

# SUPREME COURT OF LOUISIANA

No. 96-C-1110

ROBERT MEREDITH, III, JOHN W. CRANCER, HARRY F. HUFFT,  
L.D. UHLER, PAUL HILLIARD, JOE ELSBURY, JR., AND  
THE LOUISIANA INDEPENDENT OIL & GAS ASSOCIATION, INC.

Versus

THE HONORABLE RICHARD P. IEYOUB, IN HIS CAPACITY  
AS ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

KIMBALL, J., Concurring in result.

I am concurring in the result only of the majority opinion because I disagree with the content and necessity of the majority's discussion of the budget process, specifically footnote 4. I do not believe it is necessary for an agency to submit specific terms and conditions of specific contracts to the Legislature for approval where the contracting for professional services is involved.

I firmly agree with the result reached in this case, however. The provisions contained in our state's constitution are not grants of power but are instead limitations on the otherwise plenary power of the people as exercised through its Legislature. Thus, it is the Legislature which has the plenary power to do all things which are not otherwise delegated to another branch of government by the constitution and which are not otherwise prohibited by the constitution. See *Board of Commissioners of Orleans Levee District v. Department of Natural Resources*, 496 So.2d 281, 286 (La. 1986). This legislative power obviously includes the control of state finances, which, by its very definition would include the power to dispose of, disburse, or alienate state property. Thus, unless the state constitution explicitly gives this power to another branch of the government, then such power cannot be exercised by anyone other than the Legislature. Therefore, the sole issues to be resolved are whether the execution of a contingency fee contract by the Attorney General would result in the disposition or alienation of state funds and, if so, whether our constitution gives the Attorney General the authority to hire attorneys on a contingency fee basis.

The disputed legal claim which the Attorney General seeks to enforce by hiring attorneys on a contingency fee basis is a cause of action which is owned by the State of Louisiana. A cause of action has intrinsic value even before settlement or final judgment as illustrated by the fact that it can be sold or inherited. Therefore, when the Attorney General signs a contingency fee agreement, he is alienating the state's property, a power which resides solely in the Legislature. Unless the constitution or the Legislature specifically grants this power to the Attorney General, such an action is prohibited. I find no express grant of such authority in our constitution or statutory law. This is especially clear in light of the fact that the Legislature knows how to authorize the Attorney General to enter into contingency fee contracts and, in fact, has done so for specific limited types of cases as listed by the majority.

The Attorney General may be correct that it is in the State's best interests to allow him to hire private attorneys to pursue these claims under a contingency fee contract because it provides the State with a vehicle for obtaining recovery which does not expose the State to having to pay attorneys' fees up front. If such is the case, however, it is up to the Legislature to authorize the Attorney General to do so.