

THE INVESTIGATIVE POWER OF THE GENERAL ASSEMBLY¹

The Committee on the Legislative Department of the Constitutional Convention Commission expressed its concern about the necessity or the desirability of including a provision in the article dealing with the legislative branch which would prevent the abuse of the investigative power of the General Assembly.

THE FEDERAL ANALOGY

Congressional power to investigate is inherent in the legislative function. Concerning limits on this power: "American courts . . . point only to the self-limitations inherent in the legislative process . . . the limits of inquiry are then the limits of legislative power," *i.e.*, due process and equal protection.²

RECOGNITION OF THE STATE POWER

"Under American Constitutions, the legislature possesses not only such powers as are expressly granted to it but also such auxiliary powers as are necessary and proper to make the express powers effective. The question then comes down to one of whether the power to investigate is so far incidental to the informed and effective exercise of the legislative function as to be implied."³

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² Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 HARV. L. REV. 153 (1926); J. CHAMBERLAIN, *LEGISLATIVE PROCESSES, NATIONAL AND STATE* (1936); H. WALKER, *THE LEGISLATIVE PROCESS* (1948); Cousins, *The Purposes and Scope of Investigations Under Legislative Authority*, 26 GEO. L. J. 905-29 (1938).

³ Schwartz, *Legislative Powers of Investigation*, 57 DICK. L. REV. 31 (1952).

This question was answered in *McGrain v. Daugherty*, a leading case recognizing for the first time the existence of legislative investigatory authority. The Supreme Court stated:

"We are of opinion, that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. . . . Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."⁴

LIMITATION ON THE STATE POWER

State legislative investigatory power is also inherent in the legislative function and subject, at least, to the federal constitutional limitations of due process and equal protection which "operate to require that state legislatures, in regulating persons and property under the police power, do so in a reasonable and nondiscriminatory manner."⁵

ANALYSIS OF EXISTING STATE PROVISIONS

Eleven of the fifty state constitutions make some provision for legislative in-

⁴ *McGrain v. Daugherty*, 273 U.S. 135 (1926).

⁵ Snider, *American State and Local Government*, in *STATE LEGISLATURES: POWERS AND PROCEDURES* 217 (1950).