

THE A, B, CS OF POWERS AND DUTIES

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RETURN TO CREATION

Constitutionally Created?

Statutorily Created?

As the powers and duties of an agency, board, or commission are examined, it is critical to understand whether the agency, board, or commission is constitutionally- or statutorily-created, as this may figure into whether some agencies, boards, or commissions have an extra-statutory claim to power. Even so, unless a constitutional grant of power is *specific*, any claim to power must arguably be subordinate to separation of powers notions. See OKLA. CONST. art. 4, 1, art. 5, 36. In short, remember context.

POWERS AND DUTIES



The constitutional or statutory provisions creating the agency, board, or commission should include provisions which specify the **powers and duties** of the agency, board, or commission.

When examining these provisions, ask:

- *what is it that the agency, board, or commission is specifically authorized to do?
- *Does the specific grant of authority require any additional rulemaking for the power or duty to be exercised?






CONSTITUTIONALLY-CREATED AS, BS, AND CS

The Judicial Nominating Commission is a constitutionally-created commission and, as originally enacted, only governed “the selection and tenure of . . . Justices of the Supreme Court and Judges of the Court of Criminal Appeals of the State of Oklahoma.” OKLA. CONST. art. 7-B, §§ 1,3.

The Commission’s powers and duties include “choos[ing] and submit[ting] to the Governor and Chief Justice of the Supreme Court *three (3) nominees*, each of whom has previously notified the Commission in writing that he will serve as a Judicial Officer if appointed.”

The Constitution also provides that “the provisions hereof *may be extended*,” and in 1980, the Legislature in fact extended the provisions of Article VII-B, mandating that the Governor shall use the services of the Commission in filling vacancies in the offices of district judge, associate district judge, or judge of any intermediate appellate court.

What do you think?

- Does the Commission have the authority to submit fewer than the names of three nominees to the Governor and Chief Justice?
 - Prior to 1980, did the Commission have the power to choose and submit to the Governor and Chief Justice nominees for district judge?
 - Does the Commission need to engage in any rulemaking?
 - See 2016 OK AG 2.
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*STATUTORILY-
CREATED As, Bs,
and Cs*

The State Board of X shall have the powers and it shall also be its duty to regulate the practice of Y. In addition to any other powers placed on it by this Act or as otherwise provided by law, the Board shall have the power and duty to:

1. Set standards for licensure and certification;
2. Set fees;
3. Prescribe the time, place, method, manner, scope, and subjects of examination for licensure;
4. Prepare or select, conduct or direct the conduct of, set minimum requirements for, and assure security of licensing and other required examinations;
5. Issue or deny licenses and certificates and renewals thereof

...

What do you think?

- Based on the above, what is State Board of X empowered to do?
 - How would State Board of X exercise these powers?
 - Does State Board of X need to engage in any rulemaking?
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COMPARE

The Commission shall have the powers and duties to:

...


Appoint such officers, agents, and employees as it deems necessary to operate and maintain the Commission and to prescribe their duties and to fix their compensation.

The Board shall have the powers and duties to:

...

Employ, direct, reimburse, evaluate, and dismiss staff in accordance with state procedures.

What do you think?

- Does the Commission have a clearer grant of power than the Board or vice-versa?
 - Must either or both engage in administrative rulemaking to fulfill their respective grants of power?
 - What does the language suggest? Is there room for interpretation?
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*RETURN TO
CONSTRAINTS
ON POWER*

75 O.S. 307.1(D)

In addition to the review of agency-adopted rules pursuant to [the APA], [rules committees] shall have the power and duty to:

- Conduct a continuous study and investigations as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of proposed rules, review of existing rules including but not limited to consideration of amendments to or repeal of existing rules, the lack of rules, the ability of agencies to promulgate such rules, and the needs of administrative agencies . . . ; and
 - Monitor and investigate compliance of agencies with the provisions of the [APA], make periodic investigations of the rulemaking activities of all agencies and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.
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75 O.S. § 308

- “By the adoption of a joint resolution during the review period specified in subsection A of [Section 308], the Legislature may disapprove or approve any rule.” § 308(B).
 - “Rules may be disapproved in whole or in part by the Legislature.” § 308(C).
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*Thank
You*

