South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Compromise Between Supreme Court and General Assembly Possible (H.3893, H.3892)

Two pieces of legislation were introduced in the House, Wednesday, May 9th, by the Judiciary Committee. Joint Resolution (H.3893) and Bill (H.3892) are the result of efforts to arrive at a compromise between the Supreme Court and the General Assembly on the issues of rule-making and equity jurisdiction with the Court.

Events leading up to the conflict between the Court and the General Assembly started in 1979 with the passage of the Court Register Act (S. C. Code Secs. 14-3-940 and 14-3-950) and the adoption by the Court of Supreme Court Rule 40. These two vehicles combined to set out the method for making rules of practice and procedure in the courts. The Act and Rule 40 provide for the Supreme Court to make such rules. Upon proposing rules, the Supreme Court was to provide notice and hearing. If adopted, rules would be forwarded to the Judiciary Committees during January of each legislative session. Rules would become effective in 90 days if not rejected by vote of a simple majority of the members of each house of the General Assembly.

Difficulty with this procedure arose when administrative and procedural rules for magistrates' courts were twice submitted by the Supreme Court and twice rejected by the General Assembly. These Rules were rejected for the second time by the General Assembly in April 1980. Since that time, the Supreme Court has promulgated rules without submitting them to the General Assembly.

Relations between the Supreme Court and the General Assembly were further hurt with the issuance of an August 31, 1982 order of the Supreme Court. In adopting a new rule, the Court interpreted language contained in Article V, Section 4 of the Constitution as giving the General Assembly no authority in the making of rules for the courts.

When the General Assembly convened in January 1983, there was a great deal of anti-court sentiment because of the August 31st order. This mood motivated the legislature to adopt a Joint Resolution to amend Article V of the Constitution in three particulars. The three questions, which that Joint Resolution would

present to voters at the polls in November 1984, concern: 1) whether the intermediate Court of Appeals (which now exists on a temporary basis as a statutory creation) should be included in the State Constitution; 2) whether rules of practice and procedure for the courts of the State should be made by a thirteen member Judicial Commission, rather than by the Supreme Court, with authority retained by the General Assembly to make rules; and 3) whether the jurisdiction of the Supreme Court to hear appeals of cases which are equitable in nature (Family Court cases make up most of such equity cases on appeal) should be subject to limitation by the General Assembly.

Opposition to these proposed amendments to the Constitution came primarily from two sources. Former Chief Justice J. Woodrow Lewis, who retired on March 8, 1984, has opposed all three questions. The South Carolina Bar has opposed the questions concerning rule-making procedure and changing the equity jurisdiction of the Supreme Court while supporting inclusion of the Court of Appeals in the Constitution.

Throughout the period of controversy between the Supreme Court and the General Assembly efforts at compromise have been extensive. Recently representatives from the Court and the General Assembly were encouraged by the S. C. Bar to sit down again to discuss their differences with a fresh approach possibly resolving them. A joint meeting ensued and as a result a compromise proposal was submitted to the House Judiciary Committee which in turn introduced H.3892 and H.3893.

The Joint Resolution (H. 3893) would amend Joint Resolution 152 of 1983 to delete the constitutional amendments and ballot questions concerning rule-making power and the equity jurisdiction of the Supreme Court. The only constitutional change, and hence the only ballot question remaining from the prior Joint Resolution, would concern the inclusion of the Court of Appeals in the Constitution.

The Bill (H. 3892) would amend Section 14-3-950, which is part of the Court Register Act of 1979. The effect of the amendment would be to require that when rules are submitted by the Supreme Court to the General Assembly, a vote of 2/3 of those present and voting in each house would be required to reject such rules. This would assure the Supreme Court that the General Assembly could not arbitrarily reject any rules submitted by the Court.

The Supreme Court, in turn, would abide by the notice and hearing requirements of Rule 40, and submit proposed rules to the General Assembly as provided in that rule and in the Court Register Act. The Court also would promulgate an order recognizing authority in the General Assembly to make certain rules of a procedural nature which affect substantive rights such as in capital cases and claim and delivery proceedings.

