

SUPREME COURT - BOARD OF LAW EXAMINERS:

Examination fees paid by applicants for admission to bar are entirely under the jurisdiction of the Supreme Court and do not come within Section 1 of Laws of Missouri, 1933, (page 415).

---

March 20, 1935.

3-27

Hon. R. B. Caldwell  
President  
Board of Law Examiners  
2000 Fidelity Bank Building  
Kansas City, Missouri



Dear Sir:

We wish to acknowledge your request for an opinion under date of January 8th, wherein you state as follows:

"You will recall that several weeks ago the Board of Law Examiners discussed with you the method of handling the fees paid by applicants for admission to the bar and suggested that these funds should be entirely under the jurisdiction of the Supreme Court instead of being the subject of appropriation by the Legislature. You asked that we write you in regard to this matter and I am accordingly doing so.

"Our thought about it is that it would be much more convenient and practical to handle it in this way. The Legislature does not know and cannot estimate what the fees will be during a biennial period. That is particularly true at this time when the rules have been changed so substantially. The application fee has been increased but the number of applicants will doubtless be decreased. In view of these changes there is no criterion by which the Legislature can make any intelligent guess as to what amount should be ap-

propriated. You understand of course, that the appropriation is only of the fees actually paid. In other words, the State pays no part of the expenses or compensation of the Board or its employees.

"There is also the further reason that to handle these funds through appropriation, and to have them disbursed by the State Auditor requires considerable extra work which does not appear to us to serve any useful purpose. As a matter of fact our relations with the State Auditor in connection with the handling of the fund have been most pleasant.

"The right of the court to handle these funds in this way seems clear. The court has held in the case of *In re Richards*, 63 S. W. (2d) 673, that the court has inherent power to admit attorneys to the bar. By promulgating the rule which became effective on November 1st the court is actually exercising that power in prescribing the qualifications of applicants; the method of examinations and other matters incident thereto. In other words, under the doctrine announced in the *Richards* case the court has assumed and is actually exercising full authority in regard to the matter of admissions. If it has that authority, as it unquestionably has, then it would seem that it must necessarily have power to do all things incident thereto. One of those things is the appointment of the Board of Examiners and the matter of fixing their compensation and paying their expenses.

"The court has evidently in those rules announced its authority to do what we are now suggesting. Note this language of sub-section 3 of Rule 38:

" 'The members of said Board and additional examiners appointed to assist them shall receive such compensation as may be allowed by this court out of funds arising from examination and admission fees provided for in this Rule.'

"The allowance of fees by the court is of course inconsistent with their allowance by the Legislature or any other agency of the State.

"We have not found any constitutional provision which prohibits the court from doing this, nor which in reality relates to it at all. This does not appear to be analagous to the situation with respect to various other boards and commissions. All of them are in fact created by the Legislature and their existence depends on legislative act. Moreover, no tribunal other than the Legislature has any authority to create them, whereas in the case of this Board its existence, powers and functions do not depend upon legislative enactment, but entirely upon the rule or order of the court itself. Therefore, while it might very well be that compensation and expenses of all other State boards must be fixed by the legislature, the reason for that rule does not exist in the case of the Board of Law Examiners.

"Further evidence that this is the right analysis of the situation, and that this is the view of the court itself, is to be found in the fact that the court in promulgating its rule effective November 1st has fixed a license fee, to be paid annually by attorneys admitted to the bar and those fees are paid to the Clerk of the Supreme Court and kept in what is known as the 'Bar Fund'. Disbursements out of that fund are made in the manner provided in the rules. See Rule 37.

"We do not see any reason for making any distinction between the manner of administering that fund and the fund created by fees from applicants for admission to the bar. The practical administration of each of the funds and the theory authorizing their handling by the court seem most persuasive that each of them should be handled under the direction of the court in the manner suggested.

"We will be glad to have your views in regard to this matter at as early a time as

is convenient, particularly in view of the fact that the Legislature is now in session."

Laws of Missouri, 1933, Section 1, page 415, provides in part as follows:

"All fees, funds and moneys from whatsoever source received by any department, board, bureau, commission, institution, official or agency of the state government by virtue of any law or rule or regulation made in accordance with any law, shall, by the official authorized to receive same, and at stated intervals, be placed in the state treasury to the credit of the particular purpose or fund for which collected, and shall be subject to appropriation by the General Assembly for the particular purpose or fund for which collected during the biennium in which collected and appropriated. \*\*\*\*\*"

The question presented is whether examination fees paid by applicants for admission to the bar come under the above section, and are subject to appropriation by the Legislature, or whether they are entirely under the jurisdiction of the Supreme Court to be handled as they see fit?

Section 11695, R. S. Mo. 1929, vests the power of admission to practice in the Supreme Court and provides thus:

"The power to admit and license persons to practice as attorneys and counselors in the courts of record of this state, or in any of them, is hereby vested exclusively in the supreme court, subject to such regulations as are hereinafter provided."

Section 11697, R. S. Mo. 1929, provides that the Supreme Court shall appoint a board of examiners and provides thus:

"The supreme court shall, by order, appoint five persons learned in the law, and not connected with any law school,

who shall constitute the state board of law examiners. The supreme court shall, by order, determine the respective terms of the members of the first board appointed. The members of said state board of law examiners shall take and subscribe an oath, to be administered by one of the judges of the supreme court, to discharge faithfully and impartially the duties of their office, and shall receive such compensation as may be allowed by the supreme court out of the fund arising from examination fees hereinafter provided for. The supreme court shall also have power to appoint from time to time, when necessary, additional examiners to assist the board, who shall serve for one examination only, and shall receive such compensation as the court may allow, to be paid out of the fund aforesaid."

