Why Not Advisory Opinions for Illinois

R. K. Hoffman
NOTES AND COMMENTS

WHY NOT ADVISORY OPINIONS FOR ILLINOIS?

The submission of a proposed revision of the Judicial Article of the state constitution, proposed to the Illinois General Assembly at its current session, raises the serious question as to whether or not the proposal is not incomplete by reason of the failure to include therein a provision calling for the rendition of advisory opinions by the Illinois Supreme Court to the governor and to the legislature on proper request. As it is essential that the new article should, in every respect, be complete before it is submitted to the electorate for ratification, an examination has been made concerning the utility of, as well as of the constitutional and legalistic bases for, advisory opinions to the end that, if they could be said to be of value, the proposed revision might be suitably amended prior to its approval by the legislature.

One scarcely should need to repeat the story of American experience under the ill-fated National Industrial Recovery Act in order to invoke recognition of the fact that the whole fiasco could have been avoided had the federal supreme court been empowered, or required, to first express an opinion on the constitutionality thereof before it was imposed upon a helpless public. The economic waste, not to mention the upheaval, the country suffered by reason of its efforts to comply with that statute, prior to the time it was declared unconstitutional, are matters of common knowledge. The dilemma of one whose previous lawful conduct faces the condemnation of a new penal statute, not sure whether to act and pay the penalty if the law turns out to be valid or to forego his legal rights until the question of its constitutionality can be determined at the suit of others, is amply illustrated by the holding in such cases as that of Ex parte Young. To come closer to home, local experience with attempts to secure a pre-adjudication as to the validity of Illinois tax levies should serve to demonstrate the urgent need for securing advice in advance as to the constitutional appropriateness of legislation of substantial import to the

general public. There should, then, be little need to belabor the point that the present system of government is inadequate so long as it permits one branch thereof to enact laws without a decent regard for the fact that another branch may be compelled to declare those acts to be invalid.

Despite this, both in England and the United States, the history of the advisory opinion has been one of pointed criticism, with every new attempt to provide for it bringing up the ghosts of past criticisms as well as some newer objections. Regardless of how history may have fashioned the advisory opinion, there can be no doubt, from the fact of the inclusion of a provision on the point in seven state constitutions, that there is need on the part of the executive and legislative departments for constitutional advice from the judiciary. It would be well, therefore, to examine into the basis thereof.

The English practice of calling upon the judges for their opinions was firmly established by the time of McNaghten's Case for both the Crown and the House of Lords had exercised their right of appeal to the judiciary for advice before this. In fact, as history attests, it was the Crown's abuse of the practice which induced Coke's criticism thereof in Peacham's Case and in Elliot's Case. Manifestly, English precedent on this subject advances no compelling reason, either pro or con, for the adoption of the practice in this country, particularly because of a basic difference between the English system of government and that found in the United States. The doctrine of separation of governmental powers, stressed here, being unknown to the English system, the English judges

6 While compulsory rendition of advisory opinions has never been provided for in Illinois, either by constitutional provision or by statute, it is interesting to note that the Illinois Supreme Court once stated that it would not be averse to rendering such opinions: People ex rel. Billings v. Bissell, 19 Ill. 229 (1857), particularly p. 234.

7 See Pusey, Charles Evans Hughes (The Macmillan Co., New York, 1951), Vol. 2, p. 746, for an account of a message from President Franklin D. Roosevelt to a congressional committee requesting that it approve a measure which he had sponsored rather than to "permit doubts as to constitutionality, however reasonable, to block the suggested legislation." The measure, afterwards enacted, was declared unconstitutional in Carter v. Carter Coal Co., 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936).

8 The most recent statutory attempt to provide for an advisory opinion would appear to be Vt. Laws 1949, No. 51. The supreme court of that state promptly disavowed any duty to perform such a function: In re Opinion of the Justices, 115 Vt. 524, 64 A. (2d) 169 (1949). An earlier Vermont statute, enacted in 1864, had been repealed by Vt. Laws 1915, No. 84.


10 10 Cl. and Fin. 200, 8 Eng. Rep. 718 (1843).


at one time sat with the House of Lords as temporal assistants, and the executive was also considered as being a member of that body. It may be interesting to note, however, that while the English judiciary ultimately established its independence, it waged a fruitless battle against the advisory opinion for the practice is still alive and in use at the present time.

