

labels to the various governmental functions is but conclusory, Cooper & Cooper, supra, at 482; that the nature of the act performed and not the title of the performer determines whether an act is legislative or executive, Opinion of the Justices, 266 A.2d 823, 827 (N.J. 1970); that any attempt to allocate governmental authority on a purely "functional" model, (viz., the Legislature "makes law" while the executive "carries it out") is of little further assistance in determining whether an encroachment has occurred, Cooper & Cooper, supra, at 483-487; and that the several branches are not wholly separated, Buckley v. Valeo, 426 U.S. 1, 120-23 (1976) (per curiam opinion). "Indeed, there are governmental powers of doubtful classification which may be held properly to belong to either of more than one department of government." II Pound, Jurisprudence, 330-331. See also, Opinion of the Attorney General (Tenn. 12/22/75).27

As Mr. Justice Holmes "... in a classic formulation of the principles of the separation of powers, observed...":

"The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other.... It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision.... When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on.

"The fact that the boundaries between the powers of the different branches are vague and uncertain implies that the authority of each branch should be absolute only within the core of the powers the Constitution assigns it. Beyond the core of its powers, a branch certainly may act, but its activities begin to operate in an area where authority is shared with other branches. '[T]here is a twilight in which [the President] and Congress may have concurrent authority, or in which its distribution is uncertain.' Within this 'gray area' Congress may act to the extent that it has legislative authority and does not encounter an express constitutional limitation or intrude upon the core of powers held by another branch."

Stewart, supra, at 602-603. See also, 16 C.J.S. Constitutional Law §130.28 Thus, the question for analysis here is whether the proposed legislation would inject the