

determination which the opinion said is a judicial function and therefore exclusively within the judicial branch of state government. Since the Attorney General concluded that the legislature could not perform a judicial function as a body, he held it could not lawfully delegate such review power to one of its committees.

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"The Attorney General's opinion has been criticized as being based on fallacious reasoning even under the strictest doctrines of separation of powers. It is said the opinion assumes that the legislature would exercise the same mental process under its review power as a court would in the exercise of judicial power. It can as well be said that officers in the executive branch are exercising "judicial" power every time one decides to enforce a law because the reasoning process is the same i.e., interpretation of a statute and decision of its applicability to the facts of a given case. For further comments see Howe, "Legislative Review of Administrative Rules." supra. pp. 220-224."

See also, Schwartz, supra, 1042-1043, (who expressly viewed such conclusions as stemming from "a perverted construction of the separation-of-powers doctrine"); Note, Congressional Veto of Administrative Action: The Probable Response to a Constitutional Challenge, 1976 Duke L. J. 285; J. Wm. Rehnquist, supra.

#### APPENDIX ONE

##### RESTORING THE BALANCE: NINE RECOMMENDATIONS

In recognition of the need for a process of legislative review of regulations in every state, NCSL's Legislative Improvement and Modernization Committee has offered a set of nine recommendations in its report, "Restoring the Balance: Legislative Review of Administrative Recommendations." Following is the committee's summary of those recommendations.

1. Because of the proliferation of agency regulations and the possibility of promulgation of regulations which violate legislative intent or exceed statutory authority, the committee strongly recommends that legislatures establish priorities for reviewing all agency rules and regulations promulgated with the force of law under authority granted by the legislature, whether or not they are covered by the administrative procedures act. These review procedures should be as strong as the