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THE NORTH CAROLINA STATE BAR

KEMP D. BATTLE, *Editor*

July Council Meeting

The mid-summer meeting of the Council was held in the Supreme Court room at Raleigh on July 16, 1937. President Smith, Vice-President Rose, Secretary London and Councillors Grimes, Battle, Bland, Dunn, Wallace, Cheshire, Poisson, McLean, Reade, Hastings, Walser, Covington, Jones, Clement, Feimster, Grant, Shipman, Martin and Edwards were present. Councillor Perry was absent, as was Councillor Price, just elected for the newly created Twenty-First District. Councillor Edwards, succeeding Councillor Black, resigned, was assigned to the Committee on Legislation and Law Reform.

Upon recommendation of the Executive Committee, the resignation of Mr. A. A. F. Seawell, Jr., Investigator for the Grievance Committee since 1935, was accepted. Mr. Seawell has returned to the active practice of law at Sanford. The vacancy thus created was left unfilled for the present. A committee consisting of Messrs. McLean, Rose and Dunn, was appointed to make a recommendation at the October meeting.

The President announced that the trial on appeal to the Supreme Court of Harnett County from disbarment proceedings against E. C. West and J. O. West, had been completed. The trial resulted in a judgment of disbarment by the Judge of the Superior Court in the case of E. C. West. This has been sustained by the Supreme Court, 212 N. C. 189 (Oct. 13, 1937). In the case of J. O. West, a judgment of suspension for a period of two years was entered and accepted by the respondent.

The report of the Trial Committee in disbarment proceedings against B. F. Brittain of Randolph County was presented by Councillor Jones, Chairman of the Trial Committee. The respondent had filed no formal exceptions to the Committee's report but appeared in person and asked permission to make an oral statement. This was granted. After full hearing and discussion, a judgment was entered disbarring the respondent from practicing law. The respondent gave notice of appeal to the Superior Court of Randolph County.

The report of the Trial Committee in disbarment proceedings against John M. Brittain was presented and after discussion a judgment of disbarment was entered. Notice was given of appeal to the Superior Court of Randolph County.

Upon recommendation of the Trial Committee charges against Luther F. Congleton of Hertford were dismissed.

The report of the Trial Committee on complaints against another member of the North Carolina State Bar was presented and a statement from the respondent in person was heard. Judgment was rendered that the respondent be given a private reprimand at the October meeting of the Council. As the respondent is to be reprimanded privately, the name is withheld.

Proceedings against E. B. High were dismissed under the authority of *In re Parker*, 209 N. C. 693, 184 S. E. 532 (1936).

Upon report and recommendation of the Grievance Committee, disciplinary proceedings were directed against Harry B. Brown, an attorney of Washington, N. C. A trial Committee consisting of Councillors Poisson, Bland and Covington was appointed. Mr. Jack Edwards was designated as Prosecuting Attorney.

Upon report and recommendation of the Grievance Committee, disciplinary proceedings were directed against Philip A. Escoffery, an attorney of Durham, N. C. A trial Committee consisting of Councillors Hastings, Grant and Walser was appointed. Mr. B. M. Watkins of Durham was designated as Prosecuting Attorney.

Upon report and recommendation of the Grievance Committee, disciplinary proceedings were directed against B. Ray Olive, an attorney of Durham, N. C. A trial Committee consisting of Councillors Hastings, Grant and Walser was appointed. Mr. B. M. Watkins of Durham was designated as Prosecuting Attorney.

Charges against several other attorneys were dismissed, upon recommendation of the Grievance Committee.

The Committee on Legal Ethics and Professional Conduct was requested to consider and report upon the advisability of the Council adopting a code of judicial ethics. The American Bar Association has adopted a code of professional ethics for lawyers and another for judges. The North Carolina Bar Association has adopted both codes but The North Carolina State Bar has adopted only the code relating to attorneys.

