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FILE NO. S-392

**APPROPRIATIONS:
Judicial Inquiry Board
Duties of General Assembly**

Honorable Cecil A. Partee
Senator
State of Illinois
Capitol Building
Springfield, Illinois

Dear Senator Partee:

You have heretofore requested my opinion on a number of questions pertaining to Article VI, Section 15, sub paragraphs (b) and (d), of the Illinois Constitution of 1970, and House bill 3030 which appropriates \$100,000.00 for operation of the Judicial Inquiry Board which was created by the new Constitution. It is now my understanding that in the interest of clarifying your several ruling requests and simplifying the matter, the fundamental question on which you desire my opinion may be restated as follows:

"Assuming the Governor, in exercise of his power to appoint members of the Judicial Inquiry Board, appointed five persons of the same political party, could the Legislature make a valid appropriation for that Board?"

Article VI, Section 15(b) of the Illinois Constitution
of 1970 reads:

"Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years."

Article VI, Section 15(d) of the Illinois Constitution
of 1970 reads:

"The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board."
(Emphasis supplied)

My answer to that restated question is in the affirmative. An appropriation, by the General Assembly to the Judicial Inquiry Board, would be valid even though a question was then pending as to whether that board is constituted of five members of the same political party appointed by the Governor.

This is not to say that the Governor's judgment concerning the partisan philosophy and identification of the members cannot be subject to challenge. Our system of government has reposed in the judicial branch the power to rectify such improprieties. The proper procedure involves institution of a quo warranto proceeding (People ex rel Henderson v. Redfern, 48 Ill. 2d 100; Wagler v. Stoecker, 393 Ill. 560) in which the validity of the questioned appointment is placed directly in issue. The People v. Board of Review, 19 Ill. 2d 422, 427.

The first and foremost reason for responding affirmatively to the stated question and for finding as I do that the Judicial Inquiry Board is a valid, existing and functioning de jure body is to be found in a specific delineation of the appointing authority set forth in Article VI, Section 15(b) of the constitution. By that sub-section, two of the three branches of Illinois government, namely, the judiciary and executive, are vested with the total responsibility

for the naming of the members of the Judicial Inquiry Board. Thus the Supreme Court of Illinois is directed to select two circuit judges as members and the Governor is directed to appoint four persons who are not lawyers and three lawyers as members of the Board. No provision is made for any appointive or supervisory authority to be vested in the legislative branch, nor can it be implied. It follows that the General Assembly may not set itself up as a judge or reviewer of the qualifications of any member of the Judicial Inquiry Board appointed by the other two branches of government. Any effort on its part so to do would clearly violate the fundamental doctrine of separation of powers set forth in Article II, Section 1, reading as follows:

"The legislative, executive and judicial branches are separate. No branch shall exercise powers belonging to another."

This being the situation concerning the lack of reviewing authority in the legislature as a whole, it obviously follows that no individual member of the General Assembly nor a committee thereof has any right to interfere with the mandated constitutional process; furthermore, such interference could not be justified by the use of the appropriating function of the legislature as a wedge for intervention. State, ex rel. Worrel v. Carr, 25 N.E. 274, 13 L.R.A. 177 (Ind. 1891).

The Debates and Proceedings of the Constitutional Convention clearly support this interpretation and show that the Convention rejected suggestions that the General Assembly should be granted an appointive or reviewing role in the process of determining the members of the Judicial Inquiry Board. Thus in Proposal No. 2 of the Committee on Judiciary, it was said:

"Many alternatives were considered with respect to the appointing authority for the non-lawyers and lawyers, including the ever omnipresent proposal that these 'details' be left to legislative judgment. The Committee believes, however, that the designation of the appointing authority for the members of the Inquiry Board is of major constitutional significance as is the composition of the Board. In the case of the lawyers and non-lawyers, the Committee wished to reposs sole responsibility in a single officer. The Board is State wide in its jurisdiction and authority. The Governor seemed to be the logical and proper choice." (Emphasis supplied).

While the debates were not uniform, it is significant that the spokesmen for the Committee on the floor of the convention, Delegate David Linn (now a judge of the Circuit Court of Cook County) responded to a question posed as to the method of determining the political affiliation of an appointee to the Board as follows:

"Delegate Linn: Well I think this is something that the Governor would have to determine as to what party he belongs to but I think when the Governor makes an appointment he would pretty well know whether the man is Republican or Democrat, depending on what the Governor - - -

Delegate Cooper: Then you would leave it to the Governor to make that judgment in case of doubt.

Delegate Linn: Yes and the reason for it is it keys in the responsibility for that appointment to the Governor which of course is done quite often." (Verbatim transcript #52, 6th Constitutional Convention, May 19, 1930, page 117.)

If any further support is needed for the position taken herein, please consider the ramifications of a contrary holding. Every legislative body charged with appropriating funds, for use by public officers in operation of their offices and discharge of their duties, would have the power to screen and weigh the qualifications of those officers, the validity of their elections or appointments, and the desirability of such persons holding public office. Each such officer would have to be elected or appointed twice, first by the electorate or appointive authority, and again by the appropriation committee or subcommittees and the various governing bodies of our units of government, including County Boards, City Councils, etc.

The legislature has the responsibility under the Constitution to appropriate the funds, and any other interpretation obviously would make a mockery of the Constitution and would defy the will of the people who so recently created the Judicial Inquiry Board.

Honorable Cecil A. Partee

-7-

Since the appropriation with which you are concerned is made to the Board, as mandated by the Constitution, the General Assembly is derelict in its duty for failure to provide the operational funds for the Board, and since there is no question but what that Board has been created and is in existence aside from any future determinations made by a court concerning the qualifications of the members thereof, there likewise can be no question but that an appropriation to the Board is not only a "valid" appropriation but also the Constitutional duty of the General Assembly even in the hypothetical situation presented for my consideration.

Very truly yours,

A T T O R N E Y G E N E R A L