

Opinion No. 68-64

June 18, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. E. T. Johnson Court Administrator Supreme Court of New Mexico Santa Fe, New Mexico

QUESTION

FACTS

Laws 1968, Chapter 43, Section 1 created the Property Control Division within the Department of Finance and Administration. Section 11 of Chapter 43, supra, transferred custody and control of all State motor vehicles designed primarily for passenger use to the Chief of the Property Control Division. It further provides that the Chief of the Property Control Division shall make rules governing the use and maintenance of these vehicles. Pursuant to this authority the Chief of the Property Control Division promulgated rules dated May 15, 1968 establishing the procedures to be followed by the several state agencies desiring to use pool vehicles for official business. These rules provide, **inter alia**, that the leasing agency shall pay for the use of pool vehicles at the rate of 8 [cents] per mile; that the pool vehicles will be driven only by those persons possessing a transportation pool operator's permit and that the leasing agency properly complete application for use of a pool vehicle on what is called a trip ticket.

Section 5-4-8, N.M.S.A., 1953 Comp. provides for the payment of a mileage fee for the use of privately owned conveyances on official business for the State or its political subdivisions. It further provides that no privately owned conveyance shall be used on state business when a government owned conveyance is available for use. In compliance with this section the Director of the Department of Finance and Administration issued a directive, dated May 7, 1968, providing that the cost of operating a privately owned vehicle be reimbursable only when no suitable state vehicle is available either within the particular state agency involved or at the State Transportation Pool. A request for reimbursement for use of a privately owned vehicle on official business must be accompanied by a written statement from the Chief of the Property Control Division that no state vehicle was available at the Transportation Pool. This directive applies only to travel in and from the Santa Fe area. Authority for the issuance of such a directive by the director of the Department of Finance and Administration is found in Section 11-1-32, N.M.S.A., 1953 Compilation.

QUESTIONS

1. Assuming the Supreme Court does not so direct, is any portion of the above mentioned rules and directives binding upon any element of the judicial branch, and, if so, to which and to what extent?

2. If the directive is disregarded by officers and employees of the judicial branch within the Santa Fe area, do they thereby forfeit the right to reimbursement for the cost of operating a private vehicle on official business?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*105} ANALYSIS

Our perusal of Laws 1968, Chapter 43 reveals that the Act presents two constitutional questions which must be discussed for a proper analysis of your questions. The first question is whether or not the Act contains one subject in the title as required by Article IV, Section 16, New Mexico Constitution. The second question is whether or not the Act violates the separation of powers provision of Article III, Section 1, New Mexico Constitution.

CONSTITUTIONAL QUESTIONS

A.

One subject in title.

Article IV, Section 16, *supra*, provides in pertinent part:

{*106} "The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act is not so expressed shall be void. * * *"

The title contained in Chapter 43, *supra*, reads as follows:

"AN ACT TRANSFERRING AUTHORITY AND CONTROL OVER ALL EXECUTIVE STATE BUILDINGS TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; CREATING A PROPERTY CONTROL DIVISION WITHIN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; ABOLISHING THE CAPITAL BUILDINGS IMPROVEMENT COMMISSION. AND TRANSFERRING FUNDS, APPROPRIATIONS, RECORDS, EQUIPMENT, FURNITURE AND SUPPLIES; TRANSFERRING CERTAIN MOTOR VEHICLES; AMENDING SECTION 11-1-28, N.M.S.A., 1953 COMPILATION (BEING LAWS 1957, CHAPTER 251, SECTION 3) . . ." (And repealing certain sections).

How do we determine whether there is but one subject in the title of an act? The test to be followed was first enunciated by our Supreme Court in **State v. Ingalls**, 18 N.M. 211, 135 P. 1177 (1913) and is stated this way at p. 218:

"The aim and necessity of this constitutional provision is apparent. The reason for its existence is a matter of history in nearly all our States. Its purposes . . . are:

First, to prevent hodge-podge or 'log-rolling' legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and third, to fairly apprise the people of the subjects of legislation in order that they may have opportunity of being heard thereon."

And at page 219:

"In our opinion, the true test of the validity of a statute under this constitutional provision is: Does the title fairly give such reasonable notice of the subject matter of the statute itself as to prevent the mischief intended to be guarded against? If so, the act should be sustained."

Further elaboration of the **Ingalls**, supra, test can be found in **State v. Gomez et al.**, 34 N.M. 250, 280 p. 251 (1929). Therein it was stated:

". . . Each case must be decided on its own set of facts and circumstances. There are certain considerations, however, which the courts should always keep in mind. To the legislative branch of our government is committed the drafting of statutes. Court should be slow to interfere by pronouncing the work of the legislature insufficient. It often happens that one person would entitle the same act in a different way from another. To some minds, the title of an act should be so definite and nice in its definitions and distinctions as to be an index of the act itself; to others, this is unnecessary, and a more general and sweeping treatment of the subject is all that is required. We can all agree, however, on the soundness of the constitutional inhibition against surprises, concealed or 'joker' provisions in bills which might deceive both the lawmakers and the general public."

{*107} See, e.g., **Crosthwait v. White**, 55 N.M. 71, 226 P.2d 477 (1951).