October Council Meeting

The regular October quarterly meeting of the Council was held in the Supreme Court building on October 21, 1937. President Julius C. Smith, Vice-President Charles G. Rose, Secretary H. M. London and every member of the Council were present. The Council as now constituted consists of the following:

First District, Junius D. Grimes, Washington
Second District, Kemp D. Battle, Rocky Mount

Third District, B. H. Perry, Henderson
Fourth District, D. H. Bland, Goldsboro
Fifth District, Albion Dunn, Greenville
Sixth District, F. E. Wallace, Kinston
Seventh District, Joseph B. Cheshire, Raleigh
Eighth District, Louis J. Poisson, Wilmington
Ninth District, Dickson McLean, Lumberton
Tenth District, R. P. Reade, Durham
Eleventh District, G. H. Hastings, Winston-Salem
Twelfth District, Don A. Walser, Lexington
Thirteenth District, J. F. Milliken, Monroe
Fourteenth District, J. Laurence Jones, Charlotte
Fifteenth District, Hayden Clement, Salisbury
Sixteenth District, Walter C. Feimster, Newton
Seventeenth District, A. Turner Grant, Mocksville
Eighteenth District, J. E. Shipman, Hendersonville
Nineteenth District, Julius Martin, II, Asheville
Twentieth District, McKinley Edwards, Bryson City
Twenty-First District, J. Hampton Price, Leaksville

Mr. Milliken, a new member of the Council, was assigned to the Executive Committee and Mr. Price, also a new member, to the Committee on Legal Ethics and Professional Conduct.

Upon recommendation of the Board of Law Examiners, a few minor changes were made in the rules governing admission to the Bar. They are concerned mainly with technical adjustments not of general interest.

The report of the Trial Committee in the matter of James Foster Ashby, an attorney of Mt. Airy, was received and argument of counsel heard. After full discussion, the Council adjudged that the respondent be suspended for a period of six months.

The report of the Trial Committee in the matter of Dallas Locke Russell, Jr., an attorney of Hickory, was received and argument of counsel heard. After full discussion, the Council adjudged that the respondent be suspended for a period of three months.

An attorney whose conduct had been the subject of report by the Trial Committee at the July meeting of the Council appeared and received the private reprimand which had been ordered. In case of private reprimand, the name of the attorney is not made public.

The Grievance Committee made no recommendations for disciplinary action at this meeting. A number of complaints have not been investigated for lack of an investigator to make the usual preliminary survey of facts.

The report of the Grievance Committee indicating the need of assistance was supplemented by a communication from the Board of Law Examiners requesting the Council to make arrangements for the

employment of a full time secretary, authorized, in addition to other duties, to make investigations for the Board of Law Examiners in reference to the moral character of applicants for license. In connection with this communication, a special committee which had been appointed at the July meeting of the Council reported that in their judgment a full time secretary should be employed who should act also as treasurer and as investigator for the Grievance Committee. This committee, composed of Councillors Albion Dunn, Dickson McLean and Charles G. Rose, recommended the employment of a full time secretary, provided the position could be financed within the resources of the Council.

These reports elicited a prolonged discussion in the course of which it was developed that the funds of the State Bar had been reduced between 1935 and 1936 from approximately \$7,000 to approximately \$4,500 and from 1936 to 1937 to approximately \$2,500. It was therefore found that the regular income of the organization was insufficient to provide for a part time secretary as heretofore, plus the services of a full time investigator. Mr. A. A. F. Seawell, Jr. had served in that capacity for two years prior to the summer of 1937. If a full time secretary is employed it is planned that he shall maintain an office of The North Carolina State Bar in Raleigh and that his services will be available to the Board of Law Examiners, the Grievance Committee and any other committee of the Council which needs his assistance.

The discussion of the financing of this plan brought forth suggestions that the Legislature at its session in 1939 might be asked to increase the annual dues of members from \$3.00 to \$4.00 or \$5.00, or in lieu thereof that the Legislature might be willing to apply to the expense of maintaining the office surplus funds received from applicants to stand the bar examination over and above the expenses of conducting the examination. These fees have produced a surplus of approximately \$2,000 a year, which under the present Act is appropriated to the library of the Supreme Court. As the secretary of the North Carolina State Bar is *ex officio* secretary of the Board of Law Examiners without additional salary it seems not unreasonable to expect that his salary and the expenses of his office should in part be paid by the fees from applicants. At the end of the discussion a resolution was adopted directing the Executive Committee to report to the Council at its January meeting a budget, including provision for employment of a full time secretary, and recommendations as to the availability of suitable persons. It is earnestly hoped that a study of the financial implications of this plan will justify the Council in embarking upon it without awaiting further action of the Legislature.

The term of Mr. C. W. Tillett, Jr. as a member of the Board of Law

Examiners expiring before the next meeting of the Council, he was re-elected for a three year term. The President reported that Mr. Ben T. Ward, also a member of the Law Examiners, had indicated that he would not be able to accept election to another term. Thereupon Mr. Burton Craige of Winston-Salem was elected to succeed him for a three year term.

