doctrine. The general purpose of this doctrine is to prevent one branch of the government from becoming a tyrant over the other branches. Under the separation of powers doctrine, the most significant power of the judicial branch is the interpretation of laws enacted by the legislative branch. Also, in a majority of the states, including Pennsylvania, the judicial branch has been granted general supervisory power of the court systems. However, most jurisdictions permit the legislative branch to pass laws that affect aspects of the judicial branch if the statute does not conflict with a court rule or if the statute does not interfere with the administration of justice.2

2. See, e.g., Price v. Superior Court, 186 Cal.3d 156 (Cal. 1986) (holding that the separation of powers doctrine is not offended by a statute permitting the executive branch to appoint and compensate court employees); Gallegos v. Phipps, 779 P.2d 856 (Colo. 1989) (holding that the legislature had the power to modify or abrogate decisions by the court so long as legislation is constitutional); People v. Williams, 529 N.E.2d 558 (Ill. 1988) (noting that the legislature may enact statutes complementing authority of judiciary); Forti v. New York State Ethics Comm’n, 554 N.E.2d 876 (N.Y. 1990) (holding that the Ethics in Government Act, that banned former executive department employees from appearing or practicing before their former agencies in connection with a matter in which they directly participated during their state tenure, did not violate the separation of powers doctrine); State ex. rel. Fiedler v. Wisconsin Senate, 454 N.W.2d 770 (Wis. 1990) (noting that the legislature may establish certain standards in order to become eligible to practice law).
Pennsylvania is an exception to this general rule in that its separation of powers doctrine prohibits the legislative branch from enacting any law that affects the judicial branch. The Supreme Court of Pennsylvania, therefore, has emerged as a very powerful branch of the state government. This separation of powers doctrine has not always been interpreted or applied this way. This comment describes the distinct development and application of the separation of powers doctrine in Pennsylvania that has resulted in an unusually powerful judicial branch.

BACKGROUND OF THE SEPARATION OF POWERS DOCTRINE IN PENNSYLVANIA

The separation of governmental powers into the legislative, executive, and judicial departments has been inherent in the structure of Pennsylvania’s government since its inception. The convention of 1776 included this doctrine in the Plan or Form of Government. The separation of powers doctrine was continued in Pennsylvania’s Constitutions of 1790, 1838, and 1873. Specifically, the judicial branch’s power was protected by article V, section 1 of the constitution which provided that “the judicial power of the Commonwealth [is] vested in a Supreme Court, in County Courts of Common Pleas, Oyer and Terminer, and Quarter Sessions, in a Register’s Court, and an Orphans’ Court: and in such other courts as the legislature may from time to time establish.”

Early in its history, the Supreme Court of Pennsylvania confronted issues concerning the encroachment of the legislature into the powers of the judicial branch. Under these circumstances, the supreme court began to establish principles to interpret the separation of powers doctrine under article V. For example, in Greenough v. Greenough, the state supreme court noted that under the

6. 11 Pa. (1 Jones) 489 (1849). In *Greenough*, the plaintiff brought an action of ejectment against the defendant. *Greenough*, 11 Pa. at 489. The plaintiff and defendant were brothers who were disputing their sister’s will. *Id.* at 489-90. Apparently, the plaintiff concluded that the will was not signed by his sister; instead, he argued that she marked it and allowed another person to sign for her making it invalid. *Id.* at 489-91. The jury returned a verdict for the defendant. *Id.* at 491. On appeal, the court concluded that the will was not valid according to the Act of 1833 relating to wills, but the will was valid under the supplementary Act of 1848. *Id.* The court held that because the Act of 1848 had retroactive effect, the defendant was nonetheless entitled to a verdict in his favor. *Id.* at 495.
separation of powers doctrine, the legislature's function was to en-
act laws; the judiciary's role was to interpret the laws; and the ex-
ecutive was entrusted to execute the laws.\textsuperscript{7} The court based its in-
terpretation on the separation of powers doctrine found in article
V, section 1.\textsuperscript{8} The court concluded that the inherent powers of the
judicial branch were distributed by the Pennsylvania Constitution
in such a way that the legislature could not exercise any judicial
power.\textsuperscript{9} In applying these principles, the court in this case declared
a law passed by the legislature unconstitutional because it had the
effect of overruling prior decisions of the court.\textsuperscript{10} The court rea-
soned that determining a judgment of a case was within the inher-
ent power of the judiciary.\textsuperscript{11}

