

INTEREST:
BONDS:
CONSTITUTIONAL LAW:
CITIES, TOWNS & VILLAGES:

(1) House Bill No. 2, as passed by the First Extraordinary Session of the 75th General Assembly, is within the scope of the Governor's special proclamation.

(2) House Bill No. 2 complies with the provisions of Section 23 of Article III of the Constitution which require that no bill shall contain more than one subject which shall be clearly expressed in its title.

(3) The emergency clause contained in Section A of House Bill No. 2 is invalid in that such clause is not "necessary for the immediate preservation of the public peace, health or safety."

OPINION NO. 454

November 4, 1969

Honorable William C. Phelps
State Representative
District 4
5016 Grand
Kansas City, Missouri 64112



Dear Representative Phelps:

This is in response to your request for an opinion concerning House Bill No. 2, as passed by the First Extraordinary Session of the 75th General Assembly and signed by the Governor on October 10, 1969. Specifically, you have asked for our opinion on the following questions with respect to this bill:

1. Does the Act comply with subparagraph (7) of Section 39 of Article III of the Constitution which requires that the Governor's proclamation calling a special session designate the subjects to be covered by the Act?
2. Does House Bill No. 2 comply with the provisions of Section 23 of Article III of the Constitution which requires that no bill shall contain more than one subject which shall be clearly expressed in its title.
3. Does Section A of House Bill No. 2, providing that the Act is an emergency measure, qualify as such under Section 29 of Article III of the Constitution?

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By proclamation on August 30, 1969, Governor Hearnes convened an extra session of the 75th General Assembly. Among other things, the Governor requested the legislature to consider "an increase in the interest rate and sale price permitted by law on the bonds of municipalities and other subdivisions and districts of the state." In response to this call, House Bill No. 2 was passed. House Bill No. 2 provides:

"Section 1. Section 108.170, RSMo Supp. 1967, is repealed and one new section enacted in lieu thereof, to be known as section 108.170, to read as follows:

"108.170. Other provisions of law to the contrary notwithstanding, any and all bonds including revenue bonds hereafter issued under any law of this state by any county, city, town, village, school district, educational institution, drainage district, levee district, nursing home district, hospital district, library district, road district, fire protection district, water supply district, sewer district, special authority created under Section 64.920, RSMo, authority created pursuant to the provisions of Chapter 238, RSMo., or other municipality, political subdivision or district of this state shall be negotiable and may bear interest at a rate not exceeding six percent per annum, and may be sold, at any sale pursuant to any law applicable thereto, at the best price obtainable, not less than ninety-five percent of the par value thereof, anything in any proceedings heretofore had authorizing such bonds or in any law of this state to the contrary notwithstanding. Such aforementioned bonds may bear interest at a rate not exceeding eight percent per annum if sold at public sale after giving reasonable notice of such sale, at the best price obtainable, not less than ninety-five percent of the par value thereof. Industrial development revenue bonds may, however, be sold at private sale and bear interest at a rate not exceeding eight percent per annum if sold pursuant to any law applicable thereto, at the best price obtainable, not less than ninety-five percent of the par value thereof.

"Section A. Because many political subdivisions of this state have found it extremely difficult

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and, in many cases, impossible to sell their bonds at six percent interest on the bond market and consequently are unable to build or maintain public utilities and services necessary to the health, safety and well-being of their citizens, this act is deemed necessary for the immediate protection of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval."

In your first question, you ask our opinion as to whether House Bill No. 2, as enacted by the legislature, is within the scope of the Governor's proclamation. Article IV, Section 9, Missouri Constitution of 1945 provides that the Governor, in calling an extra session, shall ". . . state specifically each matter on which action is deemed necessary." Article III, Section 39(7), Missouri Constitution of 1945 provides:

"The general assembly shall not have power:

* * * * *

"To act, when convened in extra session by the Governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly after the convening of an extra session; (Sec. 55, Art. IV, Const. of 1875)"

The scope of the legislature's authority when convened in extra session was discussed extensively by this office in Opinion No. 360, issued October 20, 1965 to Mel Carnahan and Ronald M. Belt. (copy enclosed). On page 13 of that opinion, the following principles were laid forth:

"The Missouri cases make clear that if legislation is enacted at a special session that is outside the 'subject' of the Governor's call or proclamation or message it is void.

"The Missouri cases make clear that the Governor must specifically designate in his call or proclamation for a special session the 'subject' or 'matter' that is to be considered by the legislature.

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". . . the Governor may in his recommendation spell out in detail his ideas and proposals for consideration by the legislature although the legislature is not bound by the specific detail so spelled out by the Governor."