The Committee on Legal Ethics and Professional Conduct reported that at the January meeting additional Canons of Ethics of the American Bar Association would be presented to the Council for consideration.

A special committee appointed to cooperate with the NORTH CAROLINA LAW REVIEW reported that the plan of offering to members of the State Bar an opportunity to subscribe to the LAW REVIEW, at a cost of \$1.00 per year as against the regular \$3.00 a year subscription rate, had elicited a sufficient number of subscriptions to assure the continuance of the LAW REVIEW. A letter was presented from Dean Van Hecke thanking the State Bar for its cooperation. It is perhaps not too much to say that the action of the members of the State Bar in coming to the assistance of the LAW REVIEW with exactly one thousand subscriptions, has saved the LAW REVIEW to the profession.

A memorandum by Dean Van Hecke on the subject of the implied powers of the State Bar, including investigation and action on unauthorized practice of law by laymen, was presented, and Mr. Van Hecke was asked to make it public.¹ An increased interest has been manifested by members of the Bar in the advisability of the Council instituting a survey of this general subject.

As this meeting completed the term of service of President Julius C. Smith, he expressed his thanks to the Council for their cooperation with him. The Council then adjourned with a rising vote of thanks to Mr. Smith for his faithful and untiring services.

Fourth Annual Meeting

The annual meeting of The North Carolina State Bar was held at the Sir Walter Hotel in Raleigh on Friday, Oct. 22, 1937, with morning and afternoon sessions. In the absence of Governor Hoey, an address of welcome was delivered by Lieut. Governor Wilkins P. Horton, to which Mr. Fred S. Hutchins of Winston-Salem responded. The report of the secretary-treasurer was made by Mr. Henry M. London, and the report of the Executive Committee was read by Councillor Junius D. Grimes. The financial part of the treasurer's report will be separately published;² otherwise the two reports are of a routine nature and cover

¹ This memorandum is published, *infra*, p. 66.

² *Infra*, p. 74.

matters which have been from time to time included in reports of Council meetings.

Mr. Arthur T. Vanderbilt of Newark, New Jersey, President of the American Bar Association, delivered a thoughtful and interesting address entitled "Whither the Bar." He traced the position of the bar in the public life of this country for the past two centuries and indicated his belief that it was now passing through a period of transition with a future of perhaps greater influence and usefulness ahead. Mr. Vanderbilt is the youngest man ever elected to the Presidency of the American Bar Association. His address and his personality made a very pleasant impression upon the meeting.

Justice W. A. Devin of the North Carolina Supreme Court spoke on "The Growth of the Law and Some Suggested Changes." Judge Devin's enlightening address contained a number of interesting suggestions as to how practice and procedure could be improved. These suggestions brought to mind the fact that The North Carolina State Bar, as now set up, has no plans or committees for the improvement of the technique of jurisprudence. Certainly the remarks of Judge Devin were of a nature which called for a careful study and appraisal.

Mr. F. E. Winslow, President of the North Carolina Bar Association, extended the greetings of the State Bar's parent. He commented upon the fact that the Bar Association, unlike the State Bar, did have facilities for deliberation and discussion in reference to the administration of justice and he outlined a number of practical problems which the North Carolina Bar Association was preparing to tackle. The importance of the voluntary association was stressed and members of the State Bar were urged to join in and support it vigorously.

At the afternoon session Mr. Ralph M. Hoyt, of Milwaukee, read a paper entitled "Where Do We Go from the Commissions?"³ This paper continued the study of administrative law so interestingly discussed before the State Bar at its 1936 meeting by Col. O. R. McGuire. Few lawyers are aware of the extent to which the rights and activities of private individuals and corporations are governed by administrative commissions, both state and federal. It is a jungle of tortuous paths, and leadership of the bar is desperately needed to introduce the concept of due process which is an inheritance of the profession from the common law of England.

Mr. Giles J. Patterson of Jacksonville, Florida, read a paper on "The Freedom of the Press." It was eloquently expressed, and emphasized the belief that freedom of discussion and publication by a Bar imbued

³This paper is published under the title, "Shaping Judicial Review of Administrative Tribunals," as one of the leading articles in this issue of the LAW REVIEW, *supra*, p. 1.

with the traditions of individual liberty are the *sine qua non* of the maintenance of the processes of democracy and the preservation of individual freedom.