Following \textit{Greenough}, the supreme court in \textit{Commonwealth ex.
rel. Johnson v. Halloway}\textsuperscript{12} declared that an act which provided for
a gradual reduction in a person's prison term based on good behav-
ior was a violation of the separation of powers doctrine, and there-
fore, unconstitutional.\textsuperscript{13} The court noted that the "whole" judicial
power was "vested" in the judicial branch.\textsuperscript{14} It asserted that "[n]ot
a fragment of [the judicial power] belongs to the legislature."\textsuperscript{15}

This pointed language could have suggested that the court would
strike down a law as unconstitutional if it in any way affected the
power of the judicial branch. However, the supreme court also
noted that "[t]he trial, conviction, and sentencing of criminals are

\textsuperscript{7} \textit{Id.} at 494.
\textsuperscript{8} \textit{Id.}
\textsuperscript{9} \textit{Id.} Specifically, the court stated that "the judicial power of the Commonwealth is
its whole judicial power; and it is so distributed that the legislature cannot exercise any part
of it. Under the constitution, therefore, there is no mixed power—partly legislative and
partly judicial." \textit{Id.}
\textsuperscript{10} \textit{Id.} at 494-95.
\textsuperscript{11} \textit{Greenough}, 11 Pa. at 495. The court also held that the Act of 1848 was unconsti-
tutional based on article IX, section 9 of the constitution, which the court said stated that
"no person shall be deprived of property except by the judgment of his peers or the law of
the land." \textit{Id.}
\textsuperscript{12} 42 Pa. (6 Wright) 446 (1862).
\textsuperscript{13} \textit{Halloway}, 42 Pa. at 448. The court quoted the following relevant portion of the
statute:

\textit{[E]very prisoner who shall have no infraction of rules recorded against him for any
month of the first year of his imprisonment—one day for the first month, two addi-
tional days for the second month, and three additional days of each succeeding
month for the first year's imprisonment—and to a similar deduction of four days for
each month of faultless conduct in the second year, and to one additional day per
month for each succeeding year.}
\textit{Id.} at 447-48.
\textsuperscript{14} \textit{Id.} at 448.
\textsuperscript{15} \textit{Id.}
The supreme court, therefore, recognized that certain duties were inherently part of the judicial branch and the legislature could not properly engage in any of these duties. It was reasonable to conclude that the court would only declare a law unconstitutional as a violation of the separation of powers doctrine if the legislature engaged in what was considered an exclusive judicial function.

The Supreme Court of Pennsylvania took this approach in *Hoopes v. Bradshaw.* In this case, the court suggested that there were some areas in which the legislature could enact legislation that affected the judicial branch. The court considered whether an act by the legislature, which provided that admission to practice as an attorney in the state supreme court operated as an admission to practice law in every county of the commonwealth, was unconstitutional.

The supreme court reiterated the principle that an inherent power of one branch of the government could not be properly exercised by another branch. The court stressed that admission to practice law was an inherent duty of the judicial branch. However, Justice Brown, writing the opinion for the court, restated the issue as being whether this legislative act was "an attempt by the Legislature to usurp judicial power, or [whether] it in any manner interfere[d] with the exercise of judicial functions[.]." The court held that the act was not unconstitutional because it only stated what effect was to be given to a purely judicial act. Thus, this act did not interfere with a power that was exercised by only the judiciary.