It might have been expected that the English practice of rendering advisory opinions would traverse the ocean and find roots among the colonial governments, and would be likely to appear in the early constitutions adopted shortly after the Revolution. The concept particularly manifested itself in the Massachusetts Constitution of 1780, in which constitution the principle is still operative. In fact, the influence of the English practice on the Massachusetts provision is apparent. The clause, as first reported to the convention, limited interrogation to the governor and the upper house, equivalent to the Crown and the House of Lords in the English practice, and it was only by an amendment added on the convention floor that the privilege was extended to the house of representatives. The New Hampshire provision appears to have been borrowed from Massachusetts, for the text of its 1784 constitution followed that of Massachusetts except for some essential changes in terminology. Maine next adopted the advisory opinion in the constitution it drafted in 1820 at the time of its separation from Massachusetts. The consultative power was, however, there made somewhat larger than that which prevailed in Massachusetts. Rhode Island, by its constitution of 1842, followed the

---

15 Hare, Constitutional Law (Little, Brown & Co., Boston, 1889), Vol. 1, p. 159.
17 Mass. Const. 1780, Part 2, Ch. III, Art. 2, provides: “Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.”
18 Ellingwood, op. cit., pp. 31-2.
19 See Thorpe, American Charters, Vol. 4, p. 2466.
20 The clause was repeated in the N. H. Const. 1792, Art. 74, except that the word “governor” was substituted for “president.” See Thorpe, American Charters, Vol. 4, p. 2486. The wording remained unchanged when the present constitution was adopted. N. H. Const. 1902, Part 2, Art. 74, states: “Each branch of the legislature as well as the governor and council shall have authority to require the opinions of the justices of the superior court upon important questions of law and upon solemn occasions.”
21 Me. Const. 1819, Art. VI, § 3, in part provides: “They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate, or House of Representatives.” The Massachusetts provision gave the power of interrogation to “each branch of the legislature, as well as the governor and council.” The Maine provision, authorizing requests from the “Governor, Council, Senate, or House of Representatives,” eliminated the problem which had arisen in Massachusetts over whether the governor might alone request advice or whether he had to do so jointly with the council.
example of its neighbors, again with somewhat more liberality for, there being no council created by the new constitution, the consultative power rested with the governor or either house of the general assembly; the "important question and solemn occasion" qualification was omitted; and the judges were bound to give their opinion upon "any question of law."  

Missouri was the first of the western states to constitutionally provide for an advisory opinion, but the qualification that the opinion should be on "important questions of constitutional law" was severely construed as limiting the scope of the advice and the general construction placed upon the provision by the judges fore-shadowed its doom by confinement. Death blows were dealt to the provision in the course of some subsequent opinions and the drafters of the Missouri Constitution of 1875 must have considered the corpse well buried, for they omitted any reference to it in that constitution. Constitutional provision for an advisory opinion next appeared in Florida, in 1868, perhaps because conditions during the Reconstruction Era necessitated co-operation between the executive and the judiciary to curtail the actions of what promised to be an incompetent and an untrustworthy legislature. This may have accounted for the fact that the consultative power was there limited to the executive but it is, in other respects, quite broad, permitting requests "at any time," and as to "the interpretation of any portion of this constitution, or upon any point of law."

The adoption of an advisory opinion clause by the State of Colorado,

---

22 R. I. Const. 1843, Art. XII, § 2, as amended in 1903, reads: "The judges of the supreme court shall give their written opinion upon any question of law whenever requested by the governor or by either house of the general assembly."

23 In Mo. Const. 1865, Art. VI, § 11, there appeared the statement that the "judges of the supreme court shall give their opinion upon important questions of constitutional law, and upon solemn occasions, when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decisions of said court."

24 See Advisory Constitutional Opinion of the Judges, 37 Mo. 135 (1865).

25 The various opinions rendered under the Missouri provision are comprehensively analyzed in Ellingwood, op. cit., pp. 43-6.

26 Fla. Const. 1868, Art. VI, § 16, stated: "The governor may at any time require the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution, or upon any point of law, and the supreme court shall render such opinion in writing." In the 1885 Constitution, Art. IV, § 13, the Florida governor was permitted to, at any time, "require the opinion of the Justices of the Supreme Court as to the interpretation of any portion of the Constitution upon any question affecting his Executive powers and duties, and the Justices shall render such opinion in writing."