Mr. C. W. Tillett, Jr. of Charlotte, on behalf of the Board of Law Examiners, made a report discussing the problems and policies of the Board and of their efforts to adapt their practices to the attainment of the ends which all desire, namely, separating those who are qualified from those who are not qualified to enter upon the practice of the profession. It is thought that the address served a very useful purpose in giving the members of the State Bar a clearer insight into the difficulty of the problems involved.

Mr. D. E. Henderson of Charlotte made a report on the Judicial Conference appointed by Governor Hoey under the authorization contained in an Act passed by the Legislature of 1937. He invited suggestions from individual lawyers as to local problems in the various Judicial Districts and suggestions by which the system of allocation of judges could work to the best advantage in disposing of the legal business of the state with the minimum of delay and inefficiency.

Mr. L. P. McLendon of Greensboro had expected to speak concerning the work of the commission created by the 1937 General Assembly to study a State Department of Justice, but was at the last moment unavoidably prevented from attending. Attorney General Seawell made a brief statement in his place.

Annual election of officers then occurred, as a result of which Vice-president Charles G. Rose was by unanimous vote elevated to the presidency. By a similarly unanimous vote Fred S. Hutchins of Winston-Salem was elected Vice-president. The meeting then adjourned.

There seemed to be a general consensus of opinion, as attested by the large attendance and manifest interest of the lawyers of the State, that the State Bar in the four years of its existence had well measured up to the plans and hopes which had brought it forth; that it was rendering an important service to the profession and to the public welfare; and that it should go on resolutely with its work of elevating the profession to accord with the traditions of its history.

The Implied Powers of the North Carolina State Bar

By M. T. VAN HECKE

This memorandum is submitted to the Council of The North Carolina State Bar in response to a suggestion (15 N. C. L. REV. 438, 440, June 1937) that the Council would welcome discussions by members of the Bar and by the editors of the LAW REVIEW of the legal problem: Does the State Bar have any authority to act in fields other than those of admission to the Bar and discipline of attorneys? In other words, what are the implied powers of the State Bar in the execution of which the funds of the Bar may lawfully be expended?

The literature of the integrated bar movement clearly demonstrates that its objective has been to enable the legal profession to work more effectively for the improvement of the administration of justice. Admission and discipline of attorneys have been thought of as but two steps among many others leading to that end. Thus, the American Judicature Society stated in 1918, in the introduction to its Model Act: "Coming now to the powers natural to a really representative organization, we find that admission to practice and discipline are the cardinal ones. . . . The range of activities of such an association will not stop with the matter of admission and discipline, which are largely domestic policing; they will be constructive in ways now hardly dreamed of. There will be many opportunities for developing increased usefulness to all its members and to the public." 2 JOUR. AM. JUD. SOC. 105, 108-109. See also Charles A. Beardsley, *How the Integrated Bar Serves the Lawyer*, 19 JOUR. AM. JUD. SOC. 122 (1935); and Frank E. Atwood, *Objectives and Methods of Bar Integration*, 20 A. B. A. J. 203 (1934).

This broad purpose is explicitly set forth in Section 28 (c) of the Model Act published in 1918 by the American Judicature Society, and in nine of the sixteen integrated bar acts now in operation. The Model Act reads: "The Board of Governors shall have power . . . to aid in the improvement of the administration of justice in the state." Arizona, Nevada and Oklahoma follow the language of Section 23 of the California Act: "The Board shall have power to aid in the advance of the science of jurisprudence and in the improvement of the administration of justice." Section 24 of the Mississippi Act provides: "It shall be the duty of the Mississippi State Bar . . . to recommend to the state legislature such legislation relating to the courts, to matters of pleading, practice and procedure and any other legislation which in its judgment will improve the courts and the law or render the members of the bar

more efficient as instrumentalities for its attainment." The Utah Act is substantially in accord with Section 3 of the South Dakota Act: "The State Bar is created to obtain the cooperation of all the practicing lawyers in the state in the better administration of justice, . . . to furnish a legal entity through which the considered judgment of its members on matters affecting the judicial system of the state may be ascertained and made available to the courts and the legislature." The Washington Act, in Section 7 (g) provides: "The said Board of Governors shall have power in its discretion from time to time to adopt rules providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever the organization and functioning of the State Bar." The North Dakota Act was amended in 1933 so as to provide that the treasurer of the Bar Board may disburse part of the license fees to pay "the expenses incurred by the Bar Association of North Dakota in the conduct of investigations and prosecutions of proceedings instituted for the purpose of protecting the public and the bar of North Dakota against unlawful practices by corporations or persons not licensed to practice law." All of these statutes may be found in the pamphlet. STATE BAR ACTS ANNOTATED (3rd ed., 1936) published by the Conference of Bar Association Delegates, A Section of the American Bar Association.