16. *Id.*
17. 80 A. 1998 (Pa. 1911). In *Hoopes,* the petitioner was a member of the bar of the Allegheny County courts and the supreme court. *Hoopes,* 80 A. at 1099. The petitioner sought to represent his client in the Court of Common Pleas of Beaver County. *Id.* However, the prothonotary of Beaver County refused to issue an approval for the petitioner. *Id.* The petitioner, therefore, sought a writ of mandamus directing the prothonotary to recognize him as a member of the Beaver County bar. *Id.*
18. *Id.* at 1099.
19. *Id.*
20. *Id.*
21. *Id.* at 1099-1100.
22. *Hoopes,* 80 A. at 1100.
23. *Id.* See *In re Olmsted,* 140 A. 634 (Pa. 1928). The supreme court in *In re Olmsted* cited *Hoopes* and stated the rule of law in Pennsylvania to be as follows:

Statutes dealing with admissions to the bar will be judicially recognized as valid so far as but no further than the legislation involved does not encroach on the right of the courts to say who shall be privileged to practice before them and under what circumstances persons shall be admitted to that privilege. Acts of this kind have been
The *Hoopes* decision reinforced the notion that the court was basically concerned about preserving inherent powers of the judicial branch from encroachment by the legislature. The court was not declaring laws unconstitutional merely because they affected aspects of the judicial branch. For example, in 1949 the court in *Leahey v. Farrell*\textsuperscript{24} considered the issue of whether the regulation of the compensation of court employees by the legislature was an unconstitutional invasion of the powers of the judiciary.\textsuperscript{25} Justice Stearne, writing the opinion for the court, noted that the legislature may not encroach upon the judiciary in the administration of justice.\textsuperscript{26} Justice Stearne noted that there were general areas where the legislature could not act because those areas involved exclusive judicial functions.\textsuperscript{27} For example, he indicated that the legislature could not overrule a judicial decision, direct a statute to be construed in a certain way, grant a new trial, or change the effect of judgments or decrees previously rendered.\textsuperscript{28} The court, however, stressed that with the separation of powers, one branch of government may overlap with another.\textsuperscript{29} Furthermore, the court sug-

\textit{In re Olmsted}, 140 A. at 636.


25. *Leahey*, 66 A.2d at 578. The court noted the following relevant portion of the statute:

[S]alaries and compensation . . . shall be fixed by the salary board created by this act . . . [t]he board shall . . . fix the compensation of all . . . court criers, tip-staves and other court employees, and of all officers, clerks, stenographers, and employees appointed by the judge of any court and who are paid from the county treasurer.

\textit{Id.}

In this case, the judges of the Court of Common Pleas of Cambria County entered an order to increase the compensation of court stenographers. \textit{Id.} However, the county commissioners and the county comptroller refused to recognize the pay increase because the judges had failed to comply with the statute. \textit{Id.}

26. \textit{Id.}

27. \textit{Id.} at 579.

28. \textit{Id. See also}, Pennsylvania Co. for Insurances on Lives and Granting Annuities v. Scott, 29 A.2d 328 (Pa. 1942) (stating that under the separation of powers doctrine, the legislature can not interfere with a judgment or decree of the judicial branch); \textit{In re East Grant Street, In Lancaster}, 16 A. 366 (Pa. 1888) (noting that the power to declare the "meaning" of a statute was an inherent function of the judicial branch); Titusville Iron-Works v. Keystone Oil Co., 15 A. 917 (Pa. 1888) (holding that the power to interpret a statute was an inherent power of the judicial branch, and the legislature cannot constitutionally direct the court to interpret a statute in a certain way); De Chastellux v. Fairchild, 15 Pa. (3 Harris) 18 (1850) (holding that the power to grant a new trial was a court power, and therefore, cannot be constitutionally exercised by the legislature); and Greenough v. Greenough, 11 Pa. (1 Jones) 489 (1849) (see notes 6-11 and accompanying text).

gested that it was necessary for each branch to cooperate in order to have an efficient administration of justice.\(^{30}\)

In the present case, the court held that this act did not unconstitutionally infringe upon the powers of the judicial branch.\(^{31}\) The court, however, noted that if an act of this type was arbitrary or capricious in such a way that it would interfere with the administration of justice, the court would consider it a violation of the separation of powers doctrine, and therefore, unconstitutional.\(^{32}\)

**THE 1968 AMENDMENT TO ARTICLE V**

The supreme court through the 1960s and 1970s followed an interpretation of the separation of powers doctrine which permitted certain acts of the legislature to affect the judicial branch only if the legislative act did not impair the administration of justice. However, the most significant modification of the separation of powers doctrine occurred in 1968. In that year, the ninety-four year old state constitution was amended by a limited constitutional convention. The section which the court previously relied on for the separation of powers principle essentially remained unchanged.\(^{33}\) However, article V, section 10(a) was added granting to the supreme court general supervisory and administrative authority over the judicial branch.\(^{34}\) Article V, section 10(c) was also added, granting to the supreme court the power to enact rules governing all aspects of the judicial branch.\(^{35}\) Nonetheless, article V,

\(^{30}\) *Id.*

\(^{31}\) *Leahey*, 66 A.2d at 580.

