

Separation of Powers

Sections 1 and 2 of the Mississippi Constitution of 1890 deal with separation of powers. These two constitutional provisions state:

Section 1. The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confined to a separate magistrate, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

Section 2. No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others, the acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

“Core” Powers

The Mississippi Supreme Court interpreted Sections 1 and 2 in *Ball v. Fitzpatrick*, 602 So. 2d 873 (Miss. 1992). In *Ball*, the Court held that the Lowndes County Veteran’s Administration Clerk and Inventory Control Clerk could also serve as an elected member of the Council for the City of Columbus, and that his positions with the County and his position with the city were not in violation of Sections 1 and 2, “in that his positions with the Board are ministerial and do not require that he exercise executive or judicial powers.” *Id.* at 876.

The Court in *Ball* reasoned that the jobs held by this County employee were ministerial and that neither the position of Inventory Control Clerk nor Veteran’s Administration Clerk was a public office and that his duties as an employee of the County Board of Supervisors did not allow him to exercise powers at the core of the executive or judicial departments.

Applicability to Local Government

In an earlier decision, *Broadus v. State ex rel Cowan*, 132 Miss. 828, 96 So. 745 (1923), the Court considered the doctrine of separation of powers with regard to local government. *Broadus* was a suit to oust from office a member of the Harrison County Board of Supervisors who was also serving as Trustee of a school district. The Court in that case determined that the position of School Board Trustee was not wholly executive or judicial and largely ministerial, that supervisors exercise legislative and executive duties even though they are in the judicial department, and there was accordingly no violation of the separation of powers doctrine. *Broadus* was distinguished in *Alexander v. State* by and through Allain, 441 So. 2d 1329 (Miss. 1983), wherein the Court held that members of the Legislature could not serve on certain Boards and commissions whereby they might exercise powers at the core of the executive power, stating:

Broadus deals with separation of powers at the County level which, of course, is important, but it in no way is authority for the contention that a member of the legislative department may exercise powers at the core of the executive power. *Id.* at 1337.³¹

As Justice Banks noted in his concurring opinion in *Ball*, the only case where the doctrine of separation of powers has actually been applied at the local level is *In re Anderson*, 447 So. 2d 1275 (Miss. 1984), wherein the Court held that an individual serving as both a Justice Court Judge and a city law enforcement official violated the doctrine of separation of powers. Justice Banks called for abandonment “once and for all [of] the idea that the constitutional doctrine of separation of powers applies to local government.” *Ball v. Fitzpatrick*, *supra* at 887.

Cf. *Mississippi Comm’n on Judicial Performance v. Ishee*, 627 So. 2d 283 (Miss. 1993) (the office of county supervisor is not a judicial office within the meaning of the provision in the code of judicial conduct requiring judges to resign before seeking non judicial offices.)

Core Executive Functions vs. Non-Judicial Functions

In the recent decision of *Moore v. Hinds County Board of Supervisors*, 658 So. 2d 883 (Miss. 1995), the Mississippi Supreme Court held that Mississippi’s constitutional separation of powers doctrine was not violated by Youth Court Judges drafting proposed budgets and selecting and hiring personnel. The Court reasoned that the Youth Court Judges’ implementation through supervising and hiring those approved by the Board of Supervisors and the budget was constitutional since

- (1) these were people who are selected and supervised by the Youth Court Judges pursuant to statutory guidance and not additionally charged with the duty of enforcing any laws, and
- (2) the acts to be performed by those hired are non-executive judicial duties.

At issue in this case were whether the actions of the Youth Court Judges or their employees were core executive functions, that is, whether any of the personnel hired by the Youth Court perform a non-judicial function at the core of the executive power, that is, do any of the Youth Court personnel enforce a law. The Court concluded:

The question of the constitutionality of the Youth Court Judges’ involvement in the development of the budget weighs more favorably on the constitutional side. The role of the Judges, with ultimate budget authority remaining with the Board, does not create any sort of power imbalance such as to violate the separation of powers doctrine imbedded within the Mississippi Constitution of 1890. Rather, it follows this Court’s dictates in *Alexander*, as well as the mandates of the Legislature.

³¹See *In re: Inquiry Concerning Municipal Judges*, 631 So. 2d 758 (Miss. 1994)(“The distinguishing factor between *Broadus* and *Alexander* are that *Broadus* deals with the separation of powers at the County level which is important, but in no way is authority for the contention that a member of the legislative department may exercise powers at the core of executive power.”).