In contrast with these broad statutory authorizations stands the restricted language of the North Carolina Act, N. C. CODE ANN. (Michie, 1935) Section 215 (1-18) (*italics added*). Thus, Section 1 provides: "There is hereby created as an agency of the State of North Carolina *for the purposes and with the powers hereinafter set forth*, The North Carolina State Bar." Section 7 provides that when the organization of the Council shall have been completed, "it shall be vested with *the powers herein set forth*." Section 9 provides: "The Council is hereby vested, as an agency of the State, *with control of the discipline and disbarment of attorneys*. . . . The Council shall have power to administer this Act, to formulate and adopt rules of professional ethics and conduct, to publish an official journal concerning matters of interest to the legal profession and to do all such things necessary in the furtherance of *the purposes of this Act* as are not prohibited by law." Section 10 empowers the Council to appoint the Board of Law Examiners and to approve or reject the Board's rules relating to admission to the Bar. Section 11 grants to the Council the power to discipline and disbar attorneys. Section 17 provides: "The said membership fee shall be regarded as a service charge for the maintenance of the several services *prescribed in this Act*. . . . The said fees shall be disbursed by the Secretary-Treasurer on the order of the Council." The scope and

financing of the annual meeting are specifically authorized by Section 16, and compensation for prosecutors in disbarment cases by Section 14.

On the other hand, the following items indicate that the official functions of the North Carolina State Bar were not intended to be confined to the admission and discipline of attorneys:

Mr. I. M. Bailey, of Raleigh, who served as chairman of the North Carolina Bar Association's Committee on Incorporating the Bar during the drafting and enactment of the State Bar Act, stated in a recent letter: "So far as I know, the committee of the North Carolina Bar Association assumed that it was not necessary to name every general activity in which it was thought the State Bar should engage. The questions of admission and discipline are so specific that they had to be dealt with in a definite way. It was assumed that the North Carolina State Bar would be an agency through which the profession could express its aims and ambition."

In his 1934 address as the first president of the North Carolina State Bar, Mr. Bailey said: "The opportunities of The North Carolina State Bar are many and important. In the administration of justice, without the need of admitting the truth of the charge that our procedure is inadequate, we recognize need for reform. In the field of professional equipment and qualification, we can not be slow to grasp for the pinnacle of integrity, honesty and uprightness in professional conduct. In the field of government, upon every occasion and under every circumstance, we must exert ourselves to the utmost to contribute to the growth and development of society, what experience has taught and will teach us, is everlasting and for the public good. . . .

"Through the Committee on Legislation and Law Reform of the Council, The North Carolina State Bar is dedicated to sincere and serious study of our machinery for the administration of justice and of laws for the regulation of the rights and privileges of our people. No other organization in North Carolina should be the first to suggest an advance in the right direction. We must lead, but we can not afford to take any step unless it be our conviction that the welfare of our Government and of its people is safeguarded. . . .

"With a recognition of the right of any individual, whether lawyer or layman, to lay before this agency and its officers and committees, any suggestions for greater usefulness, we come, therefore, to this meeting to study our powers and our responsibilities. We must measure our strength cautiously, but as we awaken to the power which has been extended to us, we must be ever mindful of the increasing responsibilities which are ours. Justice does not administer itself; it can not be administered solely by Judges; it can not be administered solely by

jurors. The three agencies, the judge, the lawyer and the jury, must work together in a more perfect cooperation." PROCEEDINGS, THE NORTH CAROLINA STATE BAR (1934) 7-9.

The rules and regulations for the North Carolina State Bar, adopted by the Council October 6, 1933, provide in Sections 1 and 2: "*Purpose*—The North Carolina State Bar shall foster the following purposes, namely, to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice . . . *Division of Work*—To facilitate the work for the accomplishment of the above enumerated purposes, the Council may from time to time classify such work under appropriate sections and committees of the North Carolina State Bar." Chief Justice Stacy certified on October 17, 1933: "After examining the foregoing certificate of organization of the North Carolina State Bar, it is my opinion that the said certificate [which includes the rules and regulations] complies with a permissible interpretation of Chapter 210, PUBLIC LAWS, 1933." 205 N. C. 853. This, when viewed in conjunction with Section 7 of the State Bar Act, amounts to an administrative and judicial construction that the State Bar is by statute empowered to admit and discipline attorneys, and, in addition "to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, and to facilitate the administration of justice."

