

Opinion No. 75-51

September 12, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Senator I. M. Smalley, Chairman Criminal Justice Study Committee Legislative Council - State Capitol Bldg. Santa Fe, New Mexico 87503

QUESTIONS

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Does the Legislative Criminal Justice Study Committee have the authority to investigate the allegations of wrongdoing raised by your inquiry with respect to the Supreme Court and the Judicial Standards Commission?

CONCLUSION

No.

OPINION

{*137} ANALYSIS

The Legislative Criminal Justice Study Committee was created by Chapter 221, New Mexico {*138} Laws 1975 which states in the title:

Creating an interim joint committee of the legislature to undertake a study and investigation of the entire criminal justice system.

Section 3 of the act specifically provides that the Committee shall:

study and investigate all aspects of New Mexico's criminal justice system, including law enforcement within the state. The scope of the study shall include but not be limited to all areas involving New Mexico's criminal justice system, including the courts, law enforcement agencies, public defenders, district attorneys, the state's penal system and probation and parole system.

The power to conduct investigations is inherent in the legislative process. **Watkins v. United States**, 354 U.S. 178, 1 L.Ed 2d 1273, 77 S. Ct. 1173 (1957). A state legislature may delegate that power to duly authorized committees. **Liveright v. Joint Committee of Gen. Assem. of State of Tenn.**, 279 F. Supp. 205 (M.D. Tenn 1968). Thus, it would appear on the face of Chapter 221 that the committee has the authority to conduct investigations. The investigative authority of the committee is, however, severely limited and does not empower the committee to undertake the proposed investigation.

First, a legislative committee is restricted by the doctrine of the separation of powers. Article III, section 1, New Mexico Constitution. It may not interfere with the regulation of the practice of law which is the exclusive constitutional prerogative of the Supreme Court. **State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.**, 85 N.M. 521, 514 P.2d 40 (1973). Any legislative attempt to exert power over the maintenance of judicial standards, including suspension and disbarment, would be in violation of Article III, Section 1. **In re Patton**, 86 N.M. 52, 519 P.2d 288 (1974).

Second, legislative investigations may be undertaken only in furtherance of a legislative purpose. **Watkins v. United States, supra, Gibson v. Florida Investigation committee**, 372 U.S. 539, 9 L. Ed. 2d 929, 83 S. Ct. 889 (1963). Legislative investigations should be conducted solely as an aid to the consideration and determination of prospective legislation. **ASP, Incorporated v. Capital Bank and Trust**, 174 So.2d 809 (1965). The legislative power to investigate is not absolute but is limited to obtaining information on matters which fall within the proper field of legislative action. **State v. Anderson**, 299 P.2d 1078, 180 Kan. 120 (1956).

The committee has been asked to investigate an alleged conspiracy involving members of the Supreme Court. Such an investigation is clearly not in furtherance of the legislative process. The inherent power of the legislature to investigate does not extend to acting as a tribunal in hearing individual cases.

Furthermore, the language of the act itself clearly indicates that the committee is to function solely in aid of the legislative process. Although the committee is directed to "study and investigate all aspects of the criminal justice system," it is also charged with the duty to review the probate code, study the children's code, study judicial matters referred by the legislative council and make legislative recommendations. Section 3, Chapter 221, New Mexico Laws 1975. The term "investigation" is {*139} susceptible to several meanings and it would seem that within the context of this act, an investigation of all aspects of the criminal justice system would properly be an "examination" of the laws governing the organization, procedures and rules of the **system**. Similarly, an investigation consisting of an "inquiry" into criminal charges against individuals would be in excess of the authority delegated to the committee.

By: Jill Cooper

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