\(^{32}\) *Id.* The court also emphasized that the fiscal power was vested in the legislature by article IX of the constitution. *Id.* at 578.

\(^{33}\) Article V, section 1 was modified to read as follows:

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

**Pa. Const. art. V, § 1.**

\(^{34}\) Article V, section 10(a) provides that “[t]he Supreme Court shall exercise general supervisory and administrative authority over all the court and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.” **Pa. Const. art. V, § 10(a).**

\(^{35}\) Article V, section 10(c) provides:

The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of
section 10 (c) also contained language that limited the judicial branch’s rule making power. This language noted that any legislative law would be unconstitutional only if the statute was inconsistent with a court rule or order.

The commonwealth court in Sweet v. Pennsylvania Labor Relations Board\(^{36}\) noted no major change in its interpretation of the separation of powers doctrine irrespective of the new language contained in the constitution. In this case, the court considered a final order of the Pennsylvania Labor Relations Board which concluded that Washington County, acting through its county commissioners, was the public employer of the court-related employees of that county within the meaning of the Public Employee Relations Act.\(^{37}\) Specifically, the court considered the issue of whether the act was unconstitutional because it applied to court-related employees and would affect such employees thereby constituting a violation of the separation of powers doctrine.\(^{38}\) Judge Bowman, writing the majority opinion, cited the Leahey case and stated that the act as applied to court-related employees did not interfere with the proper functioning of the courts and the administration of justice as to represent an unconstitutional legislative encroachment upon the judicial branch.\(^{39}\)

In reaching this decision, the court cited article V, section 1\(^{40}\) instead of article V, section 10.\(^{41}\) In dicta, however, the court noted that the judicial branch was being unified under the general supervisory and administrative authority of the supreme court, and therefore, its holding in this case would soon be obsolete.\(^{42}\)

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actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

PA. CONST. art. V, § 10(c).
38. Id. at 667.
39. Id. at 667-68.
40. See note 33 for the relevant text of article V, section 1.
41. Sweet, 316 A.2d at 667-68. See notes 34-35 for the relevant text of article V, section 10.
42. Sweet, 316 A.2d at 669. Specifically the court stated:
[A]s unification of judicial branch of government moves toward reality as mandated by the Constitution and becomes in fact truly unified under the general supervisory
INTERPRETATION OF ARTICLE V, SECTION 10

The first case that the state supreme court decided after the 1968 amendment was Commonwealth v. Sutley. The court considered the issue of whether an amended act that mandated the judicial branch to resentence criminals who had been convicted under the prior act was unconstitutional. Justice Nix, writing for the majority of the court, held that this statute violated the separation of powers doctrine because the legislature required the court to open a final judgment based on the newly passed statute.

It was not unusual that the supreme court declared this law unconstitutional. This case was very similar to the early cases of Greenough and Halloway. In fact, the court conceded that it based its decision on prior case law that interpreted the separation of powers doctrine under the state constitution. Therefore, the court did not rely on the newly amended article V, section 10 of the constitution.

One of the first cases that interpreted article V, section 10 was Ballou v. State Ethics Commission. In the instant case, the commonwealth court struck down a financial disclosure provision of an ethics law as it applied to attorneys. The court based its decision specifically on article V, section 10(c).

and administrative authority of the Supreme Court of Pennsylvania [under] Article V, Section 10, present concepts of the employer of court-related employees and the criteria by which such a determination is made must be reconsidered and will be reshaped and much we say today may be soon antiquated.

Id.

Judge Mencer filed a dissenting opinion with Judge Crumlish and Judge Kramer joining. The dissent noted that if the public employer was the County of Washington as defined by the act (a finding with which the dissent disagreed) then the act was unconstitutional. Id. at 672. (Mencer, J., dissenting). Judge Mencer asserted that this was an unconstitutional encroachment by the legislature upon the inherent powers of the judiciary. Id. The dissent cited article V, but it failed to specify if this act was unconstitutional under section 1 or 10.

