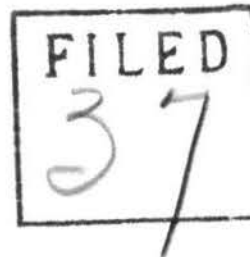


UNEMPLOYMENT

COMPENSATION ACT- Emergency clause Constitutional.

July 10, 1937



Honorable Frank G. Harris
Acting Governor of Missouri
Jefferson City, Missouri

Dear Governor Harris:

We have your request of July 7, 1937, for an opinion, which is as follows:

"The Social Security Board of the Federal Government requires an opinion as to the validity of the emergency clause on Senate Bill No. 36- the Unemployment Compensation Act. Will you please give me your opinion on this question?"

Senate Bill No. 36 was finally passed in the form of a Committee Substitute for Senate Bill No. 36, and may be generally known as the Unemployment Compensation Law of Missouri. Section No. 25 of that Act provides as follows:

"Because of the fact that unemployment and economic insecurity is seriously affecting the health, morals and public welfare of this state, making it imperative to create systematic accumulation of funds and provision for benefits for periods of unemployment, an emergency is created within the meaning of the Constitution of this state and this Act shall be in full force and effect from and after its passage and approval."

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Section 57, Article IV of Missouri Constitution, with reference to the referendum, reads as follows:

"The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions and for the support of public schools) either by petitions * * * *, etc. "

The 'second power' above referred to is one reserved to the people entitling them to reject at the polls certain legislative acts.

Unless this act is necessary for the "immediate preservation of the public peace, health or safety" it is subject to referendum.

This in turn depends upon the construction to be given the language used. Our Supreme Court, en banc, (1921) in State ex rel. Pollock vs. Becker, 233 S. W. 641, 1. c. 649, said:

"The word 'preservation' say the lexicographers, presupposes a real or existing danger; and 'immediate preservation' is indicative of a present impelling necessity, with nothing intervening to prevent the removal of the danger. By the 'public peace' we mean that quiet, order and freedom from disturbance guaranteed by law. Neuendorf v. Duryea, 6 Daly (N.Y.) 276; Id. 52 How. Prac.(N.Y.) 269; Gribble v. Wilson, 101 Tenn. 612, 49 S. W. 736.

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"Laws in regard to 'public safety' are allied in their application and effect to those enacted to promote the public peace, preserve order, and provide that security to the individual which comes from an observance of law. By the 'public health' is meant the wholesome sanitary condition of the community at large. 1 Bl. Com. 122; Anderson's Law Dict."

In the interpretation of the emergency clause of C. S. S. B. No. 36 we must keep in mind the language of our Supreme Court in *State ex rei. vs Carr*, 178 Mo. 229, 1. c. 233:

"It is one of the cardinal rules for the construction of statutes, that the spirit and purpose of the enactment is an invaluable guide to the meaning thereof, for the letter of the law often killeth, while its spirit maketh alive."

The emergency clause itself recites as a fact the existence of unemployment and economic insecurity in Missouri. This statement of fact by the Legislature is supported by the statistics. We are advised by the Missouri Reemployment Service that they have as of June 30, 1937, 68, 610 unemployed workers. The National Reemployment Service has as of July 1, 1937, 108,883 registered and unemployed workers, and there are approximately 30,000 unemployed being given temporary work by the WPA. We are also advised that the percentage of unemployment in Missouri is larger than in virtually every state in the Union.

In view of these figures, and the general unrest now existing in the ranks of practically all organized labor, it is indispensable that unemployment compensation acts be immediately organized and put into operation.

We realize, however, that the Legislature is without power to attach an emergency clause to a referable act, *Fahey vs. Hackmann*, 237 S. W. 752; 291 Mo. 351, and whether an act by the Legislature comes within the exception enumerated in the referendum clause (Article IV, Sec. 57) is a judicial question. *State ex rel. vs. Westhues vs. Sullivan*, 283 Mo. 547, l.c. 582; *State ex rel. Pollock vs. Becker*, *supra*.

In determining whether an act is necessary for the immediate preservation of public peace, health or safety, we must take into consideration the face of the act, the history of the legislation, contemporaneous declarations of the Legislature, the evil to be remedied, and the natural or absurd consequences of any particular interpretation, *State vs. Stewart*, 187 Pac. 641, 57 Mont. 144.

In this State it has been held that the urgent need of sanitation alone was sufficient to make effective an emergency clause in a health measure, *State vs. Curtis* (1928) 4 S.W. (2d) 467, l.c. 471.

In this State courts take judicial notice of current history, *State vs. Becker*, *supra*; *Title Guaranty Trust Co. vs. Sessinghaus*, 28 S. W. (2d) 1001, 325 Mo. 420; *State ex rel. Crutcher vs. Koeln*, 61 S.W. (2d) 750, 332 Mo. 1229.

That the destined goal of all good government is to promote the general welfare of all the people is now an accepted fact, universally recognized in Democracies and rendered more than lip service by the accepted leaders. Missouri faces the problem of doing something for approximately 256,000 workers, not permanently employed, and of preventing further unemployment by C. S. S. B. No. 36. It is in the face of these conditions of economic insecurity

that the Legislature by Section 25, C. S. S. B. No. 36 declared that the immediate operation of the Bill was necessary for the public welfare of the State. We find the rule of law wherein the legislative acts are presumed to be Constitutional. The Supreme Court in Kavanaugh vs. Gordon, 244 Mo. 695, 1. c. 722, said:

"The constitutionality of the law is not to be lightly drawn in question. A statute sleeps at the start in the nursing bosom of many friendly presumptions. But, however delicate the task, courts may not put away from them the grave duty of saying one is unconstitutional when it is so beyond a reasonable doubt. (State ex rel. v. Warner, 197 Mo. 650)."

The Journal of both the House and Senate shows that C. S. S. B. No. 36, and the emergency clause, were duly passed at the last Session of the Legislature. The Bill was duly and properly signed, delivered to the Governor, and approved by him. Under these circumstances there is a presumption that the Bill and all of its parts has been properly passed, and that all the requirements of the Constitution have been complied with, State ex rel. vs. Field, 119 Mo. 593, 1. c. 611, This is the rule in many other states, Mo., Kan. & Texas Ry. Co. vs Simons (1907) 75 Kans. 130; Field vs. Clark, 143 U. S. 649, 672.

It is therefore the opinion of this office that the emergency clause of C. S. S. B. No. 36 comes within the spirit and purpose of Article IV, Section 57, of the Missouri Constitution, and that in fact an

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emergency within the meaning of that Constitutional provision exists, and that the act is not referable, but is now in full force and effect.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General

FER/R