

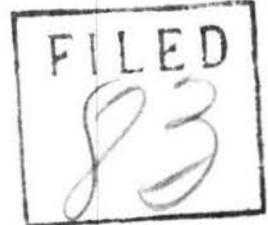
LEGISLATION:

A law expiring of its own force at a given future date cannot be revived or re-enacted without setting it out in full.

UNCONSTITUTIONALITY:

April 5th, 1939.

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Honorable Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

This acknowledges receipt of your letter of March 30th, and enclosed copy of perfected House Bill #91, of the 60th General Assembly, your request is as follows:

"I am enclosing copy of perfected HB 91 which is intended to continue the Sales Tax bill which is found on pages 552 and 569, inclusive of the 1937 Laws.

I would like a written opinion from your department as to the constitutionality of the Sales Tax law as attempted to be amended by enacting HB 91.

Section 2 on page 557 of the present law provides that the law shall die at the end of December 31, 1939. The only thing included in HB 91 is Section 2 of the Act and my contention is that all of the rest of the Act will be null and void."

April 5th, 1939

You make the broad general inquiry as to the constitutionality of the proposed sales tax law. While your letter indicates that you perhaps have in mind only one feature of the unconstitutionality of the bill, we will discuss the constitutionality of the bill from several angles that occur to us from a reading of it.

First: As To The Title. The title to the Act identifies the section of the statute sought to be amended and declares the Act to be a revision Act. It occurs to us that the title would be more complete and less subject to the criticism that might be lodged against it in court, if it also set forth the purpose of the bill. The title, as it now appears, does not set forth the purpose of the bill further than "to amend Section 2 of an Act of the 59th General Assembly * * * *, 1937."

We suggest that it would be better if the title set forth the substance of the amendment. Section 28, of Article 4, of the Constitution of Missouri, provides, "No bill * * * * shall contain more than one subject, which shall be clearly expressed in its title." It is to meet the provision of this last quoted section of the Constitution that the above is written.

Second: The Bill as written purports to amend Section 2 of the present Sales Tax Law, found at pages 557-558, Laws of 1937, by doing two things. One of them is to extend the operative force of the present law until December 31, 1941; the other is to make the Sales Tax law broader than it is at present, the latter being that part of the bill found at lines 42, 43 and 44 of page 3, thereof, placing said 2% tax on laundry, cleaning, pressing and dyeing services.

Section 34 of Article 4, of the Constitution of Missouri, provides:

"No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

Section one of the said House Bill is silent as to the portion of Section 2, last hereinabove referred to, and dealing with the broadening of the collection of the taxes to include the new field of commercial laundry, cleaning, pressing and dyeing services. It occurs to us that the following words should be inserted in Section 1 in line 12, and after the words "December 13, 1941," by adding at the end of said section the following: "Tax equivalent to 2% of amounts of sales of charges for commercial laundry, cleaning, pressing and dyeing services."

Third: As to whether the provisions of the Bill inserting a different date, to wit, December 31, 1941, is a valid extension of the provision of the whole Sales Tax Act to that date. It has been decided by the courts of this state that the Legislature may enact a law and postpone to a future date the time when it shall first become operative.

In State ex rel, v. Dirckx, 211 Mo. 568, the Supreme Court of this state en banc (1908), said at page 578:

"That a statute or constitutional provision may have a potential existence, but which will not go into actual operation until a future time, is familiar law. (State ex rel. v. Wilcox, 45 Mo. l. c. 464; State ex rel. v. Pond, 93 Mo. l.c. 625; Ex parte Snyder, 64 Mo. l.c. 61)."

And it would appear that if that were the sole question involved in your inquiry, the Legislature has the constitutional authority to provide that it shall become operative at a future date other than the 90 days after adjournment of the Legislature.

However, your inquiry seems to raise a broader question than the above. The proposed bill does not enact the whole body of the Sales Tax law and provide that it shall become operative at some future date. On the contrary, it seeks to amend one section of the said Sales Tax law by inserting a date two years in advance of the date which the present bill provides is the date of the termination of the effective force of the present sales tax law.

If no legislation were passed by the Legislature at this session, the present sales tax law would die and cease to be effective on December 31, 1939. It was doubtless in the mind of the General Assembly at the time the present sales tax law was adopted, that each of the provisions of the present Sales Tax law should cease to become operative upon the last date hereinabove mentioned. Those provisions being found on pages 555 to 569 inclusive, Laws of 1937.