Applying this yard stick to Chapter 43, supra, we now must determine whether the title to the act is sufficient to give notice that the body of the act authorizes the establishment of a State Motor Pool. We believe that it does. The primary subject of Chapter 43, supra, is a creation of a Property Control Division within the Department of Finance and Administration. It is certainly reasonable that in creating such a division certain real and personal property owned by the State will be transferred to the Division's custody and control. Contained in the title also is the provision "transferring certain motor vehicles." One would reasonably assume that in transferring motor vehicles to the Property Control Division a system would be established in the Act to manage and oversee the

use of these motor vehicles. This was done, of course, through Section 11, supra, by establishing a State Motor Pool. We find therefore that Chapter 43, supra, is not violative of Article IV, Section 16, supra.

B. Separation of powers.

As provided in Section 11 of Chapter 43, supra, the Chief of the Property Control Division has custody and control "of all vehicles . . . which are the property of the state or which are for public use of any agency or officer . . ." Since the legislature did not exempt any branch or agency of the state government, it is clear that this provision is intended to apply to the legislative and executive, as well as the judicial branches of our government. There can be no question but that the legislature has the authority to control the use of state property. Clearly aligned with the power over appropriating funds to the state treasury for the operation of the state government is the authority to designate and specify how these funds will be spent. Article IV, Section 30, New Mexico Constitution.

This conclusion leads us to the question of whether the establishment of a State Motor Pool and the procedures adopted for its operation impedes the Courts in their function of dispensing justice thereby violating the separation of powers provision in our Constitution. Article III, Section I, New Mexico Constitution provides as follows:

"The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this Constitution otherwise expressly directed or permitted."

The separation of powers doctrine is a uniquely American form of democratic government both in theory and practice. As was stated in **Kelly v. Marron**, 21 N.M. 239, 153 P. 262 (1915) the legislative branch of government has the duty of enacting laws which are deemed calculated to promote the prosperity and happiness of the people and provides for the general welfare. The judicial department is empowered to construe and interpret the laws and administer justice. Neither the legislative nor executive department has the right to question a judgment of the judiciary nor has the judiciary the power to interfere nor be concerned with the enactment of laws by the legislative department.

The separation of powers provision, however, does not necessarily foreclose the exercise by one department of the state of powers of another because in many instances, of necessity, there must be an overlapping of these powers. As an example, when the Governor exercises his right of power to veto, he is exercising a quasi-legislative function. **Dixon v. Saiz**, 62 N.M. 227, 308 P.2d 205 (1957). Witness {*108} also the quasi-judicial powers conferred upon certain agencies of the executive branch of our government which are charged with the duty of protecting the rights and interests

of the public in general in areas such as regulation of common carriers, telephone rates, professional licenses, etc., **State v. Mechem**, 63 N.M. 250, 316 P.2d 1069 (1957).

Aside from the gray areas which overlap the powers and functions from one branch of our government to another it is clear that a court within the realm of its jurisdiction cannot be directed, controlled or impeded in its functions by any of the other departments of the government. These separate and identifiable powers and duties must remain inviolate and retain their absolute integrity and freedom. As stated in **Noble County Council v. State**, 234 Ind. 172, 125 N.E. 2d 709, 715 (1955):

". . . Any act by which the legislature attempts to hamper judicial functions or interfere with the discharge of judicial duties is unconstitutional and void"

Obvious examples of legislative attempts to infringe upon judicial functions would be laws empowering a commission (executive) to determine rights and liabilities between individuals (judicial), **State v. Mechem**, supra, or laws which direct the courts to intercede in an expert administrative body's function of resolving questions of fact, **Continental Oil Co. v. Oil Conservation Commission** 70 N.M. 310, 373 P.2d 809 (1962).

One can easily visualize instances where the legislature could impede or hamper the judiciary's duties of dispensing justice without actually infringing upon, through legislation, what we ordinarily consider strictly judicial matters. For instance, the legislature could fail to appropriate sufficient funds for or to otherwise provide the courts with adequate equipment or personnel to properly accomplish its duties. This would in effect reduce the judiciary to something less than a co-equal and independent branch of our government.

It is within this context that the operation of the State Motor Pool and the rules administering it **could** hamper or impede the judiciary's functions. Prima facia, however, the procedures adopted for operating the State Motor Pool do not appear to impede the judicial functions of the judiciary. These procedures as stated under "Facts," supra, require that officials and employees of the State traveling on official business must obtain a pool operator's permit, a trip ticket and then obtain the vehicle from the Motor Pool personnel. We have not been provided with sufficient facts in this respect to opine whether these requirements unreasonably impede the administration of justice.

In answer to your first question, therefore, we conclude that the provisions of Chapter 43, supra, and the rules promulgated pursuant thereto are binding upon the judicial branch of our government unless the Supreme Court determines that such compliance would unreasonably impede or impair the functions of the judiciary. In answer to your second question, it is our opinion that the officers and employees of the judicial branch within Santa Fe will forfeit the right to reimbursement for the cost of operating a private vehicle on official business unless the Supreme Court rules as above.

Although not specifically encompassed in the questions you have posed, we do have reservations concerning the requirement in the rules adopted by the Chief of the Property Control Division that the several state agencies pay for the use of these vehicles. We are also concerned about the manner of expending these funds once collected by the Department of Finance and Administration.

By: David R. Sierra

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