

GENERAL ASSEMBLY: If a bill is reconsidered and is again voted upon and defeated the subject is finally disposed of, under Section 35, Article 4, of the Constitution of Missouri

4-21
April 20, 1937



Honorable J. G. Christy
Speaker
House of Representatives
Jefferson City, Missouri

Dear Mr. Speaker:

This Department acknowledges receipt of your letter of April 16, wherein you request an opinion based on the following facts:

"May I ask for a decision upon the following question:

"A House Bill was brought up for third reading and final passage and defeated. Within the three days limit the vote by which the bill was defeated was reconsidered and again defeated upon third reading and final passage. The next day a motion was put to suspend the rules and again bring the bill up for reconsideration. A point of order was raised under Section 35, Article 4, of the Constitution, which reads as follows: 'When a bill is put upon its final passage, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be immediately taken and the subject finally disposed of before the House proceeds to any other business.'

"As Speaker, I upheld the point of order, taking the stand that the

House had the right to suspend its rules but could not suspend the Constitution. I interpreted Section 35, Article 4, of the Constitution to mean that when they had reconsidered the vote by which the bill was taken and again voted upon the matter that 'the subject was finally disposed of' and my interpretation of the word 'finally' was that they meant the end and conclusion of the matter.

"An appeal was taken from the ruling of the Chair and the Chair was not sustained upon the point of order.

"As this matter will undoubtedly come before the House again, I would like your interpretation of Section 35, Article 4, of the Constitution."

Each Branch of the General Assembly is empowered, by Section 17, of Article IV, of the Constitution of Missouri, to determine its own proceedings, except as herein provided. The pertinent part of said Section being as follows:

"Each house shall appoint its own officers; shall be sole judge of the qualifications, election and returns of its own members; may determine the rules of its own proceedings, except as herein provided; * * * "

Therefore, in the absence of any other Constitutional provision restricting rules of procedure the House of Representatives could make its own rules of parliamentary procedure relating to the point of order which you mention in your letter. Section 35, of Article IV of the Constitution appears to be a

limitation on that power, said section being as follows:

"When a bill is put upon its final passage in either house, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be immediately taken, and the subject finally disposed of before the house proceeds to any other business."

The troublesome words in Section 35 are the meaning and intention of the clause "finally disposed of before the House proceeds to any other business." Section 35 being in the nature of a procedural limitation on the Legislature, has never been construed by the courts of Missouri.

The author of "Legislative Procedure," Robert Luce, devotes a chapter to "reconsideration." The paragraph, from which is herewith quoted, throws light upon the purpose of such a section being in the Constitution; we call your attention to the specific reference to the condemnation of this section by the author in our Constitution:

"Mississippi put into her Constitution of 1890 the requirement that 'all votes on the final passage of any measure shall be subject to reconsideration for at least one whole legislative day, and no motion to reconsider such vote shall be disposed of adversely on the day on which the original vote was taken, except on the last day of the session.' Whether or not the evil at which this was aimed should be dignified by constitutional provision, there can be little question that it ought somehow to be met. In altogether too many

assemblies it is permitted to move reconsideration immediately after a vote has been taken, with the avowed hope that the motion will not prevail, or as in Congress to make the motion and then move to lay it on the table. This foils the legitimate and admirable purpose of reconsideration, which is properly to be secured by giving the assembly a night to 'sleep on it.' Votes are sometimes carried by the influences of passion or excitement that pass away after a few hours, and the calmer deliberations of the next morning may produce wiser results. Furthermore, if the decision has been reached in a small house and if the matter is of real consequence, a full attendance may be secured at the following session, and that generally conduces to better lawmaking. For this reason I seriously question the wisdom of the provision Missouri put into her Constitution of 1875, requiring that when a bill is put upon its final passage and fails, a vote upon a motion to reconsider shall be immediately taken and the subject finally disposed of before the House proceeds to any other business."

Coming closer to the question, that is, what is the import or effect of the words, "finally disposed of," we shall consider the meaning of the words individually.

" 'Final' means conclusive, from which there is no appeal. *Blanding v. Sayles*, 49 Atl. 992."

"The ordinary definition of the word 'final' is 'last.' *Johnson v. City of New York*, 1. N. Y. S. 254."

"Final is defined in Burrill's Law Dictionary, part 1. p. 490, to be that which terminates or ends a matter or proceeding."

25 Corpus Juris, page 1129, defines "final" as,

"A word of well understood and accepted meaning derived from the Latin 'finis,'. In its ordinary signification, last; latest; relating to the end; ultimate."

The words "disposed of" mean as follows:

"To dispose of means 'to part with; to relinquish; to get rid of - as to dispose of a house.' Webster's Dictionary."

The words "final disposition" which we consider as equivalent and having the same meaning as "finally disposed of," have been defined as follows:

"The phrase 'final disposition of the case,' in 19 Stat. 102, allowing an application for discharge in bankruptcy, where there are no assets, 'at any time after the expiration of 60 days, and before the final disposition of the cause,' means the settlement of the estate and the discharge of the assignee or trustee. In re Heller (U.S.) 9 Fed. 373. It means the final disposition of the administration of the estate. In re Brightman (U.S.) 4 Fed. Cas.136, 137."

"The final disposition of a matter submitted to arbitration is a determination so that nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation is

required or can arise on the matter. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. It is not absolutely necessary that the award should state in figures the exact amount to be paid. It is sufficient if there is such reference in the award to documents or other matters that nothing remains but mere arithmetical computation to render the award final and conclusive. *Colcord v. Fletcher*, 50 Me. 398, 401."

"The expression 'final disposition' as used in Act June 25, 1868, sec. 2, allowing the court of claims at any time while any suit or claim is pending before or on appeal from the said court, or within two years next after the final disposition of any such suit, or claim, on motion on behalf of the United States to grant a new trial in any such suit or claim, means the final determination of the suit on appeal, if an appeal is taken, or, if none is taken, then its final determination in the court of claims. *Ex parte Russell*, 80 U. S. (13 Wall.)664, 667, 20 L. Ed. 632."

In Jefferson's Parliamentary Manual, page 93, while rather ancient on parliamentary law, contains the following paragraph which would indicate the real purpose of such a section in our Constitution.

"The rule permitting a re-consideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation?"

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If, after the vote, the paper on which it has passed has been parted with, there can be no reconsideration: As if a vote has been for the passage of a bill, and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when, or under what circumstances, does it cease to be susceptible of re-consideration? This remains to be settled, unless a sense that the right of re-consideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding."

CONCLUSION

We are of the opinion that if Section 35, Article IV, of the Constitution of the State of Missouri, has any rational meaning it is to the effect that when a bill is reconsidered and the matter is again voted upon the subject is finally disposed of, and that means the end and final conclusion of the matter. To hold otherwise would defeat the purpose of the Constitutional section and cause dissipation and waste of time of the House in repeated agitation of the question and make of the Constitutional section a nullity.

Respectfully submitted,

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APPROVED:

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