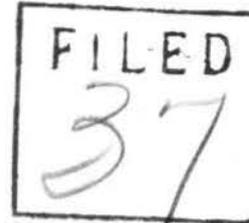


CASEY BILL:--Constitutionality--emergency clause.

July 26, 1937

9-27



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

Dear Governor Harris:

We have your request of July 19, 1937, for an opinion on the Casey Bill, which involves the following points:

- "1. The constitutionality of the bill.
2. The validity of the emergency clause.
3. Whether or not this act contains all legislation now in effect in Missouri directly or indirectly affecting the Social Security plan in this state."

We shall treat these matters in the order in which they are presented.

I.

The constitutionality of
the Casey Bill.

In passing upon the constitutionality of the Casey Bill (CSSB 125), we shall briefly refer to certain legislative procedural provisions of the Missouri Constitution.

Article IV, Section 26: Every bill shall be read on three different days in each house.

While the House Journal (page 1270), and the Senate Journal (page 1261), recites that the Casey Bill was read the third time and passed, the original bill itself recites on its face that it was duly enrolled and correctly printed (Art. IV, Sec. 29), and these facts in themselves are sufficient to comply with this provision of the Constitution. State ex rel. vs. Taylor, 123 S. W. 892, 224 Mo. 393, 476; State ex rel. vs. Drabelle, 170 S. W. 465, 261 Mo. 515.

Article IV, Section 28: No bill shall contain more than one subject, which shall be clearly expressed in its title.

This provision is intended to prevent inclusion of incongruous and unrelated matters in the same measure, and to guard against inadvertance and fraud in legislation. International Shoe Company vs. Shartel, 279 U.S. 429, 49 Sup. Ct. 380, 73 L. Ed. 781; 29 Fed. (2) 604, 50 S. Ct. 79.

This provision of the Constitution is to be given a broad and liberal construction. Thomas vs. Buchanan County, 51 S. W. (2) 95, 350 Mo. 627. Graves vs. Purcell, 85 S. W. (2) 543. It is the duty of the Courts to uphold an act under this provision of the Constitution if such can be done without doing violence to the language used and the evident intent of the act itself. It is only necessary that the title indicate the subject in a general way without going into detail. State vs. Thomas, 256 S. W. 1028, 301 Mo. 603.

By reference to the title we find that the act has one subject, namely, the grant of Social Security benefits to certain classes of persons in distress. All of the provisions fairly relate to this same subject matter and the act therefore under this section is valid. Ex Parte Loving, 77 S. W. 508, 178 Mo. 194; Southard vs. Short, 8 S. W. (2) 903, 320 Mo. 932. Thomas vs. Buchanan County supra. It is said that if

the title is a fair index of the act and matters necessary to render the act effective are included in the act although not specified in the title, any such omissions will not render the act invalid. Ex Parte Hutchins, 246 S. W. 186, 296 Mo. 331. State vs. Cox, 137 S. W. 981, 234 Mo. 605. To be invalid the title must be comprehensive enough to include disconnected and incongruous subjects. State vs. Branson, 21 S. W. 1125, 115 Mo. 271.

By reference to the title we find that it repeals a number of statutes, specifically naming each, and enacts in lieu thereof 26 new sections. This meets the requirement of Section 28, Article IV of the Missouri Constitution. State vs. Campbell, 259 S. W. 430; State vs. McEniry, 190 S. W. 272, 269 Mo. 228.

Article IV, Section 31: No bill shall become a law unless on its final passage a majority of the members of each house vote therefor and the vote taken by yeas and nays and entered in the journal.

The Senate Journal (pages 1259, 1260, 1261) and the House Journal (pages 1268, 1269, 1270) set out the Conference Committee Report on the Casey Bill and show that a majority in each house voted for the passage of the bill, to-wit, twenty-nine senators out of a total membership of thirty-four, and one hundred and six representatives out of a total of One hundred and fifty. The adoption of the Conference report by both the House and Senate meets the requirement of this section of the Constitution. Browning vs. Powers, 38 S. W. 943.

The Casey bill was duly passed by both houses of the Legislature, signed by the presiding officers and received the approval of the Governor June 23, 1937. This meets the requirement of Article IV, Sections 37 and 38.

Section 20 of the Casey bill specifically establishes certain special funds relating to the purposes covered by the act. It is also provided in this section that the State Treasurer shall be treasurer and custodian of all funds and moneys. This meets the requirement of Article IV, Section 43 that all state moneys must go into the treasury. The creating

of a special fund does not violate this section. State ex rel. Fath vs. Henderson, 60 S. W. 1093, 160 Mo. 190. The grant of public money for purposes of relief and old age pensions is specifically authorized by Article IV, Sections 46 & 47 of the Missouri Constitution.

Section 11 of the Casey Bill sets up certain qualifications and limitations for the recipient of benefits under the act. The only important one for consideration in this opinion is Subdivision (5) which excludes from the benefits of the act inmates of public institutions at the time of receiving benefits. This type of limitation has heretofore been approved in this state. State ex rel. Palmer vs. Thompson, 297 S. W. 62, 317 Mo. 903.

Article XIV, Section 9: The appointment of all officers not otherwise directed by this Constitution shall be made in such manner as may be prescribed by law.

This provision delegates to the Legislature the authority to specify by statute who shall make various appointments. State ex rel. Harvey vs. Wright, 158 S. W. 823, 251 Mo. 325.

Section 6 of the Casey Bill provides for the appointment of officers, employees and others by the State Administrator with the consent of the State Commission.

Article IV, Section 53: Prohibiting the passage of special and local laws.

