

GENERAL ASSEMBLY: LEGISLATURE:  
SPECIAL SESSION: GOVERNOR:  
GOVERNOR'S CALL FOR SPECIAL  
SESSION:

The Constitution prohibits action by the Legislature in Special Session on a proposed constitutional amendment, the subject of which is not included in the Governor's call for such Special Session, or in any special message of the Governor to such Special Session.



March 12, 1956

Honorable Roy Hamlin  
Speaker, House of Representatives  
Sixty-Eighth General Assembly  
Jefferson City, Missouri

Dear Mr. Hamlin:

This will acknowledge receipt of your recent request for an official opinion of this office concerning the following matter:

"Enclosed is a copy of House Joint and Concurrent Resolution No. 1, which was introduced into the House of Representatives this morning.

"I would appreciate it if you would check this resolution with the proclamation of the Governor and give me a written opinion as to whether the House can, or should entertain this resolution at this special session under the Constitution and laws of the State of Missouri. \* \* \*"

Article IV, Section 9 of the Constitution of Missouri, 1945, provides for the calling of an extraordinary session of the General Assembly by the Governor, and requires the Governor to state specifically each matter upon which action of the General Assembly is deemed necessary. This section reads:

"The governor shall, at the commencement of each session of the general assembly, at the close of his term of office, and at such other times as he may deem necessary, give to the

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general assembly information as to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter on which action is deemed necessary."

This provision is the same in substance, but with a slight change in language, as that found in Article V, Section 9 of the Constitution of 1875.

The Constitution further specifically limits the power of the Legislature in Special Session to the matters contained in the call of the Governor, or in any special message which the Governor may deliver. This limitation is found in Article III, Section 39 (7) where it is provided:

"The general assembly shall not have power:...

"(7) To act, when convened in extra session by the Governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly after the convening of an extra session;"

It should be noted that the provisions and language of subparagraph (7) are exactly the same as Article IV, Section 55 of the Missouri Constitution of 1875.

Thus it will be seen that the Constitution requires the Governor to state specifically each matter upon which action of the General Assembly in Special Session is deemed necessary, and affirmatively withdraws from the Legislature power to act in Special Session upon subjects other than those enumerated in the Governor's call. It has been repeatedly held by the Supreme Court of Missouri that these provisions of the Constitution are mandatory, not merely directive, and that unless action of the General Assembly is in conformity therewith, such action is null and void. See *Wells v. The Missouri Pacific Railway Company*, 110 Mo. 286, 19 S.W. 530; *State ex rel. Carpenter v. City of St. Louis*, 318 Mo. 870, 2 S.W. 2d 713; and *State v. Adams*, 323 Mo. 729, 19 S.W. 2d 671.

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In the case of State ex rel. Rice v. Edwards, et al., 241 S.W. 945, the Missouri Supreme Court En Banc carefully considered the problem of action by the General Assembly in Special Session upon a subject not included in either the call of the Governor convening such Special Session, or a message from the Governor to the General Assembly in such Special Session. It is pointed out in this case that the Governor is required to specifically set out the suggestions upon which action of the General Assembly is deemed necessary, and that the General Assembly in Special Session has no power to act on subjects other than those enumerated by the Governor. In considering this matter the court said at l.c. 948:

"In other words, there are limitations upon legislative action both when the General Assembly is in regular session, and when it is in special session. When in special session its power to legislate at all is dependent upon the Governor, and when he designates the 'matter' or matters to be legislated upon, the power to legislate is limited to such matters. The General Assembly does not have to legislate upon the special matter just as the Governor may desire, or as he might indicate in an ill-advised message, but such body must confine itself to the matter submitted by the Governor. It cannot go beyond the matter submitted. Our constitutional provision on this subject is mandatory, not discretionary. Wells v. Ry. Co., 110 Mo. loc. cit. 296, 19 S.W. 530, 15 L. R. A. 847; State ex rel. v. Hitchcock, 241 Mo. loc. cit. 464 et seq., 146 S.W. 40; Denver Co. v. Moss, 50 Colo. loc. cit. 289 et seq., 115 Pac. 696.

"This, because so sayeth our Constitution. When the General Assembly steps beyond the matter specifically submitted to it by the Governor, it acts (in a special session) without constitutional warrant, and its acts are void. In this case a vital question is the 'matter' referred to the Fifty-First General Assembly by the Governor, through these written messages. \* \* \*"

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Further, in this discussion the court said:

"In discussion of the question as to whether or not the General Assembly remained within the limits of the matter or subject submitted to it for legislative action by the message of the Governor, we want to first say that we find no fault with those cases which hold that when the subject or matter is submitted to the Legislature, the Legislature is authorized to legislate upon the subject or matter in any way that it sees fit. It does not have to follow the views of the Governor, and legislate in a particular way upon the submitted subject. But this rule does not change the rule that the Governor can limit the subject-matter for consideration, and for legislative action. The matter to be legislated upon at a special session is within the discretion of the Governor. If he wants legislation upon certain matters pertaining to railroads, or their employees, he must specifically designate it, and when he has specifically designated it, the lawmakers are not permitted to ramble through the whole domain of corporation law. Their legislation must be within the narrow bounds of the subject or matter submitted. *Wells v. Ry. Co., supra.*"

