

GENERAL ASSEMBLY: Power of Legislature to employ additional employees to assist Investigating Committee under House Resolution No. 60

February 27, 1937.



Honorable T. A. Shockley
Member of House of Representatives
Chairman, Insurance Committee
Jefferson City, Missouri.

Dear Mr. Shockley:

This is to acknowledge receipt of your letter of February 25, 1937, in which you request the opinion of this Department on the question therein submitted. Your letter is as follows:

"The House Committee on Insurance by resolution was made the Investigating Committee on certain fire insurance funds that have been impounded for a number of years, seeking to ascertain the disposition of same.

"The resolution states that said Investigating Committee may employ clerks, stenographers, sergeant-at-arms, and other assistants. Since the House of Representatives now has the seventy-five employees provided for by the Constitution, I would like to have your opinion if the Investigating Committee may employ additional clerks, stenographers, sergeant-at-arms, and other assistants.

"I am attaching hereto printed copy of said resolution for your information, and would be glad to have your opinion at the very earliest moment."

In your letter of submittal you enclosed a copy of House Resolution No. 60 with interlineations showing the amendments thereto. Your question is, as we understand from your letter, does the Investigating Committee provided for in said resolution have the authority to employ additional clerks, stenographers, sergeant-at-arms and other assistants as it may require to make the investigation called for by the resolution? We note, also, that you state in your letter that "the House of Representatives now has the seventy-five employees provided for by the Constitution." You refer, of course, to Section 16a, an Amendment to the Missouri Constitution adopted by the people at the General Election of November 8, 1932, Laws of Missouri, 1933, page 479, Vol. 15, Mo. Stat. Ann., Cumulative Pocket Addition, which is as follows:

"Neither House of the General Assembly shall employ to exceed in all 75 employes, elective, appointive, or any other, at any time during any session."

This amendment to our Constitution has not been before our courts for construction or interpretation since its adoption. One of the cardinal rules in the construction of a provision of a constitutional amendment is to find out and ascertain the intention of the framers and of the people who adopted same, and in such construction technical rules shall be disregarded, and, as a rule, a medium between a strict and a liberal construction should be followed.

Does this amendment to the Constitution mean that neither house of the General Assembly shall employ to exceed in all 75 employes at any time during any session and under any and all circumstances?

The Supreme Court of Oklahoma in the case of Shaw, State Auditor v. Grumbine, 278 Pac. 311, had a somewhat similar provision of the Oklahoma Constitution before it for construction, which provision of the Constitution of Oklahoma, Section 49, Article V, reads as follows (l. c. 313):

"The Legislature shall not increase the number or emolument of its employes, or the employes of either House, except by general law, which shall not take effect during the term at which such increase was made."

And the court held in that case (l. c. 316):

"that the Legislature, acting in an inquisitorial and investigating capacity, or either House in performing such duties, or the Senate sitting as a court of impeachment, is vested with authority to employ such clerks, stenographers, or other employees as may be necessary to discharge such duties, and that the inhibition of section 49, article 5, of the Constitution, was intended by the framers and the people in adopting the Constitution that it should apply to the Legislature as a lawmaking body, and does not prohibit the Legislature sitting in an inquisitorial and investigating capacity from employing additional employees to enable it to properly function and discharge its duties in such capacities." (Italics ours)

and that there was a distinction between its purely legislative functions and when the Legislature was acting in an investigating and inquisitorial capacity.

We assume that to perform the necessary legislative functions the House of Representatives deems it necessary to employ 75 employes to take care of and perform the general, usual, customary and ordinary matters coming before it in its law-making capacity. That being true, if the House of Representatives deemed it necessary to make an investigation, such as is called for under House Resolution No. 60, and extra employes were necessary to make such investigation, it could not do so because it had employed all the clerks, stenographers and other employes permitted under Constitutional Amendment, Section 16a aforesaid, wherein it is limited to 75 employes.

We do not agree to such a narrow construction of this Amendment to our Constitution for the reason that it would cripple the General Assembly in performing its investigating and inquisitorial functions and we do not believe that the people, by adopting this Amendment, intended to so limit the General Assembly.

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In 59 C. J., p. 102, Section 89, it is said:

"When the legislature, or either house thereof, sits in an inquisitorial or investigating capacity, it may employ additional employees to enable it properly to function and discharge its duties in such capacity, but the legislature, or either house thereof, cannot delegate to a committee the power to fix the number of employees."

Conclusion.

From the above and foregoing we are of the opinion that the Investigating Committee, provided for in House Resolution No. 60, may, with the sanction and approval of the House of Representatives, employ additional clerks, stenographers, sergeant-at-arms and other assistants mentioned in your letter, to make the investigation called for in said Resolution and report the result of its investigation to the House of Representatives.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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