27 Colo. Const. 1876, Art. VI, § 3, as amended in 1886, declares: "The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decisions of said court."
under an amendment promulgated in 1886, was undoubtedly intended to correct the problem of unconstitutional legislation which then plagued the state. It is important to note, however, that it is the “Supreme Court” of that state, and not the justices thereof, which is required to give the opinion. Why this choice of words was employed is not easy to discern, but the presence thereof gave rise to a problem as to whether or not, contrary to all precedent, the opinions were to have the force and effect of judicial decisions, rather than being merely advisory in character. While the court ultimately decided in favor of the latter construction, it even today considers the question as a whole body, rendering the opinion per curiam. The last state to deal with the point by constitutional provision was South Dakota where the section appeared in the original constitution. As in Florida, the consultative power is there limited to the governor but, unlike Florida, the question need not be one of constitutional significance but can be on “important questions of law.”

In the absence of any constitutional requirement, advisory opinions were, at least in earlier days, rendered by courts in nine states with only one court expressly disavowing the duty to render such opinions. Statutory provisions sought to establish a practice for advisory opinions

29 In the Matter of the Constitutionality of S. B. No. 65, 12 Colo. 466, 21 P. 478 (1889).
30 In re Fire and Excise Commissioners, 19 Colo. 482, 36 P. 234 (1894).
31 So. Dak. Const. 1889, Art. V, § 13, provides: “The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.”
32 Opinion of the Judges of the Supreme Court, 30 Conn. 591 (1862); Opinion of the Judges of the Court of Appeals, 79 Ky. 621 (1861); In the Matter of the Application of the Senate, 10 Minn. 78 (1865); In re Railroad Commissioners, 15 Neb. 679, 50 N. W. 276 (1883); People v. Green, 1 Denio (N. Y.) 614 (1845); Opinion of the Justices, 31 N. C. (9 Ire.) 361 (1849); State v. Johnson, 21 Okla. 40, 96 P. 26 (1908); Respublica v. DeLongchamps, 1 Dall. 111 (1784); Opinion of the Judges of the Supreme Court, 37 Vt. 665 (1864). The practice in Nebraska was evidently discontinued by court rule: 62 Neb. xviii, Rule 32. For the later view in Vermont, see note 8, ante.
33 State v. Baughman, 38 Ohio St. 455 (1882). After their earlier experiment, the courts of Connecticut, Nebraska and New York appear to have denied their power, or duty, to render advisory opinions: Reply of the Judges of the Supreme Court to the General Assembly, 33 Conn. 586 (1867); In re Board of Purchase and Supplies for State Institutions, 37 Neb. 425, 55 N. E. 1092 (1893); In re Workmen’s Compensation Fund, 224 N. Y. 13, 119 N. E. 1027 (1918). It was thought, in 1870, that North Carolina had taken a similar stand: Opinions of the Justices of the Supreme Court in Regard to the Term of Office of the General Assembly, 64 N. C. 785 (1870). Subsequent thereto, however, the supreme court of that state cheerfully acquiesced in giving advice: Resolution of request and summary of McLean and Murphy Bills, 294 N. C. 806, 172 S. E. 474 (1933); Advisory Opinion in re House Bill No. 65, 227 N. C. 708, 43 S. E. (2d) 73 (1947). See also Edsall, “The Advisory Opinion in North Carolina,” 27 N. C. L. Rev. 297 (1949).
in Delaware, Minnesota, and Vermont, but the Minnesota act never became operative, the Vermont statute was repealed, and the Delaware provision appears to have been seldom relied on. It might be said, therefore, that out of the list of other states where advisory opinions have been rendered, North Carolina stands alone as the only state where such opinions are being actively rendered. Mention should be made, however, of the fact that one of the most recent statutes purporting to require the rendition of advisory opinions is the one passed in Alabama in 1923 and amended some four years later. The statute would appear to have been drawn with the hope of avoiding some of the objections heretofore voiced to the practice of rendering advisory opinions. It provides for the submission of briefs on those questions which are propounded, affords protection to those acting pursuant to the advice given, and, while confined to advice on constitutional questions, makes the advice available both as to proposed legislation and as to laws already enacted.