43. 378 A.2d 780 (Pa. 1977). In Sutley, two defendants were convicted in unrelated prosecutions for possession of marijuana. Sutley, 378 A.2d at 781. Subsequently, the state legislature passed a statute that called for the resentencing of certain defendants who had been convicted of possession of marijuana. Id.

44. Id.
45. Id. at 788.
46. Id. at 782-83. The court cited the Greenough case. Id. at 783.
48. The Ethics Act required public officers and employees to annually file statements of their financial interests. Ballou, 424 A.2d at 984. The petitioner in this case sought to have the law declared unconstitutional because he was the solicitor of a county coroner, and the supreme court had the only authority to require him to disclose information. Id.
49. Id. at 986.
Furthermore, the majority opinion stated that "[w]hen the judiciary Article of the Pennsylvania Constitution was revised in 1968, the Supreme Court’s inherent and exclusive power, until then implicit as a fundamental matter, was made explicit by Article V Section 10(c)." The court suggested that this act would have been a violation of the separation of powers doctrine even before the 1968 amendment. In fact, the court quoted the following supreme court comment contained in Rule 103 of the Pennsylvania Rules of Disciplinary Enforcement: "‘[t]he Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers which power is reasserted in Section 10(c) of Article V of the Constitution of Pennsylvania.’" 

Interestingly, the earlier cases did not assert such power, nor did the preamended constitution grant the court this power. For example, in the Hoopes and Leahey cases, in which legislative acts affected both attorneys and court employees, the court did not strike down the laws as an unconstitutional violation of the separation of powers doctrine. Furthermore, the commonwealth court in Sweet indicated that article V, section 10(c) had granted to the judiciary more authority than it had before the 1968 amendments.

Nonetheless, Judge Craig, in his dissenting opinion in Ballou, noted that this law was not even a violation of the separation of powers doctrine under section 10(c). He emphasized the following language of section 10(c): "‘[a]ll laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.’" Judge Craig pointed out that this language permits consistent laws to coexist with judicial rules. He asserted that this law was not inconsistent with any judicial rule and suggested that the majority had not recognized a portion of the constitution.

50. Id.
51. Id. at 986 (quoting PA. R. DISCIP. ENF. 103) (emphasis added).
52. See note 42 and accompanying text.
53. Id. at 987 (Craig, J., dissenting).
54. Id.
55. Id.
56. Id. After Ballou, the commonwealth court followed the holding in several subsequent cases. For example, in Forney v. State Ethics Comm’n, 425 A.2d 66 (Pa. Commw. Ct. 1981), the court held that the financial disclosure requirements as applied to a solicitor of a board created by a municipality was unconstitutional because the supreme court has exclusive power to regulate the conduct of attorneys.

In Beckert v. American Fed’n of State, County and Municipal Employees, 425 A.2d 859 (Pa. Commw. Ct. 1981), the court held that the discharge of a judicial employee was a judicial power vested in the courts and may not be policed, encroached upon or diminished by
PENNSYLVANIA'S SEPARATION OF POWERS DOCTRINE

The state supreme court has essentially adopted two approaches when determining whether a legislative act violates the state constitution under the separation of powers doctrine. First, the state supreme court determines whether the law conflicts with any court declared rule or decree. Second, the court considers whether the statute in any way affects the judicial branch.

For example, in Commonwealth v. Sorrell the court considered the issue of whether a statute that granted the commonwealth an absolute right to a jury trial was unconstitutional. The court quoted both sections 10(a) and 10(c) of article V. The court emphasized that this statute conflicted with court sanctioned Rule of Criminal Procedure 1101 which entrusted the decision to grant the defendant a nonjury trial to the trial judge.

Because this law conflicted with a court rule, it would have been unconstitutional under article V before it was amended in 1968. Therefore, the decision in Sorrell was not inconsistent with prior supreme court decisions that interpreted the separation of powers doctrine.

