

EXTRA SESSION -57th GENERAL ASSEMBLY

SENATE BILLS 36, 37, 38 and 39: Are constitutionally within the scope of the proclamation of the Governor convening the Extra Session of the 57th General Assembly of the State of Missouri.

November 20, 1933.

FILED NO. 45

Senator Jerome M. Joffee,  
Senate Chamber,  
Jefferson City, Missouri.

Dear Senator Joffee:

This department is in receipt of your request for an opinion as to the following state of facts:

"At the request of the Committee on Wills and Probate Law, I have been instructed to write you and request that you furnish the Committee an opinion as to whether Senate Bills Nos. 36, 37, 38 and 39 are constitutionally within the scope of the proclamation of Governor Park convening this special session and his subsequent messages to the General Assembly, inasmuch as no specific mention was made therein as to inheritance taxes."

I.

Senate Bills Nos. 36, 37, 38 and 39 relating to Article 21, Chapter 1, Revised Statutes of Mo. 1929, are constitutionally within the scope of the proclamation of the Governor convening the Extra Session of the 57th General Assembly of the State of Missouri.

The proclamation of Governor Park whereby he convened the 57th General Assembly of the State of Missouri in Extra Session insofar as it is pertinent to the problem here under discussion provides:

"\*\*\*\*To raise revenue for the state and (or) any subdivision thereof by increasing the franchise tax on corporations; by increasing the tax on beer sold within the state; by taxing the manufacture of beer within the state; by increasing the license tax for the manufacture and (or) sale of beer within the

state and by authorizing counties, cities, towns and villages to license, tax and (or) regulate the manufacture and (or) sale of beer and (or) to tax, license and (or) regulate the manufacture and (or) sale of intoxicating liquors; by a general sales tax; by a gross sales tax; by a tobacco tax and by any other constitutional method of raising revenue. \*\*\*\*" (Emphasis ours)

Article IV, Section 55 of the Constitution of the State of Missouri provides as follows:

"The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specially designated in the proclamation by which the session is called, or recommended by special message to its consideration by the Governor after it shall have been convened."

Senate Bill 36 is an Act relating to rates to be levied upon inheritances and increasing such rates; Senate Bill 37 is an Act relating to exemptions under the inheritance tax law by decreasing exemptions to husbands, wives and descendants; Senate Bill 38 is an Act relating to exemption of property passing to or for the use of religious, educational and charitable institutions from inheritance tax where used in this state; Senate Bill 39 is an Act relating to property subject to inheritance tax, raising the presumption only that a conveyance made two years prior to the death of the grantor, vendor or donor was made in contemplation of death.

From a consideration of these bills, therefore, it is evident that their intent and purpose is to increase the rates to be levied upon inheritances and to subject additional property to the inheritance tax law and thereby increase the revenue in the State of Missouri.

The general rule with respect to the power of the General Assembly under Article IV, Section 55 of the Constitution is concisely stated in 59 C.J., p. 526, as follows:

"Where a governor in calling a special session is required to specify the purpose for which it is convened, a submission which does not state specifically the subject matter on which legislation is desired grants no power to the general assembly. Within his discretion, he may confine legislation to the subjects specified, which may be done by his proclamation alone or by special message after the legislature has convened on call, or by both; and he may limit the consideration of a general subject to a specified phase of it; but he cannot restrict the details springing from such subject."

In the case of *State v. Tippett* (Sup. Ct. Mo. 1927), 296 S. W. 132, the Court held (l.c. 136):

"Defendant avers that the passage of the above section violated section 55, art. IV, of the Missouri Constitution, because it was not embraced within the proclamation of the Governor, or recommended by him in a special message. It is as follows:

'The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specially designated in the proclamation by which the session is called, or recommended by special message to its consideration by the Governor after it shall have been convened.'

It is evident from a reading of the constitutional provision that, if the act falls within the proclamation or the special message of the Governor, it is valid. The constitutionality of the Motor Vehicle Act has been upheld in a terse and well-reasoned opinion by Seddon, C., in *Lauck v. Reis*, 310 Mo. 184, 274 S.W. 827. We need not reconsider the questions there made clear. We merely state that judicial notice will be taken of the official proclamations and messages of the Governor. *Wells v. Railway*, 110 Mo. 286, 19 S.W. 530, 15 L.R.A. 847. The question then arises relative to the appositeness of the statute to the special message of the Governor, on June 22, 1921, reading:

'The subject of regulating or licensing motor vehicles, and fixing the amount and manner of collecting such registration or license fees, is probably germane to that part of the call for this session which submits the road legislation. Nevertheless, you may desire to call upon motor licenses as a means of producing a maintenance fund for the roads to be constructed, and, in order that there may be no doubt of it, I submit this subject also.'

