

[7-9] Only the Legislature can enact *mulum prohibitum* laws. West Virginia Constitution, Article VI, Section 1, reposes the legislative power in the legislative department and only it can declare criminal acts of persons which would be otherwise lawful. The Legislature cannot delegate its authority to enact criminal laws to an agency which is a unit of the executive branch of State government, nor can it, under the guise of a colorable delegation, permit the Board of Pharmacy to adopt a federal law which has not been given prior approval by the Legislature. Unfortunately, the *Scott* case must be overruled on this point, and it is our further opinion that Code 1931, 16-8B-1(1)(d), as amended, is unconstitutional on its face in that it purports to delegate to the Board of Pharmacy the power to declare, unlawful, drugs which may be designated as dangerous or habit forming by the federal government prospectively, *in futuro*, and without limitations. State v. Johnson, *supra*; See also, Cheney v. St. Louis S. W. Ry. Co., 239 Ark. 870, 394 S.W.2d 731 (1965); Dawson v. Hamilton, 314 S.W.2d 532 (Ky.1958); Seale v. McKennon, 215 Or. 562, 336 P.2d 340 (1959); Nostrand v. Balmer, 53 Wash.2d 460, 335 P.2d 10 (1959).

[10-12] Under the West Virginia Constitution, Article VI, Section 1, and Article V, Section 1—the latter insuring separation of powers among the legislative, the executive and judicial branches of government—enactment of criminal statutes is solely a legislative function. See State ex rel. Davis v. Oakley, W.Va., 191 S.E.2d 610 (1972); State ex rel. Myers v. Wood, 154 W.Va. 431, 175 S.E.2d 637 (1970); State v. Lantz, 90 W.Va. 738, 111 S.E. 766 (1922). The authority to enact laws, being exclusively a legislative function, cannot be transferred or abdicated to others. State v. Harrison, 130 W.Va. 246, 43 S.E. 2d 214 (1947). The constitutional prerequisite to a valid statute is that the law shall be complete when enacted. State ex rel. West Virginia Housing Development Fund

v. Copenhaver, 153 W.Va. 636, 171 S.E.2d 545 (1969).

As the section of the statute under which the appellant Susan Grinstead was indicted is void, so too, the indictment founded thereon is void. For these reasons, the judgment of the Circuit Court of Wood County is reversed and the case is remanded with directions that the indictment charging Susan Grinstead with crimes be quashed.

Reversed and remanded with directions.



In re W. Bernard SMITH, a member of the West Virginia State Bar.

No. 13493.

Supreme Court of Appeals of West Virginia.

July 30, 1974.

Disciplinary proceeding. The Supreme Court of Appeals, Berry, J., held that a federal conviction of conspiracy to cast fictitious votes for federal, state and local candidates in primary election constitutes conviction of crime involving moral turpitude, requiring annulment of license to practice law.

License annulled.

I. Attorney and Client §39

Supreme Court of Appeals has mandatory duty to annul license of any attorney who has been convicted of any crime involving moral turpitude, upon proof of such conviction being presented to the Court in compliance with provisions of by-laws of State Bar. By-Laws of the State Bar, art. 6, §§ 23, 24.

2. Attorney and Client — 39

Commission of "crime involving moral turpitude," within State Bar bylaws relating to annulment of license to practice law, is conduct that is contrary to justice, honesty and good morals. By-Laws of the State Bar, art. 6, §§ 23, 24.

3. Attorney and Client — 39

A federal conviction of conspiracy to cast fictitious votes for federal, state and local candidates in primary election constitutes conviction of crime involving moral turpitude, requiring annulment of license to practice law. By-Laws of the State Bar, art. 6, §§ 23, 24; 18 U.S.C.A. § 241.

Syllabus by the Court

"Section 23, Part E, Article VI of the By-Laws of the West Virginia State Bar imposes upon any Court before which an attorney has been qualified a mandatory duty to annul the license of such attorney to practice law upon proof that he has been convicted of any crime involving moral turpitude." Point 2, syllabus. In The Matter of Mann, 151 W.Va. 644 [154 S.E.2d 860].

