

LEGISLATION: The emergency clause appended to H.B. No. 83,  
CONSTITUTIONAL LAW: 72nd General Assembly (which is an act to in-  
MOTOR VEHICLES: crease truck weight limits and registration  
TRUCKS: fees), is invalid since said act is not  
"necessary for the immediate preservation of  
the public peace, health or safety," as provided in Section 52,  
Article III, Missouri Constitution.

April 23, 1963

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Honorable M. E. Morris  
Director  
Department of Revenue  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Morris:

We have your letter of April 17, 1963, wherein you inquire as to the effective date of House Bill No. 83 of the 72nd General Assembly, recently signed by Governor Dalton and returned to the House of Representatives with a message expressing the Governor's doubts concerning the efficacy of the emergency clause appended to the Bill.

H.B. No. 83 repeals Section 304.180, RSMo 1959, relating to the weight of motor vehicles, and enacts a new section relating to the same subject in lieu thereof, and amends Section 301.060, RSMo 1959, relating to registration fees of motor vehicles. The purpose of the Bill is to increase the permissible weight of commercial motor vehicles traveling on the state's interstate and primary highway system and to provide for a corresponding increase in the registration fees paid for vehicles of the heavier weights. The new law increases the greatest allowable gross weight from 64,650 pounds to 73,280 pounds and raises the maximum annual registration fee from \$800.00 to \$1,050.00. A schedule of intermediate weights and fees is also provided.

In determining the effective date of an act such as this, containing an emergency clause, Sections 29 and 52 of Article III of the Constitution must be considered. These sections are as follows:

Section 29. "No law passed by the general assembly shall take effect until ninety days after the adjournment of the session

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at which it was enacted, except an appropriation act or in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly shall otherwise direct by a two-thirds vote of the members elected to each house, taken by yeas and nays; provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess."

Section 52(a). "A referendum 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 state institutions and for the support of public schools) either by petitions signed by five per cent of the legal voters in each of two-thirds of the congressional districts in the state, or by the general assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly which passed the bill on which the referendum is demanded."

It can be seen that while Section 29 provides that an act may become effective sooner than ninety days after the adjournment of the legislative session upon a declaration of emergency by two-thirds of the membership of each house, Section 52 reserves to the people, for a period of ninety days after adjournment, the right of referendum over all bills except those "necessary for the immediate preservation of the public peace, health or safety" (and certain others not material here). These two constitutional provisions were first considered in a case involving an emergency clause by our Supreme Court in *State ex rel. Westhues v. Sullivan*,

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283 Mo. 546, 224 SW 327. In that case, the Court held that the two provisions must be construed together and that, in order to be effective, the legislative declaration of emergency provided by Section 29 must be such as will meet the Section 52 standard of "necessary for the immediate preservation of the public peace, health or safety." Whether that standard has been met is a judicial question, said the Supreme Court, and the courts are obliged to look behind the legislative statement of emergency to determine if the act in question is so necessary to the immediate preservation of the public peace, health or safety as to warrant a denial of all possibility of a referendum in order to give immediate effect to the act. Otherwise, the Court pointed out, the right to refer legislative enactments, guaranteed the people by the Constitution, could be made subject to a mere statement of emergency by the Legislature, whether or not such an emergency existed in fact. The constitutional referendum would thus become a legislative referendum. The Supreme Court then proceeded to examine the alleged emergency measure before it (the Workmen's Compensation Act of 1919) and held that it did not present an emergency situation within the meaning of Section 57 of Article IV of the Constitution of 1875 (now Sec. 52 of Art. III, supra), and was therefore referable by the people.

The conclusion reached in the Sullivan case that an emergency declared by the Legislature under Section 29 may not accelerate the effective date of a law unless it meets the test of an emergency under Section 52 has been consistently followed in a series of subsequent cases. State ex rel. Pollock v. Becker, 289 Mo. 660, 233 SW 641; Fahey v. Hackmann, 291 Mo. 351, 237 SW 752; State ex inf. Barrett v. Maitland, 296 Mo. 338, 246 SW 267; State ex rel. Harvey v. Linville, 318 Mo. 698, 300 SW 1066.

Our Court has also ruled against the contention that an act may become immediately effective as an emergency measure under Section 29 and still be subject to a referendum as provided in Section 52, stating, in State ex rel. Moore v. Toberman, 363 Mo. 245, 250 SW2d 701, 706, that:

"Moreover, § 52(b) clarifies beyond question the intendment and scope of the referendum provided in § 52(a). It provides: '\* \* \* Any measure referred to the people shall

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take effect when approved by a majority of the votes cast thereon, and not otherwise.' This is a clear declaration that the referendum provided for in 52(a) is not intended to apply to laws that have become effective."

Similarly in State ex rel. Westhues v. Sullivan, supra, the Court said (l. c. 335):

"That an act may take effect under a general emergency clause, and yet be subject to the referendum, is clearly contrary to the intent of the amendment, and would produce disastrous results. The clause in the amendment [now Section 52(b)] which reads, 'Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise,' clearly means that a law upon which the referendum is invoked cannot take effect prior to its approval by the vote; and consequently no act that is subject to the referendum can be made to go into operation for 90 days after the adjournment of the session or its approval by vote."

