

LEGISLATURE:

One house of Legislature, originating bill, can only adopt or reject amendments of other branch. Secs. 26, 29, 30, 32, Art. IV, Constitution.

1-8  
January 8, 1934.



Honorable D.L. Bales,  
Senate Chamber,  
Jefferson City, Missouri.

Dear Senator:

This department acknowledges receipt of the questions handed to the writers in this office on January 5, 1933. We incorporate herewith the situation as outlined to us; also, the questions you desire to be answered, arising out of the situation.

"The Senate amended House Bill No. 5 by striking out all after the enacting clause and inserted new matter. The Senate also adopted Senate Committee Amendment No. 2, striking out the title of the bill and returned it to the House. The House amended the Senate Amendment which struck out all matter following the enacting clause by adoption of seven amendments to Senate Amendment and directed the officers of the House to return a report to the Senate stating they had amended the bill by the adoption of seven House amendments to the Senate Amendment and requested the Senate to recede from the second Senate Amendment."

I.

~~"In view of the provisions of Sec. 29, Art. IV of the Constitution dealing with the question of amendments to a bill pending in the house of its origin of the General Assembly, can the House in which the bill originated amend an amendment adopted by the other house to such bill?"~~

At the outset we make the statement that it is a general rule of law relating to the passage of bills and the conduct of the House and Senate incident thereto that when our Constitution has

provisions respecting the same, the Constitution is to be followed, and parliamentary rules are to be ignored. In the absence of constitutional provisions relating to the steps to be taken in the passage of any bill, then parliamentary rules are to govern the procedure. We are guided in this statement by Section 123 of 25 R.C.L., which is as follows:

"Formerly, the only rules controlling legislative procedure were the rules formulated and prescribed by legislative bodies themselves. But about the middle of the nineteenth century it began to be customary to insert in the constitutions of the various states provisions prescribing rules to be observed by legislatures in the enactment of laws. These provisions have constantly grown in number so that they now cover a large number of subjects, such as the title and subject matter of bills, the introduction, consideration and passing of bills, the keeping of legislative journals and similar matters \*\*\*\*\*"

Section 32, Article IV of the Constitution of Missouri is as follows:

"No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either house only by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journal."

We construe this section to mean that when a bill is returned to the House by the Senate with amendments, it is the duty of the House to concur in or reject the amendments by a vote of yeas and nays. If the House undertakes to amend the amendment made by the Senate and then vote upon the same, the House has not concurred in the Senate's amendment, and it would require a far-fetched imagination to say that it impliedly rejected the amendments. In effect it has evaded the question; it should confine itself solely to a question of rejection or concurrence. Let us assume that it has impliedly rejected the amendment - the House cannot then take any further action respecting the amendment, and cannot engraft another amendment to the amendment, or amend the amendment. The situation is then such as to require the appointment of a conference committee for the purpose of reconciling the differences.

In the case of *Browning v. Powers*, 38 S.W. 943, the Court said (l.c. 945):

"The bill first passed the House, and afterwards, with certain amendments, passed the Senate. The Senate amendments were not concurred in by the House. The situation was thus such as, in the opinion of each house, to require the appointment of a committee of conference for the purpose of reconciling differences, and agreeing upon proper amendments to the original bill. Section 32 of said article provides the manner of taking the vote of concurrence to two classes of amendments. The same formality is required in taking the vote of concurrence as in the final passage of a bill under Section 31. This would seem to imply that the concurring vote was intended to be the final vote on the bill. In either case the amendment would be the only matter with which the respective bodies had to deal."

The conclusion reached is further augmented by Section 26 of Article IV of the Constitution of the State of Missouri, which is as follows:

"Bills may originate in either House and may be amended or rejected by the other; and every bill shall be read on three different days in each house."

Harmonizing the two sections, Sec. 32 as giving the originating house the power to concur, and Sec. 26 the power to reject, in the light of the decision above quoted and the herein quoted constitutional provisions, we reach our conclusion that the House, having originated the bill, is confined in its power to reject or concur in an amendment, but does not have the power to amend the amendment or to add to the amendment or amendments.

## II.

"If a bill originating in one house, goes to the other house and is there amended by two or more amendments, can the house of origin, upon the return of the bill with the amendments, adopt one or more amendments of the other house?"

The House and Senate, under Rule 152, have adopted Jefferson's Manual and the rules and practice of the House of Representatives of

the United States 71st Congress, and have so stated on page 58 of the Manual of the 57th General Assembly of Missouri, as follows:

"The rules of parliamentary practice comprised in 'Jefferson's Manual' and the 'Rules and Practice of the House of Representatives of the United States 71st Congress', shall govern the House in all cases in which they are applicable and not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives; and the Manual and Digest of the rules and practice, above referred to, shall be taken as authority in deciding questions not otherwise provided for in these rules."

In view of our conclusions, and the authorities given in the preceding question, and having held that the house of origin can only adopt or reject an amendment of the other House, we are constrained to the conclusion that the house of origin can adopt some of the amendments made by the other house and can reject other amendments.