In addition to adopting this Order addressing the promulgation of court rules, the Supreme Court would also amend Supreme Court Rule 55 concerning circumstances under which the Court will grant certiorari to review decisions of the Court of Appeals. (Certiorari is where the Court may chose whether or not to review a case as opposed to appeal which operates as a matter or right.) The amendment provides that no Writ of Certiorari shall issue (and hence there will be no review) in domestic relations cases if the Court of Appeals affirmed the findings of fact of the Family Court, and there is substantial evidence in the record supporting those findings. Such an amendment would accomplish the result which was intended with the proposed constitutional amendment concerning the equity jurisdiction of the Supreme Court.

It is felt by those involved in the development of this compromise, that the compromise can work and should reduce the confrontation that has characterized relationships between these two branches of government over the last few years.

Interstate Banking: "Non-Bank Banks;" A Law Suit That May Affect Regional Pacts; Other Developments Around the Nation

The Interstate Banking Bill (H.3743) has been set for special order following all other special orders in the Senate. Basically the bill provides for a system of interstate banking in the Southeastern region (see the "Research Report" on this subject in Update number 13, April 10, 1984).

However, a number of financial institutions are not waiting. The Comptroller of the Currency's Office has been flooded with more than 200 applications from banks across the country following the Federal Reserve opinion allowing U.S. Trust to operate a "non-bank" bank in Florida (see below).

Basically, a "non-bank" bank offers some, but not all, services of a regular, or full service bank. A "non-bank" bank might not offer commercial loans, for example, or some other feature. By not being a full service bank the institution avoids the federal law which prohibits interstate banking without express consent of a state. The interstate banking bill recently passed by the Legislature would permit such reciprocal interstate banking between South Carolina and other states in the southern region.

A law suit in Connecticut may cause problems for interstate banking laws which are designed to confine bank mergers and acquisitions to one region. The suit, brought by the aggressive Citicorp organization, challenges Massachusetts and Connecticut laws designed to keep Citicorp and other major bank holding companies out of New England. If the courts rule that regional interstate compacts are illegal then the interstate banking picture would be confused and without significant regulations.

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The Federal Reserve Board has approved the first merger of banks under a regional interstate banking law. The Fed gave its blessing to the union of the Bank of New England (Boston) and Connecticut Bank and Trust (Hartford).

At the same time the Board also approved a plan that allows New York-based U.S. Trust Corp. to convert its Palm Beach, Florida, office into a national "non-bank" bank. U.S. Trust is prohibited from offering commercial loans but is free to provide consumer services. According to the Miami Herald the decision "has blown a huge hole in barriers to interstate banking." The biggest hole could be in regional limitations; Florida state officials are expected to appeal the Federal Reserve Board decision.

Two states and a district included in the Southern Region under H.3743 are considering other options. Virginia and Maryland bankers are considering a push for interstate banking laws with Delaware, Pennsylvania and Ohio. Such legislation has already been introduced in the Ohio legislature. The District of Columbia, also included in the Southern Region, is contemplating reciprocal laws with states in the mid-Atlantic area

In the Midwest: Iowa legislators turned down a regional interstate banking bill, fearful that mergers would cause capital to be drained from Iowa's many small, rural banks. The defeat of the bill could cause trouble for a similar bill recently introduced in nearby Kansas. Missouri currently prohibits bank holding companies from providing savings and checking services in the state. A proposed bill would allow powerful Citicorp to open full-service banks in Missouri.

Finally, in Mississippi, the Senate Banking and Financial Institutions Committee has killed a measure allowing multibank holding companies into the state. By law Mississippi banks are prohibited from expanding beyond a 100-mile radius of their home office.

Source: From the State Capitals: General Trends, April 16, 1984

ON THE DANGERS OF "EXPERT ADVICE"

If you believe the doctors, nothing is wholesome;
if you believe the theologians, nothing is innocent;
if you believe the soldiers, nothing is safe.
They all require to have their strong wine diluted by a very large admixture of common sense.

Robert Gascoyne-Cecil, Marquis Salisbury,
British Prime Minister

Drinking--How Old is Old Enough?*

Summary

The problem of drunk driving has become significant across the nation in the last decade. The issue of raising the legal drinking was addressed in H.2080, recently reported out by the Senate Judiciary Committee. Since 1935, the legal drinking age limit in South Carolina for purchasing distilled spirits has been 21 and the legal age for purchasing beer and wine has been 18.