The Casey Bill relates to persons and things as a class and includes all persons who are or may come within like situations and circumstances. It is therefore a general law as distinguished from special and therefore meets this requirement of the constitution. State vs. McCann, 47 S. W. (2) 95, 329 Mo. 748. State ex inf. vs. Southern, 177 S. W. 640, 265 Mo. 275. State ex rel. vs. Lee, 5 S. W. (2) 83, 319 Mo. 976.

It is therefore the opinion of this office that the Casey Bill is constitutional.

II.

The validity of the
emergency clause.

The emergency clause (Section 26) recites that the state is without necessary administrative facilities to carry out the purposes of the bill and that the bill itself is necessary to the advancement of the public peace, health, safety and public welfare of the state. These facts are worthy of consideration even though their enumeration is not conclusive and binding upon the courts. *Fahey vs. Hackmann*, 237 S. W. 752, 291 Mo. 351; *State ex rel. Westhues vs. Sullivan*, 283 Mo. 547, 1. c. 582.

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, 1. 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.

An examination of the act itself (Section 1) shows that the commission is created for the purpose of administering state plans and laws involving pensions or assistance to persons over seventy years of age, or who are incapacitated from earning a livelihood and are without means of support; aid to dependent children; aid or relief in cases of public calamity; and child welfare services. Administering to those who have reached and passed the age of seventy, who are incapacitated and without means of support (Art. IV, Sec. 47)

is included within the sphere of Article II, Sec. 4, declaring the purpose of government to be promotion of the "general welfare of the people".

The grant of aid or relief in cases of public calamity (Art. IV, Sec. 46) is based upon the situation affecting the public peace, health and safety of the state. In the last two years agriculture in the State of Missouri felt the devastating affects of two state wide droughts, and in the last year a large portion of the growing plant life which survived the drought was swept away by the flood waters of the Mississippi. In addition to that some one-quarter of a million Missouri citizens are now without permanent employment.

The act covers aid to dependent children and child welfare services. Commenting upon the power of the State to relieve the unfortunates our Supreme Court in State ex rel. Cave vs. Tincher, 258 Mo. 1, 1. c. 24, said:

"The conclusion is, therefore, authorized that the State in its character of parens patriae may provide for the comfort and promote the well being of not only infants but persons of defective understanding, or so burdened with other misfortunes or infirmities as to be unable to care for themselves. So important is this governmental function that the limitations of the Constitution are to be so construed, if possible, as to not interfere with its legitimate exercise. (Jarrard vs. State, 116 Ind. 98; Ex parte Ah Peen, 51 Cal. 280; McLean Co. vs. Humphreys, 104 Ill. 378; Re John Sharp, 15 Idaho, 120, 18 L.R.A. (N.S.) 886.)"

The above doctrine is recognized in other states. Griffin vs. Griffin, 187 Pac. 598. The Casey Bill merely extends the helping hand to those children who have been deprived of parental support, Section 16. That the welfare of the children has always been close to the heart of the State is now universally admitted. Millions are spent for their education, training and welfare. They are set apart and exempted from the application of many provisions of the criminal code. Speaking of children, the appellate division of the Supreme Court of New York, In Re: Vasko, (1935) 263 N.Y.S. 552, l. c. 555, 556, said:

"Children come into the world helpless, subject to all the ills to which the flesh is heir. They are entitled to the benefit of all laws made for their protection,--whether affecting their property, their personal rights, or their persons--by the Legislature, the sovereign power of the state."

Speaking on the meaning of aid to dependent children, we find the Court of Appeals of Maryland, (1933) 165 Atl. 618, l. c. 633, in the case of Mayor and City Council of Baltimore City vs. Fuget, using this language:

"To us it is clear that what is here attempted to be accomplished by the passage of the acts in question is not a pension within the meaning of this provision of the Constitution, nor is it even called a pension. The object and purpose of the act is to provide, in some cases, for the care and maintenance of dependent children at their homes 'under the guidance of their mother,' and not to commit them to an institution at possibly a greater cost to the state, thereby taking them from the care and control of their mother and the association of their brothers and sisters, if any, as well as depriving

them of the environment of a home and subjecting them to the care of others who have not in them the interest of a mother. It is not a pension to the mother, nor is the act passed for the mother's benefit, except in so far as it enables her to enjoy the association of her children. But it is for the benefit and welfare of the children; and the aid or assistance afforded them by the act lasts only so long as the necessity therefor exists. It lacks the attributes of a pension."

Whether or not the emergency clause is constitutional depends upon whether or not the act is referable under Section 57, Article IV, of the Missouri Constitution, which section in part provides:

"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."

We have heretofore attempted to point out that from the act itself, the emergency clause, the existing economic conditions of the state, the history of the legislation and existing conditions to be remedied, that the act is one which clearly and beyond the question of any doubt comes within the meaning of any law necessary for immediate preservation of the public peace, health and safety of the state.

The journals of both the House and Senate show that the Casey Bill and the emergency clause were duly passed at the last session of the Legislature. Senate Journal page 1261, House Journal page 1271.

July 26, 1937

It is therefore the opinion of this office that the emergency clause attached to the Casey Bill is valid and constitutional and that the act is not referable but became effective upon being approved by the Governor June 23, 1937.

III.

Does the act contain all
legislation in effect in
Missouri affecting the
Social Security Plan.

The Casey Bill contains all the state laws now operative with reference to a single state plan for the purposes set out in Section 1 of the act. In Section 2 the State Social Security Commission is designated as the State Agency in any state or federal act involving any of the purposes of this bill. In addition thereto Section 25 provides that all provisions of law in conflict with this act are hereby repealed.

It is therefore the opinion of this office that the Casey Bill now contains all legislation now in effect in Missouri directly or indirectly affecting old age pensions, and to dependent children, relief and child welfare services under the Social Security plan in this state.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

FER:MM