Accordingly, the Council has set up, in addition to the Executive Committee, the Grievance Committee, the Committee on Legal Ethics and Professional Conduct, and the State Board of Law Examiners, committees on Legislation and Law Reform, Constitutional Amendments, Cooperation with the LAW REVIEW, Administrative Law, and the Unauthorized Practice of the Law. The annual statements of the Treasurer, however, show that in no instance has the work of any of these committees been financed by the State Bar.¹

The Council, according to Section 3 of the Act, "shall be competent to exercise the entire powers of The North Carolina State Bar in respect of the interpretation and administration of this Act, . . . and all other matters." Annual meetings, under Section 16, are to be devoted to "the discussion of the affairs of the Bar and the administration of justice." At these meetings, the membership is authorized to review "any decision of the Council or any committee thereof relating to admission, exclusion, discipline or punishment of any person or other action."

Section 17, in saying that the membership fee "shall be regarded as a

¹ The 1936-1937 Treasurer's Report, *infra*, p. 74, which was not available at the time this memorandum was prepared, shows that the State Bar paid the expenses of the Committees on Constitutional Amendments and on Legislation and Law Reform.

service charge for the maintenance of the several services prescribed in this Act," sets forth the reason why compulsory membership fees are imposed. It does not purport to limit the power of the Council to determine the purposes for which they shall be spent. Several lines down in Section 17, after other matters have been dealt with, it is provided without limitation: "The said fees shall be disbursed by the secretary-treasurer on the order of the Council." The expenses of the Board of Law Examiners are more than covered by the separate fees paid by candidates for admission to the Bar. The balances of those funds are, by Section 10, to be paid to the Supreme Court for the development of the law library. With this self-liquidating activity aside, are the services maintained by the membership fee to consist only of the substantially negative disciplinary proceedings? Will not the legal profession and the public expect that the State Bar's services thus underwritten shall relate more constructively to the improvement of the administration of justice?

Power to deal with the unauthorized practice of the law is implied in several ways.

Sections 2 and 10 of the State Bar Act prohibit anyone who is not a member of the State Bar from practicing law and grant to the Council and the Board of Law Examiners exclusive control over admission to practice. It follows as a necessary corollary that the State Bar may act to prevent unqualified persons from usurping the privilege thus safeguarded. Why should the State Bar go to so much effort to see that those select few who are admitted to practice have the desired professional attainments if it is to be powerless to prevent unauthorized practice by hordes of business men who do not even attempt to comply with any standards or qualifications?

No case has been found dealing with this question as applied to a State Bar. However, in those states where the courts have inherent and exclusive control over admission to the bar, the courts have often asserted themselves against laymen. In *People ex rel. The Illinois State Bar Association v. Peoples Stockyards Bank*, 344 Ill. 462, 176 N. E. 901 (1931), the court, at page 906 of the NORTH EASTERN REPORTER, said: "Having inherent and plenary power and original jurisdiction to decide who shall be admitted to practice as attorneys in this state, this court also has all the power and jurisdiction necessary to protect and enforce its rules and decisions in that respect. Having power to determine who shall and who shall not practice law in this state, and to license those who may act as attorneys and forbid others who do not measure up to the standards or come within the provisions of its rules, it necessarily follows that this court has the power to

enforce its rules and decisions against offenders, even though they have never been licensed by this court. Of what avail is the power to license in the absence of power to prevent one not licensed from practicing as an attorney? In the absence of power to control or punish unauthorized persons who presume to practice as attorneys and officers of this court the power to control admissions to the bar would be nugatory."

In Brand's UNAUTHORIZED PRACTICE DECISIONS (1937) cases are discussed at pages 92, 107, 233, 268, 407, 480, 565, 620, and 639 in which courts, similarly motivated, have set up commissions to investigate and prosecute the unauthorized practice of the law.

Very little activity on the part of unauthorized practitioners can go on without participation at some point by licensed attorneys. Since the 1937 General Assembly amended the State Bar Act so as to make the violation of any of the canons of ethics a cause for discipline (see 15 N. C. L. REV. 330, June 1937) the State Bar can at least discipline those of its members who are guilty of such participation.