It is now sought by House Bill #91 to prolong the life of all of those sections by amending Section 2, so that it states that the effective date of this Sales Tax law shall be December 31, 1941, instead of

December 13, 1939. If it had been in the mind of the General Assembly when this Sales Tax was enacted in 1937, that it should have been extended to 1941, and that each of the provisions of the sales tax were to remain effective until the latter date, they would have so stated in the act.

If this were an obligation of a private nature, such as a promissory note, of course the parties to the instrument could have extended the due date of it to some future time other than that the instrument, when written, bore, and ratification and estoppel might successfully be set up in the courts as a reason why the attack on the validity of the obligation in its extended form should not prevail. But, generally speaking, ratification and estoppel are not recognized as a method of enacting laws. The Constitution sets out the course that must be followed by the Legislature in enacting laws, and that course must be followed, at least substantially in order for the enactment to pass the test of the courts.

Section 33, of Article 4, of the Constitution of the State of Missouri, provides as follows:

"No act shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length, as if it were an original act."

It would seem to be a reasonable conclusion that the real purpose and object of House Bill #91 is to revive or re-enact the state Sales Tax law for another period of two years beyond the date when the said state Sales Tax, in its present form, ceases to be operative. In other words, it would appear that the bill, by striking out of the present Sales Tax law at page 557 in Section 2, the words; "and up to and including December 31, 1939", and by adding the

words in lieu thereof as follows: "and up to and including December 31, 1941", should revive or re-enact and breathe life into the whole of the present Sales Tax law which, as enacted, comes to and end on December 31, 1939. Putting it another way, that the Legislature by merely inserting the expiration date two years in future from the present expiration date of the law, would revive about 50 sections of the statutes now representing the state Sales Tax law. By so doing, it would seem that the requirements of Section 33, of Article 4, of the Constitution hereinabove referred to, and which section requires that the bill shall be set forth at length as if it were an original act, is harshly dealt with. Section 33, supra, does not appear to have been construed by the courts, but it would appear that the fair meaning of it is that it requires that the whole sales tax law shall be set forth at length as if it were an original act", and that an act which sought to revive or breathe life into the entire sales tax law which expires on the date therein designated, by amending that date so that the legislation would be extended and in the future would be by the courts declared unconstitutional as violative of said Section 33.

Fourth: As to the necessity of a section prescribing that the bill is declared to be a revision act.

The Missouri Constitution was amended at the election of November 8, 1932, (See Laws of 1933, 479). The amendment of the Constitution so adopted provides, among other things, "that after the expiration of 70 days of such revision sessions no measure other than appropriation bills and such bills as the General Assembly may determine by an express statement therein contained to be revision bills shall be considered by the General Assembly * * * ." More than 70 days have passed, and under that constitutional provision this bill could not be considered except that it be designated by the General Assembly "by an express statement therein

contained" to be a revision bill. The words "by an express statement therein contained" mean that those provisions so designating such bill to be a revision bill must be contained in the bill itself. The title is no part of the bill. The title is merely the designation of the substance of the bill. In order for a bill to be saved for consideration by the Legislature more than 70 days from the first day of the session a provision must be contained in the bill itself, and this provision must state that the bill is a revision bill, (absent the Governor's special message recommending the bill for consideration).

The Constitution of the State of Missouri says, Section 25, Article 4: "No law shall be passed except by bill * * * *". The amendment to the Constitution as adopted in 1932 requires the designation by the Legislature of the bill to be a revision bill to be in the body of the bill, and if the constitution means what it says, a bill could not legally be considered by the Legislature when it is not an appropriation bill, and when the consideration thereof is more than 70 days after the first day of the session, and when the bill did not in the body of it express that it is a revision bill. In order to meet the above observations, a new section should be added to the bill stating that this is a revision bill.

We recognize that the courts lend every indulgence of construction in favor of the constitutionality of a law passed by the Legislature, and will not declare laws passed by the Legislature to be unconstitutional if there is any reasonable construction that can be placed on the act. While there may be grounds for argument upon some of the questions hereinabove discussed, yet we believe the Legislature and the public are best served by calling attention to the questions hereinabove referred to, in order that controversy in the courts may be averted, and it is in that spirit the observations herein expressed are made.

Hon. Forrest Smith

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April 5, 1939

CONCLUSION

It is our conclusion that House Bill
#91 in its present form is unconstitutional.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

DW/RV