

STATE AUDITOR:
GENERAL ASSEMBLY:
LEGISLATURE:
SALARIES:

Members of the 57th General Assembly convened in extra session only entitled to \$5.00 per day for the first 70 days of the session and \$1.00 per day thereafter and during the remainder of the session.

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This Department acknowledges receipt of your letter dated December 28, 1933, which is as follows:

"I would appreciate a ruling from your office as to whether the members of this Special Session of the Legislature shall receive \$5.00 per day during the entire length of this Session, or whether the \$5.00 a day stops at the end of seventy days."

I.

Section 16 of Article IV of the Constitution of the State of Missouri, in reference to the pay of members of the General Assembly of this State, reads:

"The members of the General Assembly shall severally receive from the public treasury such compensation for their services as may, from time to time, be provided by law, not to exceed five dollars per day for the first seventy days of each session, and after that not to exceed one dollar per day for the remainder of the session, except the first session held under this Constitution, and during revising sessions, when they may receive five dollars per day for one hundred and twenty days, and one dollar per day for the remainder of such sessions. In addition to per diem, the members shall be entitled to receive traveling expenses or mileage, for any regular and extra session; not greater than now provided by law; but

no member shall be entitled to traveling expenses or mileage for any extra session that may be called within one day after an adjournment of a regular session. Committees of either house, or joint committees of both houses, appointed to examine the institutions of the State, other than those at the seat of government, may receive their actual expenses, necessarily incurred while in the performance of such duty; the items of such expenses to be returned to the chairman of such committee, and by him certified to the State Auditor, before the same, or any part thereof, can be paid. Each member may receive at each regular session an additional sum of thirty dollars, which shall be in full for all stationery, used in his official capacity, and all postage, and all other incidental expenses and perquisites; and no allowance or emoluments, for any purpose whatever, shall be made to or received by the members, or any member of either house, or for their use, out of the contingent fund or otherwise, except as herein expressly provided; and no allowance or emolument, for any purpose whatever, shall ever be paid to any officer, agent, servant or employe of either house of the General Assembly, or of any committee thereof, except such per diem as may be provided for by law, not to exceed five dollars."

It is not necessary to look to the statutory law of the State in determining your question, except in so far as statutory enactments may throw light on the meaning of the constitutional provision above quoted. However, Section 11231 Revised Statutes Missouri 1929, in all pertinent respects, follows the wording of Section 16 of Article IV of the Constitution of Missouri. Such section 11231 is as follows:

"The members of the general assembly and the president of the senate of this state shall receive, as compensation for their services, the sum of five dollars per day for each and every day

they may serve as such, for the first seventy days of each session, and one dollar per day for every day they may serve thereafter to the end of the session; except during the sessions for the revision of the statute laws of the state, when they shall receive five dollars per day for every day they may serve as such for the first one hundred and twenty days, and one dollar per day for every day they may serve thereafter, and five dollars per day for every day they may be necessarily employed in going to and from said general assembly, and shall also receive at each regular session of the general assembly the sum of thirty dollars in addition to their per diem, which shall be in full for all stationery used in their official capacity, and all postage, together with all other incidental expenses and perquisites, and no allowance or emoluments for any purpose whatever shall be made or received by the members, or any member of either house, or for their use, out of the contingent fund or otherwise; nor shall any member receive pay per diem until he has appeared in his seat and answered to his name at the meeting of each session of the legislature; nor shall any member be entitled to traveling expenses or mileage for any extra session that may be called within one day after an adjournment of the regular session. And each member of the general assembly, at each session thereof, except sessions called within one day after the adjournment of any regular session, who shall attend at the place of meeting, shall receive the following amounts, for mileage, that is to say: * * * * *

We particularly direct your attention to what we consider the controlling language of the above sections of the Constitution and Statute, where it is provided that members of the General Assembly shall receive as compensation not to exceed five dollars per day for the first seventy days of each session (meaning each session of the legislature) and

after that (meaning after the first seventy days have passed) one dollar per day for the remainder of the session. It is not said that the compensation of the members is so fixed for regular sessions but for each session.

Section 19 of Article IV of the Constitution of Missouri provides:

"The sessions of each house shall be held with open doors, except in cases which may require secrecy."

Section 20 of Article IV of the Constitution, with reference to the convening of the General Assembly in regular session, reads:

"The General Assembly elected in the year one thousand eight hundred and seventy-six shall meet on the first Wednesday after the first day of January, one thousand eight hundred and seventy-seven; and thereafter the General Assembly shall meet in regular session once only in every two years; and such meeting shall be on the first Wednesday after the first day of January next after the elections of the members thereof."

Section 9 of Article V of the Constitution of this State, setting forth the powers of the Governor, in part, empowers the Governor to,

"* * * * On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary."

Section 55 of Article IV of the Constitution, provides:

"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."

Sections 20 and 55 of Article IV of the Constitution, above quoted, alternately refer to "regular session" and to "extra session" but a session of the Legislature, nevertheless, is referred to and it is a session of the Legislature that is referred to in Section 16 of Article IV of the Constitution for services on which compensation is allowed members of the General Assembly. While Section 55 of Article IV, above set out, limits the General Assembly, convened in extra session, in its deliberations to action upon only the subjects specifically designated in the proclamation of the Governor calling the Assembly into extra session or to such matters as may be recommended to the Assembly by the Governor in a special message or in special messages, but there is no limitation upon the subjects as to which the Governor may require the action of the General Assembly, so long as the same involve extraordinary occasions. We know, as a matter of common knowledge, circumscribed only by the proclamation and messages of the Governor, that the Fifty-seventh General Assembly of this State, convened in extra session, has functioned and transacted its business in the same manner and form as the business of such Legislature was transacted at the last regular session.