Section 11702, R. S. Mo. 1929, provides that the examiners are to certify the result of the examination to the supreme court and provides in part thus:

"The examiners, or a majority of them, shall certify the result of their examination to the supreme court, which court if satisfied that such examination has been properly conducted, and that the applicant has complied with all the requirements hereinafter provided for, shall cause license to be issued to the successful applicants \*\*\*\*."

We are of the opinion that the above sections dealing with attorneys at law unequivocally show that the Legislature intended to vest the power to admit and license persons to practice as attorneys exclusively in the supreme court, and that the board of law examiners was created merely as an "arm of the court" for the purpose of assisting it in determining who has and who has not the necessary qualifications for admittance into the profession. The supreme court appoints the members of the board, determines their respective terms, administers their oath, and allows them their compensation. The court must, in the final analysis, be satisfied that all requirements have been met, and they in turn cause the license to be issued to the successful applicants.

Section 11701, R. S. of Mo. 1929, provides that applicants for a license to practice law pay an examination fee and provides in part thus:

"Every applicant \*\*\*\* at the time of filing his application shall pay to the said clerk the sum of ten dollars. Said fees from applicants shall constitute a fund from which by order of the supreme court shall be paid the necessary expenses and a reasonable compensation fixed by the court, to the members of the board of examiners, \*\*\*\*. Any surplus remaining from such fees after the payment of the expenses and compensations above mentioned shall be carried in the examination fund of the succeeding year and accounted for as receipts of such succeeding year. The clerk of the supreme court is hereby made the custodian of such fund."

We must determine whether the examination fees in the above section must be placed in the State treasury to the credit of the "examination fund" and be subject to appropriation by the General Assembly for the purpose for which collected. (Laws of Mo. 1933, Sec. 1, page 415, supra).

In the case of *In re Richards*, 63 S. W. (2d) (Mo.) 672, loc. cit. 675, our Court said:

"It is not always easy to determine what objects are naturally within the range or orbit of a particular department of government, but it will scarcely be denied that a primary object essentially within the orbit of the judicial department is that courts properly function in the administration of justice, for which purpose they were created, and in the light of judicial history they cannot long continue to do this without power to admit and disbar attorneys who from time to time immemorial have in a peculiar sense been regarded as their officers. Since the object sought is not naturally within the orbit of the legis-

tive department, the power to accomplish it is in its exercise judicial and not legislative, although in the harmonious co-ordination of powers necessary to effectuate the aim and end of government it may be regulated by statutes to aid in the accomplishment of the object but not to frustrate or destroy it. \*\*\*\*"

The court having stated that the power to admit and disbar attorneys is judicial and not legislative, and that such power can only be regulated by statute for the purpose of aiding the court in governing its "officers," promulgated new rules effective November 1, 1934, for admission to the bar. Under the new rules, applicants must pay an examination fee of Twenty-five Dollars whereas under Section 11701, R. S. Mo. 1929, supra, a fee of Ten Dollars was required. New rules have been adopted as to qualifications of applicants, methods of examination and other matters incident thereto. Section 11697, R. S. Mo. 1929, dealing with the board of law examiners has been substituted by sub-sections 2 and 3 of Rule 38 (Rules Supreme Court of Missouri, page 45) and these subsections read as follows:

- "2. The Board of Examiners herein mentioned shall be composed of five persons learned in the law. The State Board of Law Examiners as at present constituted both as to membership and term of office shall constitute the Board of Examiners herein provided for. Provided, however, that when necessary, additional examiners to assist the Board may be temporarily appointed by this Court.
- "3. Upon the expiration of the term of office of any member of the present Board or upon any member of the present Board vacating his office, this Court shall appoint his successor. The members hereafter appointed to said Board and the additional examiners appointed to assist said Board shall take and subscribe an oath prior to the assumption of their official duties, to be administered as this Court may direct, to discharge faithfully and impartially the duties of their office. The members of said Board and additional examiners appointed to assist them shall receive such compensation as may be allowed by this Court out of funds arising from examination and admission fees provided for in this rule."

That the court has the power to regulate the matter of admissions cannot be questioned under the doctrine as announced by the Richards case, supra, and, having such power, we are of the opinion that it has the authority to enact such rules as herein above set out in order to make their power effective. As stated by our Court in the case of Hudging v. Mooreville Consolidated School District, 278 S. W. 789, 312 Mo. 1, 100. Cit. 13:

"The rule of interpretation being that a power granted carries with it, incidentally or by implication, powers not expressed, but necessary to render effective the one expressed \*\*\*\*."

From the foregoing, we are of the opinion that Section 1, Laws of Missouri, 1933, page 415, supra, does not include the examination fees received by the Clerk of the Supreme Court from applicants for a license to practice law. Under the reasoning of the Richards case and the consequent promulgation of the Revised Rules of the Court, supra, the present board is not to be considered a creature of the Legislature. It exists and functions as an "arm of the court" and such existence and functions may be altered as the court in its discretion sees fit. As an "arm of the court" the board, in no respect differs from its purpose as outlined by Section 11897, supra. The difference now is that the board depends upon the rule or order of the court itself rather than upon legislative enactment. Ordinary state boards exist and have their compensation fixed by statutory enactment, but not so the board of law examiners. Their terms, fees and expenses are allowed by the court, and if in its discretion it desires to abolish the board, we find no constitutional provision which would prohibit it.

We are of the opinion that the examination fees paid by the applicants for admission to the bar are entirely under the jurisdiction of the Supreme Court and are to be handled as it may deem proper.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK  
Attorney-General.