The fate of the advisory opinion at the hands of the federal judiciary

34 27 Del. Laws Ch. 4 (1852), as amended in 1893, states: “The Chancellor and Judges, whenever the Governor shall require it for public information, or to enable him to discharge the duties of his office with fidelity, shall give him their opinions in writing touching the proper construction of any provision in the Constitution of the State or of the United States, or the constitutionality of any law enacted by the Legislature of this State.” See Del. Rev. Code 1935, § 374. The statute remained unrepealed as late as 1951.

35 Minn. Comp. Stat., Ch. 4, § 15.
36 Vt. Laws 1864, No. 70.

37 See Vt. Laws 1915, No. 84. See also note 8, ante.
38 The only noted instance of an advisory opinion rendered by the court of that state appears in In re School Code of 1919, 30 Del. 406, 108 A. 39 (1919).

39 See note 33, ante.

40 Ala. Code 1940, Tit. 13, §§ 34-6. Section 34, originally enacted in 1923, provides: “The governor by a request in writing, or either house of the legislature, by a resolution of such house, may obtain written opinion of the justices of the supreme court of Alabama, or a majority thereof, on important constitutional questions.”

41 Ibid., § 36, states: “The justices of the supreme court may request briefs from the attorney general, and may require briefs from other attorneys as amici curiae, as to such questions as may be propounded to them for their answers.”

42 Ibid., § 35, added in 1927, declares: “The opinion of the justices of the supreme court or a majority of them shall be a protection to the officers and departments of the state, acting in accordance therewith, in the same manner and to the same extent as opinions of the attorney general of the state, and in the event of a conflict between the opinions of the attorney general and the opinions of the justices of the supreme court rendered in accordance with this article, the opinion of the justices of the supreme court shall take precedence and prevail. All opinions of the justices of the supreme court heretofore rendered in accordance with this article shall have the protective force and effect provided for herein.”

43 From the beginning, the Alabama Supreme Court has evidently entertained no doubt as to the constitutionality of the statute itself for it has rendered advisory opinions without any evidence of reluctance: In re Opinions of the Justices, 209 Ala. 593, 96 So. 487 (1923); In re Opinions of the Justices, 266 Ala. 70, 54 So. (2d) 68 (1951).
appears to have been dependent more on circumstance than on deliberative reasoning. The advantage of such a provision must have been clear to those who sat in the constitutional convention of 1787, for at least one such provision was debated there although Charles Pinckney’s proposal for an advisory opinion clause substantially similar to that adopted in Massachusetts proved to be unsuccessful. It would appear that an omnipresent fear of a controlled judiciary, or the possibility of an alliance between the executive and the judicial departments against the legislature, was more responsible for the defeat than any consistency of principle.

Unfortunately, the first time the federal supreme court might have acted to render an advisory opinion, the question propounded was purely political in nature, was extremely comprehensive, and was presented in formidable shape. Under these circumstances, the court was afforded an excellent opportunity to refuse to answer and it did do so. It may be of some interest to note that, on May 4, 1822, President Monroe vetoed a bill seeking to extend federal power over turnpikes within state boundaries. He embodied his views on the point in a pamphlet and sent a copy to each justice of the United States Supreme Court. Marshall replied expressing agreement but Story merely acknowledged his receipt thereof. Thereafter, Justice Johnson obtained the views of his associates and, with their consent, forwarded a joint opinion to Monroe. If this could be considered in the nature of an advisory opinion, there can be no doubt that the Supreme Court did thereafter refuse, and has ever since refused, to render opinions which would be no more than advisory in nature.

Manifestly, the attitude taken by the federal supreme court demonstrates what amounts to the generally prevailing view in the United States, one which deems that, in the absence of a constitutional provision authorizing it, a requirement for the rendition of an advisory opinion by a court

