

GOVERNOR: The clause "during the recess", as used in Section 12859, R. S. Mo. 1939, means after the final adjournment of the General Assembly and when it is not in session. (b) General Assembly is now in recess. (c) The expression "without delay" means without unreasonable and unnecessary delay. (d) Writ of election issued under Section 12859, R. S. Mo. 1939, for election in March or April, 1942, may be unreasonable and unnecessary delay. Governor cannot be compelled to issue election because can not be mandamused.

November 6, 1941

Mr. Richard Arens
Secretary to the Governor
Jefferson City, Missouri



Dear Sir:

As Secretary to the Governor, on November 5, 1941, you submitted a request to this Department for an official opinion on the construction of Section 12859, R. S. Missouri, 1939, and other questions arising in connection therewith. The first portion of your letter is as follows:

"Section 12859 of the 1939 Revised Statutes of Missouri provides: 'Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy.'

"Since the adjournment of the 61st General Assembly of the State of Missouri the resignations of certain members of the General Assembly have been received by the Governor."

I.

Questions (a) and (b) are closely related and we shall treat them as one.

"An opinion from your office is respectfully requested on the following questions:

"(a) What is the meaning of the phrase 'during the recess' as used in Section 12859 of the 1939 Revised Statutes of Missouri?

"(b) Is the 61st General Assembly now in recess within the meaning of this section?"

Section 12859, R. S. Missouri, 1939, contains the clause "during the recess", and is as follows:

"Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy."

We think Section 12858, R. S. Missouri, 1939, lends some bearing on the intent of the Legislature in using the clause "during the recess" in Section 12859. Said section is as follows:

"If any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during any session, he shall address his resignation, in writing, to the presiding officer of the house of which he is a member, which shall be entered on the journal; in which case, and in all cases of vacancies happening,

or being declared, during any session of the general assembly, by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof."

Condensing the section, the meaning is that when there is a vacancy from any cause in the recess (after final adjournment), the member who resigns addresses his resignation to the Governor, but when there is a resignation or vacancy from any cause during the session, the resignation is to be addressed to the presiding officer of the house in which the vacancy occurs, and the presiding officer in turn shall immediately notify the Governor.

We think it proper to resort to the rules of statutory construction to the effect that a statute should not be construed as if it stood alone and complete in itself, and when two statutes are susceptible of construction which gives force and aid to both, they must be so construed. *McGill v. City of St. Joseph*, 38 S. W. (2d) 725.

Referring again to Section 12859, quoted supra, and bearing in mind the terms of Section 12858, we find that the statute is so worded as to present two conditions for the Governor to issue a writ of election to supply a vacancy, first, whenever the Governor receives a resignation direct from the member of the General Assembly or notice of the vacancy which we construe to mean when notified by the presiding officer of either house. Second, when he shall be satisfied of the death of any member of either house during the recess. So that, in either event, irrespective of whether the vacancy occurs during the session of the Legislature or after final adjournment, it is the duty of the Governor to issue a writ of election to supply such vacancy.

Further, bearing on the meaning of the clause "during the recess," we shall consider the Constitution. Section 14 of Article IV states that:

"Writs of election to fill such vacancies as may occur in either house of the General Assembly shall be issued by the Governor."

Section 21 of Article IV states:

"Every adjournment or recess taken by the General Assembly for more than three days shall have the effect of and be an adjournment sine die."

Section 22 of Article IV provides:

"Every adjournment or recess taken by the General Assembly for three days or less shall be construed as not interrupting the session at which they are had or taken, but as continuing the session for all purposes mentioned in section sixteen of this article."

Section 23 of Article IV omits the word "recess" but provides:

Neither house shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than that in which the two houses may be sitting."

We are of the opinion that the clause "during the recess", when construed in the light of the statute itself, and the fact that the Constitution uses the word "adjournment" and the word "recess" interchangeably, that the word "recess" as used in the statute under consideration means

final adjournment. Therefore, in either event, irrespective of whether the vacancy takes place during the session of the General Assembly or after it is finally adjourned, it is the duty of the Governor to issue writs of election to supply the vacancy. The General Assembly having finally adjourned on the 12th day of July, 1941, is now in recess within the meaning of the section and within the meaning of the law.

II.

"(c) If writs of election should issue, to supply such vacancies as hereinbefore set forth, when should such writs be issued?"

Section 12859, R. S. Missouri, 1939, states that the Governor "shall, without delay, issue a writ of election to supply such vacancies."

In the decision of *Ex parte Ryan*, 124 La. 356, the expression "without delay" is defined to mean without unreasonable and unnecessary delay and with reasonable promptness. In the decision of *State ex rel. Compton Company v. Walter*, 23 S. W. (2d) 167, it was interpreted to mean at once. The statute can be construed as directory in its nature as it does not prescribe the result or the effect if the Governor does not issue the writ of election without delay. We are of the opinion that the Governor should issue the writs of election without unreasonable and unnecessary delay.

III.

"(d) If writs of election should issue, to supply such vacancies as hereinbefore set forth, would it be in compliance of Section 12859 of the 1939 Revised Statutes of Missouri to hold such elections in March or April of 1942?"

Mr. Richard Arens

(6)

Nov. 6, 1941

In view of our conclusion in answer to your question (c), relating to the time when the writs should be issued, we are of the opinion that the time mentioned in your letter, being March or April of 1942, might constitute an unreasonable and unnecessary delay in the absence of any unusual circumstances or conditions to the contrary. However, we do not think it amiss to point out to you that the Chief Executive of the State may exercise discretion in issuing the writs of election, in the event that he does issue the same, and as to the time of issuing the same for the reason that the Governor as Chief Executive, cannot be compelled to do so as he would not be subject to a mandamus action.

Respectfully submitted,

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APPROVED:

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