John O. Kizer, Charleston, for Legal Ethics Committee, The W. Va. State Bar.
Beckett, Burford & James, R. H. Burford, Huntington, for W. Bernard Smith.

BERRY, Justice:

In this proceeding instituted by the Committee on Legal Ethics of the West Virginia State Bar, herein referred to as the Committee, pursuant to the provisions of Sections 23 and 24, Part E, of Article VI of the By-Laws of the West Virginia State Bar, the Committee seeks to have this Court annul the license to practice law of W. Bernard Smith, a duly licensed attorney and member of the West Virginia State Bar.

On September 13, 1971 the respondent was found guilty of violating Section 241 of Title 18 of the United States Code. As a result of this conviction, W. Bernard Smith was sentenced to ten years in prison on October 14, 1971. Section 241 of Title 18 of the United States Code makes it unlawful to conspire to injure any citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States. The respondent and four other public officials in Logan County were indicted for conspiring to cast fictitious votes for federal, state and local candidates in the primary election in 1970.

W. Bernard Smith and his co-conspirators appealed their convictions to the United States Court of Appeals for the Fourth Circuit. On June 26, 1973, the Fourth Circuit affirmed the conviction of each of the defendants. Subsequent thereto, the defendants filed a petition for writ of certiorari in the Supreme Court of the United States. On December 10, 1973 certiorari was granted. The Supreme Court of the United States affirmed the conviction of each of the defendants. *Anderson v. United States*, — U.S. —, 94 S.Ct. 2253, 41 L.Ed.2d 21.

On June 17, 1974, upon a letter of the Committee addressed to this Court dated June 12, 1974, with which were transmitted a certified copy of the indictment for a felony and a certified copy of an order of the United States District Court for the Southern District of West Virginia entered October 14, 1971, which adjudged W. Bernard Smith to be guilty of the offense charged in the indictment and which sentenced him to ten years imprisonment, and also a certified copy of an order of the United States District Court for the Southern District of West Virginia entered on June 5, 1974, which recited that Smith's conviction was affirmed by the United States Court of Appeals for the Fourth Circuit on June 26, 1973 and that his conviction was also affirmed by the United

States Supreme Court on June 3, 1974, this Court issued a rule directed to Smith returnable July 9, 1974 to show cause why his license to practice law should not be annulled or suspended. On July 9, 1974, the return day, an answer was filed on behalf of W. Bernard Smith and the case was submitted for decision upon the aforesaid documents.

The respondent's answer admits the conviction and waived formal hearing. A request was made by the respondent to file, with the record of this case, a copy of the transcript of the testimony taken at the trial in the District Court, which is denied, but the Court permits such copy to be lodged in the office of the Clerk of the Court.

The pertinent parts of Sections 23 and 24, Part E, of Article VI of the By-Laws of the West Virginia State Bar, under which this proceeding was instituted, provide as follows:

* * * * *
 § 23

Any court before which any attorney has been qualified, upon proof that he has been convicted—

- (a) Of any crime involving moral turpitude or professional unfitness; or,
- (b) * * * shall annul his license to practice law.

§ 24
 * * * * *

In any proceeding in any court, before which an attorney has been qualified, to suspend or annul the license of any such attorney because of his conviction of any crime or crimes mentioned in section twenty-three or in this section twenty-four, a certified copy of the order or judgment of conviction shall be conclusive evidence of guilt of the crime or crimes of which the attorney has been convicted. * * *

The only question presented in this proceeding is whether the respondent has been

convicted of a crime involving moral turpitude or professional unfitness requiring the annulment of his license to practice law.

[1] It has been repeatedly held that this Court has a mandatory duty to annul the license of any attorney who has been convicted of any crime involving moral turpitude upon proof of such conviction being presented to the Court in compliance with the provisions of the By-Laws of the West Virginia State Bar.