It is our view that House Bill No. 2, as enacted by the 75th General Assembly in extra session, is within the scope of the Governor's proclamation calling for "an increase in the interest rate and sale price permitted by law on the bonds of municipalities and other subdivisions and districts of the state." House Bill No. 2 does deal with the interest rate and sale price allowable on bonds issued by municipalities and other subdivisions and districts of the state. It is true that, with the exception of industrial development revenue bonds, the bill does not authorize a flat increase in the interest rate of bonds of municipalities and other subdivisions and districts of the state, but rather provides that the interest rate on such bonds can be raised from the old level of six percent to eight percent per annum, if sold at public sale after giving reasonable notice of such sale. However, this is a matter of detail only and well within the legislature's authority to legislate upon the subject of the Governor's proclamation or message in any way it sees fit. See State ex rel. Rice v. Edwards, 241 S.W. 945, 948 (Mo. en banc 1922).

In your second question you asked whether House Bill No. 2 complies with the provisions of Article III, Section 23, Missouri Constitution of 1945 which provides in pertinent part:

"No bill shall contain more than one subject which shall be clearly expressed in its title, . . ."

House Bill No. 2 is entitled "An Act to repeal section 108.170, RSMo Supp. 1967, relating to bonds issued by political subdivisions of this state, and to enact in lieu thereof one new section relating to the same subject, within an emergency clause."

The Missouri Supreme Court has ruled in the case of State v. Weindorf, 361 S.W.2d 806, 809 (Mo. 1962) that:

"Section 23, Art. III, of the 1945 Constitution should be liberally construed. In order to satisfy the provision's requirements the title of a statute needs only to indicate the general contents of the act, and if the contents fairly relate to and have a natural connection with the subject expressed in the title they are within the purview of the title. State v. King, Mo., 303 S.W.2d 930, 932[1]."

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It is our view that the title of House Bill No. 2 meets the above criteria and therefore is in compliance with the provisions of Article III, Section 23. The title clearly indicates the general contents of the act, i.e., bonds issued by political subdivisions of this state, and the contents of the act, i.e., interest rates and sale prices of such bonds, clearly bear a natural connection to this subject.

Your third question relates to Section A of House Bill No. 2, the so-called emergency clause. Said section provides:

"Section A. Because many political subdivisions of this state have found it extremely difficult and, in many cases, impossible to sell their bonds at six percent interest on the bond market and consequently are unable to build or maintain public utilities and services necessary to the health, safety, and well-being of their citizens, this act is deemed necessary for the immediate protection of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval."

The validity of emergency clauses was discussed at some length in Opinion No. 171, issued April 23, 1963 to M. E. Morris. (copy enclosed). In that opinion we concluded that ". . . a legislative declaration of emergency does not render an act immediately effective unless it is 'necessary for the immediate preservation of the public peace, health or safety' that the act be given immediate effect; . . ." Id. at page 5. This is the test by which an emergency clause must be measured. See also Section 1.130(1), RSMo 1959.

In determining whether or not House Bill No. 2 is indeed an "emergency" measure within the meaning of Article III, Section 29 and Article III, Section 52(a) of the Missouri Constitution and Section 1.130(1), RSMo 1959, it will not be necessary to look beyond the case of State ex rel. City of Charleston v. Holman, 355 S.W.2d 946 (Mo. en banc 1962). In that case, the legislature had undertaken to implement the provisions of Sections 23(a) and 27 of Article VI of the Missouri Constitution. The bill passed by the legislature provided the proceedings required for (1) the issuance of general obligation bonds for a project for industrial development as authorized by Section 23(a); and (2) the issuance of revenue bonds for such a project as authorized by Section 27. In addition, the bill contained the following emergency clause:

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"'Since existing laws are inadequate to permit municipalities to promote their industrial development, and since industries desiring to locate in the state of Missouri will not wait for an extended time before making commitments for new locations, and since municipalities within the state of Missouri are presently at a disadvantage in competing with municipalities in other states in attracting new industries, the peace, health and safety of the citizens of the state of Missouri are in jeopardy and an emergency exists within the meaning of the constitution. This act, therefore, shall be in full force and effect immediately upon its passage and approval.'" Id. at page 948

Although it found that the issuance of general obligation bonds for industrial development would no doubt contribute to the public welfare, and indirectly promote the public peace, health, and safety, the Supreme Court could not say with conviction that immediate effectiveness of the act was necessary for the immediate preservation of the public peace, health or safety of the citizens of this state and, therefore, held that no emergency existed within the meaning of Sections 29 and 52(a), Article III of the Constitution. See State ex rel. City of Charleston v. Holman, supra at 952.

Likewise, it is our view that immediate effectiveness of House Bill No. 2 is not necessary for the immediate preservation of the public peace, health and safety, but rather that said act becomes effective ninety days after adjournment of the First Extra Session.

CONCLUSION

Therefore, it is the opinion of this office that:

(1) House Bill No. 2, as passed by the First Extraordinary Session of the 75th General Assembly, is within the scope of the Governor's special proclamation.

(2) House Bill No. 2 complies with the provisions of Section 23 of Article III of the Constitution which require that no bill shall contain more than one subject which shall be clearly expressed in its title.

(3) The emergency clause contained in Section A of House Bill No. 2 is invalid in that such clause is not "necessary for the immediate preservation of the public peace, health or safety."

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 360
1-20-65, Carnahan & Belt

Op. No. 171
4-23-63, Morris