The decisions in Sullivan and subsequent cases were summarized in the most recent case on this subject, State ex rel. City of Charleston v. Holman, Mo., 355 SW2d 946, where the Court said (l. c. 950):

"In 1920, this court, in construing the purpose and effect of provisions of the Constitution of 1875 from which the above quoted §§ 29 and 52(a), Article III, of our present constitution are taken, held they, of necessity, were to be read and considered together. And so construing them, it was further held that no act subject to the referendum provisions of § 52(a) could go into effect earlier than 90 days

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after the adjournment of the session at which it was enacted; that neither could an act subject to referendum be made effective at an earlier date by the mere legislative declaration than an earlier effective date was necessary for the immediate preservation of the public peace, health or safety; and that the courts are vested with the right and duty to measure the act 'by the yardstick of the constitution' and determine whether in fact its provisions are 'necessary for the immediate preservation of the public peace, health or safety.' \* \* \*"

From the foregoing, we conclude that a legislative declaration of emergency does not render an act immediately effective unless it is "necessary for the immediate preservation of the public peace, health or safety" that the act be given immediate effect; and that the legislative declaration is not binding but is open to inquiry to determine whether the Section 52 test has been met.

The emergency clause appended to H.B. No. 83 reads as follows:

"Section 3. Since the present laws governing maximum vehicle weights seriously interfere with the movements of essential products to and from industry, business and agriculture which are necessary for the immediate preservation of public peace, health, safety, and general welfare, the General Assembly hereby declares an emergency exists within the meaning of the Constitution, and this Act shall become effective upon passage and approval."

No doubt the removal of the handicap imposed upon the trucking industry by the present weight limits will result in many benefits for Missouri. The transportation services performed by commercial motor vehicles are extremely important to the economy of the state, and the passage of H.B. No. 83 will make possible a substantial enlargement of these services. The question remains, however, whether the increase

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in maximum weight limits and the resulting revenues derived from the increased registration fees provided in H.B. No. 83 are of such vital importance to the immediate preservation of the public peace, health or safety that the Bill may be given immediate effect and the referendum guaranteed by the Constitution thus avoided. For some years, trucks have been required to observe our present weight limits without apparent damage to the public peace, health or safety. This holds true even though in recent years the current restrictions have become particularly burdensome due to increased weight limits in adjoining states. It can hardly be said that an increase of some 13% in maximum truck weights is necessary to meet an immediate threat to the public peace, health or safety when no such threat was apparent prior to the enactment of the increase.

A somewhat related situation is found in State ex rel. State Highway Commission v. Thompson, 323 Mo. 742, 19 SW2d 642, wherein the Court considered an act authorizing the issuance of \$7,500,000 in bonds to provide for the completion of the state highway system, and other matters. An emergency clause was appended to the bill and our Court held this clause did not meet the standard of Section 52. The Court said (l. c. 647):

"\* \* \* The early completion of the state highway system, the reimbursement of counties for money expended on the state highway system, the relief from congestion of traffic in areas adjacent to St. Louis and Kansas City, and a beginning of supplementary state highways in counties, are all desirable, and when accomplished will no doubt greatly contribute to the public welfare, and indirectly promote the public peace, health and safety. But it cannot be affirmed that any of these things are necessary for the immediate preservation of the public peace, health or safety.  
\* \* \*"

Certainly the trucking industry could not function without a highway system, and yet the Court held that the construction of such a system is not of such vital necessity as to

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warrant the giving of immediate effect to the act.

In *Fahey v. Hackmann*, 291 Mo. 351, 237 SW 752, the General Assembly passed a veterans' benefit bill with an emergency clause which stated that many of the intended beneficiaries of the act were not employed and were in dire need of the benefits sought to be provided them in the act. The Supreme Court held that the emergency clause was ineffectual, saying (l. c. 761):

"It is by virtue of this clause that proposed action under the law at this time is threatened. We regret to postpone the disposition of this fund, so richly deserved by the beneficiaries thereof, for even the short space of six or seven weeks, but we feel that the heroes entitled to the fund would not ask us to run counter to former judicial determinations in order to save this short space of time."

Applying the consistent line of thinking developed by the Supreme Court in the cases heretofore cited, we must necessarily conclude that, desirable as the implementation of H.B. No. 83 may be, it cannot be said to be necessary to the immediate preservation of the public peace, health or safety, and thus cannot be given immediate effect. This being the case, H.B. No. 83 will become effective in the normal course as provided in Section 29 of Article III, so that its effective date will be 90 days after the adjournment of the present legislative session, or October 13, 1963.

#### CONCLUSION

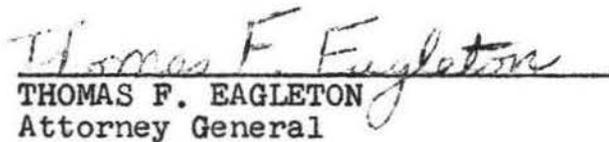
It is the opinion of this office that the emergency clause appended to H.B. No. 83, 72nd General Assembly, does

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not meet the constitutional standard set out in Section 52, Article III, Missouri Constitution; that an act to be given immediate effect must be "necessary for the immediate preservation of the public peace, health or safety" and said emergency clause is therefore invalid.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Very truly yours,

  
THOMAS F. EAGLETON  
Attorney General