The Unauthorized Practice Act of 1931, N. C. CODE ANN. (Michie, 1935) Section 199(d) contemplates coöperation by bar associations and solicitors in stamping out the prohibited activities. This Act and the State Bar Act of 1933, considered together, authorize the State Bar at least to conduct and finance the investigations necessarily incident to the furnishing of evidence to the solicitors.

The only decision on the capacity of a State Bar to sue in its own name for an injunction against persons charged with the unauthorized practice of law is *State Bar of Oklahoma v. Retail Credit Association*, 170 Okla. 246, 37 P. (2d) 954 (1934). In that case the State Bar sought an injunction against a collection agency which was alleged to be engaging illegally in the practice of law. The defendant demurred to the complaint on the ground that the plaintiff had no capacity to sue. The Supreme Court of Oklahoma overruled the demurrer and sent the case back for a trial on its merits, saying at pages 956-958 of the PACIFIC REPORTER:

"The act creating the plaintiff as a legal association provides in section 2 (section 4211, O. S. 1931) that the state bar shall have a seal and may sue and be sued, and in section 23 (section 4232, O. S. 1931) that the association, acting through its board of governors, shall have the power to aid in the advance of the science of jurisprudence and in the improvement of the administration of justice. The purpose of the act was to create the association to be known as the state bar of Oklahoma, with a membership to be composed of persons authorized to practice law, and to generally have and possess the power to regulate the practice of law in Oklahoma, and to aid and assist the various courts in the administra-

tion of justice. The plaintiff association acts as an aid or an arm of the judicial system of the state in the prevention of the unauthorized practice of law, and may, and often does, proceed against persons unfit to hold themselves out as lawyers, or to engage in the practice of law. The passage of this act is a distinct effort toward improvement in the general government and regulation of the practice of law, and the administration of justice.

"The plaintiff association since its creation in 1929 has been an agent for great good to the state, and to the practice of law and to the administration of justice in the state. It has rendered services of great value not only to the lawyers and to the courts, but to the general public, and, in final analysis, the general purpose and plan of the plaintiff association and of the law creating it is the further protection of the general public in affairs pertaining to the practice of law and the administration of justice. . . .

"The state has a vital interest in the regulation of the practice of law for the benefit and protection of the people as a whole, and this act was adopted in furtherance of a wholesome public policy. Clearly it was intended by the Legislature to create the state bar, vested with power to enforce the provisions of the State Bar Act by whatever lawful means it might employ for that purpose. Here the state bar enters a court of equity to enjoin the defendants and abate the wrong of defendant's continued actions. No good reason is shown why the plaintiff should not be freely permitted so to do. . . .

"The State Bar Act does provide (section 4257, O. S. 1931) that any unauthorized person who engages in the practice of law shall be guilty of a misdemeanor. That statute, however, is not purely or primarily a criminal statute. The act was passed to further regulate the practice of law, to provide for the qualifications and licensing of those who should practice law, and to create the state bar and confer upon it the power and authority set out in the act. As an incident thereto, it made persons guilty of a misdemeanor who practiced law in violation of the act. That provision was evidently adopted as an addition or positive deterrent to the unauthorized practice of law by those not entitled to practice. It is difficult to find in this provision any possible restriction or limitation upon the duties or power of the state bar. The primary purpose of the act was not to create a crime, but to provide for the public welfare."

The statutory situation in Oklahoma differs in several ways from that in North Carolina.

The Oklahoma Act gives that State Bar power to aid in the advance of the science of jurisprudence and in the improvement of the administration of justice. That the North Carolina State Bar has such powers

is clear from the rules and regulations certified by the Chief Justice as complying with a permissible interpretation of the Act.

No mention is made of any Oklahoma statute similar to our Unauthorized Practice Act of 1931, N. C. CODE ANN. (Michie, 1935) Section 199(d), which directs the solicitor to sue for an injunction in the name of the State. But there is no reason to believe that the General Assembly intended Section 199(d) to make action by the solicitor for an injunction the exclusive remedy. Many voluntary state and local bar associations in other states have been allowed to bring suits in their own names for injunctions against the unauthorized practice of the law without any statutory authorization. See the cases discussed in Brand, UNAUTHORIZED PRACTICE DECISIONS (1937) 89, 189, 232, 315, 366, 508. See also the many cases where, for the reasons given *supra* in *People v. Peoples Stockyards Bank*, courts, without any statutory authorization, have instituted contempt proceedings against persons charged with the unauthorized practice of the law. These are collected in Brand, UNAUTHORIZED PRACTICE DECISIONS (1937), at pages 81, 101, 158, 206, 209, 244, 249, 253, 258, 315, 343, 347, 354, 409, 411, 427, 438, 460, 466, 468, 470, 480, 523, 540, 586, 602, 605, 606, 614, 623, 641, 662, 681.

