



OFFICES OF THE
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JEFFERSON CITY

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OPINION LETTER NO. 1

Honorable Richard M. Webster
Missouri Senate, District 32
Room 434, Capitol Building
Jefferson City, Missouri 65101

Dear Senator Webster:

This is in answer to your opinion request concerning Section 226.530, RSMo, which concerns rules and regulations of the State Highway Commission applicable to outdoor advertising. Such section provides in part as follows:

" . . . Such commission rules and regulations shall be filed in the office of secretary of state of the state of Missouri. Such rule or regulation, or any amendment thereto shall become interimly effective thirty days after such filing, and shall remain in effect pending amendment, approval or rejection by the general assembly in the next regular or special session."

The language of the section is confusing in that it states that the rule or regulation or any amendment thereto shall remain in effect pending "amendment, approval or rejection" by the General Assembly. The concept of a rule's remaining in effect pending "approval" would indicate that if approval were not given the rule or regulation would expire. The use of the term "rejection" would indicate that if the rule were not rejected it would remain in effect. The use of the word "amendment" would indicate that the legislature purports to have the power to change in part a rule promulgated by the State Highway Commission.

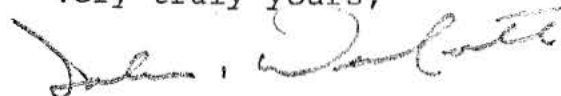
The legislature can at any time enact a statute which invalidates a rule promulgated by any agency which is not promulgated

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under a constitutional provision. The legislature can in a sense "approve" a rule by enacting the provisions of such rule into law. Further, a rule can be "amended" by a statute which contains provisions in part contrary to the rule and in such case the statute would prevail over such contrary provisions of the rule. Such action can be taken by the legislature at any time in any session after the promulgation of the rule except that, of course, a statute cannot be enacted at a special session of the General Assembly unless the subject matter of the statute is within the call of the Governor. It is axiomatic that one General Assembly cannot restrict the action of a succeeding General Assembly, The State ex rel. Walker v. Walker, 88 Mo. 279 (1885). It is our view that the legislative intent of Section 226.530, in the premises, is that the action of the General Assembly in approving, rejecting or amending a rule promulgated by the State Highway Commission is that the approval, rejection or amendment must be by a statute duly enacted with provisions that are the same as the rule, contrary to the rule, or in part contrary to the rule.

Further, we are of the view that a rule promulgated by the State Highway Commission under the authority of Section 226.530, cannot be affected by a joint resolution of the General Assembly. This is because under Section 21 of Article III of the Missouri Constitution no law can be passed except by bill. We cannot, in these premises, conclude that the General Assembly intended to enact permanent substantive legislation by the use of a joint resolution. We conclude that such rules remain effective until the General Assembly passes legislation invalidating them in whole or in part.

Very truly yours,



JOHN C. DANFORTH
Attorney General