OFFICIAL OPINION NO. 75-39, Budget of unified judicial system

March 4, 1975

Senator Schreier and
Representative Johnson
State Capitol
Pierre, South Dakota 57501

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Budget of unified judicial system

Dear Senator Schreier and Representative Johnson:

You have asked whether the Legislature may limit or prescribe the purposes for which the budget of the unified judicial system may be spent.

Section 2 of article XII of the South Dakota Constitution provides:

The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature.

Section 9 of article XI provides:

All taxes levied and collected for the state purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the state, and no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made. The Legislature shall provide by suitable enactment for carrying this section into effect.

The constitution clearly vests control of appropriations of state funds in the Legislature. In *State ex rel. Longstaff v. Anderson,* 33 S.D. 574, 579, 146 N.W. 703, 704 (1914), the

Supreme Court held:

The Constitution in no manner prescribes what is necessary to constitute a valid appropriation. In this respect it differs materially from the Constitutions of some of the other states, wherein there are express provisions defining and limiting appropriations-such as, that they must be specific in amount or limited for a certain period of time. . . .

The court also held:

It must be borne in mind at all times that the full legislative power, including the power to raise public revenues and to appropriate the same to public purposes, is vested solely in the legislative branch of our state government, (Carter v. Thorson, 5 S.D. 474, 59 N.W. 469; 24 L.R.A. 734; 49 Amer. Stat. Rep. 893); that the Legislature, in the exercise of such power, is under no restraint or limitation whatsoever except such as may have been imposed by the people of this state through our state Constitution, or through some surrender of power to the federal government as evidenced by the federal Constitution; and that no legislative act should be declared unconstitutional unless the conflict between its provisions and some principle of constitutional law is so plain and palpable as to leave no reasonable doubt of its validity.

While all of the power to appropriate may be vested in the Legislature, the Legislature cannot abolish the court system or "render the court inoperative by refusing financial support." *Judges for Third Judicial Circuit v. County of Wayne,* 190 N.W. 2d 228, 231 (Mich. 1971). Courts in other states have held that expenses which are reasonably necessary must be paid by the state. *Judges for Third Judicial Circuit v. County of Wayne,* 172 N.W. 2d 436 *(1969); State ex rel. Weinstein v. St. Louis County,* 451 S.W. 2d 99 (1970);*Commonwealth ex rel. Carroll v. Tate,* 274 A.2d 193 (Penn. 1971).

In answer to your first question, it is my opinion that the Legislature can prescribe the specific purposes for which the budget of the unified court system may be spent based on the reasonable necessity of such expenses.

You have also asked whether an administrative program existing in the executive branch (specifically adult probation currently assigned to the department of social services, SDCL 23-57-10, 23-58-1.1, 1-36-18) can be transferred by appropriation to the unified court

system.

Section 11 of article V of the South Dakota Constitution contains the following grant of power to the unified court system:

The chief justice is the administrative head of the unified judicial system. The chief justice shall submit an annual consolidated budget for the entire unified judicial system, and the total cost of the system shall be paid by the state. The Legislature may provide by law for the reimbusement to the state of appropriate portions of such cost by governmental subdivisions. The Supreme Court shall appoint such court personnel as it deems necessary to serve at its pleasure.

The last sentence of the foregoing permits the court to appoint such "court personnel" as it deems necessary. The Pennsylvania Supreme Court in *Commonwealth ex rel. Carroll v. Tate,* 274 A.2d 193, 196 (Penn. 1971), said that the judiciary has the inherent power to compel payment of all expenses that are reasonably necessary to carry out its mandated duty to administer justice.

In *Judges for Third Judicial Circuit v. County of Wayne,* 172 N.W. 2d 436, 440 (Mich. 1969), the court described inherent powers as follows:

It is the imperfection of human institutions which gives rise to our notion of inherent power. It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the laws. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things which are normally done by the other departments.

Thus, both the legislative department and the judicial department have certain housekeeping chores which are prerequisite to the exercise of legislative and judicial power. And, to accomplish these housekeeping chores both departments have inherently a measure of administrative authority not unlike that primarily and exclusively vested in the executive department.

Adult probation has traditionally been an executive branch function. In *Judges for the Third Judicial Circuit v. County of Wayne,* 172 N.W. 2d 436, 442 (Mich. 1969), the Michigan Supreme Court recognized the following:

We are not prepared to say that a court should exercise inherent power to take direct contractual action to augment the probation staff for the purpose of assuring a more adequate and effective ratio of supervisory officers to probationers.

The interest of the judiciary in the rehabilitative process is keen but not paramount. Corrections, pardons, and paroles are primarily the historic responsibility of the executive branch of government. And while such things are appropriately within the purview of a broad concept of the needs of justice, they are not normally a part of the narrower notion of practical necessities of effectively continuing court functioning. The exigencies of a particular case may indeed dictate the appointment of a particular person to supervise a particular defendant. In such case, the inherent power of the court to act directly may be called into play.

The decision was later modified by *Judges for the Third Judicial Circuit v. County of Wayne,* 190 N.W. 2d 228 (Mich. 1971), to allow for probation officers in the court.

In South Dakota, adult probation is primarily assigned to the Division of Corrections of the Department of Social Services. SDCL 23-57-10, 23-58-1.1 and 1-36-18. The circuit court apparently does have the power to retain supervision if it wishes. SDCL 23-57-10.

The court's inherent administrative power is generally limited to the "assignment of judges, the advancement of judicial education, the maintenance of judicial statistics, the division of judicial business, the supervision of the Bar," *Judges for the Third Judicial Circuit v. County of Wayne,* 172 N.W. 2d 436, 440 (Mich. 1969), and the payment of such traditional court expenses as court reporters and assistant clerks of court, *White v. Hughes County,* 9 S.D. 12, 67 N.W. 855 (1896); *Underwood v. Lawrence County,* 6 S.D. 5, 60 N.W. 147 (1894). It does not extend to the wholesale transfer of existing programs from the executive branch. While the court may request, and legitimately expect to receive, funding for probation officers to carry out its statutory responsibility with respect to probation, it should not attempt to transfer an entire, complete, existing program from the executive branch to the judicial branch by a request for an appropriation. If the unified judicial system wants to completely take over adult probation, it should seek a change in the statute as it did last year when it assumed statutory responsibility for juvenile probation. SDCL 26-7-3 as amended by ch. 177, §3, 1973 Session Laws. Therefore it is my opinion that the unified judicial system should not take control of the present statutory adult probation services without a statutory

change and an appropriation by the Legislature.

Respectfully submitted,

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