In view of the implied powers of the North Carolina State Bar, the lack of a specific provision authorizing our Bar to sue should not be regarded as a handicap. In *Seawell v. Carolina Motor Club*, 209 N. C. 624, 184 S. E. 540 (1936) the Attorney General was on motion made a party plaintiff in an action for an injunction originally instituted by the solicitor. No specific statutory provision was thought to be necessary for that intervention. None is needed to enable a statutory agency to enter the courts of the State on any matter within its sphere of interest.

The point of the Oklahoma case is that the Oklahoma court's conception of the public significance of the State Bar is directly applicable to North Carolina.

Taken literally, the text of the statute setting up The North Carolina State Bar appears to limit its functions to the admission and discipline of attorneys. That is due to the narrow scope of the specific grants of power. The Act expresses, however, no prohibition upon the exercise of other powers not particularly authorized. For the reasons given in the foregoing discussion, I am of the opinion that the implied powers of The North Carolina State Bar are broad enough to enable it to devote its energies and finances to those activities which in the judgment of the Council are likely "to cultivate and advance the science of jurisprudence; to promote reform in the law and in judicial procedure; and to facilitate the administration of justice."

Treasurer's Report

Statement of Receipts and Disbursements of The North Carolina State Bar for the period October 1, 1936, to October 20, 1937.

Receipts

October 1, 1936, active balance in Wachovia Bank and Trust Co., Raleigh.....	\$ 587.08
Dues @ \$3.00 for 1933 from 3 members.....	9.00
Dues @ \$3.00 for 1934 from 15 members.....	45.00
Dues @ \$3.00 for 1935 from 56 members.....	168.00
Dues @ \$3.00 for 1936 from 316 members.....	948.00
Dues @ \$3.00 for 1937 from 1,706 members.....	5,118.00
Dues @ \$3.00 for 1938 from 4 members.....	12.00
1,000 annual subscriptions to N. C. LAW REVIEW.....	1,000.00
Interest paid by bank on Time Certificates.....	59.91
Transfer from Savings to Active Account.....	1,500.00
(Leaving \$2,000 in 2% Time Certificates)	
	<u>\$9,346.99</u>

Disbursements

Postage, printing and supplies.....	709.64
Expenses annual meeting at Raleigh.....	132.50
Reporting annual meeting.....	28.90
Reporting four council meetings.....	52.50
Expenses Councillors	1,472.65
Expenses trial committees.....	436.26
Stenographic reporting disbarment cases.....	260.44
Attorneys in disbarment cases, fees.....	400.00
Witnesses in disbarment cases.....	15.60
Serving papers in disbarment cases.....	4.50
Expenses Constitutional Amendment Committee.....	57.50
Expenses Chairman Grievance Committee.....	40.00
Salary Secretary-Treasurer	1,200.00
Clerical help for Secretary-Treasurer.....	600.00
Salary Investigator Grievance Committee, 9½ months.....	1,187.50
Expenses Investigator, 9½ months.....	423.20
G. R. Poole, auditing books for Treasurer.....	50.00
Rubber stamps and telegrams.....	5.32
Premium on Treasurer's bond.....	12.50
Expenses Committee on Legislation.....	117.50
LAW REVIEW subscriptions.....	1,000.00
Docketing Denny judgment.....	1.75
Bad check	3.00
Bank service charges.....	24.60
Edwards and Broughton Co., printing and mailing 1936 Proceedings	734.05
Total disbursements	<u>\$8,969.91</u>
October 20, 1937, Balance in First Citizens Bank and Trust Co.—Active Account	477.08
Two per cent time certificates in Wachovia and First Citizens Banks equally.....	2,000.00
Total on hand October 21, 1937.....	<u>\$2,477.08</u>

HENRY M. LONDON, Treasurer.

Examined and found correct as stated above:

J. D. GRIMES,

A. T. GRANT,

For Executive Committee.