This report reviews the issue of raising the drinking age, summarizes of the experience of other states, national recommendations, and arguments made for and against raising the age. It will help remind members of factors which were discussed during debate in the House last year, and help answer questions and concerns of constituents over this matter.

Background

Since 1970, 26 states have reduced the drinking age limit. According to the Journal of American Insurance, the data from six states that lowered the drinking age show a significant upward trend in teenage alcohol-related accidents. Arizona, Illinois, Connecticut, New Jersey and Michigan all lowered the legal drinking age between 1971 and 1973. All experienced increases in either teenage fatalities, teenage accidents involving alcohol, or teenage arrests for driving while intoxicated.

Illinois, Iowa, Nebraska and Michigan have since reinstated the legal age back to 21. New York, Massachusetts and Rhode Island are considering raising their drinking age to 21. Alex Wagenaar of the Highway Safety Research Institute found that Michigan experienced between 17.7% and 30.7% fewer drink-related accidents since the state raised the age back to 21. In 1981, South Carolina drivers under 21 constituted 10.9% of all licensed drivers, but accounted for 20.1% of all drivers in alcohol-related accidents.

Several national organizations have studied this issue and report the following. The Department of Transportation (DOT) reports that since 1970, there has been a 28% increase in the number of teenage alcohol-related accidents. The National Traffic Safety Administration and the DOT both attribute this increase to the national trend of lowering the legal drinking age since 1970. National Safety Council supports the Wagenaar

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* This Research Report was substantially developed by Patti Knoff, Intern from the University of South Carolina.

premise that "with the drinking age raised, young people have difficulty in obtaining alcohol, and therefore consume less, drive less under the influence and are involved in fewer alcohol-related motor-vehicle accidents." In August 1982, the National Transportation Safety Board recommended to the governors and legislators of 35 states, including South Carolina, "that all states adopt a 21 year minimum drinking age in effort to reduce the number of alcohol-related crashes."

Arguments For and Against Raising the Drinking Age

Opponents to raising the legal drinking age propose these arguments:

1) At age 18, a citizen is no longer a minor. If the citizen is mature enough to vote and serve in the armed forces, s/he is mature enough to enjoy the privilege of drinking alcohol. Can you deny a cold beer to an 18 year old Marine in Beaufort with orders for the Middle East?

2) Increasing the legal drinking age will incite rebellious behavior among the young and would increase irresponsible youthful drinking.

3) Traffic fatalities will increase as the result of young South Carolinians travelling to neighboring states with lower drinking ages. North Carolina allows beer and wine drinking at age 18 and liquor consumption at 21. Georgia allows all alcohol consumption at age 19.

4) This law will be unenforceable and have a negative social effect with respect for all laws.

5) The state should furnish alcohol and drug abuse education rather than curb behavior through legal controls.

6) This law will be detrimental to beer and liquor industries, and trade, bar, and restaurant associations, not to mention teenage employment in these businesses.

7) Finally, research in this area is insufficient to support the premise that raised drinking ages deter teenage drinking and reduces alcohol-related crashes.

Proponents to raising the legal drinking age counter with the following arguments:

1) Simply because one is considered mature enough to vote and enter the armed services doesn't necessarily mean that s/he is mature enough to drink.

2) Rebellion is unlikely since many privileges are granted with respect to age, (e.g., driver's license).

3) South Carolina should enact laws that are in the best interest of her citizens and shouldn't be influenced by the actions of other states.

4) Even if the law is seen as unenforceable, it is the legal system's responsibility to enforce laws to the best of its ability to achieve a deterrent effect.

5) It is the state's duty to regulate the welfare of the citizens.

6) A higher drinking age reduces the possibility of minors obtaining alcohol from their 18 year old friends who are still in high school.

7) Most liquor distributors and package dealers report little or no effect on sales when the legal age goes up or down.

Conclusion

Setting the legal drinking age involves a number of different factors: the rights and responsibilities of the individual; the extent to which laws can be effectively enforced; the role of the state in protecting citizens from themselves and from others. These points and others form part of a difficult and often complex problem.

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Around the House

State Auditor Moves

Members of the House may find it helpful to know that the State Auditor and staff have a new location for their offices. South Carolina State Auditor Edgar A. Vaughn, Jr., and his staff have moved from the Wade Hampton Building to Suite 700 in the SCN Building at Lady and Main Streets.

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