The second approach in interpreting article V, section 10 of the constitution clearly represents a break from the court's earlier interpretation of separation of powers doctrine. For example, in Kremer v. State Ethics Commission the court addressed an issue similar to that which the commonwealth court had addressed in Ballou. Specifically, the issue was whether the financial disclosure requirement under the Ethics Act was unconstitutional as it ap-

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57. 456 A.2d 1326 (Pa. 1982).
58. Sorrell, 456 A.2d at 1327. The relevant portion of the statute states that “[i]n criminal cases the Commonwealth shall have the same right to trial by jury as does the accused.” 45 PA. CONS. STAT. ANN. § 5104(c) (1981).
60. Id. The relevant portion of Rule 1101 provides:
   In all cases, the defendant may waive a jury trial with the consent of his attorney, if any, and approval by a judge of the court in which the case is pending, and elect to be tried by a judge without a jury. The judge shall ascertain from the defendant whether this is knowing and intelligent waiver, and colloquy shall appear on the record.
plied to judges. The court, citing as authority sections 10(a) and 10(c) of article V, declared the financial disclosure provisions of the Ethics Law unconstitutional because those provisions infringed on the court's power to supervise the judicial branch. The court noted that it had established a judicial code that applied specifically to judges. However, the court ignored the fact that this law did not conflict with any part of the judicial code. Justice Hutchinson in his dissent declared that "the majority reasons fallaciously when it assumes that everything which affects the judiciary unconstitutionally interferes with [the judicial branch]."

Thus, the separation of powers doctrine in Pennsylvania has evolved into a powerful check on legislative action. The doctrine originally permitted legislative acts to affect the judicial branch as long as these acts did not interfere with the administration of justice. Presently, however, the separation of powers doctrine is being used to strike down laws that affect the judicial branch in any way.

Massachusetts' Separation of Powers Doctrine: An Example of the Majority Approach

Pennsylvania represents the minority approach to the separation of powers doctrine, while Massachusetts represents the majority approach. Using Massachusetts as an example illustrates that the judicial branch in the majority of states is not as powerful as it is in Pennsylvania. In fact, the judicial branch in states like Massachusetts usually defers to the other branches, particularly the legislative branch, when there is no conflict between them.

The first primary case that considered the separation of powers doctrine in Massachusetts was Collins v. Godfrey. The court asserted that article 30 of the state constitution provides expressly for the separation of executive, legislative, and judicial powers of the government. This also included the exclusive exercise of judi-

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62. Kremer, 469 A.2d at 595.
63. Id.
64. Id. at 595-96.
65. Id. at 596 (Hutchinson, J., dissenting).
66. See note 2 for other examples of the majority approach.
68. Collins, 87 N.E.2d at 839. Article 30 of the Massachusetts constitution provides: In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial branch shall never exercise the legislative and executives powers, or either of them: to the end it may be a government of laws and not of men.
cial powers by the judicial department of the government.69 The court noted that it was settled law in the commonwealth that in the distribution of powers, the ultimate power of general control over the practice of law rested with the judicial branch.70

This ultimate power with respect to the practice of law, however, was not considered exclusive. The court noted that the legislature could assist the judicial branch, and in fact, impose higher standards upon officers of the judicial branch.71 However, if the judicial branch established a higher code than the legislature, that code would prevail.72

In following the constitutional principles established in Collins, the Massachusetts Supreme Court decided Burnside v. Bristol County Board of Retirement.73 The issue the court considered was whether the legislature may remove a deputy sheriff from office when the sheriff was required to attend sessions of court as part of his employment.74

The plaintiff argued that his removal from office was a judicial act that could not be exercised by either the legislative or executive branches because it violated the separation of powers of the state constitution.75 The court agreed with the plaintiff that removal of an officer of the court was a power incidental to the court's judicial functions.76 However, the court disagreed with the plaintiff's assertion that the legislature was precluded from establishing standards for the removal an officer of the court.77 The court held that in this case the legislature properly removed the plaintiff.78