We think the statute, relative to leaving the scene of accident, is comprised within the term 'regulating' as used in the special message. *Lauck v. Reis*, supra, defines 'regulate' among others, as 'to direct by rule or restriction.' It has also been defined as 'a rule prescribed for conduct.' Providing for a stoppage by the operator of a motor vehicle after

injury or damage, or the reporting of the same, is directing by restriction or course of conduct the operation or use of the vehicle. That it proscribes free operating after an accident and prescribes a punishment therefor fails to limit the force of the term 'regulating' with respect to motor vehicles. In view of the recognized canon of construction that a statute is not to be held unconstitutional, unless clearly so, and that every fair and reasonable intendment in favor of its constitutionality is presumed, the assignment is ruled against defendant.'"

The Court in the case of *City of Rockwood v. Rodgers* (Sup. Ct. Tenn. 1926), 290 S.W. 381, set out the general rule of construction applicable to a section of the Tennessee Constitution, which is similar to Art. IV, Sec. 55 of the Missouri Constitution: (l.c. 382)

"In the case of *State ex rel. v. Woolen*, 128 Tenn. 456, 487, 161 S.W. 1006, Ann. Cas. 1915C, 465, the rule by which the language of the Governor's proclamation must be tested to determine whether the legislation under consideration was included therein is stated as follows:

'It is agreed, so far as any of the cases speak on the matter, and this view is undoubtedly sound, that the presumption is always in favor of the constitutionality of an act, and that any piece of legislation so under consideration should be held within the call, if it can be done by any reasonable construction.'

862: As was said in the case of *In Re Likins*, (Pa.) 72 Atl.

"Although a Governor who has decided to convene a special session of the legislature is empowered to proclaim, to indicate, to designate, the subjects for legislative consideration at such session, he cannot by his proclamation, any more than he can by his message to the same body when in regular session, prescribe or limit the manner in which or the extent to which the Legislature may dispose of these subjects which he designates in his proclamation as matters for legislative consideration."

In the case of *Loiza Sugar Co. v. People of Porto Rico*, 57 Fed. (2d) 705, (1932), the Circuit Court of Appeals held that a call for a special session of the Legislature to correct mistakes and discrepancies in the excise and revenue laws authorized an amendatory statute imposing an excise tax on the manufacture of sugar. The Court said (l.c. 706):

"While section 33 of the Organic Act of Porto Rico provides that at special sessions of the Legislature no legislation not specified in the call shall be considered, under the call for the Special Session of August 13, 1923, the legislative authority was not confined within such narrow limits as contended by the appellant below. Any enactment during the special session, not clearly foreign to the purpose for which it was called together, should be held valid. The Porto Rican Legislature under the call could properly by amendment make clear their intent as to any provision of the original act, or correct any mistakes or discrepancies."

A problem practically identical with the question here under consideration has been passed upon by the Supreme Court of Colorado in the case of *Parsons v. People*, 76 Pac. 666, decided in 1904. The Constitution of the State of Colorado at that time authorized the Governor to call a special session of the Legislature but provided that thereat no business should be transacted other than that named in the proclamation. The proclamation of the Governor calling a special session recited that it was to provide necessary revenue and to enact a revenue law providing for the assessment of property for taxation and the levying and collection of taxes. An Act was passed at that special session which provided that every one selling liquor should, in addition to the other license fees exacted by law or by the ordinances of any municipality, pay to the State an additional license fee of \$25.00. It was contended that this Act did not come within the Governor's proclamation; the Supreme Court of Colorado held (l.c. 669):

"When the Governor, by his proclamation, declared, as he did, that one object of convening the General Assembly was to enact a revenue law for the state, his power was exhausted, in so far as concerns the right of the Legislature to carry that object into effect. It was not competent for him to restrict the General Assembly to some particular method of raising revenue, or as to the subjects of taxation, but having declared the general object for convening the General Assembly, viz., to pass a revenue law, that body was at liberty to adopt such methods as it deemed best to effectuate that object, and to select for itself the subjects of

taxation. A case quite in point is In Re Proclamation, 19 Colo. 333, 336, 338, 35 Pac. 530. For additional authorities see Baldwin v. State, 21 Tex. App. 591, 593, 3 S.W. 109; State v. Shores, 31 W. Va. 491, 7 S.E. 413, 13 Am. St. Rep. 875; Mitchell v. F. & C. Turnpike Co., 22 Tenn. 456."

CONCLUSION

In view of the foregoing, it is the opinion of this department that Senate Bills Nos. 36, 37, 38 and 39 are constitutionally within the scope of the proclamation of Governor Park convening the Extra Session of the 57th General Assembly of the State of Missouri.

Respectfully submitted,

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APPROVED:

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