Calling your attention again to Section 16 of Article IV of the Constitution, you will note that the compensation of the members of the General Assembly shall not exceed five dollars per day for the first seventy days of each session and thereafter not to exceed one dollar per day for the remainder of such session, but there is excepted from that provision compensation for services of the members of the General Assembly at the first session of same held under the present Constitution and there is also excepted revising sessions of the Legislature when the members may receive five dollars per day for one hundred twenty days and one dollar per day for the remainder of such sessions. If the writers of the Constitution had intended to except a special session, as to the seventy day period, doubtless the same would have been written into Section 16 of Article IV along with the exceptions that were written into that section.

II.

We do not find any decisions of the courts of Missouri that help in a solution of the problem at hand, except those cases declaring the well-known rule that in construing a provision of the Constitution the intention of the framers of that document

must be the end sought to be attained. Decisions from courts of foreign jurisdictions throw more light on the subject.

In the case of *People v. Rice* 31 N. E. 921, the Court of Appeals of the State of New York had for consideration whether or not the State could be re-districted, as to the Senate and Assembly, at an extraordinary session. The court at page 923 of the opinion said:

"It is contended on the part of those who allege the invalidity of the law of 1892 that it was passed in violation of that provision of the constitution which directs the alteration to be made by the legislature at the 'first session after the return of every enumeration.' The act was in truth passed at an extraordinary session of the legislature called by the governor, and after the return of the enumeration of 1892. The point is made that an extraordinary session is not such a session of the legislature as is contemplated by the constitution. To my mind the objection is wholly without force. An extraordinary session is, nevertheless, a session of the legislature. The governor by the terms of the constitution has 'power to convene the legislature (or the senate only) on extraordinary occasions.' When thus convened, is not the legislature in session? And can it be for a moment correctly contended that a session thus convened is the same session which had already terminated by an adjournment without day? It is not a regular session, it is true; it is what the constitution describes it,-an extraordinary session,-but yet a session of the legislature. The constitution does not say that the session which is to deal with the question must be a regular one. All it directs is that the legislature at the first session after the return shall proceed to make the alterations. The constitution provides for the assembling of the legislature on the first Tuesday in January in each year. When it adjourns sine die, has not the session of the legislature ended? The term of office of its members may not have ended, but

the legislative session has certainly terminated by an adjournment without day. It could not again assemble and perform any valid act unless the governor, under the special power given him by the constitution, should convene it. When thus convened, the legislature is in session, and it is clearly not the same session which was ended by a prior adjournment thereof without day.

The case of *State v. Olson* 176 N. W. 528, defined what was a "special session" of the legislative assembly of the State of North Dakota and held that a special session of the Legislature of that State was a "session" within the meaning of the Constitution of North Dakota. The holding of the court, as well as the matter at issue, is contained in the following excerpt from the opinion at page 533:

"Can there be any question that the Legislature which met in special session in 1919 was a legislative assembly? Can it be doubted that such session was not a session of the legislative assembly? Is there any room for construction or argument that, under the Constitution, the same members of the House and the Senate might one day be sitting in regular session bound by the constitutional provisions, requiring a two-thirds vote in order to enact an emergency measure, and that acts not so passed should not become effective until July 1st, and that several days later, after adjournment and reconvenement by the Governor, this same Legislature, composed of exactly the same members, sitting in special session, would have the power to enact statutory enactments, irrespective of the constitutional provisions, and in disregard of the legislative power reserved to the people in the initiative and referendum."

In *Shaw v. Carter* 297 Pac. 273, the Supreme Court of Oklahoma, construing the Constitution of that state with reference to the compensation of the members of its legislature, who receive six dollars per diem for their services during a

session of the Legislature for a fixed number of days and thereafter two dollars per day for such services. Defining "session" of the Legislature of that state the court at page 276 of the opinion said:

" The phrase 'session' has a fixed and definite meaning which has heretofore received a construction by our court.

In the case of Ralls v. Wyand, 40 Okl. 323, 136 P. 158 the sixth paragraph of the syllabus provides: 'The meaning of the word "session" is the sitting of a body, competent for the transaction of its business; the time during it is convened and actually engaged in business; the time during which a legislative body or other assembly sits for the transaction of business.'

In the body of the opinion, the court states;

'The Ency. of Plead. & Prac. vol. 21, pp. 559, 560, says: "A session of court is the time during a term in which the court sits for the transaction of business." "

The Century Dictionary includes the following among the word's (session) meaning: 'The sitting together of a body of individuals for the transaction of business; the sitting of a court, academic body, council, legislature, etc., of the actual assembly of the members of these, or any smaller body, for the transaction of business. As the court is now in session (that is, the members are assembled for business); the time, space or term during which a court, council, legislature or the like, meets daily for business, or transacts business regularly, without breaking up,'

* * * *"

CONCLUSION.

From the use of the words "session" and "each session" in the various constitutional and statutory provisions

above quoted; the failure to make extra session an exception in Section 16 of Article IV of the State Constitution, and being unauthorized to write into the Constitution or Statutes what is not there, and in the light of the decisions above quoted from, we think the intention of the framers of the State Constitution on the question involved is clear and it is our opinion that the members of the Fifty-seventh General Assembly, convened in extra session, are only entitled to the compensation of five dollars per day for their services for the first seventy days of such session and thereafter one dollar per day for the remaining days of such session.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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