---

44 Ellingwood, op. cit., pp. 56-7.
48 Bizzell, Judicial Interpretation of Political Theory (G. P. Putnam’s Sons, New York, 1914), p. 115 et seq.
49 While the cases in point were not requests for advisory opinions in the commonly accepted sense of the term, the court dismissed cases for failure to satisfy the jurisdictional criterion of interested parties asserting adverse rights, where any other determination would be more in the nature of an advisory opinion. See Chicago & Grand Trunk Ry. Co. v. Wellman, 143 U. S. 339, 12 S. Ct. 400, 36 L. Ed. 176 (1892); In re Sanborn, 148 U. S. 222, 13 S. Ct. 577, 37 L. Ed. 429 (1893); Muskrat v. United States, 219 U. S. 346, 31 S. Ct. 250, 55 L. Ed. 236 (1911).
would violate the principle of separation of governmental powers.\textsuperscript{50} However, the truth of this is open to serious doubt. Surely, the advising of the executive or the legislature is not a function peculiar to either of those bodies. It is, rather, a function which has traditionally been judicial in nature, even though it may fall in the shadow zone which is said to lie between the several governmental powers. Of course, aside from abstract categorical analysis, the only logical objection to the rendering of such opinions is that to do so would subject the judiciary to a function impinging upon their independence. This, however, overlooks the essential nature of the advisory opinion. The duty is usually imposed on the justices individually, rather than upon the court.\textsuperscript{51} The opinions, when rendered, do not become precedent, for neither \textit{res judicata} nor \textit{stare decisis} is applicable.\textsuperscript{52} If the merit of an opinion should accord it weight, this merely attests to the quality thereof and its efficacy as preventive justice; but that fact by no means determines that it is more than persuasive in nature. Notwithstanding these observations, it is recommended that the function should be more positively imposed on the court by a constitutional provision rather than by a simple legislative enactment.\textsuperscript{53}

In practice the utility of the advisory opinion has been severely circumscribed by some doubtful interpretations given to clauses authorizing such opinions.\textsuperscript{54} It has, for example, been held that a question from the legislature can be answered only if it relates to pending legislation,\textsuperscript{55} with an accompanying qualification which would exclude inquiry as to a bill not yet definite in form\textsuperscript{56} or one which has already become law by reason of its final passage. It has been held that the question must relate to public as opposed to private rights,\textsuperscript{57} and must be one possessing

\textsuperscript{50} Although the federal constitution does not expressly provide that the several departments of government should be separate, the doctrine is now well established in federal law. Nearly every state, however, has expressly provided that the departments of the state government should be separate, distinct, and not subject to encroachment upon by the other departments. See, for example, Ill. Const. 1870, Art. III.
\textsuperscript{51} See, for example, the Colorado provision set out in note 27, ante, and the cases mentioned in notes 29 and 30, ante. See also People v. Martin, 19 Colo. 565, 36 P. 543 (1894).
\textsuperscript{53} In re Opinion of the Justices, 115 Vt. 524, 64 A. (2d) 169 (1949).
\textsuperscript{54} Ellingwood, op. cit., p. 178 et seq., lists thirteen separate considerations bearing upon the rendering of advisory opinions with a comprehensive analysis of each.
\textsuperscript{55} In re Opinion of the Justices, 217 Mass. 607, 105 N. E. 440 (1914); In re S. R. No. 4, 54 Colo. 262, 130 P. 333 (1913).
\textsuperscript{56} In re Opinion of the Justices, 226 Mass. 607, 115 N. E. 921 (1917). The justification for this view would seem to be that an action for declaratory judgment would be a more appropriate remedy in these instances.
\textsuperscript{57} In re H. B. No. 99, 26 Colo. 140, 56 P. 181 (1899). This qualification obviously includes all questions relating to litigation then pending in the courts: Commonwealth v. Smith, 9 Mass. 530 (1810); In re Continuing Appropriations, 18 Colo. 192, 32 P. 272 (1893).
peculiar importance. Obviously, the question must be confined to matters of law for fact questions will not be considered. In Florida and South Dakota, where the interrogatories may come only from the executive, the questions cannot relate to legislative doubts, so the justices are not bound to advise the executive on a measure before it becomes law. In addition, under the Florida provision, which is more restrictive than the rest, the duty to advise is limited to constitutional construction of the powers and duties of the executive branch. It has also been said that the opinion, when rendered, is neither binding on the interrogating body nor on other governmental bodies. On the other hand, requested opinions will not be refused simply because of the possibility that the question submitted may be the subject of future litigation, because the subject is not one of judicial nature; because the court is lacking in legal assistance; or because immediate legislative or executive action is not contemplated.