It was held in point 2 of the syllabus of the case of *In The Matter of Mann*, 151 W.Va. 644, 154 S.E.2d 860, that:

Section 23, Part E, Article VI of the By-Laws of the West Virginia State Bar imposes upon any court before which an attorney has been qualified a mandatory duty to annul the license of such attorney to practice law upon proof that he has been convicted of any crime involving moral turpitude.

The respondent was convicted of violating Section 241 of Title 18, United States Code, which makes it a crime for two or more persons to conspire to injure any citizen in the free exercise of his federal constitutional rights secured by the Constitution or laws of the United States. The indictment charged that the respondent Smith and his codefendants caused "fraudulent and fictitious votes to be cast * * * all with the purpose and intent that said illegal, fraudulent, and fictitious ballots would be counted, returned and certified as a part of the total vote cast * * *." In other words, he was charged with "stuffing" the ballot box with fraudulent and fictitious ballots.

It has been held by this Court that a conviction on the charge of wilfully attempting to evade and defeat federal income taxes is a conviction of a crime involving moral turpitude making it mandatory to annul the license of an attorney convicted of such offense. In *The Matter of Mann, supra*; *In The Matter of Trent*, 154 W.Va. 333, 175 S.E.2d 461.

The conviction of conspiracy to commit bribery and bribery of a juror, in violation of Title 18, sections 1503, 371, 201(b) and 2, United States Code, is a conviction involving moral turpitude requiring the annulment of the license to practice law. In *The Matter of Barron*, W.Va., 181 S.E.2d 273; In *re Brown*, W.Va., 197 S.E.2d 814.

Convictions of conspiracy to bribe public officials and interstate transportation in aid of racketeering enterprises were held to be crimes involving moral turpitude and require the annulment of the license to practice law. In *re Robertson*, W.Va., 194 S.E.2d 650.

A conviction of a charge of using the mails to defraud has been held to be a crime involving moral turpitude requiring the annulment of the license to practice law. In *re West*, W.Va., 186 S.E.2d 776; In *re Berzito*, W.Va., 192 S.E.2d 227.

[2] The commission of a crime involving moral turpitude has been defined in many disbarment proceedings as conduct that is contrary to justice, honesty and good morals. In *re West*, *supra*; In *re Hatch*, 10 Cal.2d 147, 73 P.2d 885; In *re Carr*, 377 Ill. 140, 36 N.E.2d 243.

[3] Certainly, if the crimes in the cases cited above involve moral turpitude, requiring the annulment of the license to practice law, the crime in the instant case involves moral turpitude and warrants the annulment of the license of the respondent to practice law.

It has been consistently held that the conviction of a crime wherein fraud is an element involves moral turpitude. In *The Matter of Mann*, *supra*; In *re West*, *supra*; In *re Teitelbaum*, 13 Ill.2d 586, 150 N.E.2d 873; In *re Eaton*, 14 Ill.2d 338, 152 N.E.2d 850. The crime for which the respondent was convicted clearly involves an element of fraud, and is so stated in the indictment upon which he was tried and convicted, and thus this crime unquestionably involves moral turpitude, which makes

it mandatory upon this Court to annul the license of the respondent.

For the reasons set out herein, the license of W. Bernard Smith to practice law is annulled.

License annulled.



STATE of West Virginia

v.

Dorothy Corinne GREEN.

No. 13359.

Supreme Court of Appeals of West Virginia.

July 23, 1974.

Defendant was convicted in the Circuit Court, Jefferson County, Vance E. Sencindiver, J., of second-degree murder, and she appealed. The Supreme Court of Appeals, Berry, J., held that where there was competent evidence tending to show that the defendant believed, and had reasonable grounds to believe, that she was in danger of losing her life or suffering great bodily harm at the hands of several assailants acting together, she was privileged to defend against any or all of said assailants, and it was reversible error for the trial court to refuse to instruct the jury to that effect.

Reversed; verdict set aside; new trial awarded.

1. Homicide \Rightarrow 101

If defendant fired bullet intended for alleged assailant but hit uninvolved third party, it would not excuse an intentional homicide, but the same defenses would be available to the defendant as if she had killed alleged assailant.