69. Collins, 87 N.E.2d at 840.
70. Id.
71. Id.
72. Id.
73. 226 N.E.2d 234 (Mass. 1967). In this case, the plaintiff brought an action to enjoin the defendant from terminating the plaintiff's employment. Burnside, 226 N.E.2d at 235. The plaintiff was a deputy sheriff whose employment responsibilities included attending session of the supreme judicial court and superior court. Id. The defendant notified the plaintiff that his employment would terminate on June 30, 1964 because the plaintiff would be 70 years old on June 25, 1964. Id. at 236.
74. Burnside, 226 N.E.2d at 235.
75. Id. at 236.
76. Id.
77. Id.
78. Id. Compare Gardner v. Peoples, 506 A.2d 479 (Pa. Commw. Ct. 1986) (holding that a law requiring the retirement at age 70 for all county employees was an unconstitu-
Citing the above-mentioned cases, the court in *Opinion of The Justices To The Senate* answered questions submitted by the Senate concerning an order that the Senate had adopted. Specifically, the court answered questions about a law entitled "An Act to Control Conflicts of Interest by Public Officials." The law required certain state and county public officials and employees, including candidates for elective and certain appointive state and county offices, to disclose their financial interests publicly each year. The law would be enforced by a five member state ethics commission. One of the primary questions addressed by the court was whether the law would violate the Massachusetts Constitution because it imposed filing and other requirements on personnel in the judicial department, although the law did not apply to judges.

The court noted that the legislative and executive departments were prohibited from exercising powers belonging to the judiciary. The court asserted that this prohibition is part of the principle of separation of powers of article 30 of the state constitution. The state supreme court, however, refused to interpret the constitution's separation of powers doctrine as prohibiting the legislature from enacting laws affecting the judicial branch. The court said that "[w]hile we recognize the importance of observing scrupulously the division of powers of each branch of government, we also are cognizant of the need for some flexibility in the allocation of functions among the three departments." The court reasoned that each branch of the government in some degree has executive, legislative, and judicial functions.

The critical test for this court was whether the requirements this law imposed on attorneys and other personnel of the judicial branch would unconstitutionally interfere with the functions of the judicial branch of government. The court held that there was

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81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.* at 821.
86. *Id.* at 822.
87. *Id.*
88. *Id.*
89. *Id.*
nothing in the law that would represent an unconstitutional interference by the legislative or executive branches of the government into the powers of the judicial branch. The court reasoned that even though it had the authority to establish standards of conduct of personnel in the judicial branch, the legislature could establish complementary standards. With this power, the court also noted that the legislature could establish a commission to enforce its law if the commission were subject to judicial review. The Massachusetts Supreme Court limited the authority of the legislature, and followed its earlier precedent, by stating that if the judicial department issued a rule imposing higher standards or standards in conflict with any legislative act, the judicial rule must prevail.

As in Pennsylvania, the separation of powers doctrine in the majority of states prohibits the legislature from enacting laws that conflict with court orders or decrees or engage in an exclusive judicial function. The courts under these circumstances are concerned with legislative interference in the administration of justice. However, unlike the majority, Pennsylvania courts invoke the separation of powers doctrine to protect against any legislative action that concerns the judicial branch.

**Conclusion**

Presently in Pennsylvania, forces are gathering to reform its highest court. Pennsylvania's supreme court seems to have greater power than any other state supreme court in the country. Most of this power is based upon article V, sections 10(a) and 10(c) of the state constitution. In addition, due to the court's interpretation of these sections, the court possesses more authority than is actually granted by the plain language of the constitution. Recent

91. *Id.*
92. *Id.*
93. *Id.* For example, the court noted that the law under discussion required attorneys who were candidates or holders of public office to disclose the names, addresses and nature of business of their clients. *Id.* at 822 n.15. It was possible, the court reasoned, that this could conflict with the court-issued rule that forbids attorneys from revealing information that would be embarrassing or would likely be detrimental to a client. *Id.* If this would occur, the court-issued rule would prevail. *Id.*


supreme court decisions have stated that the amended constitution reasserted this power. It is not clear, however, where any of this newly found power was first asserted.

The Supreme Court of Pennsylvania has employed the separation of powers doctrine to declare acts by the legislature unconstitutional even if the acts do not conflict with any judicial order. The court is thereby applying the doctrine to acts to which it had historically been inapplicable. As Justice Warren of the United States Supreme Court once noted, “the ‘separation of powers’ doctrine was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny.” Clearly, this doctrine in Pennsylvania is being invoked to serve as much more than protection against tyranny.

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