The most startling development in the advisory opinion question has been in relation to the interpretation of the phrases "important question" and "solemn occasion" frequently found in constitutional or statutory provisions. Rather than construe the words to denominate the interrogating body as the arbiter of what should constitute an important question or a solemn occasion, the courts have unequivocally stated that they are to be the sole judges on these points. In certain instances,

58 In re Interrogatories of the Senate, 54 Colo. 166, 129 P. 811 (1913).
59 Opinion of the Justices, 120 Mass. 600 (1876); In re Opinion of the Justices, 76 N. H. 601, 81 A. 170 (1911).
60 See the text of the Florida and South Dakota constitutional provisions set forth in notes 26 and 31, ante.
61 In re Construction of Constitution, 3 S. Dak. 548, 54 N. W. 650 (1893).
62 In re Executive Communication Concerning Powers of Legislature, 23 Fla. 297, 6 So. 925 (1887).
63 In re Opinion of the Justices, 69 Fla. 632, 68 So. 851 (1915).
64 Ellingwood, op. cit., pp. 153-60.
65 In that regard, note the provisions of the Alabama statute set out in notes 40 to 42, ante.
66 This is true only as a general statement: Ellingwood, op. cit., pp. 181-205. The author cites cases containing qualifications on the rule.
67 Opinion of the Justices, 126 Mass. 557 (1878); Opinion of the Court, 60 N. H. 585 (1881).
68 In the Matter of the Constitutionality of S. B. No. 65, 12 Colo. 466, 21 P. 478 (1889); In re Bounties to Veterans, 186 Mass. 603, 72 N. E. 95 (1904).
69 If the question is not one of immediate concern, it must be one which the inquiring body could have occasion to consider in the exercise of the powers entrusted to it: In re Opinion of the Justices to the House of Representatives, 208 Mass. 614, 95 N. E. 927 (1911). In Colorado, questions from the legislature must relate to pending bills: In re S. R. Relating to Internal Improvement Fund Provided for by Act of Congress, 12 Colo. 285, 21 P. 483 (1889).
70 See particularly the provisions of the constitutions of Colorado, Maine, Massachusetts, New Hampshire and South Dakota set out above. See also the Alabama statute quoted in notes 40-2, ante.
71 Opinions of the Justices, 95 Me. 564, 51 A. 224 (1901); Opinion of the Justices, 122 Mass. 600 (1877); Functions of Judiciary, 148 Mass. 623, 21 N. E. 439 (1889).
they have declared that the two qualifications must concur, and may have used these phrases as a door by which to escape from odious or difficult questions. It is difficult to find any logical basis for this assumption by the courts of the right to pass upon these qualifications, but there can be no doubt that, precedent having been established, such precedent has been unvaryingly followed thereafter. Supposedly, the result has been dictated by an application of the principle of separation of powers, as based upon the imputed intent of the framers of the several constitutions, but this is, at best, no more than a weak rationale.

To reiterate, the attack upon the advisory opinion has been bottomed on the principle of separation of governmental powers. Yet, it has been admitted that that principle is one not capable of accurate delineation as between the several functions of government and there has always been recognition of a considerable degree of overlapping. For that matter, it has never been seriously contended that each department should be unwilling to assist the others in serving the public for whose benefit governments have been established. The manifest purpose of the advisory opinion, then, is to obviate those difficulties which can arise among the several departments and thereby to lend to the operations of the government at least some semblance of efficiency, a quality most conspicuously absent in our present system. The attack upon the advisory opinion falters and lags perceptibly in the face of the drain which may be put on the public treasury by the presence of unconstitutional legislation or in the face of the effect such laws may have upon the people during the period of their usurpatious existence. If for no other reason than to prevent the havoc which can be created by the presence of such spurious laws, there is ample justification for the use of the advisory opinion.

Traditional conservatism on the part of the judiciary should not be allowed to override the practical demands of a working government. True, the judiciary has played an invaluable role as the dominant constraining influence upon rash and ill-conceived movements which gnaw at the vitals of sound and stable government. It could, however, play an even more effective role if it would warn against such movements at the start. There would, then, appear to be full reason why the General Assembly should, as it considers the proposal to revamp the present Judicial Article, also consider the need for complete as well as proper revision.

R. K. Hoffman,

72 Advisory Opinion of the Judges of the Supreme Court, 37 Mo. 135 (1865), pronounced under a constitutional provision no longer in force.
74 Opinion of the Justices, 122 Mass. 600 (1877).