Further, in reaching its conclusion the court noted:

"\* \* \* Under our rulings, and under rulings elsewhere, the Governor can and should specifically name the matter or subject for legislative action. When he has specifically named it, all the courts hold that the Legislature cannot go beyond it. Not a case cited by respondents contravenes this rule.\* \* \*"

In this connection see also *Stocke v. Edwards*, 295 Mo. 402, 244 S.W. 802, where the court, following the same reasoning, reached the same result.

Thus it will be seen that the Supreme Court of Missouri has constantly held that the Governor must specifically enumerate subjects upon which he deems action necessary by the General

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Assembly in Special Session, and that under what is now Article III, Section 39 (7) of the Missouri Constitution, the Legislature in Special Session is limited in an affirmative and specific manner from acting on any subject other than those specifically designated by the call of the Governor, or by special message of the Governor. In the present case there has been no special message from the Governor and thus, the subjects upon which the Legislature in this Special Session may act must be found in the Proclamation of the Governor calling this Special Session. From an examination of this Proclamation it appears that the Governor did not include the subject dealt with by House Joint and Concurrent Resolution No. 1.

It has been suggested that since this joint resolution would, if legally enacted, submit to the people for their determination the matter of a constitutional amendment, and would not require the concurrence or signature of the Governor, that action on such matter by the General Assembly in Special Session is not prohibited by the Constitution. This suggestion is based upon a misapprehension of the constitutional provision. The Constitution does not limit its prohibition to matters of legislation or to matters which require the concurrence of the Governor. The Constitutional provision (Article III, Section 39(7)) is much broader and specifically withdraws the power of the Legislature to act on any subject except those enumerated by the Governor.

If the constitutional limitation only prohibited "legislation," then the Special Session of the General Assembly could properly act upon House Joint and Concurrent Resolution No. 1 since the Missouri Supreme Court has, in conformity with the holding in most other states, held that the proposing of constitutional amendments is not a legislative function. See *State ex inf. McKittrick ex rel. Ham v. Kirby*, 349 Mo. 988, 163 S.W. 2d 990, and cases cited therein. However, as is pointed out above, the constitutional limitation is not restricted to "legislation" but is very broad in scope.

It has also been suggested that constitutional amendments are not proposed by the General Assembly but by a majority of the members thereof, and that, therefore, the prohibition on action by the General Assembly in special session, found in Article III, Section 39 (7), is not applicable to and does not prohibit the proposing of constitutional amendments by the members of the legislature when assembled in special session, irregardless of the subjects designated by the Governor. This contention is based upon the wording of Article XII, Section 2, wherein it is provided:

"Constitutional amendments may be proposed at any time by a majority of the members elect

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of each house of the General Assembly, the vote to be taken by yeas and nays and entered on the journal.\* \* \* (Emphasis supplied.)

A reading of this provision shows that it is not proposed that a majority of the members of each house of the General Assembly may propose a constitutional amendment regardless of any other circumstance, for it appears that the requirement that a vote be taken by yeas and nays and entered on the journal, of necessity, limits the powers to propose constitutional amendments to a time when the General Assembly is in session. It is apparent that the authorization to propose constitutional amendments "by a majority of the members elect of each house" merely determines the number of members of each house which must concur before such amendment may, in fact, be proposed. Thus, it is not a majority of the members voting or a majority of a quorum or a majority of the members present, but it is a "majority of the members elect" which constitutes the number required to propose a constitutional amendment. Therefore, this language of Article XII, Section 2, does not take from the General Assembly the power to propose constitutional amendments and vest the same in the members of each house thereof, but it merely designates the number in each house who must vote for any proposed constitutional amendment. This conclusion is buttressed by the fact that immediately following the above quoted portion of Section 2, it is provided that "All amendments proposed by the General Assembly or by the initiative shall be submitted," etc., so that it appears that it was not the intention of the framers of the Constitution that constitutional amendments should be proposed by the members of each house of the General Assembly as contradistinguished from the General Assembly itself.

Although all of the Missouri cases found on this subject dealt with statutes enacted by the General Assembly at Special Session rather than with proposed constitutional amendments, or other similar matters, it is believed that the reasoning of the cases cited require the conclusion that the Special Session of the Legislature is without power to act upon a subject such as that contained in House Joint and Concurrent Resolution No. 1, as well as upon proposed statutes.

#### CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the Legislature now in Special Session,

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pursuant to the Proclamation of the Governor, is without power to act upon the subject of House Joint and Concurrent Resolution No. 1, for the reason that such subject matter was not included in the Proclamation of the Governor convening such extraordinary Session and that there has been no special message from the Governor to the General Assembly covering such subject matter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

FLH:vlw