

This is Chris Micheli with the Sacramento Governmental Relations Firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law. Welcome to today's podcast on *Delegating Authority by the Legislature*. Under our state constitution separation of powers provisions, generally, the laws of the state are enacted by the legislative branch of government. The laws are generally administered by the executive branch of government and the laws are generally interpreted by the judicial branch of government. With the executive branch charged with administering the law as well as enforcing it. The state agencies, departments that administer the law, need to engage in rulemaking activities.

Those that are quasi-legislative in nature. In delegating authority to the executive branch of government, one question that occasionally arises is whether a legislature can be expected to adopt statutes that address every detail of public policy. In some instances, they can, but in many others, they cannot. As a result, there's expected to be some delegation of legislative authority to the executive branch of either the federal or state levels of government. Issues are raised, however, regarding which powers can be delegated to the executive branch of government, and to which of the agencies or departments, as well as to what extent that delegation can take, without running afoul of constitutional limitations.

As a result, the question arises, how broadly can the legislature in California, delegate authority to state agencies and departments? Now generally, when this authority is delegated to state agencies, the legislature will articulate guidance in the use of that authority by the particular state agency. To do otherwise is tantamount to an improper delegation of legislative power. There are many state appellate court decisions in this area of state constitutional law. As a general rule, an unconstitutional delegation of authority occurs when the legislature, one, leaves the resolution of fundamental policy issues to others, or two, it fails to provide adequate direction for the implementation of that policy.

Interested persons can review numerous appellate court decisions on the topic of delegation of legislative authority. For example, there's *Carson Mobile Home Park Owners Association, versus the city of Carson*, a 1983 decision of the California Supreme Court. In that particular case, the court said, quote, "An unconstitutional delegation of power occurs when the legislature confers upon an administrative agency, the unrestricted authority to make fundamental policy determinations. To avoid such delegation, the legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law. Underlying these rules is the belief that the legislature is the most appropriate representative organ of government, which is settled in so far as possible controverted issues of policy, and that it must determine crucial issues whenever it has the time, information and competence to deal with them. Unquote. There are numerous other cases that have made similar determinations. Now, one interesting example occurred in the case of *California radioactive materials versus DHS* in 1993.

The parties litigated over an order for formal adjudicatory proceedings to determine whether the particular order was the result of an unlawful coercion by members of the Senate Rules Committee during the confirmation hearings of senior officials to head the state's health and welfare agency.

The Senate Rules Committee admitted that it obtained an agreement for further administrative proceedings from those appointees during the confirmation process, but the legislators characterize the agreement as a legally proper compromise between two branches of government.

The appellate court, on the other hand, concluded that the Senate rules committees interference in the administration of the law was indeed unconstitutional, and the purported agreement with the administrative officers was therefore null and void. The appellate court explained that formal adjudicatory hearings are not otherwise required by law, and the void agreement was the only basis upon which the agency intended to conduct further proceedings in the matter.

In the end, the fundamental issue the courts look at is how much authority can be delegated to the agencies contained in the executive branch.

It appears as you would expect, that the more that authority is delegated than the more likely it will be deemed unlawful.

As such, the legislature must remain vigilant in its delegation of authority efforts. I hope you've enjoyed this podcast.