In consulting the House Manual of the 71st Congress, 3rd Session, we find as a part of the rules of the House of Representatives, at page 465, the stages of a bill of the House, and at page 467 the following:

"13. Consideration of Senate amendments by the House:

When a bill with Senate amendments comes before the House, the House takes up each amendment by itself and may vote to agree to it, agree to it with an amendment, or disagree to it. If it disagrees it may ask a conference with the Senate or may send notice of its disagreement, leaving it to the Senate to recede or insist and ask the conference."

In considering question I we have shown that because of constitutional prohibition the House of origin may not "agree to it with an amendment", but it is apparent that the other provisions of this rule can be applied to the action of the originating house on amendments of the other house, and is ample authority for the statement that the amendments to the bill are to be considered individually by the originating house, some of which may be adopted, while others may be rejected.

## III.

"Can a conference committee act upon an amendment to a bill which amendment was adopted by the house not of the origin of the bill and in connection with such action also act upon amendments to an amendment to a bill originating in the same house that the amendments to the amendment originated?"

Having held under Question I that the House can only concur or reject an amendment made by the house not of origin, we are constrained to hold that the conference committee should not act upon "amendments to an amendment to a bill originating in the same house that the amendments to the amendment originated". Of course, the conference committee can act upon the amendment or amendments which were originally made by the house not of origin, but having held that the house of origin cannot amend an amendment or engraft an amendment on an amendment, the conference committee would not legally have such amendments before it.

## IV.

"Does Sec. 29 of Art. IV of the Constitution, as amended, contemplate that all amendments adopted to a bill originating in the same house shall be offered and considered upon perfection of the bill?"

Section 29 of Article IV of the Constitution of Missouri was amended by a vote of the people on November 8, 1932 and said section now reads:

"All amendments adopted by either house to a bill pending and originating in the same shall be incorporated in the bill, and the bill as agreed to shall, before third reading and final passage, be printed for the use of the members. The printing of bills ordered to third reading and final passage shall be under the supervision of a committee, whose report shall set forth that they find the printed copy of such bill as theretofore agreed to and furnished for the use of the members is correct. A correct record of each day's proceedings in each house shall be furnished for the use of the members of the General Assembly before the record is approved, and no bill shall be signed by the presiding officer of either house until such printed copy thereof shall have been furnished for

the use of the members of the General Assembly and the record of the previous day shall have been approved. When agreed to by both houses, the bill as finally passed shall be typed or printed and signed by the presiding officer of each house and transmitted to the Governor."

While the office of this section was primarily to reduce cost and labor by permitting bills to be printed, yet we can also read into said section that it contemplates and provides that amendments to a bill originating in the same house shall be offered and considered upon perfection of the bill. Said section uses the terms "all amendments adopted by either house to a bill pending and originating in the same shall be incorporated in the bill and the bill as agreed to shall, etc."

We construe the new section to require that all amendments to a bill originating in the same house in which such amendments are offered must be offered and adopted before the bill is declared perfected and the perfected bill is printed, and that the house of origin is precluded from offering any further amendments to its own bill, unless said amendments be offered and accepted by a conference committee.

#### V.

"Does Section 32 of Article IV contemplate that differences are to be settled by conference committees?"

We are not certain that we glean the exact meaning of this question. In view of Section 32 of Article IV of the Constitution of Missouri, supra, and interpreting the opinion as quoted in the case of *Browning v. Powers*, supra, to be that when a situation arises wherein the house of origin of a bill refuses to concur in the Senate amendments, then it requires the appointment of a committee of conference for the purpose of reconciling differences and agreeing upon proper amendments to the bill. Having decided that the differences should be referred to a committee, then said committee constitutes a board of arbitration and it is its duty to attempt to "settle" the differences. If, however, after the differences are "settled" by the conference committee in so far as the committee is concerned, it would require the adoption of the committee's report by both houses. We therefore conclude that the conference committee cannot settle any differences, but can only recommend in its report a settlement of the differences.

This conclusion is further augmented by Jefferson's Manual as found at page 245 of the House Journal of the 3rd Session of the 71st Congress:

"The report of the managers of a conference goes first to one house and then to the other, neither house acting until it is in possession of the papers, which means the original bill and amendments, as well as the report. \*\*\*\* The report must be acted on as a whole, being agreed to or disagreed to as an entirety",

and Section 32, Article IV of the Constitution of Missouri, supra.

#### CONCLUSION

Another element which has played an important part in answering your various questions is the uniform custom and practice of long standing which has prevailed in the General Assembly of this State. It is our understanding that for a period of more than thirty years amendments have been adopted or rejected by the house originating the bill. Great weight is to be given the interpretation by legislative bodies of constitutional provisions.

As stated in Cooley's Constitutional Limitations, 86:

"Greater weight is also given to the practical construction of forms of procedure than to that which concerns the substance of legislation. When there is a real doubt of the proper interpretation of a constitutional provision relating to the course of procedure, it should be solved in favor of the practical construction given it by the Legislature."

This rule has been adopted by the Supreme Court of Missouri in the case of Browning v. Powers, supra, wherein the Court said (l.c. 945):

"The doubt, by uniform practice, has been solved by the Senate in the negative, and we adopt that solution."

As stated above, we have based our conclusions and the answers to your various questions on the construction of the provisions of the Missouri Constitution, court decisions and the element of custom and practice.

Respectfully submitted,

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APPROVED:

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